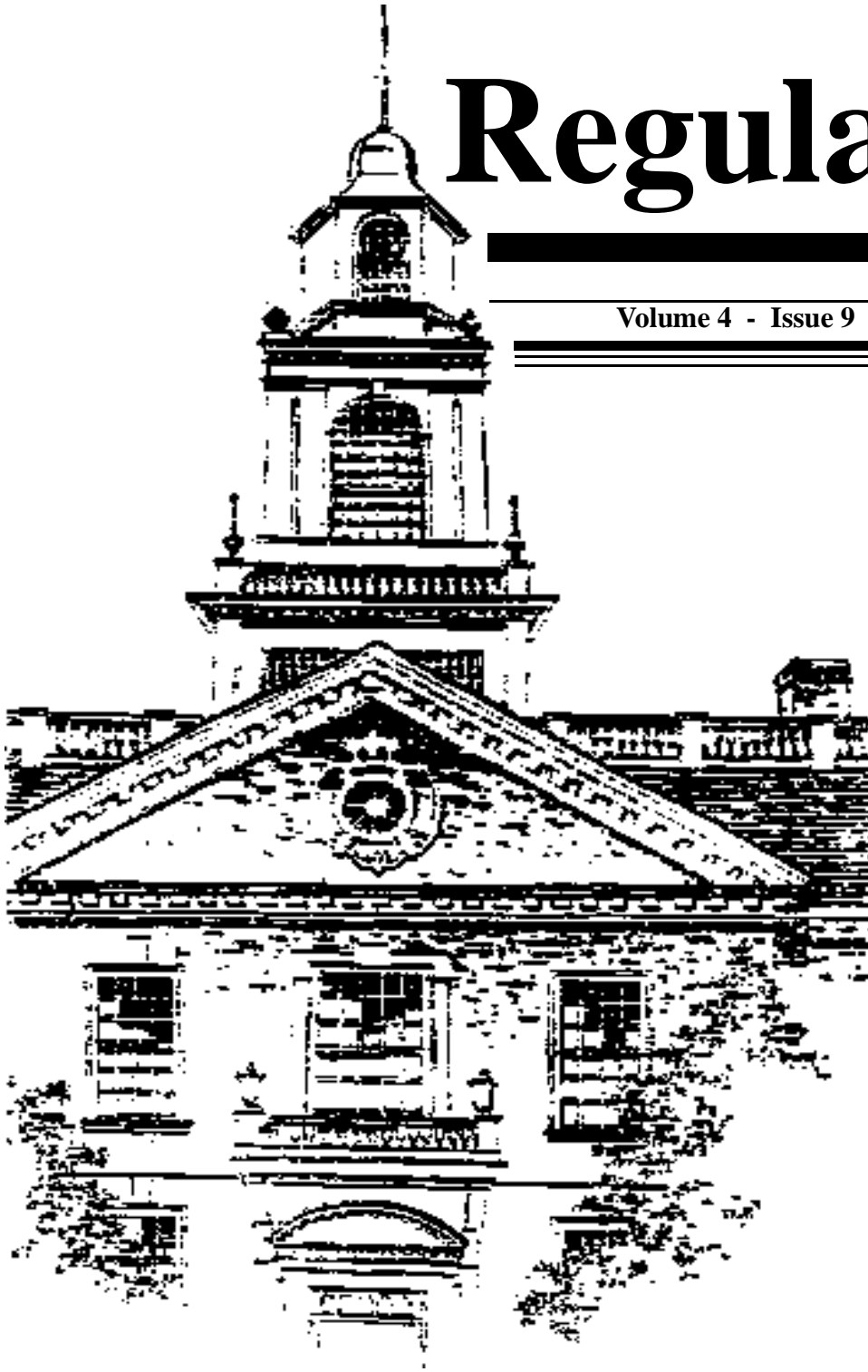

Delaware Register of Regulations



Issue Date: March 1, 2001

Volume 4 - Issue 9

Pages 1361 - 1573

IN THIS ISSUE:

Regulations:

- Errata
- Emergency
- Proposed
- Final

Governor

- Executive Orders
- General Notices
- Calendar of Events &
Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before February 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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

1363

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

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

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

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

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

Except as provided in the preceding section,

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

| ISSUE DATE | CLOSING DATE | CLOSING TIME |
|------------|--------------|--------------|
| APRIL 1 | MARCH 15 | 4:30 P.M. |
| MAY 1 | APRIL 15 | 4:30 P.M. |
| JUNE 1 | MAY 15 | 4:30 P.M. |
| JULY 1 | JUNE 15 | 4:30 P.M. |
| AUGUST 1 | JULY 15 | 4:30 P.M. |

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Cumulative Tables..... 1366

ERRATA

Delaware Prescription Assistance
Program (DPAP)..... 1373

EMERGENCY

Tidal Finfish Reg. No. 23, Black Sea Bass Size Limit;
Trip Limits; Seasons; Quotas..... 1378

PROPOSED

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

100 Board of Accountancy..... 1380
700 Board of Chiropractic..... 1391
3000 Board of Professional Counselors of
Mental Health..... 1394
3700 Board of Speech/Language Pathologists,
Audiologists, and Hearing Aid Dispensers... 1399
5300 Board of Massage and Bodywork..... 1411

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

Rule 15.02, Bleeder Medication..... 1415

DEPARTMENT OF EDUCATION

501 State Content Standards..... 1421
503 Instructional Program Requirements..... 1421

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

Application & Operation of Managed Care
Organizations (MCO)..... 1425
Regulations Governing a Detailed Plumbing
Code 1447
Regulations for the Control of Communicable
and Other Disease Conditions..... 1452
Regulations Concerning Air Medical Ambulance
Services 1465

DIVISION OF SOCIAL SERVICES

9042, Food Stamp Program, Categorically Eligible
Households..... 1486
17170, Section 4913 Disabled Children..... 1487

**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR AND WASTE MANAGEMENT
WASTE MANAGEMENT SECTION**

Regulations Governing Hazardous Waste..... 1488

DIVISION OF FISH AND WILDLIFE

Shellfish, S-34, Non Commercial Crab Pot Design;
Bycatch Reduction Device..... 1490
Tidal Finfish Reg. No. 21, Scup Size Limit..... 1491
Tidal Finfish Reg. No. 23, Black Sea Bass Size
Limit; Trip Limits; Seasons; Quotas..... 1492
Tidal Finfish Reg. No. 27, Spiny Dogfish; Closure
of Fishery..... 1492

FINAL

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

1600 Commission on Adult Entertainment
Establishments..... 1493
1900 Board of Nursing, Rule 6.10.1.1..... 1494
2500 Board of Pharmacy..... 1500
Regulation I, Pharmacist Licensure
Requirements..... 1501
Regulation VI, Pure Drug Regulations..... 1502
Regulation XV, Automated Pharmacy Systems... 1502
2930 Council on Real Estate Appraisers..... 1504

DEPARTMENT OF EDUCATION

804 Immunizations..... 1515

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

Licensing & Registration of Operators of Public
Water Supply Systems..... 1517

**DIVISION OF PUBLIC HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES**

| | |
|-------------------------------------------------------------------|------|
| Advanced Life Support Interfacility Transportation (ALS-IFT)..... | 1525 |
| Delaware Early Defibrillation Program..... | 1543 |

DIVISION OF SOCIAL SERVICES

| | |
|------------------------------------------------------------------------------------|------|
| 14300 Citizenship and Alienage..... | 1550 |
| 14320.1 Medicaid Eligibility for Qualified Aliens (PRWORA and/or State Funds)..... | 1551 |
| 14330.2 Eligibility For State Funded Benefits (Nonqualified Aliens)..... | 1551 |
| 17800 Medical Assistance during Transition to Medicare..... | 1551 |

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

| | |
|------------------------------------------------------------------------------------------------------|------|
| Tidal Finfish..... | 1552 |
| Reg. 4, Summer Flounder Size Limits; Possession Limits; Seasons..... | 1553 |
| Reg. 7, Striped Bass Possession Size Limit; Exceptions..... | 1554 |
| Reg. No. 8, Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements..... | 1554 |
| Reg. 9, Bluefish Possession Limits..... | 1555 |
| Reg. 10, Weakfish Size Limits; Possession Limits; Seasons..... | 1555 |
| Reg. No. 14, Spanish Mackerel Size Limit and Creel Limit..... | 1556 |

**DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DIVISION OF FAMILY SERVICES**

| | |
|-------------------------------------------------------------------------------------|------|
| Regulations for Entry onto & Expungement from the Central Child Abuse Registry..... | 1556 |
|-------------------------------------------------------------------------------------|------|

GOVERNOR

| | |
|----------------------------------------------------------------------------------|------|
| Executive Order No. 10, Prohibiting Discrimination in State Employment..... | 1562 |
| Executive Order No. 11, Violence Against Women Act Implementation Committee..... | 1565 |

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Executive Order No. 12, Amending paragraph 2(q) of Executive Order No. 3, relating to the creation of the Strategic Economic Council, issued on January 5, 2001..... | 1566 |
| Executive Order No. 13, Ensuring that Persons Who Have Committed Felonies Surrender Their Firearms..... | 1566 |

GENERAL NOTICES

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| Proposed Amendment to the Delaware River Basin Commission's Water Code and Comprehensive Plan to Establish Water Usage Reporting Requirements and Proposed Amendment to the Commission's Water Metering Requirements | 1567 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|

CALENDAR OF EVENTS/HEARING NOTICES

| | |
|----------------------------------------------------------------------------------------------------------------|------|
| Board of Accountancy, Notice of Public Hearing. | 1568 |
| Board of Chiropractic, Notice of Public Hearing. | 1568 |
| Board of Professional Counselors of Mental Health, Notice of Public Hearing..... | 1568 |
| Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, Notice of Public Hearing..... | 1568 |
| Board of Massage and Bodywork, Notice of Public Hearing..... | 1569 |
| Thoroughbred Racing Commission, Notice of Public Comment Period..... | 1569 |
| State Board of Education, Notice of Monthly Meeting..... | 1569 |
| Health & Social Services, Div. of Public Health, Managed Care Organizations, Notice of Public Hearing..... | 1569 |
| Regulations Governing a Detailed Plumbing Code, Notice of Public Hearing..... | 1570 |
| Regulations for the Control of Communicable and Other Disease Conditions, Notice of Public Hearing..... | 1570 |
| Regulations Concerning Air Medical Ambulance Services, Notice of Public Hearing..... | 1571 |
| Div. of Social Services, Categorically Eligible Households, Notice of Public Comment Period..... | 1571 |
| DSSM Section 4913 Disabled Children,..... | 1571 |
| DNREC, Regulations Governing Hazardous Waste, Notice of Public Hearing..... | 1572 |
| Shellfish Regs., Notice of Public Hearing..... | 1572 |
| Tidal Finfish Regs., Notice of Public Hearing | 1572 |
| Delaware River Basin Commission's, Notice of Public Hearing | 1573 |

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the Delaware Register of Regulations.

The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the Register in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

ATTORNEY GENERAL

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------|---|---------------------|
| Opinion No. 99-IB15, FOIA Complaint Against the City of Newark..... | 4 | DE Reg. 1317 |
| Opinion No. 99-IB16, FOIA Complaint Against the Delaware Department of Transportation & the City of Wilmington..... | 4 | DE Reg. 1318 |
| Opinion No. 99-IB17, FOIA Complaint Against the Town of Townsend..... | 4 | DE Reg. 1318 |
| Opinion No. 00-IB01, Residency and Christina Board of Education..... | 4 | DE Reg. 1319 |
| Opinion No. 00-IB02, FOIA Complaint Against the Town of Bellafonte..... | 4 | DE Reg. 1320 |
| Opinion No. 00-IB03, FOIA Complaint Against the Brandywine School District..... | 4 | DE Reg. 1321 |
| Opinion No. 00-IB04, Interpretation of 9 Del.C. Section 4104(c), Compensation of President and Vice-President of Levy Court..... | 4 | DE Reg. 1321 |
| Opinion No. 00-IB05, FOIA Complaint Against the Red Clay Consolidated School District.... | 4 | DE Reg. 1323 |
| Opinion No. 00-IB06, Felony Conviction Information and Voter Registration..... | 4 | DE Reg. 1324 |
| Opinion No. 00-IB07, FOIA Complaints Against the Woodbridge School District | 4 | DE Reg. 1325 |
| Opinion No. 00-IB08, FOIA Complaint Against the University of Delaware..... | 4 | DE Reg. 1328 |
| Opinion No. 00-IB09, State of Delaware as a Party to an Equal Accommodation Complaint..... | 4 | DE Reg. 1330 |
| Opinion No. 00-IB10 Capital School District Referendum..... | 4 | DE Reg. 1333 |
| Opinion No. 00-IB11, Voting by Incompetent Persons..... | 4 | DE Reg. 1335 |
| Opinion No. 00-IB12, FOIA Complaints Against the Woodbridge Board of Education, and the Raider Committee..... | 4 | DE Reg. 1338 |
| Opinion No. 00-IB13, Kent County Levy Court/Board of Assessment..... | 4 | DE Reg. 1341 |
| Opinion No. 00-IB14, Executive Order No. 70S-10..... | 4 | DE Reg. 1342 |
| Opinion No. 00-IB15, Delaware State Housing Authority Application Procedures..... | 4 | DE Reg. 1345 |
| Opinion No. 00-IB16, Sheriff as a Police Officer..... | 4 | DE Reg. 1347 |
| Opinion No. 00-IB17, Burris-Rochford Education Plan Mailing..... | 4 | DE Reg. 1348 |
| Opinion No. 00-IB18, FOIA Complaint Against the City of Newark..... | 4 | DE Reg. 1351 |
| Opinion No. 00-IB19, FOIA Complaint Against the Woodbridge School District..... | 4 | DE Reg. 1352 |
| Opinion No. 00-IB20, Elderly Property Tax Relief and Education Expense Fund..... | 4 | DE Reg. 1353 |

DELAWARE STATE FIRE PREVENTION COMMISSION

1997 Edition Part I, Annex A, 1997 Edition Part I, Annex B and 1997 Edition Part III,

| | | |
|-------------------------------------------------------------------------------|---|-------------------------------|
| Chapter 1, Operation, Maintenance and Testing of Fire Protection Systems..... | 4 | DE Reg. 769 (Prop.) |
| | | 4 DE Reg. 1237 (Final) |

DEPARTMENT OF ADMINISTRATIVE SERVICES (Title 24 Delaware Administrative Code)**Division of Professional Regulation**

| | | |
|-------------------------------------------------------------------------------|---|-------------------------------|
| 200 Board of Landscape Architecture..... | 4 | DE Reg. 385 (Prop.) |
| | | 4 DE Reg. 1239 (Final) |
| 400 Gaming Control Board, Regulations Governing Bingo, Section 1.03 (10)..... | 4 | DE Reg. 334 (Final) |
| 500 Board of Podiatry..... | 4 | DE Reg. 688 (Final) |
| 1400 Board of Electrical Examiners..... | 4 | DE Reg. 1213 (Prop.) |
| 1600 Commission on Adult Entertainment Establishments..... | 4 | DE Reg. 1068 (Prop.) |
| 1770 Board of Medical Practice, Respiratory Care Advisory Council..... | 4 | DE Reg. 14 (Prop.) |
| | | 4 DE Reg. 699 (Final) |

| | | | | |
|------|-------------------------------------------------------------------------------------------------|---|----------------|--------------|
| 1900 | Board of Nursing..... | 4 | DE Reg. | 274 (Prop.) |
| | | 4 | DE Reg. | 672 (Final) |
| | Advance Practice Nurses, Independent Practice and/or Independent Prescriptive Authority..... | 4 | DE Reg. | 296 (Final) |
| | Rule 6.10, Register of Nurses Licensed in Delaware..... | 4 | DE Reg. | 1069 (Prop.) |
| 2100 | Board of Examiners in Optometry..... | 4 | DE Reg. | 674 (Final) |
| 2500 | Board of Pharmacy | | | |
| | Reg. I, Pharmacist Licensure Requirements..... | 4 | DE Reg. | 163 (Final) |
| | | 4 | DE Reg. | 889 (Prop.) |
| | Reg. II Grounds for Disciplinary Proceeding..... | 4 | DE Reg. | 163 (Final) |
| | | 4 | DE Reg. | 247 (Errata) |
| | Reg. V, Dispensing..... | 4 | DE Reg. | 8 (Prop.) |
| | | 4 | DE Reg. | 163 (Final) |
| | | 4 | DE Reg. | 682 (Final) |
| | Reg. VI, Pure Drug Regulations..... | 4 | DE Reg. | 890 (Prop.) |
| | Reg. XV, Automated Pharmacy Systems..... | 4 | DE Reg. | 605 (Prop.) |
| | | 4 | DE Reg. | 890 (Prop.) |
| 2600 | Examining Board of Physical Therapists..... | 4 | DE Reg. | 21 (Prop.) |
| | | 4 | DE Reg. | 440 (Final) |
| | | 4 | DE Reg. | 1114 (Final) |
| | | 4 | DE Reg. | 607 (Prop.) |
| 2900 | Real Estate Commission..... | 4 | DE Reg. | 390 (Prop.) |
| | | 4 | DE Reg. | 844 (Final) |
| | Rule 5.2... .. | 4 | DE Reg. | 457 (Final) |
| 2950 | Council on Real Estate Appraisers..... | 4 | DE Reg. | 1074 (Prop.) |
| 3000 | Board of Professional Counselors of Mental Health..... | 4 | DE Reg. | 267 (Prop.) |
| | | 4 | DE Reg. | 970 (Final) |
| 3100 | Board of Funeral Services..... | 4 | DE Reg. | 157 (Final) |
| 3500 | Board of Examiners of Psychologists..... | 4 | DE Reg. | 275 (Prop.) |
| | | 4 | DE Reg. | 977 (Final) |
| 3900 | Board of Clinical Social Work Examiners..... | 4 | DE Reg. | 892 (Prop.) |
| 5100 | Board of Cosmetology & Barbering..... | 4 | DE Reg. | 329 (Final) |
| 5300 | Board of Massage and Bodywork..... | 4 | DE Reg. | 771 (Prop.) |
| | | 4 | DE Reg. | 1245 (Final) |

DEPARTMENT OF AGRICULTURE

| | | | | |
|------------------------------------------------------------------------------------------------|--|---|----------------|--------------|
| Delaware Standardbred Breeders' Fund Program..... | | 4 | DE Reg. | 37 (Prop.) |
| Nutrient Management Certification Regulations..... | | 4 | DE Reg. | 609 (Prop.) |
| | | 4 | DE Reg. | 1117 (Final) |
| Nutrient Management, Regulations Governing the Processing of Complaints of Violations | | 4 | DE Reg. | 612 (Prop.) |
| | | 4 | DE Reg. | 1121 (Final) |

Harness Racing Commission

| | | | | |
|-----------------------------------------------------------------------------------------|--|---|----------------|--------------|
| Amend Rules 3.2.8.3; 6.3.2; 7.6.6; 7.6.13; 7.6.14; 7.6.15; 8.3.5.4; and 8.4.3.5.10..... | | 4 | DE Reg. | 336 (Final) |
| Rules 6.3.3.13 and 8.3.5.9.4..... | | 4 | DE Reg. | 259 (Errata) |
| Claiming Races, Rule 6.3..... | | 4 | DE Reg. | 776 (Prop.) |
| Claiming Races, Rule 6.3..... | | 4 | DE Reg. | 1094 (Prop.) |
| | | 4 | DE Reg. | 1123 (Final) |
| Testing | | 4 | DE Reg. | 6 (Errata) |

Thoroughbred Racing Commission

| | | | | |
|----------------------------------------------------------|--|---|----------------|--------------|
| 30 Rule Amendments..... | | 4 | DE Reg. | 173 (Final) |
| Rules 8.08, 10.07, 15.01.1(b), 15.01.2(d) and 15.02..... | | 4 | DE Reg. | 397 (Prop.) |
| | | 4 | DE Reg. | 1131 (Final) |

DEPARTMENT OF EDUCATION, (Title 14 Delaware Administrative Code)

| | | | | | |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------|---|----------------|----------------|--------------|
| 101 | Delaware Student Testing Program..... | 4 | DE Reg. | 69 | (Prop.) |
| | | | 4 | DE Reg. | 464 (Final) |
| 103 | School Accountability for Academic Performance..... | 4 | DE Reg. | 784 | (Prop.) |
| | | | 4 | DE Reg. | 1218 (Prop.) |
| 245 | Michael C. Ferguson Achievement Awards Scholarship Program..... | 4 | DE Reg. | 224 | (Final) |
| 250 | Procedures Related to the Collection, Maintenance and Disclosure of Student Data..... | 4 | DE Reg. | 787 | (Prop.) |
| | | | 4 | DE Reg. | 1143 (Final) |
| 255 | Definitons Public & Private School..... | 4 | DE Reg. | 897 | (Prop.) |
| | | | 4 | DE Reg. | 1251 (Final) |
| 309 | Middle Level Certification..... | 4 | DE Reg. | 995 | (Final) |
| 310 | Speech/Language Pathologist..... | 4 | DE Reg. | 184 | (Final) |
| 311 | Bilingual Teacher (Spanish) Primary/Middle Level..... | 4 | DE Reg. | 408 | (Prop.) |
| | | | 4 | DE Reg. | 851 (Final) |
| 312 | Bilingual Teacher (Spanish) Secondary..... | 4 | DE Reg. | 408 | (Prop.) |
| | | | 4 | DE Reg. | 851 (Final) |
| 391 | Limited Standard Certification for Middle Level Mathematics and Science and Secondary Science Certificate for Middle Level Science..... | 4 | DE Reg. | 222 | (Final) |
| 396 | Private Business and Trade Schools..... | 4 | DE Reg. | 614 | (Prop.) |
| | | | 4 | DE Reg. | 986 (Final) |
| 398 | Degree Granting Institutions of Higher Education..... | 4 | DE Reg. | 807 | (Prop.) |
| | | | 4 | DE Reg. | 1164 (Final) |
| 401 | Major Capital Improvement Programs..... | 4 | DE Reg. | 898 | (Prop.) |
| | | | 4 | DE Reg. | 1252 (Final) |
| 501 | State Content Standards..... | 4 | DE Reg. | 343 | (Final) |
| | | | 4 | DE Reg. | 407 (Prop.) |
| | | | 4 | DE Reg. | 853 (Final) |
| | | | 4 | DE Reg. | 901 (Prop.) |
| | | | 4 | DE Reg. | 1421 (Rep.) |
| 510 | Computer Literacy Amendments to the Graduation Requirements, Repeal of..... | 4 | DE Reg. | 626 | (Prop.) |
| | | | 4 | DE Reg. | 995 (Final) |
| 511 | Credit Requirements for High School Graduation..... | 4 | DE Reg. | 634 | (Prop.) |
| | | | 4 | DE Reg. | 995 (Final) |
| 522 | Visual and Performing Arts..... | 4 | DE Reg. | 634 | (Prop.) |
| 524 | Physical Education..... | 4 | DE Reg. | 634 | (Prop.) |
| 525 | Requirements for Vocational-Technical Education Programs..... | 4 | DE Reg. | 634 | (Prop.) |
| | | | 4 | DE Reg. | 1421 (Rep.) |
| 543 | (Formerly 524) Physical Education, Reproposal..... | 4 | DE Reg. | 903 | (Prop.) |
| | | | 4 | DE Reg. | 1102 (Prop.) |
| 710 | Teacher Workday..... | 4 | DE Reg. | 905 | (Prop.) |
| | | | 4 | DE Reg. | 1254 (Final) |
| 716 | Maintenance of Local School District Personnel Records..... | 4 | DE Reg. | 635 | (Prop.) |
| | | | 4 | DE Reg. | 989 (Final) |
| 729 | School Custodians..... | 4 | DE Reg. | 225 | (Final) |
| 804 | Immunizations..... | 4 | DE Reg. | 1104 | (Prop.) |
| 885 | Policy for the Safe Management & Disposal of Surplus Chemicals in the Delaware Public School System..... | 4 | DE Reg. | 906 | (Prop.) |
| | | | 4 | DE Reg. | 1255 (Final) |
| 920 | Educational Programs for Students with Limited English Proficiency..... | 4 | DE Reg. | 71 | (Prop.) |
| | | | 4 | DE Reg. | 467 (Final) |
| 925 | Children with Disabilities..... | 4 | DE Reg. | 43 | (Prop.) |
| | | | 4 | DE Reg. | 470 (Final) |
| 930 | Supportive Instruction (Homebound)..... | 4 | DE Reg. | 75 | (Prop.) |
| | | | 4 | DE Reg. | 344 (Final) |
| | | | 4 | DE Reg. | 381 (Errata) |
| | | | 4 | DE Reg. | 497 (Final) |

| | | | | |
|------|----------------------------------------------------------------------------------|---|----------------|-------------|
| 1051 | DSSAA, Senior High School Interscholastic Athletic Eligibility Rules..... | 4 | DE Reg. | 185 (Final) |
| 1052 | DSSAA, Junior High/Middle School Interscholastic Athletic Eligibility Rules..... | 4 | DE Reg. | 185 (Final) |
| 1101 | Standards for School Buses..... | 4 | DE Reg. | 637 (Prop.) |
| | | 4 | DE Reg. | 995 (Final) |
| | Handbook for K-12 Education Sections II, III, and IV, Repeal of..... | 4 | DE Reg. | 626 (Prop.) |

DEPARTMENT OF FINANCE

Division of Revenue

| | | | | |
|--|-------------------------------------------------------------------------------------------------------------------------------------|---|----------------|-------------|
| | Technical Memo. 2000-02, Duty to Report Sales of Cigarette Products made by Non Participating Manufacturers..... | 4 | DE Reg. | 346 (Final) |
| | Technical Memo. 2000-06, Form 1801AC, Application and Computation for Delaware Land & Historic Resource Conservation Credit..... | 4 | DE Reg. | 823 (Prop.) |

Office of the State Lottery

| | | | | |
|--|-----------------------------------------------------------------------------------|---|----------------|-------------|
| | Delaware Lottery & Video Lottery, Introduction, Sections 13, 16, 18, 19 & 29..... | 4 | DE Reg. | 78 (Prop.) |
| | | 4 | DE Reg. | 498 (Final) |

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Mental Retardation

| | | | | |
|--|----------------------------|---|----------------|-------------|
| | Eligibility Criteria | 4 | DE Reg. | 228 (Final) |
|--|----------------------------|---|----------------|-------------|

Division of Public Health

| | | | | |
|--|---------------------------------------------------------------------------|---|----------------|-------------|
| | Conrad State 20/J-1 Visa Waiver Program..... | 4 | DE Reg. | 349 (Final) |
| | Delaware Early Defibrillation Program..... | 4 | DE Reg. | 412 (Prop.) |
| | Licensing & Registration of Operators of Public Water Supply Systems..... | 4 | DE Reg. | 825 (Prop.) |
| | Office of Emergency Medical Services | | | |
| | Advanced Life Support Interfacility Transport Regulations (ALS-IFT)..... | 4 | DE Reg. | 908 (Prop.) |

Division of Services for Aging and Adults with Physical Disabilities

| | | | | |
|--|------------------------------------------------------------------------------------------------------------------|---|----------------|--------------|
| | Establishment of Delegation of Power of Relative Caregivers to Consent to Medical Treatment of Minors..... | 4 | DE Reg. | 263 (Emer.) |
| | | 4 | DE Reg. | 283 (Prop.) |
| | | 4 | DE Reg. | 599 (Emer.) |
| | | 4 | DE Reg. | 656 (Prop.) |
| | | 4 | DE Reg. | 1014 (Final) |
| | Establishment of Delegation of Power of Relative Caregivers to Consent for Registering Minors for School..... | 4 | DE Reg. | 264 (Emer.) |
| | | 4 | DE Reg. | 284 (Prop.) |
| | | 4 | DE Reg. | 600 (Emer.) |
| | | 4 | DE Reg. | 657 (Prop.) |
| | | 4 | DE Reg. | 1016 (Final) |

Division of Social Services

| | | | | |
|--|--------------------------------------------------------------------------------|---|----------------|--------------|
| | 4004.6, Minor Student Earned Income..... | 4 | DE Reg. | 89 (Prop.) |
| | 4004.6, Minor Student Earned Income - ABC and GA..... | 4 | DE Reg. | 855 (Final) |
| | 4004.7, Minor Student Earned Income GA, Repeal of..... | 4 | DE Reg. | 855 (Repeal) |
| | 4005.3, Step-Parent Income in the ABC Program..... | 4 | DE Reg. | 1222 (Prop.) |
| | 4006.1, Excluded Income..... | 4 | DE Reg. | 229 (Final) |
| | 7002.1, Cash Assistance Overpayments..... | 4 | DE Reg. | 922 (Prop.) |
| | 8030.1, Excluded Income..... | 4 | DE Reg. | 229 (Final) |
| | 9059, Income Exclusions..... | 4 | DE Reg. | 229 (Final) |
| | 10004.3, Sanction Period and Penalty, 10004.3.1, Information Coordination..... | 4 | DE Reg. | 89 (Prop.) |
| | | 4 | DE Reg. | 856 (Final) |
| | 11003.9.1, Countable Income..... | 4 | DE Reg. | 229 (Final) |
| | 14300, Citizenship and Alienage..... | 4 | DE Reg. | 91 (Prop.) |
| | | 4 | DE Reg. | 858 (Final) |
| | | 4 | DE Reg. | 923 (Prop.) |
| | 14320.1, Medicaid Eligibility for Qualified Aliens..... | 4 | DE Reg. | 92 (Prop.) |
| | | 4 | DE Reg. | 859 (Final) |
| | | 4 | DE Reg. | 924 (Prop.) |

| | | | |
|---------------------------------------------------------------------------|---|------------------|--------------|
| 14320.3, Medicaid Eligibility Not Based on Date of Entry into U.S..... | 4 | DE Reg. | 92 (Prop.) |
| | | 4 DE Reg. | 859 (Final) |
| 14330.2, Eligibility for State Funded Benefits (Nonqualified Aliens)..... | 4 | DE Reg. | 92 (Prop.) |
| | | 4 DE Reg. | 860 (Final) |
| | | 4 DE Reg. | 924 (Prop.) |
| 14380, Documentation of Citizenship or Alien Status..... | 4 | DE Reg. | 93 (Prop.) |
| | | 4 DE Reg. | 860 (Final) |
| | | 4 DE Reg. | 382 (Errata) |
| 14400, Acceptable Evidence of U.S. Citizenship, Repeal of..... | 4 | DE Reg. | 93 (Prop.) |
| | | 4 DE Reg. | 861 (Final) |
| 14410, Acceptable Evidence of Qualified Alien Status..... | 4 | DE Reg. | 93 (Prop.) |
| | | 4 DE Reg. | 861 (Final) |
| 14710, Income | 4 | DE Reg. | 229 (Final) |
| 15120.1.2, Child Support Cooperation..... | 4 | DE Reg. | 95 (Prop.) |
| | | 4 DE Reg. | 862 (Final) |
| 16100.1.2, Initial Eligibility Determination..... | 4 | DE Reg. | 383 (Emer.) |
| | | 4 DE Reg. | 418 (Prop.) |
| | | 4 DE Reg. | 857 (Final) |
| 16250, Eligibility Determination..... | 4 | DE Reg. | 384 (Emer.) |
| | | 4 DE Reg. | 418 (Prop.) |
| | | 4 DE Reg. | 858 (Final) |
| 17800, Medical Assistance during Transition to Medicare..... | 4 | DE Reg. | 924 (Prop.) |
| 18100.3, Fair Hearings..... | 4 | DE Reg. | 95 (Prop.) |
| | | 4 DE Reg. | 382 (Errata) |
| | | 4 DE Reg. | 862 (Final) |
| Delaware Prescription Assistance Program (DPAP), Eligibility Policy..... | 4 | DE Reg. | 95 (Prop.) |
| | | 4 DE Reg. | 834 (Prop.) |
| | | 4 DE Reg. | 1180 (Final) |

DEPARTMENT OF INSURANCE

| | | | |
|---------------------------------------------------------------------|---|----------------|-------------|
| Regulation 41, Medicare Supplement Insurance Minimum Standards..... | 4 | DE Reg. | 863 (Final) |
| Regulation 81, Prompt Payment of Settled Claims..... | 4 | DE Reg. | 659 (Prop.) |

DEPARTMENT OF JUSTICE

| | | | |
|----------------------------------------------------------------------|---|----------------|--------------|
| Delaware Securities Act, Rules 700, 701, 710..... | 4 | DE Reg. | 510 (Final) |
| Delaware Securities Act, Rule 508, Recognized Securities Manual..... | 4 | DE Reg. | 1184 (Final) |

DEPARTMENT OF LABOR

| | | | |
|------------------------------------------------|---|------------------|--------------|
| Delaware Prevailing Wage Regulation III.C..... | 4 | DE Reg. | 419 (Prop.) |
| | | 4 DE Reg. | 838 (Prop.) |
| | | 4 DE Reg. | 863 (Final) |
| | | 4 DE Reg. | 1186 (Final) |

Council on Apprenticeship & Training

| | | | |
|------------------------------------------------------------------------|---|------------------|--------------|
| Delaware Apprenticeship and Training Law, Sections 106.9 & 106.10..... | 4 | DE Reg. | 842 (Prop.) |
| | | 4 DE Reg. | 1222 (Prop.) |

DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

| | | | |
|---------------------------------------------|---|------------------|--------------|
| Freedom of Information Act Regulations..... | 4 | DE Reg. | 660 (Prop.) |
| | | 4 DE Reg. | 1256 (Final) |

Division of Air and Waste Management

| | | | |
|---------------------------------------------------------------------|---|------------------|--------------|
| Air Quality Management Section | | | |
| Reg. No. 26, Motor Vehicle Emissions Inspection Program..... | 4 | DE Reg. | 925 (Prop.) |
| | | 4 DE Reg. | 1261 (Final) |
| Reg. No. 30, Title V State Operating Permit Program..... | 4 | DE Reg. | 1018 (Final) |
| Reg. No. 31, Low Enhanced Inspection & Maintenance Program Proposed | | | |
| Sip Revision..... | 4 | DE Reg. | 931 (Prop.) |
| | | 4 DE Reg. | 1267 (Final) |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Reg. No. 38, Emission Standards for Hazardous Air Pollutants for Source Categories, Subparts M and N..... | 4 DE Reg. 286 (Prop.) |
| Reg. No. 39, NOx Budget Trading Program..... | 4 DE Reg. 707 (Final) |
| 2002 Rate-of-Progress Plan for Kent & New Castle Counties..... | 4 DE Reg. 419 (Prop.) |
| 2002 Rate-of-Progress Plan for Kent & New Castle Counties..... | 4 DE Reg. 1019 (Final) |
| 2002 Rate-of-Progress Plan for Kent & New Castle Counties..... | 4 DE Reg. 664 (Prop.) |
| Waste Management Section | |
| Solid Waste Regulations..... | 4 DE Reg. 101 (Prop.) |
| Regulations Governing Hazardous Waste..... | 4 DE Reg. 514 (Final) |
| Division of Fish and Wildlife | |
| Tidal Finfish Reg. No. 4, Summer Flounder Size Limits; Possession Limits; Seasons..... | 4 DE Reg. 1106 (Prop.) |
| Tidal Finfish Reg. No. 7, Striped Bass Possession Size Limit; Exceptions..... | 4 DE Reg. 229 (Final) |
| | 4 DE Reg. 1107 (Prop.) |
| Tidal Finfish Reg. No. 8, Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements..... | 4 DE Reg. 1108 (Prop.) |
| Tidal Finfish Reg. 9, Bluefish Possession Limits..... | 4 DE Reg. 1109 (Prop.) |
| Tidal Finfish Reg. 10, Weakfish Size Limits; Possession Limits; Seasons..... | 4 DE Reg. 1109 (Prop.) |
| Tidal Finfish Reg. No. 14, Spanish Mackrel Size Limit and Creel Limit..... | 4 DE Reg. 1110 (Prop.) |
| Tidal Finfish Reg. No. 23, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas..... | 4 DE Reg. 602 (Emer.) |
| | 4 DE Reg. 1225 (Prop.) |
| Tidal Finfish Reg. No. 24, Fish Pot Requirements..... | 4 DE Reg. 1110 (Prop.) |
| Tidal Finfish Reg. No. 27, Spiny Dogfish, Closure of Fishery..... | 4 DE Reg. 603 (Emer.) |
| Division of Water Resources | |
| Regulations Governing the Control of Water Pollution..... | 4 DE Reg. 103 (Prop.) |
| DEPARTMENT OF PUBLIC SAFETY | |
| Board of Examiners of Private Investigators & Private Security Agencies | |
| Employment Notification..... | 4 DE Reg. 361 (Final) |
| Rules and Regulations..... | 4 DE Reg. 864 (Final) |
| Division of Highway Safety | |
| Policy Regulation 36, Driving Under the Influence Evaluation Program, Courses of Instruction, Programs of Rehabilitation & Related Fees..... | 4 DE Reg. 1226 (Prop.) |
| Regulation A, Motor Carrier Safety Enforcement..... | 4 DE Reg. 1229 (Prop.) |
| DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES | |
| Division of Family Services | |
| Regulations for Entry onto & Expungement from the Central Child Abuse Registry... .. | 4 DE Reg. 1110 (Prop.) |
| DEPARTMENT OF TRANSPORTATION | |
| Toll Exemption Policy | 4 DE Reg. 294 (Prop.) |
| Traffic Calming Manual | 4 DE Reg. 105 (Prop.) |
| | 4 DE Reg. 528 (Final) |
| GOVERNOR'S OFFICE | |
| Appointments & Nominations..... | 4 DE Reg. 233 |
| | 4 DE Reg. 367 |
| | 4 DE Reg. 580 |
| | 4 DE Reg. 716 |
| | 4 DE Reg. 868 |
| | 4 DE Reg. 1041 |
| | 4 DE Reg. 1192 |
| | 4 DE Reg. 1316 |
| Executive Order No. 79, Relating to Community-based Alternatives for Individuals with Disabilities..... | 4 DE Reg. 231 |

| | |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Executive Order No. 80, Establishing the Council on Deaf and Hard of Hearing Equality and other Related Matters..... | 4 DE Reg. 365 |
| Executive Order No. 81, Relating to Statistical Analysis Center..... | 4 DE Reg. 1040 |
| Executive Order No. 82, Recycling..... | 4 DE Reg. 866 |
| Executive Order No. 83, Relating to Equal Employment Opportunities..... | 4 DE Reg. 1191 |
| Executive Order No. 84, Reallocation of State Private Activity Bond Volume Cap for Calendar Year 2000..... | 4 DE Reg. 1307 |
| Executive Order No. 1, Relating to the Appointment of Cabinet Officials..... | 4 DE Reg. 1307 |
| Executive Order No. 2, Relating to the Creation of the Governor's Information Services Task Force | 4 DE Reg. 1308 |
| Executive Order No. 3, Relating to the Creation of the Strategic Economic Council..... | 4 DE Reg. 1309 |
| Executive Order No. 4, Relating to the Judicial Nominating Commission..... | 4 DE Reg. 1310 |
| Executive Order No. 5, Relating to DEFAC..... | 4 DE Reg. 1312 |
| Executive Order No. 6, Relating to the Creation of the Governor's Foster Care Task Force..... | 4 DE Reg. 1313 |
| Executive Order No. 7, Relating to the Department of Children, Youth and Their Families and at-risk Kids..... | 4 DE Reg. 1313 |
| Executive Order No. 8, Relating to Ethics Requirements for Executive Branch Officials.. | 4 DE Reg. 1314 |
| Executive Order No. 9, Relating to the Electronic Government Steering Committee..... | 4 DE Reg. 1316 |

PUBLIC SERVICE COMMISSION

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Proposed Regulations Concerning Water Utilities Including the Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity Subject to the Jurisdiction of the PSC..... | 4 DE Reg. 1230 |
| Rules for the Provision of Telecommunications Services..... | 4 DE Reg. 516 |

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF SOCIAL SERVICES
Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. 505)

PUBLIC NOTICE
Medicaid / Medical Assistance Program

**IN THE MATTER OF:
REVISION OF THE REGULATIONS
OF DELAWARE'S DIVISION OF
SOCIAL SERVICES MANUAL
SECTION(S) 30000 - 30700**

* **PLEASE NOTE: THIS FINAL REGULATION WAS INITIALLY PUBLISHED IN THE JANUARY 2001 ISSUE OF THE REGISTER. SEVERAL CHANGES THAT WERE MADE TO THE PROPOSED REGULATION WERE NOT PUBLISHED, SPECIFICALLY SECTIONS 30000, 30305 AND 30400. THEREFORE, THE FINAL REGULATION IS BEING REPUBLISHED.**

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to the Delaware Prescription Assistance Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C. 10114 and its authority as prescribed by 31 Del.C. 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the November, 2000 **Delaware Register of Regulations**, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2000 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF INFORMATION SUBMITTED:

The State Council for Persons with Disabilities (SCPD) submitted observations and recommendations to clarify the following sections: Section 30000 - deleting "disabled individuals" and inserting "individuals with disabilities"; Section 30203 - reference "individual" instead of "family income" by deleting "household"; and, Section 30305 - clarify "the individual must not have or must be ineligible for". As such, the Delaware Prescription Assistance Program

policy has been amended to grammatically clarify the language.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November, 2000 Register of Regulations and amended should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Delaware Prescription Assistance Program are adopted and shall be final effective January 10, 2001.

December 13, 2000
Gregg C. Sylvester, M.D.
Secretary

**DELAWARE PRESCRIPTION ASSISTANCE
PROGRAM**

30000 Delaware Prescription Assistance Program
30100 Definitions
30200 General Application Information
30201 Disposition of Applications
30202 Timely Determination of Eligibility
30203 Reporting Changes in Circumstances
30300 Technical Eligibility
30301 Citizenship and Alienage
30302 State Residency
30303 Social Security Number
30304 Aged or Disabled Requirement
30305 No Other Prescription Drug Coverage
30305.1 Exceptions to No Other Prescription Drug Coverage
30306 Inmate of a Public Institution
30400 Financial Eligibility
30401 Countable Income
30402 Excluded Income
30403 Eligibility Determination
30404 Effective Date of Coverage
30405 Redetermination of Eligibility
30500 Benefits
30501 Limitations on Benefits
30502 Co-payment Requirement
30503 Waiver of Co-payment for Good Cause
30600 Confidentiality
30601 Release of Information to DPAP Providers
30602 Release of Information to Others
30700 Fair Hearings

**30000 DELAWARE PRESCRIPTION ASSISTANCE
PROGRAM**

The 140th General Assembly amended Title 16, Delaware Code, by adding Chapter 30B to enact the

Delaware Prescription Drug Payment Assistance Program. The purpose of this act is to provide payment assistance for prescription drugs to low-income senior and ~~[disabled]~~ individuals ~~[with disabilities]~~ who are ineligible for, or do not have, prescription drug benefits or coverage through federal, state, or private sources.

The program is administered by the Fiscal Agent under contract with the Delaware Department of Health and Social Services.

The rules in this section set forth the eligibility requirements for coverage under the Delaware Prescription Assistance Program (DPAP). The DPAP is implemented January 1, 2000, with benefits beginning January 14, 2000.

30100 Definitions

Contractor: the agent who is under contract with the State to administer the DPAP.

Department: the Department of Health and Social Services or DHSS

Division: the Division of Social Services or DSS

30200 General Application Information

The application for DPAP must be made in writing on the prescribed DSS form. This request for assistance can be made by the applicant, guardian, or other individual acting for the applicant with his knowledge and consent. The application filing date is the date the application is received in either the Contractor's office or a DSS office.

DPAP will consider an application without regard to race, color, age, sex, disability, religion, national origin, or political belief as per Title VI of the Civil Rights Act of 1964.

Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

30201 Disposition of Applications

The Contractor must include in each applicant's case record facts to support the Contractor's decision on his application. The Contractor must dispose of each application by a finding of eligibility or ineligibility, unless:

- a) there is an entry in the case record that the applicant voluntarily withdrew the application, and that the Contractor sent a notice confirming his decision;
- b) there is a supporting entry in the case record that the applicant has died; or
- c) there is a supporting entry in the case record that the applicant cannot be located.
- d) Certain factors of eligibility must be verified. If all information requested is not received, the Contractor cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new

eligibility issue not previously realized and this may require additional verifications. Failure to provide additional requested verifications may result in denial or termination of eligibility.

All applicants will receive a notice of acceptance or denial.

30202 Timely Determination of Eligibility

A time standard of 45 days will apply. This standard equals the period from the application filing date to the date that the notice of decision is mailed. The standard must be met except in unusual circumstances, such as:

- A decision cannot be made because the applicant or his representative delays or fails to take a required action.
- There is an administrative or other emergency beyond the Contractor's control.

30203 Reporting Changes in Circumstances

At time of application and redetermination, each individual ~~household~~ must be informed that he is responsible for notifying the Contractor of all changes in his circumstances, which could potentially affect his eligibility for DPAP.

30300 Technical Eligibility

The following requirements are factors of eligibility specific to DPAP.

30301 Citizenship and Alienage

The individual must be a U.S. citizen or a lawfully admitted alien.

30302 State Residency

The individual must be living in the State of Delaware.

30303 Social Security Number

Each individual applying for DPAP must furnish his or her Social Security number.

30304 Aged or Disabled Requirement

The individual must meet one of the following requirements:

- a) be age 65 or over, or
- b) be an individual between the ages of 19 and 64 who is receiving disability benefits under Title II of the Social Security Act. An individual is considered to meet the "receiving disability benefits" requirement if the individual is a former recipient of either Social Security Disability Insurance benefits or Supplemental Security Income benefits and was required by the Social Security Administration to accept Social Security Survivors benefits.

30305 No Other Prescription Drug Coverage

The individual must not have or **[must]** be ineligible for, prescription drug benefits or coverage through federal, state, or private sources regardless of any annual limitations to the benefits.

The individual must not have or **[must]** be ineligible for:

- a) Medicaid prescription benefits
- b) prescription drug benefits through a Medicare supplemental policy
- c) prescription drug benefits through a third party payer
- d) the Nemours Health Clinic Pharmaceutical benefit as defined on 1/1/99

30305.1 Exceptions to No Other Prescription Drug Coverage

Individuals who are eligible for the following drug benefits will not be excluded from eligibility for DPAP:

- a) individuals eligible for Medicaid as Family Planning Only
- b) individuals covered under a specific disease state insurance program, for example a policy that pays only for cancer drugs
- c) individuals who are members of a discount drug program in which the policy does not actually pay for the drugs, for example American Association of Retired Persons (AARP)
- d) individuals eligible for drug coverage through the Division of Vocational Rehabilitation
- e) individuals eligible for drug coverage through the Division of Alcoholism, Drug Abuse, and Mental Health.

30306 Inmate of a Public Institution

An individual who is an inmate of a public institution is not eligible for DPAP.

An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution.

30400 Financial Eligibility

Income is any type of money payment that is of gain or benefit to ~~to family~~ an individual. Income is either counted or excluded for the eligibility determination.

30401 Countable Income

Countable income includes but is not limited to:

1. Social Security benefits – as paid after deduction for Medicare premium
2. Pension – as paid

3. Veterans Administration Pension – as paid
4. U.S. Railroad Retirement Benefits – as paid
5. Wages – net amount after deductions for taxes and FICA
6. Senior Community Service Employment – net amount after deductions for taxes and FICA
7. Interest/Dividends – gross amount
8. Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.
9. Credit Life or Credit Disability Insurance Payments – as paid
10. Alimony – as paid
11. Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses
12. Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses
13. Self Employment – countable income as reported to Internal Revenue Service (IRS)
14. Unemployment Compensation - as paid

30402 Excluded Income

Excluded income includes but is not limited to:

1. Annuity payments
2. Individual Retirement Account (IRA) distributions
3. Payments from reverse mortgages
4. Capital gains from the sale of principal place of residence
5. Conversion or sale of a resource (i.e. cashing a certificate of deposit)
6. Income tax refunds
7. Earned Income Tax Credit (EITC)
8. Vendor payments (bills paid directly to a third party on behalf of the individual)
9. Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)
10. Loan payments received by individual
11. Proceeds of a loan
12. Foster care payments made on behalf of foster children living in the home
13. Retired Senior Volunteer Program (RSVP)
14. Veterans Administration Aid and Attendance payments
15. Victim Compensation payments
16. German reparation payments
17. Agent Orange settlement payments
18. Radiation Exposure Compensation Trust Fund payments
19. Japanese-American, Japanese-Canadian, and Aleutian restitution payments
20. Payments from long term care insurance or for inpatient care paid directly to the individual

30403 Eligibility Determination

To be eligible for DPAP:

(a) the individual must have countable income that is less than 200% of the Federal Poverty Level, or

(b) the individual has countable income that is equal to or greater than 200% of the Federal Poverty Level and the individual has prescription drug expenses that exceed 40% of his countable income.

The Federal Poverty Level (FPL) is published annually. The income eligibility standard based on the FPL will be issued within 10 business days after the FPL is published. The revised income eligibility standard will be used to determine eligibility for the month following the month in which the standard is issued.

30404 Effective Date of Coverage

Coverage begins on the first day of the month following the month that eligibility is determined. There is no retroactive coverage. Eligible individuals will receive an identification card for DPAP.

30405 Redetermination of Eligibility

A redetermination of eligibility must be completed by July of each year. If an individual's initial coverage begins in April, May, or June, a redetermination will not be required until July of the following year.

30500 Benefits

Prescription drugs covered under DPAP are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing Delaware Medical Assistance Program limitations. Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner. Necessary diabetic supplies not covered by Medicare will also be covered. Medications that are covered by Medicare are not covered under DPAP.

30501 Limitations on Benefits

Payment assistance to each eligible individual shall not exceed \$2,500.00 per State fiscal year. Individuals will receive a notice when 75% of the \$2,500.00 cap has been expended.

30502 Co-payment Requirement

There is a co-payment of \$5.00 or 25% of the cost of the prescription whichever is greater. The pharmacy will not dispense or provide the prescription until the co-payment is collected.

30503 Waiver of Co-payment for Good Cause

At the written request of the individual, the co-pay

requirement may be waived for good cause.

Good cause for waiver of the co-payment is:

The individual has experienced a catastrophic situation resulting in unexpected, extraordinary expenses related to loss or significant damage to shelter or the well being of the individual or his immediate family.

The written request must explain the circumstances that led to the request. Verification of the circumstances is required in the form of collateral evidence that may include, but is not limited to, repair bills and police or insurance reports. The DPAP will provide written notification to the individual regarding the good cause decision. If good cause is granted, the co-payments will be waived for the remainder of the fiscal year.

30600 Confidentiality

DPAP will provide safeguards that restrict the use or disclosure of information about applicants and recipients to purposes directly connected with the administration of the DPAP.

Purposes directly related to administration of the DPAP include establishing eligibility, providing services for recipients, determining the amount of medical assistance, and conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the program.

At a minimum, the types of information about applicants and recipients that must be safeguarded and not released without consent include:

1. Names and addresses;
2. Medical services provided;
3. Social and economic conditions or circumstances;
4. Contractor evaluation of personal information;
5. Medical data, including diagnosis and past history of disease or disability;
6. Information received for verifying income eligibility and amount of medical assistance payments; and
7. Information about third party liability.

30601 Release of Information to DPAP Providers

DPAP providers have a contractual obligation to safeguard information about recipients. Providers may have access to certain eligibility information if they can provide:

- a. a DPAP identification number, or
- b. two of the following identifying factors: individual's full name, date of birth, Social Security number; AND
- c. the date of service.

Providers who supply the above identifying factors may be given the following information:

- a. correct spelling of the recipient's name;
- b. DPAP number;

- c. date of birth;
- d. an indication whether the individual is eligible for the date of service given or for a range of dates given.
Providers may not be given all periods of eligibility.

30602 Release of Information to Others

At the time of application, individuals are informed that all eligibility information is confidential and disclosure without written permission of the individual is limited. DPAP has the authority to responsibly share information concerning applicants and recipients with:

- a. DHSS employees;
- b. Federal or federally assisted programs that provide assistance to individuals on the basis of need (SSI, HUD);
- c. contracted service providers

Information may be released to comply with a subpoena or other valid court order.

DPAP must obtain specific written permission from the individual before releasing information to any other persons or sources.

30700 Fair Hearings

A fair hearing is an administrative hearing held in accordance with the principles of due process. An opportunity for a fair hearing will be provided, subject to the provisions in policy at DSSM 5000 - 5607.

Symbol Key

Roman type indicates the text existing prior to the emergency regulation being promulgated. Italic type indicates new text. Language which is striken 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 without notice of hearing to reduce the trip limits for black sea bass in the first quarter of 2001.

**Order No. 2001-F-0006
ORDER**

AUTHORITY

Pursuant to 29 **Del.C.** §10119, The Department of Natural Resources and Environmental Control is adopting an amendment to Tidal Finfish Regulation No. 23, **BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS** without prior notice or public hearing to reduce the trip limit in the first quarter (January, February and March) from 9,000 pounds to 4,500 pounds. 7 **Del.C.** §903

authorizes the Department to promulgate regulations concerning species of finfish that spend part or all of their life cycle within the tidal waters of the 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

The Summer Flounder, Scup and Black Sea Bass Management Board, Atlantic States Marine Fisheries Commission, approved an Emergency Rule on August 15, 2000 that required all states to implement a 9,000 pound possession limit for the commercial black sea bass fishery on January 1, 2001. The motion also stated that when 75% of the Quarter I quota was projected to be landed, the states would be required to reduce the trip limit to 4,500 pounds until the entire first quarter quota is projected to be landed.

The Commission staff has reviewed the most recent black sea bass landings data. Landings through January 20, 2001 were estimated to be 458,822 pounds. Therefore, it is projected that 75% of the first quarters quota will be landed in early February. Therefore, effective as of 0001 hours February 6, 2001 the states are required to reduce the possession limit for the commercial black sea bass fisheries to 4,500 pounds. Commission staff will continue to monitor the commercial black sea bass landings and notify the states when the entire first quarter is projected to be landed and the states will be required to close their fisheries for the remainder of the first quarter period.

This amendment to **Tidal Finfish Regulation No. 23** is necessary to protect the welfare of commercial sea bass fishermen. The Department has determined an imminent peril to these fishermen's welfare if the stock of black sea

bass is not protected from over harvesting.

EFFECTIVE DATE OF ORDER

This Order shall take effect at 12:01 AM on February 8, 2001 and shall remain in effect until midnight March 31, 2001.

PETITIONS FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for reconsideration 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 **8th** day of **February, 2001**, that the above referenced amendment to Tidal Finfish Regulation No. 23, a copy of which is attached hereto, is adopted pursuant to 29 **Del.C.** §10119.

It is further ordered that a copy of this order be forwarded to all commercial fishermen licensed to sell finfish in this State.

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

**EMERGENCY AMENDMENT TO TIDAL FINFISH
REGULATION****TIDAL FINFISH REGULATION NO. 23 BLACK SEA
BASS SIZE LIMIT; TRIP LIMITS; SEASONS;
QUOTAS**

a) It shall be unlawful for any person to have in possession any black sea bass **Centropritis striata** that measures less than ten (10) inches, total length.

b) Is omitted intentionally.

c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the following quantities of black sea bass during the quarter listed:

First Quarter (January, February and March) –
~~9,000~~ 4,500 pounds

Second Quarter (April, May and June) – 3,000 pounds

Third Quarter (July, August and September) –
2,000 pounds

Fourth Quarter (October, November and December) –
3,000 pounds

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

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter indicated in subsection (c) after the date in said quarter that the National Marine Fisheries Services determines that quarter's quota is filled.

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

BOARD OF ACCOUNTANCY

24 DE Admin. Code 100

Statutory Authority: 24 Delaware Code,
Section 105(1)(5), (24 **Del.C.** §105(1)(5))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 105(1) and (5), the Delaware Board of Accountancy proposes to revise its Rules and Regulations. The proposed revisions are made to Section 6.0 of the existing Rules and Regulations in order to comply with and implement and clarify the Board's authorizing law, 24 **Del. C.** Chapter 1, as revised effective July 16, 2000. Substantive changes to the regulations include changes in and clarification of the requirements for a permit to practice certified public accountancy, including modification and clarification of the standards and requirements for qualifying experience. The proposed rules and regulations are reorganized to correspond with the Board's authorizing law, 24 **Del. C.**, Chapter 1.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, April 18, 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 Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey 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 Mary Paskey at the above address or by calling (302) 739-4522, extension 207.

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

Board of Accountancy **Statutory Authority: 24 Del.C. 105**

- 1.0 General Provisions
- 2.0 Professional Conduct
- 3.0 Use of Designations
- 4.0 Applications
- 5.0 Examination and Certificate Requirements
- 6.0 Requirements for Permit to Practice Certified Public Accountancy
- 7.0 Requirements for Permit to Practice Public Accountancy
- 8.0 Reciprocity
- 9.0 Firm Permits to Practice
- 10.0 Continuing Education
- 11.0 Additional Provisions Concerning Examinations
- 12.0 Excepted Practices; Working Papers
- 13.0 Hearings
- 14.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 General Provisions

1.1 Pursuant to 24 **Del.C.** Ch. 1, the Delaware Board of Accountancy ("the Board") is authorized to, and has adopted, these Rules and Regulations. The Rules and

Regulations are applicable to all certified public accountants, public accountants, permit holders and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board's Administrative Assistant at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) 739-4522. Requests to the Board may be directed to the same office.

1.3 The Board's President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President's absence, the Board's Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 1.

1.7 Board members are subject to the provisions applying to "honorary state officials" in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 **Del.C.** Ch. 58. No member of the Board shall: (1) serve as a peer reviewer in a peer review of a licensee; or (2) be an instructor in an examination preparation course or school or have a financial interest in such an endeavor.

2.0 Professional Conduct

2.1 A certified public accountant, or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants shall automatically be made a part of these Rules and Regulations unless specifically rejected by the Board.

3.0 Use of Designations

3.1 Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Certified or Public Accountancy:

3.1.1 Only the following individuals and entities may use the designation "certified public accountant", the abbreviation "CPA", and other designations which suggest that the user is a certified public accountant, in the practice of certified or public accountancy:

3.1.1.1 An individual who is registered with

the Board and holds a certificate of certified public accountant and a current permit to practice.

3.1.1.2 A partnership, professional association or professional corporation composed of certified public accountants which is registered with the Board and holds a current firm permit to practice.

3.2 Designation "Certified Public Accountant" and the abbreviation "CPA" by certificate holders who do not maintain a permit to practice:

3.2.1 An individual who holds a certificate of certified public accountant but does not maintain a permit to practice may use the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery if:

3.2.1.1 The certificate of certified public accountant has not been suspended or revoked and is in good standing.

3.2.1.2 The individual does not engage in the practice of certified or public accountancy and does not offer to perform certified or public accountancy services.

3.2.1.3 The individual does not hold himself or herself out to be in the practice of certified or public accountancy when performing or offering to perform accounting, bookkeeping, tax or accounting-related matters.

3.2.1.4 The individual does not engage in solicitations or advertising, including listings and advertisements in phone directories, newspapers, or other media (including electronic), in which the individual uses the designation "certified public accountant" or the abbreviation "CPA".

3.2.1.5 The individual does not publicly display a certificate of certified public accountant to imply that he or she is licensed in the practice of certified or public accountancy or offering to perform certified or public accountancy services.

3.2.1.6 The individual is employed by a government, or an academic institution, corporation, or company not engaged in the practice of certified or public accountancy and uses the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery provided:

3.2.1.6.1 The business cards and stationery indicate the name of the employer and the title of the person; and

3.2.1.6.2 The business cards or stationery are not used to solicit certified or public accountancy services or accounting-related business.

3.2.2 An individual who holds a certificate of certified public accountant but not a permit to practice may not refer to his or her business as "John/Jane Doe, CPA" or have business cards imprinted "John/Jane Doe, CPA, and Company or Institution, Title" with the intent to offer certified or public accountancy services.

3.2.3 An individual who holds a certificate of

certified public accountant, but not a permit to practice, may not perform a service related to accounting, including bookkeeping and tax returns, while holding him or herself out as a certified public accountant without a permit to practice. Similarly, an individual may not prepare income tax returns and refer to his or her business or sign tax returns as "John/Jane Doe, CPA" without a permit to practice. Such individual may put up a sign reading "John/Jane Doe, Tax Preparer" and prepare and sign tax returns as "John/Jane Doe".

3.3 Designation "Public Accountant" and the abbreviation "PA"

3.3.1 Only the following individuals and entities may use the designation "public accountant," the abbreviation "PA", and other designations which suggest that the user is a public accountant, in the practice of public accountancy.

3.3.1.1 An individual who is registered with the Board and holds a permit to practice public accountancy in good standing.

3.3.1.2 A partnership, professional association or professional corporation composed of public accountants which is registered with the Board and holds a current firm permit in good standing to practice public accountancy.

3.3.2 An individual may not refer to his or her business or sign tax returns as "John/Jane Doe, PA" without a permit to practice public accountancy.

3.4 No person, partnership, or corporation shall hold him/her/itself or otherwise use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "licensed public accountant", "registered public accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any other abbreviations of any prohibited titles or designations likely to be confused with "CPA" or "PA". It is not a violation of this clause for an individual on whom has been conferred, by the Internal Revenue Service, the title enrolled agent to use that title or the abbreviation "EA".

3.5 No person, partnership, or corporation shall use a title or specialized designation that includes the word "accredited" or "certified" or an abbreviation of such a title or designation or otherwise claim a qualification unless that designation has been conferred by a bona fide organization after evaluation of the individual's credentials and competencies. This includes such designations as "CFP", "CVA", "ABV", etc.

4.0 Applications

4.1 An application for examination, certificates, permits to practice and renewals of permits to practice shall be submitted on forms approved by the Board.

4.2 The Board may require additional information or explanation when it has questions about an applicant's

qualifications or application materials. An application is not complete or in proper form until the Board has received all required and requested documents, materials, information and fees.

5.0 Examination and Certificate Requirements

5.1 Each applicant for a certificate must provide the Board with the following:

5.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 Del.C. §107(a)(1).

5.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination.

5.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

5.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

5.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by

the final date for accepting applications for the examination at which the applicant intends to sit.

5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations. An applicant who expects to meet the education requirements of Section 5.1.4 within 120 days following the examination is eligible to take the examination provided he or she:

5.2.1 meets the character requirements of Section 5.1.1; and

5.2.2 provides evidence satisfactory to the Board that he or she is expected to complete the education requirements within 120 days of the examination.

6.0 Requirements for Permit to Practice Certified Public Accountancy

6.1 For purposes of Section 6.0 of these Rules and Regulations, the term "certificate holder" shall be defined as the holder of a certificate of certified public accountant issued by any jurisdiction.

6.2 Each applicant for a permit to practice certified public accountancy must provide the Board with the following:

6.2.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board;

6.2.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice;

6.2.3 Evidence in a form satisfactory to the Board that the applicant holds a valid certificate; and

6.2.4 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 **Del.C.** §108(c)(2) and Sections 6.3 , 6.4 and 6.5 of these Rules and Regulations, as applicable.

6.3 Applicants who seek a permit based on their experience as an employee of a firm engaged in the practice of certified public accountancy shall meet the following standards and requirements:

6.3.1 The distinguishing characteristic of practice as a certified public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagements, resulting in the issuance of financial statements including appropriate footnote disclosure and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the

American Institute of Certified Public Accountants. Such experience must be obtained under the supervision of a certified public accountant who holds a valid permit to practice certified public accountancy.

6.3.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

~~3 DE Reg. 1668 (6/1/00)~~

6.3.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full-time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

6.4 Applicants who seek a permit based on their experience in government or industry shall meet the following standards and requirements:

6.4.1 The applicant shall submit a detailed description of the education and experience requirements of entry to his or her job, a detailed description of his or her duties and responsibilities over the entire period of time relied on to meet the experience qualification, a detailed description of the reporting requirements of his or her job, and a statement of the training opportunities in which the applicant has participated. The employment submitted as qualifying experience must include extensive experience resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants. Such experience must be obtained under the direct supervision of a certified public accountant who holds a valid permit to practice certified public accounting.

6.4.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature

of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

3 DE Reg. 1668 (6/1/00)

6.4.3 Each application under this subsection will be considered on its own merits and the Board will evaluate the applicant's experience, as set forth in the application materials, for the purpose of determining whether it is substantially equivalent to experience as an employee of a firm engaged in the practice of certified public accountancy. Such experience may be prorated at less than 100% equivalence.

6.5 Applicants who seek a permit based on their experience in the practice of public accountancy shall meet the following standards and requirements:

6.5.1 The distinguishing characteristic of practice as a public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.5.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience.

6.5.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full-time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall

be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

6.3 Applicants who hold a master's degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 Del.C. §108(c)(2):

6.3.1 Qualifying experience for holders of a master's degree shall include the provision of any type of service or advice involving the use of accounting, attest, compilation, internal audit, management advisory, financial advisory, tax or consulting skills.

6.3.1.1 "Management advisory" experience shall be limited to the fields of accounting, financial or business matters.

6.3.1.2 "Consulting skills" shall be limited to providing accounting, financial or business advice.

6.3.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.4 Applicants who hold a baccalaureate degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 Del.C. §108(c)(2):

6.4.1 Qualifying experience for holders of a baccalaureate degree shall include experience in engagements resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.4.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

6.4.2. Experience in internal audit may be used in lieu of or in addition to the experience described in 6.4.1.

6.4.3 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.5 Applicants who hold an associate degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 De l.C. §108(c)(2):

6.5.1 The applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.5.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate

to the level of engagement.

6.5.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.6 Each applicant, regardless of educational level, must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.6.1 In cases in which any part of the required experience has been obtained in the practice of public accountancy, the affidavit may be from the responsible supervisor at each employer with whom such experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience.

6.7 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

7.0 Requirements for Permit to Practice Public Accountancy

7.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

7.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

7.1.2 Evidence in a form satisfactory to the Board that the applicant holds, as a minimum, an associate degree with a concentration in accounting. The provisions of

Sections 5.1.4.1 and 5.1.4.2 of these Rules and Regulations also apply to applicants for permits to practice public accountancy.

7.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully passed the accounting examination given by the Accreditation Council for Accountancy & Taxation, which is the examination recognized by the National Society of Public Accountants, or both the Accounting and Reporting and the Auditing portions of the Uniform Certified Public Accounting Examination.

7.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

7.1.5 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board.

7.1.6 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a permit to practice.

8.0 Reciprocity

8.1 An applicant seeking a permit to practice through reciprocity shall demonstrate that he or she meets requirements of 24 **Del.C.** §109(a) and must provide the Board with the following:

8.1.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board; and

8.1.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice.

8.2 The provisions of Section 6.3 of these Rules and Regulations shall also apply to the experience required by 24 **Del.C.** §109(a)(3) for the granting of a permit by reciprocity.

8.3 An applicant seeking a certificate through reciprocity shall demonstrate that he or she meets the requirements of 24 **Del.C.** §114 and must provide the Board with the following:

8.3.1 A certified statement from the licensing authority, or comparable agency, of the jurisdiction through which the applicant seeks reciprocity that the applicant holds a valid certificate with no past or pending disciplinary proceedings or complaints against him or her; and

8.3.2 Copies of the law and rules or regulations establishing the requirements for certification in the jurisdiction through which the applicant seeks reciprocity.

9.0 Firm Permits to Practice

9.1 For purposes of 24 Del.C. §111 and this Section of the Rules and Regulations, the term "principal of a firm" is defined as any individual who has an equity interest in the firm.

9.2 Certified public accounting and public accounting firms practicing as corporations must be organized as professional corporations ("P.C.") or professional associations ("P.A.") in compliance with The Professional Service Corporation Act, 8 Del.C. §671, *et. seq.*

9.3 Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such a time as that person begins to perform certified public accounting or public accounting services.

9.4 Certified public accounting and public accounting firms may not practice using firms names that are misleading as to organization, scope, or quality of services provided.

10.0 Continuing Education

10.1 Hours Required: Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period of each year ending with an odd number. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period.

10.2 Reporting Requirements: The Board will mail permit renewal forms which provide for continuing professional education reporting to all permit holders. 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 at least 60 days prior to the permit renewal date set by the Division of Professional Regulation.

10.3 Proration: Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

10.3.1 If the initial permit was issued less than one year prior to the renewal date, there shall be no continuing education requirement for that period.

10.3.2 If the initial permit was issued at least one year, but less than two years prior to the renewal date, the continuing education requirement shall be 40 hours for that period.

10.4 Exceptions: The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

10.5 Qualified Programs.

10.5.1 General Determination: The overriding consideration in determining if a specific program qualifies

as a continuing professional education program is whether it is a formal program of learning which contributes directly to the professional competence of the permit holder.

10.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

10.5.2.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.

10.5.2.2 The program is at least an hour (a fifty-minute period) in length.

10.5.2.3 The program is conducted by a qualified instructor or discussion leader.

10.5.2.4 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

10.5.3 Programs deemed approved: Provided the criteria in Sections 10.5.1 and 10.5.2 of these Rules and Regulations are met, the following are deemed to qualify for continuing professional education:

10.5.3.1 Programs approved by National Association of State Boards of Accountancy (NASBA);

10.5.3.2 Professional development programs of national, state and local accounting organizations;

10.5.3.3 Technical sessions at meeting of national, state and local accounting organizations and their chapters;

10.5.3.4 University or college courses:

10.5.3.4.1 Credit courses: each semester hour credit shall equal 5 hours of continuing professional education.

10.5.3.4.2 Non-credit courses: each classroom hour shall equal one hour of continuing professional education;

10.5.3.5 Programs of other organizations (accounting, industrial, professional, etc.);

10.5.3.6 Other organized educational programs on technical and other practice subjects including "in-house" training programs of public accounting firms.

10.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

10.5.5 Instructors and Discussion Leaders: Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each classroom hour for research and preparation to the extent

that the activity contributes to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

10.5.6 **Published Articles and Books:** One hour credit will be granted for each 50 minute period of preparation time on a self-declaration basis to a maximum of 20 hours in each biennial reporting period. A copy of the published article must be submitted to the Board upon request.

10.5.7 **Committee, Dinner, Luncheon and Firm Meetings.** One hour credit will be granted for each 50 minutes of participation. Credit will only be granted for those meetings which are structured as a continuing education program.

10.6 Control and Reporting

10.6.1 Each applicant for permit renewal shall provide a signed statement under penalty of perjury, disclosing the following information pertaining to the educational programs submitted in satisfaction of the continuing education requirements:

10.6.1.1 school, firm or organization conducting course;

10.6.1.2 location of course;

10.6.1.3 title of course or description of content;

10.6.1.4 dates attended; and

10.6.1.5 hours claimed.

10.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies. Any license revocation or denial of application for license renewal will proceed in accordance with the provisions of the Administrative Procedures Act, 29 **Del.C.** §10101, *et. seq.*

10.7 Evidence of Completion- Retention

10.7.1 Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

10.7.2 Sufficiency of evidence includes retention of course outlines and such signed statements of attendance as may be furnished by the sponsor.

10.7.3 For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and

attendance record.

10.7.4 For non-credit courses at accredited universities or colleges, a statement of the hours of attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

10.8 **Composition of Continuing Professional Education:** The biennial continuing professional education requirement shall include a minimum of 20 percent in accounting and/or auditing and a minimum of 20 percent in taxation and the remaining hours may be satisfied by general subject matters so long as they contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

Accounting

Administrative Practice

Auditing

Business Law

Communication Arts

Computer Science

Economics

Finance, Production and Marketing

Management Services Mathematics, Statistics,
Probability, and Quantitative Applications in
Business

Personnel Relations, Business Management and
Organization

Social Environment of Business

Specialized Areas of Industry

Taxation

11.0 Additional Provisions Concerning Examinations

11.1 All examinations required under 24 **Del.C.** Ch. 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by the Board's designated agent.

11.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

11.4.2 Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

11.4.3 At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he or she does not have current credit for certification or permit, whichever is applicable.

11.4.4 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

11.4.5 Applicants will be informed in writing of the results achieved in each examination.

11.5 Passing Grade on the Uniform CPA Examination

11.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

11.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

11.6 Conditional Status for Subjects passed in this State

11.6.1 An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

11.6.1.1 To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

11.6.1.2 To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

11.6.1.4 An applicant who fails to pass all subjects required during the 5 consecutive examinations following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

11.7.1 An applicant who has passed one or more

subjects of either examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts so passed under the following conditions, and provided the requirements of Section 11.6 of these Rules and Regulations have been met:

11.7.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

11.7.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

11.7.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

11.7.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

11.7.3 If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

12.0. Excepted Practices; Working Papers

12.1. Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 Del.C. §115. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of 24 Del.C. Chapter 1.

12.2 Working Papers: For purposes of 24 Del.C. §120, the term "working papers" does not properly include client records. In some instances, a permit holder's working papers may include data which should be part of the client's

books and records, rendering the client's books and records incomplete. In such instances, that portion of the working papers containing such data constitutes part of the client's records and should be made available to the client upon request.

13.0 Hearings

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

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

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

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

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

13.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. A partnership or corporation may be represented at such hearing by a duly authorized representative of such partnership or corporation who shall be a partner or shareholder thereof and a permit holder of the State in good standing, or by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

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

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

13.2. General procedure

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

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

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

13.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing at least three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

14.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

14.1 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.

14.2 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.

14.3 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).

14.4 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.

14.5 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.

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

14.6.1 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.

14.6.2 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.

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

14.6.4 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.

14.6.5 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.

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

14.7 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.

14.8 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.

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

14.10 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.

14.11 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.

14.12 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 CHIROPRACTIC**

24 DE Admin. Code 700

Statutory Authority: 24 Delaware Code,
Section 706(a)(1), (24 **Del.C.** §706(a)(1))**NOTICE - PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 706(a)(1), the Delaware Board of Chiropractic proposes to revise its rules and regulations. The proposed revisions would represent a comprehensive change of the rules and regulations implementing or clarifying specific sections of 24 **Del.C.** Chapter 7.

A public hearing will be held on the proposed Rules and Regulations on Thursday, 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, 19904. The Board will receive and consider oral and written input on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Ms. Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations should notify Ms. Letterman at the above address or by calling (302) 739-4522.

- 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 PROFESSIONAL COUNSELORS OF
MENTAL HEALTH

24 DE Admin. Code 3000

Statutory Authority: 24 Delaware Code,
 Section 3006(a)(1)(5), (24 **Del.C.** §3006(a)(1)(5))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 3006(a)(1) and 3006(a)(5), the Delaware Board of Professional Counselors of Mental Health proposes to revise its Rules and Regulations. The proposed revisions establish a hardship exception to the continuing education requirement.

A public hearing will be held on the proposed Rules and Regulations on Friday, April 6, 2001 at 3:30 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written

comments should be submitted to the Board in care of Gayle Franzolino 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 Gayle Franzolino at the above address by calling (302) 739-4522, extension 220.

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

Board of Professional Counselors of Mental Health

- 1.0 Meetings and Elections
- 2.0 Licensure by Certification
- 3.0 Licensure by Reciprocity
- 4.0 Licensure of Associate Counselors of Mental Health
- 5.0 Application and Fee, Affidavit and Time Limit
- 6.0 Renewal of Licensure
- 7.0 Ethics
- 8.0 Return to Active Status
- 9.0 Disciplinary Proceedings and Hearings
- 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Meetings and Elections

1.1 Meetings - Regular meetings of the Board shall be held on a monthly basis as needed, at least in June and December, at a time and place designated by the Board.

1.2 Election of Officers - The Board shall elect officers annually at the regular December meeting.
 Statutory authority: 24 *Del.C.* §3004

2.0 Licensure by Certification

Applicants for LPCMH licensure by certification shall fulfill the following requirements:

2.1 Certification - The applicant shall be certified by NBCC as a National Certified Counselor (NCC), by ACMHC as a Certified Clinical Mental Health Counselor (CCMHC), or by a certifying organization acceptable to the Board.

2.2 Certifying Organization - Certifying organizations acceptable to the Board shall include the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), formerly the National Academy for Certified Clinical Mental Health Counselors (NACCMHC), International Christian Institute Certification Board, Commission on Rehabilitation Counselor Certification Board, and other certifying organizations that meet all of the following criteria:

2.2.1 The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

2.2.2 The organization shall require the applicant to take a standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

2.2.3 The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

2.2.4 The organization shall require the minimum of a master's degree in the counseling or behavioral science field. This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

2.3 Graduate Transcript - The applicant's master's degree in a counseling or behavioral science field, required by his/her certifying organization for certification, shall be documented by an official transcript submitted directly to the Board by the accredited educational institution granting the degree.

2.4 Professional Counseling Experience - Professional Counseling experience shall be defined as the accumulation of hours spent providing mental health counseling services in a professional mental health clinical counseling setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients.

2.4.1 Designated Objective Agent - For purposes of professional counseling experience obtained through self-employment, a designated objective agent shall be a professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse, parent, step-parent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be acceptable as a designated objective agent.

2.4.2 Thirty (30) graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

2.4.3 Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" and/or the "Verification of Self Employment" form.

2.5 Supervised Professional Counseling Experience - Supervised professional counseling experience shall be the accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised professional counseling experience acceptable to the Board shall be

defined as follows:

2.5.1 Supervised professional counseling experience shall consist of 1,600 hours of clinical experience, directly supervised by a LPCMH. Where direct supervision by a LPCMH is not available, a licensed clinical social worker, licensed psychologist or licensed physician specializing in psychiatry may supervise the applicant.

2.5.2 Direct Supervision - 1600 hours of direct supervision acceptable to the Board, for purposes of §3008(a)(2) shall mean supervision overseeing the supervisee's application of clinical counseling principles, methods or procedures to assist individuals in achieving more effective personal and social adjustment. At least 100 of the 1600 hours of supervision shall consist of face to face consultation between the supervisor and the supervisee. Direct supervision may take place in individual and/or group settings, defined as follows:

2.5.2.1 Individual Supervision - Individual supervision shall consist of one-to-one, face-to-face meetings between supervisor and supervisee.

2.5.2.2 Group Supervision - Group supervision shall consist of face-to-face meetings between supervisor and no more than six (6) supervisees.

2.5.2.3 Supervisory Setting - No more than forty (40) hours of group supervision shall be acceptable toward the 100-hour requirement. The entire 100-hour requirement may be fulfilled by individual supervision.

2.5.3 Supervision shall be verified by the "Direct Supervision Reference Form," submitted directly to the Board by the approved clinical supervisor.

Statutory authority: 24 *Del.C.* §3008.

See 4 DE Reg. 970 (12/1/00)

3.0 Licensure by Reciprocity

Applicants for LPCMH licensure by reciprocity (i.e., those requesting licensure based upon active licensure status in another state) shall meet the following requirements:

3.1 Proof of Licensure Status - The applicant shall hold an active professional counseling license in good standing from another state. Verification of licensure status shall be submitted directly to the Board by that state on the "Verification of Licensure or Certification from Another State" form.

3.2 Notarized Statement of Prior Licensing Jurisdictions - The applicant shall submit a notarized statement listing all licensing jurisdictions in which he/she formerly practiced and a signed "Release of Information" granting the Board permission to contact said jurisdictions for verification of disciplinary history and current status.

3.3 Determination of Substantial Similarity of Licensing Standards- The applicant shall submit a copy of the statute and rules of licensure from the state issuing his/her license. The burden of proof is upon the applicant to demonstrate that

the statute and rules of the licensing state are at least equivalent to the educational, experience and supervision requirements set forth in Title 24, *Delaware Code*, Chapter 30. Based upon the information presented, the Board shall make a determination regarding whether the licensing requirements of the applicant's licensing state are substantially similar to those of Delaware.

3.4 LACMH Option - If the Board determines that the requirements of the applicant's licensing state are not equivalent with regard only to the experience requirements of §3008(a)(2), the applicant shall be eligible for licensure as a LACMH, in which case he/she shall have four (4) years to complete the supervision requirements of §3008(a)(2). The applicant shall be given full credit for such properly documented experience and/or supervised experience as was required for licensure in his/her licensing state.

Statutory authority: 24 *Del.C.* §§3010.

See 4 DE Reg. 970 (12/1/00)

4.0 Licensure of Associate Counselors of Mental Health

4.1 Written Plan - The applicant shall submit a written plan for supervised professional experience, on the "Written Plan for Professional Counseling Experience and Supervision" form, supplied by the Board, and signed by the approved professional supervisor.

Statutory authority: 24 *Del.C.* §3009.

See 4 DE Reg. 970 (12/1/00)

5.0 Application and Fee, Affidavit and Time Limit

When applying for licensure, the applicant shall complete the following:

5.1 Application and Fee - The applicant shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee.

5.2 Affidavit - The applicant shall submit a signed, notarized "Affidavit," affirming the following:

5.2.1 that he/she has not violated any rule or regulation set forth by the Delaware Board of Professional Counselors of Mental Health;

5.2.2 that he/she has not been the recipient of any administrative penalties from any jurisdiction in connection with licensure, registration or certification as a mental health provider,

5.2.3 that he/she does not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to safely act as a LPCMH or LACMH,

5.2.4 that he/she has not been convicted of any felony and that he/she does not have any criminal conviction or pending criminal charge, whether felony or misdemeanor, which is substantially related to fitness to practice as a mental health provider; and

5.2.5 that the applicant has not been penalized for any willful violation of any code of ethics or professional

mental health counseling standard.

5.3 Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

Statutory authority: 24 *Del.C.* §§3008, 3009, 3010.

See 4 DE Reg. 970 (12/1/00)

6.0 Renewal of Licensure

6.1 Renewal Date - The LPCMH license shall be renewable biennially on September 30 of even-numbered years, beginning with September 30, 1994.

6.2 Requirements for Renewal - Requirements for licensure renewal are as follows:

6.2.1 Certification - The candidate for renewal shall hold current certification in good standing as of the date of licensure renewal in NBCC, ACMHC or other certifying organization acceptable to the Board. This certification shall be verified by the appropriate "Verification of Certification Form," submitted directly to the Board by the certifying organization.

6.2.2 Continuing Education

6.2.2.1 Requirement - The candidate for renewal shall have completed no less than forty (40) clock hours of acceptable continuing education per two (2) year licensure renewal period. Continuing education requirements for initial licensure periods of less than two (2) years shall be prorated.

6.2.2.2 Acceptable Continuing Education - Acceptable continuing education shall include the following:

6.2.2.2.1 Continuing education hours approved by a national mental health organization, such as NBCC, ACMHC, APA, shall be acceptable. Other training programs may apply for continuing education oriented towards enhancement, knowledge and practice of counseling. Hours are to be documented by a certificate signed by the presenter, or by designated official of the sponsoring organization.

6.2.2.2.2 Academic course work, and presentation of original papers providing training and clinical supervision may be applied for up to twenty (20) clock hours of the continuing education requirement. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented.

Under no circumstances, may there be less than twenty (20) hours of face-to-face participation in continuing education as outlined above.

6.2.2.3 Make-Up of Disallowed Hours - In the event that the Board disallows certain continuing education clock hours, the candidate for renewal shall have three (3) months after the licensure renewal date to complete the balance of acceptable continuing education hours required.

6.2.3 Hardship. The Board shall have the authority to make exceptions to the continuing education requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not necessarily

limited to, disability, illness, military service, 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 period, along with payment of the appropriate renewal fee. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the Board.

~~6.2.3~~ 6.2.4 Verification - Verification of continuing education hours shall be by the "Continuing Education Form for Licensed Professional Mental Health Counselors," with appropriate documentation for each item listed attached to the form.

~~6.2.4~~ 6.2.5 Fees - The candidate for renewal shall make payment of a renewal fee in an amount prescribed by the Division of Professional Regulation for that licensure renewal period. A fifty percent (50%) late charge shall be imposed upon any fee paid after the renewal date.

~~6.2.5~~ 6.2.6 It shall be the responsibility of all licensees to keep the Division informed of any change of address. Renewal applications will be sent to the last address on file with the Division.

Statutory authority: 24 *Del.C.* §§3006(a)(5), 3012.

See 4 DE Reg. 970 (12/1/00)

7.0 Ethics

7.1 The Board hereby adopts the current version of National Board for Certified Counselors Code of Ethics ("Code").

7.2 The practice of all persons licensed as an LPCMH or LAMCH shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

Statutory authority: 24 *Del.C.* §§3006(b), 3013.

See 4 DE Reg. 970 (12/1/00)

8.0 Return to Active Status

8.1 Return to Active Status - Return to active status from inactive status shall be granted upon fulfillment of the following requirements:

8.1.1 Written Request - Written request to the Board requesting return to active status.

8.1.2 Certification - Current certification in good standing, as of the date of the request for return to active status, in NBCC, ACMHC or other certifying organization.

8.1.3 Continuing Education - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.

8.1.4 Fee - Payment of the current fee for licensure renewal. No late fee shall be assessed for return to active status.

Statutory authority: 24 *Del.C.* §30012(d).

9.0 Disciplinary Proceedings and Hearings

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

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

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

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

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

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

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

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

Statutory authority: 24 *Del.C.* §§3013 and 3016; 29 *Del.C.* §§10111, 10122 and 10131

9.2. Hearing procedures

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

oath.

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

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

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

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if at least four members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 Del.C. §515.

9.2.6 Any decision by the Board to suspend or revoke a license shall be made public by publishing notice of the suspension or revocation in at least two (2) Delaware newspapers of general circulation. Such publication shall take place following the Board's execution of the final order.

Statutory authority: 24 *Del.C.* §§3004, 3013, 3015, 3016; 29 *Del.C.* §§10111

See 4 DE Reg. 970 (12/1/00)

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.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF SPEECH/LANGUAGE PATHOLOGISTS,
AUDIOLOGISTS & HEARING AID DISPENSERS**

24 DE Admin. Code 3700

Statutory Authority: 24 Delaware Code,
Section 3706(a)(1) (24 **Del.C.** 3706(a)(1))

The Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, in accordance with 24 **Del.C.** §3706(a)(1) has proposed comprehensive changes to its rules and regulations. The changes clarify application procedures, provide for extending a temporary license, describe the inactive status process, provide for calibration of electronic equipment, clarify continuing education credits, and replace the current Code of Ethics.

A public hearing will be held at 2:00 p.m. on April 11, 2001 in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, 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 Examiners of Speech/Language Pathologists,
Audiologist & Hearing Aid Dispensers**
Statutory Authority: 24 Del. C. ~~3714(3)~~ **3706(a)(1)**

1.0 Division of Professional Regulation

~~1.0~~ 2.0 Licensure Requirements for Speech/Language Pathologists and Audiologists

~~2.0~~ 3.0 Licensure Requirements for Hearing Aid

- Dispensers
- 4.0 Expired Licenses and Inactive Status
- ~~3.0~~ 5.0 Requirements for Audiology Aids
- ~~4.0~~ 6.0 Requirements for Speech Pathology Aids
- 7.0 Electronic Equipment
- ~~5.0~~ 8.0 Continuing Education For All Licensees: Speech/
Language Pathologists, Audiologists and Hearing
Aid Dispensers
- ~~6.0~~ Code of Ethics for Speech/Language Pathologists
and Audiologists
- ~~7.0~~ Code of Ethics for Hearing Aid Dispensers
- 9.0 Code of Ethics for Speech/Language Pathologists,
Audiologists, and Hearing Aid Dispensers
- ~~8.0~~ 10.0 Voluntary Treatment Option for Chemically
Dependent or Impaired Professionals

1.0 Division of Professional Regulation

1.1 Responsibilities

1.1.1 All applications and other forms may be obtained from, and must be returned after completion, to the Division of Professional Regulation, ATTN: SLP-AUD-HAD, at 861 Silver Lake Blvd., Ste. 203, Dover, DE 19904-2467 by mail or in person during regular business hours.

1.1.2 Fees required under the statute are to be made payable to the State of Delaware and remitted to the Division of Professional Regulation. No license shall be issued until all required fees are paid.

1.1.3 The Administrative Assistant assigned by the Division of Professional Regulation performs support functions for the Board and serves as the contact person for the Board to receive inquiries.

2.0 Licensure Requirements for Speech-Language Pathologists and Audiologists

2.1 Education

~~2.1.1~~ 2.1.1 To be eligible for a license as a Speech/Language Pathologist or Audiologist, the applicant must submit verification by an official transcript of completion of at least a master's degree or its equivalent ~~from an educational institution recognized by the Board, from an accredited college or university~~ with major emphasis in speech-language pathology, audiology, communication disorders or speech-language and hearing science.

2.2 Clinical Practicum

~~2.2.1~~ 2.2.1 The Speech/Language Pathology and Audiology applicant must have completed a minimum of 375 clock hours of supervised clinical practicum with major emphasis in the professional area for which the license is being sought.

~~2.2.2~~ 2.2.2 A minimum of 250 clock hours in the area of specialty of the supervised clinical practicum must have been obtained at the graduate level.

2.3 Clinical Fellowship Year (CFY)

~~2.3.1~~ 2.3.1 The Speech/Language Pathology or

Audiology applicant must have the equivalent of nine (9) months of full-time or eighteen (18) months of part time (defined as 15-20 hours per week) supervised * CFY in the major professional area in which the license is being sought. The CFY must start after completion of the academic and clinical practicum requirements.

* Supervision is defined as direct observation consisting of 36 supervisory activities, including 18 one hour on-site observations and 18 other monitoring activities. (From Appendix E of Clinical Fellowship Year adopted ASHA 1985)

~~1.3.2~~ A temporary license valid for only 1 year from the date of issuance and non-renewable must be obtained for fulfillment of the supervised CFY in Delaware. An applicant for a temporary license must demonstrate that he is or will be supervised by a person who holds a license in the appropriate discipline. (See Section 6)

2.4 National Examination

~~2.4.1~~ 2.4.1 The Speech/Language Pathology and Audiology applicant must have completed and passed the appropriate national examination approved by the Division of Professional Regulation for the area of specialty ~~and~~ license with at least the minimum nationally recommended score. Scores must be sent directly from the testing service to the Division of Professional Regulation.

~~2.4.2~~ 2.4.2 A Speech/Language Pathology or Audiology applicant with a temporary license is permitted to complete the appropriate national examination during the period of the temporary license. ~~The requirements in Section 4.1 must be completed prior to expiration of the temporary license which is non-renewable.~~

2.4.3 Anyone who fails two examinations may not be reexamined for a period of one year following the second failure. Prior to reexamination after a second failure, an applicant must submit proof of additional course work and/or clinical experience.

2.5 Reciprocity

~~2.5.1~~ A license will be granted to an applicant who provides proof of a current license from those states with equivalent standards for licensure. The applicant must provide verification statement(s) or letter(s) of good standing (active or inactive) from each state in which a license has been issued.

~~2.5.2~~ A license will be granted to an applicant who holds the current Certificate of Clinical Competence from the American Speech Language Hearing Association.

2.6 Application Process-Temporary Licensure

~~2.6.1~~ 2.6.1 An applicant must complete ~~an~~ a notarized application for temporary licensure. Items which must be provided to the ~~Board office~~ Division of Professional Regulation include:

~~2.6.1.1~~ 2.6.1.1 Official Transcript(s);

~~2.6.1.2~~ 2.6.1.2 Documents verifying the appropriate number and level of supervised clinical

practicum hours;

~~1.6.1.3 2.5.1.3~~ CFY plan on a form approved by the Board or letter of intent, signed by the licensed professional who will provide the supervision;

~~1.6.1.4 2.5.1.4~~ payment of appropriate fees.

~~1.6.2 2.5.2~~ A temporary license is valid for one year from the date of issuance and is not renewable may be renewed for one year in extenuating circumstances upon application to the Board. Requests for Board consideration of a renewal shall be made in writing and sent to the Division of Professional Regulation 60 days prior to expiration.

~~1.7 2.6~~ Application Process -Permanent Licensure

~~1.7.1 2.6.1~~ All Speech/Language Pathology and Audiology applicants must complete the application on a form approved by the Board and submit the appropriate fee.

~~1.7.2 2.6.2~~ An applicant who has ASHA Certification must comply with Section ~~1.7.1 2.6.1~~ and submit a copy of current ASHA certification. ~~to facilitate the issuance of a license(See Section 5)~~

~~1.7.3 2.6.3~~ An applicant who is currently licensed in another state, the District of Columbia, or territory of the United States whose standards for licensure are substantially similar to those of this state which has equivalent standards for licensure, must comply with Section ~~1.7.1 2.6.1~~ and submit verification of licensure in good standing from all jurisdictions where he or she is or has been licensed. ~~proof of the current license (copy of license). Verification of the license and a statement of good standing with active or inactive status should be sent to the Board office. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in this section. Verification of practice should be by notarized letter from the employer(s).~~

~~1.7.4 2.6.4~~ An applicant who has completed the supervised CFY in Delaware and has a current temporary license, must submit the following documentation to the Board office Division of Professional Regulation 30 days prior to expiration of the temporary license:

~~1.7.4.1 2.6.4.1~~ proof of completion of the CFY,

~~1.7.4.2~~ completion of the appropriate national examination (if taken during CFY period) with scores sent directly to the Board office, and

~~1.7.4.3~~ any required items not received with the earlier application for the temporary license.

~~2.6.4.2~~ national examination score unless previously provided,

~~2.6.4.3~~ licensure fee.

~~1.7.5~~ An applicant not included in 7.2, 7.3 and 7.4 above, must provide items to the Board office as required in the application including:

~~1.7.5.1~~ official transcript(s);

~~1.7.5.2~~ documents verifying the appropriate number and level of supervised clinical practicum

~~1.7.5.3~~ National examination scores (sent directly to the Board office);

~~1.7.5.4~~ verification of completion of the required supervised CFY signed by a licensed professional and notarized, and

~~1.7.5.5~~ verification of all current and expired licenses held in any state with a statement of good standing (active or inactive status).

2.0 3.0 Licensure Requirements for Hearing Aid Dispensers

~~2.1 3.1~~ Education

~~2.1.1 3.1.1~~ To be eligible for a license as a Hearing Aid Dispenser, the applicant must submit verification of high school diploma or its equivalent.

~~2.2~~ Clinical Practicum

~~2.2.1~~ The Hearing Aid Dispensing applicant is not required to complete a practicum.

~~2.3~~ Supervised Professional Employment

~~2.3.1~~ A Hearing Aid Dispensing applicant applying for a temporary license must be supervised *by a Hearing Aid Dispenser licensed in Delaware.

* Supervision is defined as a minimum of 25% direct on-site observations during the temporary licensure period.

~~2.4 3.2~~ National Examination

~~2.4.1 3.2.1~~ Hearing Aid Dispensing applicants must have completed and passed the appropriate national examination for the license approved by the Division of Professional Regulation, in accordance with scores as recommended by the national testing service, National Institute for Hearing Instruments Studies (NIHIS), or its successor. ~~or one selected by the Board to be equivalent.~~

~~3.2.2~~ Anyone who fails two examinations may not be reexamined for a period of one year following the second failure. Prior to reexamination after a second failure, an applicant must submit proof of course work and/or supervised experience.

~~2.5 3.3~~ Application Process - Temporary Licensure

~~2.5.1 3.3.1~~ An applicant must complete the application for temporary licensure. Items which must be provided to the Division of Professional Regulation Board office include:

~~2.5.1.1 3.3.1.1~~ verification of a high school diploma or its equivalent,

~~2.5.1.2 3.3.1.2~~ payment of appropriate fees, and

~~2.5.1.3~~ three letters of recommendation, and

~~2.5.1.4 3.3.1.3~~ notarized signature of a Delaware licensed sponsor stating a willingness to provide direct supervision and training. Direct supervision is defined as a minimum of 25% direct on-site observations during the temporary licensure period.

~~2.5.2 3.3.2~~ A temporary license is valid for one year

from date of issuance and is not renewable. A temporary license cannot be renewed for any reason, and may be renewed for one year in extenuating circumstances upon application to the Board. Requests for Board consideration of a renewal shall be made in writing and sent to the Division of Professional Regulation 60 days prior to expiration.

2.5.3 Examination(s) for licensure as a Hearing Aid Dispenser are made available by the Board at least twice yearly. Successful completion of the national examination (See 4.1 above) is required to become permanently licensed and must be completed before the expiration of the temporary license.

2.6 3.4 Application Process-Permanent Licensure

2.6.1 3.4.1 All Hearing Aid Dispensing applicants must complete an application on a form approved by the Board and submit it with three letters of recommendation and the appropriate fee to the Division of Professional Regulation, the Board office.

2.6.2 Any Hearing Aid Dispensing applicant who has been licensed in any state must provide verification of all current and expired licenses held in any state with a statement of good standing (active or inactive status).

2.6.3 3.4.2 A Hearing Aid Dispensing applicant who is currently licensed in another state which has equivalent standards for licensure, the District of Columbia, or territory of the United States, whose standards for licensure are substantially similar to those of this state, must comply with 6.1 3.4.1 and submit verification of licensure in good standing from all jurisdictions where he or she is or has been licensed. proof of the current license (copy of license). Verification of the license and a statement of good standing with active or inactive status should be sent to the Board office. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in this section. Verification of practice should be by notarized letter from the employer(s).

2.6.4 3.4.3 It is the responsibility of the Hearing Aid Dispensing applicant to contact the Board office 30 days prior to expiration of the temporary license to insure that all requirements for permanent licensure have been completed. This may include: Licensees holding temporary Hearing Aid Dispensing licenses must submit a passing score on the national examination described in 3.2.1 and the required fee to the Division of Professional Regulation to obtain a permanent license.

2.6.4.1 completion of appropriate National exam

2.6.4.2 any required item not received

2.6.5 Any Hearing Aid Dispensing applicant not included in 2.6.3 or 2.6.4 must follow the directions in Section 5 above, completing an application for temporary licensure and submitting it with

2.6.5.1 verification of high school diploma or its equivalent,

2.6.5.2 national exam score,

2.6.5.3 three letters of recommendation,

2.6.5.4 payment of the appropriate fees, and

2.6.5.5 notarized signature of a Delaware licensed sponsor who is willing to provide supervised professional employment with training and direct supervision (minimum of 25 % on site).

4.0 Expired Licenses and Inactive Status

4.1 Expired Licenses

4.1.1 A holder of an expired license may renew the license within one year of the date the renewal was due by fulfilling all of the renewal requirements and paying the late fee established by the Division of Professional Regulation.

4.2 Inactive Status

4.2.1 A licensee may apply to the Board for inactive status for up to five years. The license may be reactivated upon application on a form approved by the Board and proof of 20 CE's completed within the preceding 24 months (30 CE's for a triple license) as required by Section 8.2.3, and paying the fee established by the Division of Professional Regulation.

3.0 5.0 Requirements for Audiology Aides

3.1 Education and Supervised Employment

3.1.1 An Audiology Aide must have a minimum of a high school diploma or its equivalent. An Audiology Aide assists a licensed audiologist in professional endeavors with the audiologist's direct supervision.

3.2 5.1 Certification

3.2.1 5.1.1 Certification of the Audiology Aide must be by the Council of Accreditation of Occupational Hearing Conservationists, or its equivalent, with documentation. The Audiology Aide must be registered with the Board annually by the supervising, Delaware licensed audiologist. The supervising Delaware-licensed audiologist must annually register each Audiology Aide using a form approved by the Board.

5.2 Direct Supervision

5.2.1 An Audiology Aide assists a licensed audiologist in professional activities with direct supervision of the audiologist. Direct supervision requires the presence of the supervising audiologist on the premises when the aide is performing professional activities.

3.3 5.3 Duties of the Audiology Aide

3.3.1 5.3.1 Duties of the Audiology Aide must be specified by the supervising audiologist and may include the following:

3.3.1.1 5.3.1.1 Accurate Air conduction pure tone assessment and data recording.

3.3.1.2 5.3.1.2 Hearing screenings.

3.3.1.3 5.3.1.3 Assisting with conditioning

techniques.

~~3.3.1.4~~ 5.3.1.4 Cursory otoscopy.

~~3.3.1.5~~ 5.3.1.5 Basic hearing aid maintenance.

~~3.3.1.6~~ 5.3.1.6 Routine instrument sterilization.

~~3.3.1.7~~ 5.3.1.7 Biological and electroacoustic

~~assessment of the audiometer check.~~

~~3.3.1.8 Assist with electroacoustic assessment of the audiometer.~~

~~3.3.1.9~~ 5.3.1.8 Clerical support.

~~3.3.1.10~~ 5.3.1.9 Participation with the professional in research projects, in service training, or similar endeavors.

~~3.3.1.11~~ 5.3.1.10 Other duties as may be appropriately determined with training from and direct supervision of the Delaware licensed audiologist.

4.0 6.0 Requirements for Speech/Language Pathology Aides

~~4.1 6.1 Education and Supervised Employment:~~

~~4.1.1 6.1.1 A Speech Pathology Aide must have a minimum of a high school diploma or its equivalent. A Speech Pathology Aide assists a licensed speech/language pathologist in professional activities with direct supervision by the speech/language pathologist.~~

~~4.1.2 The definition of direct supervision for Speech/Language Pathology Aides shall be: "in any situation where an aide is assisting with testing, and/or treatment, direct supervision shall constitute presence of the speech pathologist with the aide and the client at all times."~~

6.2 Direct Supervision

6.2.1 A Speech Pathology Aide assists a licensed Speech/Language Pathologist in professional activities with direct supervision of the Speech Pathologist. Direct supervision requires the presence of the supervising Speech/Language Pathologist at all times where an aide is assisting with testing, and/or treatment.

6.3 Duties of the Speech/Language Pathology Aide

6.3.1 Duties of the Speech Pathology Aide must be specified by the supervising Speech/Language Pathologist and may include the following:

6.3.1.1 Assisting with testing or treatment.

6.3.1.2 Clerical support.

6.3.1.3 Client escort.

6.3.1.4 Preparation of therapeutic materials

6.3.1.5 Equipment maintenance.

6.3.1.6 Participation with the professional in research projects, in service training, or similar endeavors.

6.3.1.7 Other duties as may be appropriately determined with training from and direct supervision of the Delaware licensed Speech/Language Pathologist.

7.0 Electronic equipment

7.1 Standards

7.1.1 Calibration of electronic equipment used to

assess hearing shall be performed by a certified professional consistent with the standards set by the American National Standards Institute (ANSI).

7.1.2 Every licensed Audiologist and Hearing Aid Dispenser shall annually submit proof of calibration to the Board. Any Audiologist who does not have such equipment may file an affidavit so stating on a form approved by the Board.

5.0 8.0 Continuing Education For All Licensees:

Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers

~~5.1 8.1~~ Philosophy

~~5.1.1 8.1.1~~ Continuing education is required by the Delaware Board of Examiners to maintain professional licensure in the fields of Speech/Language Pathology, Audiology and Hearing Aid Dispensing. Continuing education requirements arise from an awareness that these fields are in a continual state of transition due to the introduction of new philosophies and the refinement of already existing knowledge. Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers should continually strive to update their clinical skills in an effort to deliver high quality services.

~~5.1.2 8.1.2~~ The Delaware Board of Examiners is keenly aware of existing educational opportunities in Delaware and neighboring states and has established regulations which will provide continuing education credit as effortlessly as possible while assuring quality instruction. Credit will be given for participation in a variety of activities which increase knowledge and enhance professional growth.

~~5.1.3 8.1.3~~ These regulations recognize the financial and time limitations of Delaware's professionals while assuring continued appropriate services to those individuals who require them.

~~5.2 8.2~~ Continuing Education Hours and Definitions

~~5.2.1 8.2.1~~ One contact hour is abbreviated as CE and is defined as 60 minutes of attendance/participation in an approved continuing education activity unless otherwise stated. (Therefore, credits and CEU's issued by various organizations must be translated. e.g., 1.0 ASHA CEU = 10 CE's)

~~5.2.2 8.2.2~~ Continuing Education Time Frame: CE requirements must be completed by April 30th of each license renewal period. Each licensee has up to 24 months in which to complete the minimum continuing education requirements, that is from May 1 (of the current renewal year) to April 30 of the next renewal year. Licenses ~~are renewed in the odd-numbered years.~~ expire on July 31 of the odd-numbered years.

~~5.2.3 8.2.3~~ The required number of continuing education contact hours vary with certification and/or professional status as outlined below:

~~5.2.3.1 8.2.3.1~~ New License: If a license

would cover less than one year, the licensee is not required, but is encouraged, to accrue continuing education hours. If a license would cover more than one year, but less than 2 years, the licensee is required to obtain 10 CE's or one-half of the required total hours.

~~5.2.3.2~~ 8.2.3.2 Single License: Individuals retaining a license in one area of specialty must obtain a minimum total of 20 CE's for each two-year license period.

~~5.2.3.3~~ 8.2.3.3 Dual License: Individuals retaining licenses in two areas of specialty must obtain a minimum total of 20 CE's for each two year license period, with 10 CE's obtained in each area of licensure. One course may be split between areas of licensure to fulfill multiple continuing education requirements. Content must be shown to be relevant to those areas.

~~5.2.3.4~~ 8.2.3.4 Triple License: Individuals retaining licenses in three areas of specialty must obtain a minimum of 30 CE's for each two-year license period, with 10 CE's obtained in each area of licensure. One course may be split between areas of licensing to fulfill multiple continuing education requirements. Content must be shown to be relevant to those areas.

~~5.2.3.5~~ 8.2.3.5 Temporary License: All continuing education requirements will be waived for temporary licensees; however, individuals are encouraged to participate in continuing education activities during ~~the maximum one year period.~~ their CFY period.

~~5.2.3.6~~ 8.2.3.6 Extenuating Circumstances: The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review a written request with supporting documentation. Extenuating circumstances may include, but are not limited to, disability, illness, extended absence from the jurisdiction, and exceptional family responsibilities.

~~5.3~~ 8.3 Suggested Activities for Obtaining CE's

~~5.3.1~~ 8.3.1 Continuing education courses shall focus on professional growth and the enhancement of clinical skills and be recorded on the appropriate Board form(s). Verification is required and allows the licensee to show the relevance of continuing education to professional practice.

~~5.3.2~~ 8.3.2 All continuing education activities approved and sponsored by the American Speech, Language and Hearing Association or other accredited related professional associations, including study of professional journals which grant ASHA CEU's. Verification is required--photocopy acceptable.

~~5.3.3~~ 8.3.3 All scientific and clinical sessions and short courses of the American Speech, Language and Hearing Association National Conventions or other accredited related professional associations. Verification required--photocopy of short course completion acceptable. Agenda of sessions attended and time spent is required for convention activities.

~~5.3.4~~ 8.3.4 All Delaware Speech, Language and Hearing Association (DSHA) sponsored activities, including professional meetings. Verification of completion required.

~~5.3.5~~ 8.3.5 Delaware Department of Education course offerings in areas related to the professions. (1/5 Delaware Department of Education (DDE) credit = 3 hours = 3 CE's) Verification required.

~~5.3.6~~ 8.3.6 Professional study group and journal group meetings recognized and monitored by the Delaware Speech, Language and Hearing Association. Verification required including summary/agenda and time spent.

~~5.3.7~~ 8.3.7 Professional course work for academic credit in Speech/Language Pathology, Audiology or Hearing Aid Dispensing. ~~Verification of credits earned required. Undergraduate and graduate level courses should be submitted, using appropriate forms, for prior approval 45 days before the activity with course description, brochure, and class schedule/ hours so that the licensee will know in advance the number of CE's to be approved by the Board. Verification of credits earned upon course completion along with a course description should be submitted to the Board for approval. The course description may be submitted for prior approval of the course. (1 undergraduate credit = minimum of 3 CE's ; 1 graduate credit = minimum of 5 CE's)~~

~~5.3.8~~ 8.3.8 Professional presentations by licensee on professional required topics. Verification, including summary, time spent and verification from sponsor. Credit is given for each presentation only once during a licensure period. (1 hour of presentation = 3 CE's)

~~5.3.9~~ 8.3.9 Professional publication by licensee within ASHA or related specialty journals. Verification required. Reprint of publication.

~~5.3.10~~ 8.3.10 Other continuing education with documentation of content and hours attended. A licensee who wishes to be sure that an activity will be approved by the Board may ~~contact the Board office for information and assistance.~~ request advance approval from the Board (See Rule 4.1.3)

~~5.4~~ 8.4 Continuing Education Checklist of Responsibilities

~~5.4.1~~ 8.4.1 All licensees shall:

~~5.4.1.1~~ 8.4.1.1 obtain a Continuing Education Record form

~~5.4.1.2~~ 8.4.1.2 document completed continuing education activities on Continuing Education Record

~~5.4.1.3~~ 8.4.1.3 obtain Advance a Board Approval form and submit 45 days before the Board meeting preceding the start of a proposed activity for which prior approval is required by the Board or preferred by the licensee if a licensee seeks advance approval and determination of CE's.

~~5.4.1.4 8.4.1.4~~ submit Non-Prior Approved forms within 30 days of completion of activities, as recommended by the Board, to facilitate accumulation of CE's by licensees. obtain a Board Approval form and submit after completion of the CE activity for approval and determination of CE's.

~~5.4.1.5 8.4.1.5~~ mail Continuing Education Record to the ~~Board office~~ the Division of Professional Regulation by ~~April 30~~ May 1 of the renewal year.

~~5.4.1.6 8.4.1.6~~ retain photocopy of Continuing Education Record for personal records.

~~5.4.2~~ All continuing education sponsors shall:

~~5.4.2.1~~ complete a Sponsor Request for Activity Approval Form and submit it 45 days before the start of the proposed activity.

~~5.4.2.2~~ upon approval, be able to advertise the activities as Delaware Licensure Board Approved for continuing education with the specific number of CE's noted.

~~5.4.2.3~~ at the conclusion of the activity, verify each attendee's participation by signing attendee's Continuing Education Record and/or providing and signing an individual certificate of attendance showing date and title of activity, number of CE's and name of attendee.

~~5.4.2.4~~ submit attendance roster with copy of Board Approval form to the Board.

~~5.5~~ Board Continuing Education Coordination

~~Any Board member may be designated to process continuing education requests between scheduled meetings and may~~

~~5.5.1~~ review, approve or disapprove Sponsor Requests.

~~5.5.2~~ review, approve or disapprove Non-Prior and Prior Approval Requests from licensees.

~~5.6~~ Licensure Board Administrative Assistant

~~5.6.1~~ Receives and prepares for Board meeting and forwards to designated Board member(s), all Sponsor Requests, Prior and Non-Prior Approval forms.

~~5.6.2~~ Receives decision regarding request and notifies person filing request.

~~5.6.3~~ Maintains file of course activities approved for CE's during the current 24 months licensure period.

~~5.6.4~~ Receives Continuing Education Records from licensees. Checks for completeness and approved documentation when appropriate. Audits each licensee's CE's annually and notifies Board of those in jeopardy of not completing requirements.

~~5.6.5~~ Maintains files holding original applications and relevant documentation for the Board.

~~5.6.6~~ Receives Non-Prior Approved Activity forms and forwards to Board member(s) for approval/disapproval.

6.0 Code of ethics for Speech Language Pathologists and Audiologists

~~6.1~~ Preamble

~~6.1.1~~ The Preservation of the highest standards of integrity and ethical principles is vital to the responsible discharge of obligations in the professions of speech-language pathology and audiology. This Code of Ethics sets forth the fundamental principles and rules considered essential to this purpose.

~~6.1.2~~ Any action that violates the spirit and purpose of this Code shall be considered unethical. Failure to specify any particular responsibility or practice in this Code of Ethics shall not be construed as denial of the existence of such responsibilities or practices.

~~6.1.3~~ The fundamentals of ethical conduct are described by Principles of Ethics and by Rules of Ethics as they relate to responsibility to persons served, to the public, and to the professions of speech-language pathology and audiology.

~~6.1.4~~ Principles of Ethics, aspirational and inspirational in nature, form the underlying moral basis for the Code of Ethics. Individuals shall observe these principles as professional activity.

~~6.1.5~~ Rules of Ethics are specific statements of minimally acceptable professional conduct or of prohibitions and are applicable to all individuals.

~~6.2~~ Principle of Ethics I

~~6.2.1~~ Individuals shall honor their responsibility to hold paramount the welfare of persons they serve professionally.

~~6.2.2~~ Rules of Ethics

~~6.2.2.1~~ Individuals shall provide all services competently.

~~6.2.2.2~~ Individuals shall use every resource, including referral when appropriate, to ensure that high-quality service is provided.

~~6.2.2.3~~ Individuals shall not discriminate in the delivery of professional services on the basis of race, sex, age, religion, national origin, sexual orientation, or handicapping condition.

~~6.2.2.4~~ Individuals shall fully inform the persons they serve of the nature and possible effects of services rendered and products dispensed.

~~6.2.2.5~~ Individuals shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefit can reasonably be expected.

~~6.2.2.6~~ Individuals shall not guarantee the results of any treatment or procedure, directly or by implication; however, they may make a reasonable statement of prognosis.

~~6.2.2.7~~ Individuals shall not evaluate or treat speech, language, or hearing disorders solely by correspondence.

~~6.2.2.8~~ Individuals shall maintain adequate records of professional services rendered and products

dispensed and shall allow access to these records when appropriately authorized.

6.2.2.9 Individuals shall not reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

6.2.2.10 Individuals shall not charge for services not rendered, nor shall they misrepresent in any fashion, services rendered or products dispensed.

6.2.2.11 Individuals shall use persons in research or as subjects of teaching demonstrations only with their informed consent.

6.2.2.12 Individuals shall withdraw from professional practice when substance abuse or any emotional or mental disability may adversely affect the quality of services they render.

For purposes of this Code of Ethics, misrepresentation includes any untrue statements or statements that are likely to mislead. It also includes the failure to state any information that is material and that ought, in fairness, to be considered.

6.3 Principle of Ethics II

6.3.1 Individuals shall honor their responsibility to achieve and maintain the highest level of professional competence.

6.3.2 Rules of Ethics

6.3.2.1. Individuals shall engage in the provision of clinical services only when they hold the appropriate Certificate of Clinical Competence or when they are in the certification process and are supervised by an individual who holds the appropriate Certificate of Clinical Competence.

6.3.2.2. Individuals shall engage in only those aspects of the professions that are within the scope of their competence, considering their level of education, training, and experience.

6.3.2.3. Individuals shall continue their professional development throughout their careers.

6.3.2.4. Individuals shall delegate the provision of clinical services only to persons who are certified or to persons in the education or certification process who are appropriately supervised. The provision of support services may be delegated to persons who are neither certified nor in the certification process only when a certificate holder provides appropriate supervision.

6.3.2.5. Individuals shall prohibit any of their professional staff from providing services that exceed the staff member's competence, considering the staff member's level of education, training, and experience.

6.3.2.6. Individuals shall ensure that all equipment used in the provision of services is in proper working order and is properly calibrated.

6.4 Principle of Ethics III

6.4.1 Individuals shall honor their responsibility to the public by promoting public understanding of the professions, by supporting the development of services designed to fulfill the unmet needs of the public, and by providing accurate information in all communications involving any aspect of the professions.

6.4.2 Rules of Ethics

6.4.2.1. Individuals shall not misrepresent their credentials, competence, education, training, or experience.

6.4.2.2. Individuals shall not participate in professional activities that constitute a conflict of interest.

6.4.2.3. Individuals shall not misrepresent diagnostic information, services rendered, or products dispensed or engage in any scheme or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

6.4.2.4. Individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, about the professions, and about professional services.

6.4.2.5. Individuals' statements to the public (advertising, announcing, and marketing professional services, reporting research results, and promoting products) shall adhere to prevailing professional standards and shall not contain misrepresentations.

6.5 Principle of Ethics IV

6.5.1 Individuals shall honor their responsibilities to the professions and their relationships with colleagues, students and members of allied profession. Individuals shall uphold the dignity and autonomy of the professions, maintain harmonious interprofessional and intraprofessional relationships, and accept the professions' self-imposed standards.

6.5.2 Rules of Ethics

6.5.2.1. Individuals shall prohibit anyone under their supervision from engaging in any practice that violates the Code of Ethics.

6.5.2.2. Individuals shall not engage in dishonesty, fraud, deceit, misrepresentation, or any form of conduct that adversely reflects on the professions or on the individual's fitness to serve persons professionally.

6.5.2.3. Individuals shall assign credit only to those who have contributed to publication, presentation, or product. Credit shall be assigned in proportion to the contribution and only with the contributor's consent.

6.5.2.4. Individuals' statements to colleagues about professional services, research results, and products shall adhere to prevailing professional standards and shall contain no misrepresentations.

6.5.2.5. Individuals shall not provide professional services without exercising independent professional judgment, regardless of referral source or prescription.

6.5.2.6. Individuals who have reason to believe that the Code of Ethics has been violated shall inform the

Ethical Practice Board.

6.5.2.7. Individuals shall cooperate fully with the Ethical Practice Board in its investigation and adjudication of matters related to this Code of Ethics.

6.5.2.8. Individuals shall not discriminate in their relationships with colleagues, students and members of allied professions on the basis of race, sex, age, religion, national origin, sexual orientation, or handicapping condition.

7.0 Code of Ethics for Hearing Aid Dispensers**7.1 Code of Ethics**

7.1.1 This is a Code of Ethics for those engaged in the testing of human hearing, and in the selection, counseling, fitting, dispensing and servicing of hearing instruments. This Code sets standards of professional integrity and practice, including relationships with patients/clients, colleagues and the general public.

7.1.2 Ethical principles are standards by which the profession and individual Hearing Aid Dispensers determine the propriety of their conduct. Adherence to these standards serve to assure public confidence in the integrity of the services of Hearing Aid Dispensers in this profession. It is incumbent on all Hearing Aid Dispensers to abide by all laws, or rules and regulations applicable to the dispensing of hearing aids in Delaware.

7.1.3 Rules of Ethics

7.1.3.1 Individuals shall state only the true facts in public announcements and advertising of hearing aids and related products, and shall not, in any way, mislead or misrepresent in regard to their performance, appearance, benefits, elements, and use.

7.1.3.2 Individuals shall provide thorough and ethical consulting services when dispensing instruments, including the appropriate testing and fitting suitable for the patient/client's particular type of hearing loss.

7.1.3.3 Individuals shall, at all times, provide the best possible service to the hearing toward their deriving the maximum benefit from their hearing instruments.

7.1.3.4 Individuals shall constantly encourage and support research, cooperating with medical and other hearing health professionals and societies to employ the maximum accumulation of scientific knowledge and technical skills in the testing of human hearing for the selection, fitting and maintenance of hearing instruments.

7.2 Conduct and Relationship with Patient/Client

7.2.1 Hearing Aid Dispensers engaged in the practice of the testing of human hearing, and in the selection, counseling, fitting, dispensing and servicing of hearing instruments, shall hold paramount the welfare of the patient/client.

7.3 Continuing Education

7.3.1 Hearing Aid Dispensers shall engage and participate in continuing education during each year of

active practice in the best interest of the patient/client and professional development.

7.4 Referral

7.4.1 Hearing Aid Dispensers shall utilize all resources available, including referral to other specialists as needed.

7.5 Services Rendered

7.5.1 Hearing Aid Dispensers shall accept and seek full responsibility for the exercise of judgment within their area of expertise. These services include the testing of human hearing, and the selection, counseling, fitting, dispensing and servicing of hearing instruments.

7.5.2 Hearing Aid Dispensers shall not guarantee outstanding results from the use of hearing instruments, products, services or counseling when such is not the case. They shall exercise caution not to mislead persons to expect results that cannot be predicted.

7.6 Confidential Aspects of Patient/Client Relations

7.6.1 Hearing Aid Dispensers shall hold in professional confidence all information and professional records concerning a patient/client and use such data only for the benefit of the patient/client or as the law demands.

7.7 Conduct in Regard to Colleagues and Hearing Health Care Professions

7.7.1 Hearing Aid Dispensers shall keep the welfare of the patient/client uppermost at all times. They shall avoid personal invective directed toward professional colleagues or members of hearing health care professions. They shall conduct themselves at all times in a manner which will enhance the status of the profession. They shall be supportive to individuals and organizations with whom they are associated to their mutual benefit. They shall not agree to practice under terms or conditions which tend to interfere with or impair the proper exercise of their professional judgment and skill, which tend to cause a deterioration in the quality of service, or which require consent to unethical conduct.

7.8 Maintenance of Records

7.8.1 Hearing Aid Dispensers shall initiate and maintain records of service provided to patients/clients. All laws, or rules and regulations pertaining to keeping of records shall be carefully observed.

7.9 Fees and Compensation

7.9.1 Hearing Aid Dispensers shall not participate with other health professionals or any other person in agreements to divide fees or to cause financial or other exploitation when rendering professional services.

7.10 Delay in Providing Services

7.10.1 Hearing Aid Dispensers shall not delay furnishing care to patients/clients served professionally, without just cause.

7.11 Discontinuance of Services

7.11.1 Hearing Aid Dispensers shall not discontinue service to patients/clients without providing reasonable

notice of withdrawal, and satisfying all contractual agreements.

7.12 Responsibility of The Profession and Colleagues

7.12.1 Hearing Aid Dispensers have the duty to observe all laws, rules and regulations, applicable to the dispensing of hearing aids, to uphold the dignity and honor of the profession and to accept its ethical principles. They shall not engage in any activity that will bring discredit to the profession and shall expose, without fear or favor, illegal or unethical conduct in the profession.

7.12.2 In the event it appears that a Hearing Aid Dispenser is in violation of this Code, fellow Hearing Aid Dispensers are encouraged to report the circumstances to the Board.

7.12.3 Hearing Aid Dispensers holding an appointed position in the State or Provincial Chapter, shall not use such a position for self-aggrandizement.

7.13 Advertising

7.13.1 Hearing Aid Dispensers who choose to advertise services shall use only material considered ethical and complying with laws, or rules and regulations governing advertising.

7.13.2 Hearing Aid Dispensers shall endorse the following statement of principles that assures protection of the hearing impaired and the public in general.

7.13.2.1 ~~TRUTH~~ Advertising shall tell the truth, and shall reveal significant facts, the concealment of which would mislead the public, and shall not dispense any product or part thereof, representing that it is new, unused, or rebuilt, when such is not the fact.

7.13.2.2 ~~RESPONSIBILITY~~ Advertisers shall be willing and able to provide substantiation of claims made.

7.13.2.3 ~~TASTE AND DECENCY~~ Advertising shall be free of statements, illustrations, or implications which are offensive to good taste or public decency.

7.13.2.4 ~~DISPARAGEMENT~~ Advertising shall offer merchandise or service on its merits, and shall refrain from attacking competitors or disparaging their products, services or methods of doing business.

7.13.2.5 ~~BAIT ADVERTISEMENT~~ Advertising shall offer only merchandise or services which are readily available for purchase during the advertised period at the advertised price; it is unethical for any Hearing Aid Dispenser to advertise a particular model or kind of instrument to obtain prospects for the sale of a different model kind of instrument than that advertised, or to imply a relationship with a manufacturer or trade name that does not exist.

7.13.2.6 ~~GUARANTEES AND WARRANTIES~~ Advertising of guarantees and warranties shall be explicit. Advertising of any guarantee or warranty shall clearly and conspicuously disclose its nature and

extent, the manner in which the guarantor or warrantor will perform, and the identity of the guarantor or warrantor. It is unethical to use, or cause to be used, any guarantee or warranty which is false, misleading, deceptive, or unfair whether in respect to the quality, construction, serviceability, performance, or method of manufacture of any industry product, or in respect to the terms and conditions of refund of purchase price thereof, or in any other respect.

7.14 Standards

7.14.1 Maintenance of high standards by all Hearing Aid Dispensers is in the best interest of persons served professionally, Hearing Aid Dispensers and the profession.

7.14.1.1 It shall be unethical for Hearing Aid Dispensers to willfully and knowingly violate any law or rule or regulation applicable to the dispensing of hearing aids.

7.14.1.2 It shall be unethical to use such terms or to use any abbreviation of such terms as doctor, physician, otologist, certified hearing aid audiologist, clinical audiologist, medical audiologist, research audiologist, industrial audiologist, when such is not the fact.

7.14.1.3 It shall be unethical to use any symbol or depiction which connotes the medical profession.

7.14.1.4 It shall be unethical to use any terms that may reasonably be said to confuse the public that a private business practice has some relationship to a governmental or nonprofit medical, educational or research institution.

7.15 Discrimination

7.15.1 Hearing Aid Dispensers shall not discriminate in the delivery of professional services on the basis or race, national origin, religion, sex, age, marital status, sexual orientation, or handicapping condition.

9.0 Code of Ethics for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers

9.1 PREAMBLE. The preservation of the highest standards of conduct and integrity is vital to achieving the statutory declaration of objectives in 24 Del. C. §3701. Adopting a code of ethics by regulation puts licensees on notice of the kinds of activity that violate the level of care and protection to which the clients are entitled. The provisions are not intended to be all-inclusive but rather they should serve as examples of obligations that must be satisfied to maintain minimum standards.

9.2 Standards of Professional Conduct

9.2.1 A licensee who violates the following Standards of Professional Conduct may be guilty of illegal, negligent, or incompetent practice and disciplined pursuant to 24 Del. C. § 3715(a)(2).

9.2.1.1 Licensees shall provide all services competently. Competent service refers to the use of reasonable care and diligence ordinarily employed by similarly licensed individuals.

9.2.1.2 Licensees shall use every resource, including referral, to provide quality service.

9.2.1.3 Licensees shall maintain reasonable documentation of professional services rendered.

9.2.1.4 Licensees shall not evaluate or treat a client with speech, language, or hearing disorders solely by correspondence. Correspondence includes telecommunication.

9.2.1.5 Licensees shall delegate responsibility only to qualified individuals as permitted by law with appropriate supervision.

9.2.1.6 Licensees who have evidence that a practitioner has violated the Code of Ethics or other law or regulation shall present that information by complaint to the Division of Professional Regulation for investigation.

9.3 Standards of Professional Integrity.

9.3.1 A licensee who violates the following Standards of Professional Integrity may be guilty of consumer fraud, deception, restraint of competition, or price-fixing and disciplined pursuant to 24 Del. C. § 3715(a)(6).

9.3.1.1 Licensees shall not charge for services not rendered nor misrepresent the services or products dispensed.

9.3.1.2 Licensees shall inform clients of the nature and possible effects of services. Care must be taken to speak to a client in lay terms that he or she can understand.

9.3.1.3 Licensees may use clients in research or as subjects of teaching demonstrations only with their informed consent. An informed consent must be explained and written in lay terms.

9.3.1.4 Licensees shall inform clients in any matter where there is or may be a conflict of interest. Conflicts of interest may be found when a client is steered to a particular provider by one with an expectation of financial gain (kickbacks) or a provider is involved in double dipping by providing services in a private practice that he or she is obligated to provide through public employment (double-dipping).

9.3.1.5 Licensees shall make no guarantees of the results of any product or procedure but may make a reasonable statement of prognosis.

9.3.1.6 Licensees shall provide services or dispense products only when benefits can reasonably be expected.

9.3.1.7 Licensees shall not engage in misrepresentation, dishonesty, fraud, or deceit. Misrepresentation includes statements likely to mislead or an omission of material information.

9.3.1.8 Licensees who advertise shall provide information in a truthful manner that is direct and not likely to mislead the public.

9.3.2 A licensee who violates the following Standards of Professional Integrity may be guilty of misrepresentation, impersonation, or facilitating unlawful

practice and disciplined pursuant to 24 Del. C. §3715(a)(1).

9.3.2.1 Licensees shall accurately represent any credentials, education, and experience to the public.

9.3.2.2 A licensee who has evidence that an individual is practicing the profession without a license in violation of 24 Del.C. §3707 has a duty to report that information to the Division of Professional Regulation.

9.4 Miscellaneous Professional Standards

9.4.1 A licensee who violates the following Professional Standards may be subject to disciplinary action under 24 Del. C. §3715(a)(7)

9.4.1.1 Licensees shall respect the privacy of clients and not reveal, written authorization, any professional or personal information unless required by law.

9.4.1.2 Licensees shall not discriminate on the basis of race, sex, age, religion, national origin, sexual orientation, or disability.

9.4.1.3 Licensees shall offer services and products on their merits and should refrain from making disparaging comments about competing practitioners or their services and products.

8-0 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

10.1 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.

10.2 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.

10.3 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).

10.4 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.

10.5 ~~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.

10.6 ~~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:

10.6.1 ~~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.

10.6.2 ~~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.

10.6.3 ~~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.

10.6.4 ~~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.

10.6.5 ~~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.

10.6.6 ~~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.

10.7 ~~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.

10.8 ~~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.

10.9 ~~8-9~~ If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

10.10 ~~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.

10.11 ~~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.

10.12 ~~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))

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Sections 5306(1) and (7), the Delaware Board of Massage and Bodywork proposes to revise its Rules and Regulations. The proposed revisions clarify the continuing education requirement for those licensees that are certified as massage technicians and subsequently are licensed as massage and bodywork therapists.

A public hearing will be held on the proposed Rules and Regulations on Thursday, April 5, 2001 at 1:00 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio 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 Susan Miccio at the above address by calling (302) 739-4522, extension 206.

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

- 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 AGRICULTURE
THOROUGHBRED RACING COMMISSION
Statutory Authority: 3 Delaware Code,
Section 10103 (3 **Del.C.** 10103)

The Thoroughbred Racing Commission proposes to amend their rules pursuant to 3 **Del.C.** 10103(c) and 29 **Del.C.** 10115. The proposed amendment to Rule 15.02 would provide for deletion of the reference to a "detention area" in the existing Rule 15.02(d). The proposed amendment would also propose new subsections 15.02(g)(h)(i) providing for the quantification of lasix and the penalties for violations.

The Commission will accept written comments on the proposed rule amendment form March 1, 2001 until April 3, 2001. Written comments should be sent to the Delaware Thoroughbred Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rule can be

obtained by contacting the Commission office at 302-698-4600.

PART 15 -- MEDICATION, TESTING PROCEDURES

15.01 Prohibition and Control of Medication:

It shall be the intent of these Rules to protect the integrity of horse racing, to guard the health of the horse and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs and medications or substances foreign to the natural horse. In this context:

(a) No horse participating in a race shall carry in its body any substance foreign to the natural horse, except as hereinafter provided.

(b) No foreign substance shall be administered to a horse (entered to race) by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four (24) hours prior to the scheduled post time for the first race, except as hereinafter provided.

(c) No person other than a veterinarian shall have in his possession any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition as prescribed by a veterinarian.

(d) Notwithstanding the provisions of Rule 15.01(c) above, any person may have in his possession within a race track enclosure, any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any Federal law or law of this State without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him.

(e) Notwithstanding the provisions of Rule 15.01(c) above, any person may have in his possession within any race track enclosure, any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the Stewards: (1) of his possession of such device; (2) of the size of such device; and (3) of the chemical substance to be administered by such device and has obtained written permission for possession and use from the Stewards.

15.01.1 Definitions:

The following terms and words used in these Rules are defined as:

(a) Hypodermic Injection shall mean any injection into or under the skin or mucous, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection and intraocular (intraconjunctival) injection.

(b) Foreign Substances shall mean all substances except those which exist naturally in the untreated horse at normal physiological concentration.

(c) Veterinarian shall mean a veterinary practitioner authorized to practice at the race track.

(d) Horse includes all horses registered for racing under the jurisdiction of the Commission and for the purposes of these Rules shall mean stallion, colt, gelding, ridgling, filly or mare.

(e) Chemist shall mean the Commission's chemist.

(f) Test Sample shall mean any body substance including, but not limited to, blood or urine taken from a horse under the supervision of the Licensee's Veterinarian and in such manner as prescribed by the Commission for the purpose of analysis.

(g) Race Day shall mean the 24-hour period prior to the scheduled post time for the first race.

15.01.2 Foreign Substances:

No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.01.2(c):

(a) A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

(b) A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.01 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

(c) A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission.

(d) The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenbutazone in the level stated in subsection (e) or (f). The presence of any other NSAID at any test level is forbidden. Notwithstanding the foregoing, the presence of any NSAID at any test level is forbidden for a two-year old horse.

Revised: 1/6/92.

(e) The test level of phenylbutazone under this Rule shall not be in excess of two point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

Micrograms per milliliter Penalties

0 to 2.5

No action

2.6 to 4.9

First Offense-\$250.00 fine

| | |
|--------------|--------------------------------------------------------------------------------------|
| 2.6 to 4.9 | Second Offense within 365 days - \$500.00 fine |
| 2.6 to 4.9 | Third Offense within 365 days - \$500.00 fine and/or Suspension and/or Loss of Purse |
| 5.0 and Over | Fine, Suspension, Loss of Purse |

(f) The test level for oxphenbutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

Micrograms per milliliter Penalties

| | |
|--------------|--------------------------------------------------------------------------------------|
| 0 to 2.5 | No action |
| 2.6 to 4.9 | First Offense-\$250.00 fine |
| 2.6 to 4.9 | Second Offense within 365 days - \$500.00 fine |
| 2.6 to 4.9 | Third Offense within 365 days - \$500.00 fine and/or Suspension and/or Loss of Purse |
| 5.0 and Over | Fine, Suspension, Loss of Purse |

15.02 Bleeder Medication:

Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (Lasix) to control epistaxis (bleeding) to horses under the following conditions:

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Commission's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Commission's Veterinarian at the detention barn within one (1) hour of workout or race.)

(b) A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Commission's Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Licensee's Veterinarian or Stewards on official forms from that State prior to entry.

(c) The Commission's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

4 DE Reg. 183 (7/1/00)

(d) A horse in the Bleeder Program shall be required to be brought to a ~~detention barn~~ an area designated by the

Licensee and approved by the Commission not later than three and one-half (3 ½) hours before post time for the race in which it is entered ~~and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time.~~ During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

(e) (Deleted.)

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

Revised: 6/19/92.

(g) Dosage. Furosemide (Lasix) shall be administered intravenously, or intramuscularly as permitted under subsection (h) of this Rule, to horses in the Bleeder Program by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

i. The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

(h) Restrictions. No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (lasix) in oral or intramuscular form, except that the stewards may approve intramuscular administration for a horse based on written documentation from the Commission veterinarian and the trainer's veterinarian.

(i) Post-Race Quantification. As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of furosemide (lasix) per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower.

If post-race analysis indicates that the specific

gravity of a horse's urine is less than 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter, the stewards shall take the following action (for each horse):

A. If such overage is the first violation of this rule for this horse, the trainer and/or attending veterinarian shall be issued a warning and be required to participate in a review of all pertinent Commission rules and subsequent penalties at a time scheduled by the stewards. If the trainer wishes to contest the overage, the trainer shall follow a specific procedure under which all of the following conditions must be met:

i) the horse in question must report to the detention barn four hours prior to post time.

ii) the same handler/room must stay with the horse at all times.

iii) a blood sample shall be taken by the Commission veterinarian before the administration of furosemide.

iv) the trainer's veterinarian must administer furosemide at a dosage not to exceed 500 milligrams.

v) the Commission veterinarian must witness the administration of furosemide.

vi) the horse must return to the detention barn after the race for the taking of post-race blood and urine testing by the Commission veterinarian or assistant, no matter how the horse finishes in the race.

If, after all of the above conditions are met, the post race tests reveal that the specific gravity of the horse's urine is again below 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter of plasma, and the blood sample taken in the detention barn before the administration of furosemide tests negative for furosemide, the horse will be placed on an "exempt" list and the first offense will be removed, provided further that any horse on the "exempt" list will be required to have all future prerace lasix treatments administered pursuant to the procedure set forth in items i) through vi) set forth above. Any horse that is placed on the "exempt" list and later fails to follow the rerace procedure for lasix administration set forth in items i) through vi) above will be removed from the "exempt" list, disqualified from the race, and subject to the penalties in items B-D of this Rule for subsequent offenses.

B. If such overage is the second violation of this rule for the same horse, the trainer and/or attending veterinarian shall be fined a minimum of \$100.00 and a maximum of \$500.00.

C. If such overage is the third violation of this rule for the same horse, the trainer and/or attending veterinarian shall be issued a minimum suspension of seven (7) days and a maximum suspension of fifteen (15) days and shall be fined a minimum of \$100.00 and a maximum of

\$1,000.00, and the stewards in their discretion may order loss of purse as an additional penalty.

D. If such overage is the fourth violation for the same horse, the trainer and/or attending veterinarian shall be issued a suspension of fifteen (15) days to thirty (30) days, and shall be fined \$250.00 to \$1,000.00, and the stewards will order loss of purse as a mandatory penalty.

15.03 Responsibility for Prohibited Administration:

Any person found to have administered or authorized a medication, drug or substance which caused or could have caused a violation of Rules 15.01 or 15.02, or caused, participated or attempted to participate in any way in such administration, shall be subject to disciplinary action.

(a) The registered Trainer of a horse found to have been administered a medication, drug or substance in violation of Rules 15.01 or 15.02 shall bear the burden of proof to show freedom from negligence in the exercise of a high degree of care in safeguarding such horse from being tampered with and, failing to prove such freedom from negligence (or reliance on the professional ability of a licensed Veterinarian), shall be subject to disciplinary action.

(b) The Assistant Trainer, groom, stable watchman or any other person having the immediate care and custody of a horse found to have been administered a medication, drug or substance in violation of Rules 15.01 or 15.02, if found negligent in guarding or protecting such horse from being tampered with, shall be subject to disciplinary action.

(c) A licensed Veterinarian shall be responsible for any medication, drug or substance that he administers, prescribes or causes to be administered by his direction on a horse. If found to have made an error in type or quantity of same administered and if in reliance upon the correctness thereof a Trainer races such treated horse in violation of Rules 15.01 and 15.02, such licensed Veterinarian shall be subject to disciplinary action.

15.04 Reports of Administration:

Before a licensed Veterinarian administers or prescribes any drug or restricted substance for a horse, he shall ascertain by reasonable inquiry whether the horse has been entered to race at any track and, if the horse has been entered, he shall not administer or prescribe any drug or restricted substance within the time or manner restricted by these Rules.

If, however, an emergency exists involving the life or health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the State Veterinarian and Stewards.

(a) Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Track Veterinarian as to any medication prescribed or administered or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48)

hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be grounds for disciplinary action against such Veterinarian.

(b) Such daily reports shall accurately reflect the identity of the horse treated, diagnosis, time of treatment, type and dosage of medication, drug or substance and method of administration.

(c) Such daily reports shall remain confidential except that the Commission's Veterinarian may compile general data therefrom to assist the Commission in formulating policies or rules and the Stewards may review the same in investigating a possible violation of these rules. See Rule 11.02(d) respecting a public list of horses declared to race on medication.

4 DE Reg. 184 (7/1/00)

(d) When making an entry, it shall be the duty of the Trainer or his representative, as required by Rule 11.02(d), to disclose and declare to the Racing Secretary or his representative whether said horse will race on any medication permitted by these rules.

15.05 Report Prior to Race of Cessation or Reduction of Medication:

For any horse entered to run in a race, a timely report of the elimination or reduction since its last race in the level of Phenylbutazone and/or similar medications administered to it at the time of such last race shall be made to the Commission's Veterinarian by the horse's Owner, Trainer, attending Veterinarian and/or any other person having supervision over, or custody of, such horse.

4 DE Reg. 184 (7/1/00)

Violation of this Rule will constitute grounds for disciplinary action.

15.06 Bettors' Safeguard:

To help protect against inconsistent performances, a horse which last raced after having been administered Phenylbutazone and/or similar medication shall not be permitted to race without having been administered the same or similar medication at a comparable level, unless the Commission's Veterinarian grants his prior, express approval that such horse may race notwithstanding that the medication program to which it was subjected at the time of its last race has subsequently been eliminated or reduced.

4 DE Reg. 184 (7/1/00)

Violation of any aspect of this Rule by an Owner, Trainer, attending Veterinarian or any other person having supervision or custody of the horse will constitute grounds for disciplinary action as provided by these Rules.

15.07 Commission List:

As a guide to Owners, Trainers and Veterinarians, the Commission may from time to time publish a list of

medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Rule 15.01.

15.08 Detention Area:

Each Licensee may provide and maintain on its grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing; such detention area shall be under the supervision and control of the Commission's Veterinarian.

4 DE Reg. 184 (7/1/00)

15.09 Horses to be Tested:

The Stewards may at any time order the taking of a blood, urine, or saliva specimen for testing from any horse entered. Any Owner or Trainer may at any time request that a specimen be taken from a horse he owns or trains by Licensee's Veterinarian and be tested by Commission's Chemist, provided the costs of such testing are borne by the Owner or Trainer requesting such test.

15.10 Procedure for Taking Specimens:

(1) Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission veterinarian. Only the owner, trainer, groom, or hotwalker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

(2) Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

(a) Buckets and water shall be furnished by the Commission veterinarian.

(b) If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission veterinarian.

(c) A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

(3) One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

(a) The owner;

(b) The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

(c) A stable representative designated by such owner or trainer.

(4) (a) All urine containers shall be supplied by the Commission laboratory and shall be sealed with the

laboratory security seal which shall not be broken, except in the presence of the witness as provided by subsection (3) of this section.

(b) Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

(5) Samples taken from a horse, by the Commission veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

(a) These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

(b) The Commission veterinarian shall:

1. Identify the horse from which the specimen was taken.
2. Document the race and day, verified by the witness; and
3. Place the detached portions of the identification tags in sealed envelope for delivery only to the stewards.

(c) After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

(d) The "secondary" sample shall remain in the custody of the Commission veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

(e) The Commission veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

(f) When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

(g) If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission veterinarian.

(h) If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

(i) Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

(j) In the event of an initial finding of a prohibited

drug or in violation of these Rules & Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample.

1. If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

2. Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

(k) The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

1. A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

2. The referee laboratory shall be informed of the initial findings of the Commission chemist prior to the making the test.

3. If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug to the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(l) The Commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as the possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

(m) If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

15.11 Commission Chemist:

The Commission's Chemist, who shall be a member of the Association of Official Racing Chemists, shall conduct tests on specimens provided him in order to detect and identify prohibited substances therein and report on such in such a manner, and according to such procedures, as the Commission from time to time may approve and/or prescribe.

DEPARTMENT OF EDUCATION

14 DE Admin. Code 103

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. 122(d))**EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C., SECTION 122(d)****501 STATE CONTENT STANDARDS
503 INSTRUCTIONAL PROGRAM REQUIREMENTS****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation 501 State Content Standards from the *Regulations of the Department of Education* and the regulations on Visual and Performing Arts, Physical Education and Home Economics from the *Handbook for K-12 Education*. (Visual and Performing Arts, II.D.2., Page B-4, III.2.B.b., Page C-3 and IV.3.b., Page D-3) (Physical Education, II.D.5., Page B-5, III.B.2.e., Page C-4, and IV.3.f., Pages D-3 – D-4) (Home Economics, III.B.2.f.).

The amendments are necessary to provide clarity on the requirements for the functional life skills curriculum, English language arts, mathematics, science, social studies, health, physical education, visual and performing arts and vocational technical education programs. The amendment creates two separate regulations, 501 State Content Standards and 503 Instructional Program Requirements.

In 501 State Content Standards, all instructional programs must be in alignment with the state content standards. In addition, integration of the content standards within and across the curricula is required as well as keeping instructional materials and curricula content current and consistent with the *Guidelines for the Selection of Instructional Materials*.

In 503 Instructional Program Requirements, the amendments require English language arts and mathematics

programs for all public school students in each grade K-8, and science and social studies programs for all public school students in each grade 1-8 in addition to the existing high school graduation requirements. The amendments also require the functional life skills curriculum for students who need the program and participation in other content areas as designated by the student's IEP.

The amendments require that all public school students in each grade 1-8 be enrolled in physical education programs in addition to the credit required for high school graduation.

The amendments require that all public school students in each grade 1-6 be enrolled in visual and performing arts programs and requires the presence of visual and performing arts programs in grades 7-12.

The amendments also require vocational technical programs for grades 7 and 8.

These two revised regulations take the place of previously advertised amendments to the State Content Standards regulation and to previously advertised amended regulations for the visual and performing arts and physical education and a previously advertised amendment to the regulation 525 Requirements for Vocational Technical Education Programs.

C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations clarify the relationship between the standards and the instructional programs and program requirements that eventually effects student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations address standards and instructional programs, not equity issues.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address standards and instructional programs, not health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations address standards and instructional programs, not students' legal rights.

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

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations do add some additional requirements for some content areas.

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity?

The decision-making authority and accountability for addressing the amendments will remain with the same entity.

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulations?

The regulations are needed to clarify the role of the state content standards and to replace regulations from the *Handbook for K-12 Education*.

10. What is the cost to the state and to the local school boards of compliance with the amended regulations?

There is no additional cost.

501—State Content Standards

1.0 State Content Standards

1.1 Each local school district and each charter school shall provide instructional programs in mathematics, English language arts, science and social studies for all students in grades K-12, except for those students for whom a functional life skills curriculum is appropriate. The instructional programs shall be in alignment with the documents *Mathematics Curriculum Framework*, *English Language Arts Curriculum Framework*, *Science Curriculum Framework* and *Social Studies Curriculum Framework* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.2 Each local school district shall provide instructional programs in the visual and performing arts for all students in

grades K-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Visual and Performing Arts Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.3 Each local school district shall provide instructional programs in technology education for all students in grades 5-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.4 Each local school district shall provide instructional programs in health and wellness education for all students in grades K-12. The instructional programs shall be in alignment with the document *Delaware Health Education Curriculum Framework and Assessment* as the same may from time to time be amended with the approval of the Secretary and the State Board of Education.

1.5 Each local school district and each charter school shall provide instructional programs for students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Standards for Functional Life Skills Curriculum* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.6 Each local school district that provides additional instructional programs for students in any area of agriscience, business finance and marketing education, foreign language, visual and performing arts and technology education shall align these areas with the applicable state content standards. These program areas shall be in alignment with the documents *Agriscience Curriculum Framework Content Standards*, *Business Finance and Marketing Education Curriculum Framework Content Standards*, *Foreign Language Curriculum Framework Content Standards*, *Visual and Performing Arts Content Standards*, and the *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.7 Each local school district shall provide for the integration of content areas within and across the curricula.

1.8 Each local school district shall keep instructional materials and curricula content current and consistent with the *Guidelines for the Selection of Instructional Materials*.

AS APPEARS IN THE *HANDBOOK FOR K-12
EDUCATION*

H. ELEMENTARY EDUCATION
5. PHYSICAL EDUCATION

a. The primary goal of the elementary physical education program is to have students acquire the fundamental skills necessary for their participation in team or group activities, free play, and health-related physical fitness.

b. Classes should be learning laboratories in which students are involved in the important task of learning about themselves and others through movement.

c. The program should be student centered, with a special focus on problem-solving and exploratory methods applied to a wide range of activities.

d. Students should have freedom of choice, but be guided by the teacher toward predetermined goals.

e. This suggested time allotment will serve as a basis in the formulation of the daily or weekly schedule depending on the school organization:

Vigorous Physical Activity--

1st and 2nd grade 30 minutes daily

3rd, 4th, 5th and 6th grade 30 minutes daily

f. A major part of physical education should be directed play involving team or group activities, while 30 minutes per week may be supervised free play. Directed play involves selected activities to teach desirable skills while free play is permitting the children a choice of activities under the supervision of the teacher.

III. MIDDLE LEVEL EDUCATION

e. Physical Education

Physical education must be offered at least two class periods per week for a year or five days a week for a semester in both grades 7 and 8. (State Board Approved February 1985)

IV. HIGH SCHOOL

f. Physical Education

(1) Physical education shall be a requirement for any two years during grades nine through twelve with a maximum of 1/2 unit of credit earned per year. Provision for makeup and accumulation of required credit should be provided at the ninth through twelfth grade levels.

(2) Physical education should be offered as an elective for ninth through twelfth grade students.

(3) The high schools may establish their physical education program of instruction within these guidelines:

(a) providing instruction on a five-day week basis for a full semester;

(b) providing instruction for a minimum of three days per week for the entire school year;

(c) providing instruction on a flexible basis equivalent to three instructional periods per week or rotating two periods one semester and three the next semester; and

(d) providing instruction on a variable basis equivalent to 3 instructional classes per week during the school year.

(4) The physical education program should emphasize the concept of lifetime sports and be adapted to both individual and group physical education needs. All schools should conscientiously develop a meaningful elective program in physical education.

(5) In addition to the one unit of credit required for graduation, a student may receive only one unit of elective credit for a maximum total of two credits in physical education.

(a) Objectors must submit to the administrative head of the school an affidavit stating reasons for being excused from this activity.

(b) Pupils may be excused from physical education if they have a certified excuse from a qualified physician or they have objections based on religious beliefs to various rhythmical activity.

AS APPEARS IN THE HANDBOOK FOR K-12 EDUCATION

(From the Elementary Section II)

2. VISUAL AND PERFORMING ARTS (Music, Visual Arts, Theatre and Dance)

a. All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the elementary grades, kindergarten through four.

b. Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated they will be adopted in June, 1997.

(From the Middle Level Section III)

b. Visual and Performing Arts (music, visual arts, theatre, dance)

(1) All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the middle level grades, five through eight.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are approved by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

f. Home Economics

Program offerings in home economics and technology education must be available to all students in middle school to insure that they have the exploratory experience and elective studies to develop their special interest skills. It is essential that these programs be staffed by certified home economics and technology education teachers.

(From the Secondary Section IV)

b. Visual and Performing Arts (Music, Visual Arts, Theatre, and Dance)

(1) All high schools should provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of all students as well as those students wishing to pursue indepth study or a career in the visual and performing arts.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

501 State Content Standards

1.0 Instructional Programs

1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: *English Language Arts Curriculum Framework, Mathematics Curriculum Framework, Science Curriculum Framework, Social Studies Curriculum Framework, Health Education Curriculum Framework and Assessment, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, Foreign Language Curriculum Framework Content Standards, Technology Education Curriculum Framework Content Standards, Consumer and Family Sciences Content Standards and the Standards for Functional Life Skills Curriculum.*

1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.1.2 Integration of the content standards shall be provided for within and across the curricula.

1.1.3 Instructional materials and curricula content shall be kept current and consistent with the *Guidelines for the Selection of Instructional Materials.*

503 Instructional Program Requirements

1.0 English Language Arts

1.1 Local school districts and each charter school shall provide instructional programs in English Language Arts for each grade K-12.

1.2 All public school students in each grade K-8 shall be enrolled in an English language arts program.

1.3 All public school students in grades 9-12 shall complete the credits in English language arts necessary to graduate from high school.

2.0 Mathematics

2.1 Local school districts and each charter school shall provide instructional programs in mathematics for each

grade K-12.

2.2 All public school students in each grade K-8 shall be enrolled in a mathematics program.

2.3 All public school students in grades 9-12 shall complete the credits in mathematics necessary to graduate from high school.

3.0 Science

3.1 Local school districts and each charter school shall provide instructional programs in science for each grade K-12.

3.2 All public school students in each grade 1-8 shall be enrolled in a science program.

3.3 All public school students in grades 9-12 shall complete the credits in science necessary to graduate from high school.

4.0 Social Studies

4.1 Local school districts and each charter school shall provide instructional programs in social studies for each grade K-12.

4.2 All public school students in each grade 1-8 shall be enrolled in a social studies program.

4.3 All public school students in grades 9-12 shall complete the credits in social studies necessary to graduate from high school.

5.0 Functional Life Skills Curriculum

5.1 Local school districts and each charter school shall provide instructional programs for students for whom a functional life skills curriculum is appropriate.

5.2 Public school students in the Functional Life Skills Curriculum shall participate in health, physical education, visual and performing arts and vocational technical programs as directed by their Individual Education Program (IEP).

6.0 Physical Education

6.1 Local school districts and each charter school shall provide instructional programs in physical education for each grade K-12 with the exception of the James H. Groves High School program.

6.2 All public school students in each grade 1-8 shall be enrolled in a physical education program.

6.3 All public school students in grades 9-12 shall complete the credit in physical education necessary to graduate from high school.

6.4 In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.

6.5 The physical education requirements may be waived only for students who have an excuse from a qualified physician or objections based on religious beliefs. The local school district shall have the authority to grant such waivers.

Notice of Public Hearing**7.0 Visual and Performing Arts**

7.1 Local school districts and each charter school shall provide instructional programs in the visual and performing arts for each grade K-12 with the exception of the James H. Groves High School program.

7.2 All public school students in each grade 1-6 shall be enrolled in a visual and performing arts program.

8.0 Vocational Technical Education

8.1 Local school districts and charter schools, where applicable, shall provide instructional programs in vocational technical education in grades 7 and 8.

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

Statutory Authority: 16 Delaware Code,
Section 9110 (16 Del.C. 9110)

**STATE OF DELAWARE RULES AND REGULATIONS
PERTAINING TO THE APPLICATION AND
OPERATION OF MANAGED CARE
ORGANIZATIONS (MCO).****SUMMARY OF PROPOSED REGULATIONS**

These regulations amend regulations previously adopted on November 16, 1998 and most recently amended February 1, 1999. They are adopted in accordance with Chapter 91, Section 9110, Title 16, Delaware Code. They will supersede all previous regulations concerning the Application and Operation of Managed Care Organizations (MCO).

The amendments to these regulations establish and define conditions of the Independent Health Care Appeals Program (IHCAP). This program revises the previous grievance procedure for quality of care complaints against Managed Care Organizations in Delaware. Prior to the creation of IHCAP, the third/final stage of appeal was sent before a Utilization Review Organization retained by the MCO. This revision outlines the process that places this third/final stage of appeal beyond the influence of the MCO. IHCAP requires appropriately qualified Independent Utilization Review Organizations (IURO) to contract with the State. Delaware Health and Social Services (Office of Health Facilities Licensing and Certification) then coordinates the assignment of any third/final stage appeal to an IURO for review and determination.

The Office of Health Facilities Licensing and Certification, Division of Public Health, Delaware Health and Social Services will hold public hearings to discuss proposed revisions to Delaware Regulations for Managed Care Organizations (MCOs).

The regulations establish and define conditions of the Independent Health Care Appeals Program. This program revises the previous grievance procedure for quality of care complaints against MCOs in Delaware. This revision outlines the process that places this third/final stage of appeal beyond the influence of the MCO. The Independent Health Care Appeals Program requires appropriately qualified Independent Utilization Review Organizations to contract with the State. DHSS (Office of Health Facilities Licensing and Certification) then coordinates the assignment of any third/final stage appeal to an Independent Utilization Review Organization for review and determination.

The public hearings will be held March 27, 2001 at 11:00 AM in the Library Conference Room, Townsend Building, 401 Federal Street, Dover, Delaware 19903 and 9:00 AM on March 28, 2001 in the first (1st) floor conference room, Delaware Fire Service Center, 2307 MacArthur Road, New Castle, DE 19720.

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

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

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Vanette Seals at (302) 995-8521 by March 16, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by April 2, 2001 to:

Susan H. Kirk-Ryan, Hearing Officer
2055 Limestone Road, Suite 200
Wilmington, DE 19808

**RULES AND REGULATIONS GOVERNING THE
APPLICATION AND OPERATION OF
MANAGED CARE ORGANIZATIONS
(MCO)**

Adopted by the Department of Health and Social Services on
November 16, 1998
Effective February 1, 1999
Revised [DATE]

PART ONE LEGAL AUTHORITY AND DEFINITIONS

SECTION 69.0 LEGAL AUTHORITY

These regulations are adopted under Part VIII, Title 16, Delaware Code, Chapter 91, pursuant to delegation of authority from the Secretary of the Department of Health and Social Services (DHSS) to the Director of the Division of Public Health (DPH) ~~effective March 15, 1983 and revised July 1, 1989.~~

SECTION 69.1 DEFINITIONS

69.101 “Administrator/Chief Executive Officer”: ~~means~~ the individual employed to manage and direct the activities of the MCO.

69.102 “Appeal”: a request to reexamine or review an adverse determination made by an MCO that denies, reduces or terminates health care.

69.103 “Appellant”: an enrollee (69.117) or other authorized representative (69.105) of the enrollee who may appeal an MCO decision.

69.104 “Appropriateness of services”: an appeal classification for adverse determinations that were made based upon identification of treatment as cosmetic or experimental.

69.105 “Authorized representative”: an individual who the appellant willingly acknowledges to represent her or his interests during the appeal process. An MCO may require the appellant to submit written verification of her/his consent to be represented. If an enrollee has been determined by a physician to be incapable of assigning the right of representation, the appeal may be filed by a family member or a legal representative.

69.102~~6~~ “Basic health services”: ~~means~~ a range of services, including at least the following:

A. Physician services, including consultant and referral services, by a physician licensed by the State of Delaware.

B. At least three hundred sixty-five (365) days of inpatient hospital services.

C. Medically necessary emergency health services.

D. Initial diagnosis and acute medical treatment (at least one (1) time) and responsibility for making initial behavioral health referrals.

E. Diagnostic laboratory services.

F. Diagnostic and therapeutic radiological services.

G. Preventive health services including at least the provision of physical examinations, papanicolaou (PAP)

smears, immunizations, mammograms and childrens’ eye examinations (through age 17), conducted to determine the need for vision correction performed at a frequency determined to be appropriate medical practice. Other preventive services may be provided by the MCO as contained in the Health Care Contract.

H. Health education services, including education in the appropriate use of health services, and education in the contribution each enrollee can make to the maintenance of the enrollee’s own health. This information shall be understandable and not misleading.

I. Emergency out-of-area coverage.

69.107 “Benefits denial”: a denial of service on the grounds that is excluded from the enrollee’s health care contract with the insurer.

69.103~~8~~ “Certificate of Authority”: ~~means~~ the authorization by the Department of Health and Social Services to operate the MCO ~~and~~. This certificate shall be deemed to be a license to operate such an Organization.

69.104~~9~~ “Certified Managed Care Organization”: ~~(MCO) means~~ a managed care organization which has been issued a Certificate of Authority under 16 Del. C. and either a Certificate of Authority from the ~~Insurance Department~~ Department of Insurance (DOI) under the relevant provisions of Title 18 or a statement from the ~~Insurance Department~~ DOI that the ~~Insurance Department~~ DOI Certificate of Authority is not required.

69.105~~10~~ “Commissioner”: ~~means~~ the Insurance Commissioner of Delaware.

69.111 “Covered health services”: services that are expressly included in the enrollee’s health care contract with the insurer.

69.106~~12~~ “Covered Person”: see “Enrollee”.

69.107~~13~~ “Department”: ~~means~~ the Delaware Department of Health and Social Services.

69.119~~4~~ “~~Insurance~~ Department of Insurance Certificate of Authority”: ~~means~~ the authorization by the Insurance Commissioner that the MCO has met the relevant provisions of Title 18 of the Delaware Code.

69.108~~15~~ “Emergency Care”: ~~means~~ health care items or services furnished or required to evaluate or treat an emergency medical condition.

69.109~~16~~ “Emergency Medical Condition”: ~~means~~ a medical condition manifesting itself by acute symptoms of

sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

- A. placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
- B. serious impairment to bodily functions; or
- C. serious dysfunction of any bodily organ or part.

69.14017 “Enrollee”: ~~means~~ an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into with the MCO, under which the MCO assumes the responsibility to provide to such person(s) basic health services and such supplemental health services as are enumerated in the Health Care Contract.

69.1148 “Geographical area”: ~~refers to~~ the stated primary geographical area served by a MCO. The primary area served shall be a radius of not more than twenty (20) miles or more than thirty (30) minutes driving time from a primary care office operated or contracted by the MCO.

69.1129 “Health care contract”: ~~refers to~~ any agreement between a MCO and an enrollee or group plan which sets forth the services to be supplied to the enrollee in exchange for payments made by the enrollee or group plan.

69.14320 “Health care professional”: ~~means~~ individuals engaged in the delivery of health services as licensed or certified by the State of Delaware.

69.14421 “Health care services”: ~~means~~ any services included in the furnishing to any individual of medical or dental care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury or physical disability.

69.14522 “Independent Health Care Appeals Program”: a program within the Department of Health and Social Services which establishes a final step in the appeal process which provides for a review by an Independent Utilization Review Organization (69.124).

69.14623 “Independent Practice Association” (IPA): ~~means~~ an arrangement in which health care professionals provide their services through the association in accordance with a mutually accepted compensation arrangement while retaining their private practices.

69.14724 “Independent Utilization Review Organization

(IURO)”: an entity that conducts independent external reviews of an MCO’s determinations resulting in a denial, termination, or other limitation of covered health care services.

69.14825 “Insurance Department”: ~~means~~ the Delaware Insurance Department of Insurance.

69.119 “~~Insurance Department of Insurance Certificate of Authority~~”: ~~means the authorization by the Insurance Commissioner that the MCO has met the relevant provisions of Title 18 of the Delaware Code.~~

69.1206 “Intermediary”: ~~means~~ a person authorized to negotiate and execute provider contracts with MCOs on behalf of health care providers or on behalf of a network.

69.1247 “Level 1 Trauma Center”: ~~means~~ a regional resource trauma center that has the capability of providing leadership and comprehensive, definitive care for every aspect of injury from prevention through rehabilitation.

69.1228 “Level 2 Trauma Center”: ~~means~~ a regional trauma center with the capability to provide initial care for all trauma patients. Most patients would continue to be cared for in this center; there may be some complex cases which would require transfer for the depth of services of a regional Level 1 or specialty center.

69.1239 “Managed Care Organization (MCO)”: ~~(MCO) means~~ a public or private organization organized under the laws of any state, which:

A. provides or otherwise makes available to enrolled participants health care services, including at least the basic health services defined in 69.102;

B. is primarily compensated (except for co-payment) for the provision of basic health care services to the enrolled participants on a predetermined periodic rate basis; and

C. provides physician services directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

69.130 “Medical necessity”: providing of covered health services (69.111) or products that a prudent physician would provide to a patient for the purpose of diagnosing, or treating an illness, injury, disease or its symptoms in a manner that is:

A. In accordance with generally accepted standards of medical practice;

B. Consistent with the symptoms or treatment of the condition; and

C. Not solely for anyone’s convenience.

69.124~~31~~ “Network”: ~~means~~ the participating providers delivering services to enrollees in a managed care plan.

69.125~~32~~ “Office”: ~~means~~ any facility where enrollees receive primary care or other health services.

69.126~~33~~ “Out of area coverage”: ~~refers to~~ health care services provided outside the organization’s geographic service areas with appropriate limitations and guidelines acceptable to the Department and the Commissioner. At a minimum, such coverage must include emergency care.

69.127~~34~~ “Participating provider”: ~~means~~ a provider who, under a contract with the Organization or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly from the Organization.

69.128~~35~~ “Premium”: ~~refers to~~ payment(s) called for in the Health Care Contract which must be:

A. paid or arranged for by, or on behalf of, the enrollee before health care services are rendered by the ~~Organization~~ MCO;

B. paid on a periodic basis without regard to the date on which health services are rendered; and

C. with respect to an individual enrollee are fixed without regard to frequency, extent or cost of health services actually furnished.

69.129~~36~~ “Primary Care Physician (PCP)”: ~~means~~ a participating health care physician chosen by the enrollee and designated by the ~~Organization~~ MCO to supervise, coordinate, or provide initial care or continuing care to an enrollee, and who may be required by the ~~Organization~~ MCO to initiate a referral for specialty care and maintain supervision of health care services rendered to the enrollee.

69.130~~7~~ “Provider”: ~~means~~ a health care professional or facility.

69.131~~8~~ “Staff model MCO”: ~~means~~ an MCO in which physicians are employed directly by the MCO or in which the MCO directly operates facilities which provide health care services to enrollees.

69.132~~9~~ “Supplemental payment”: ~~refers to~~ any payment not incorporated in the premium which is required to be paid to the MCO or providers under contract to the MCO by the enrollee.

69.133~~40~~ “Supplementary health services”: ~~means~~ any health services other than basic health services which may be provided by a MCO to its enrollees and/or for which the enrollee may contract such as:

- A. Long term care;
- B. Vision care not included in basic health services;
- C. Dental services;
- D. Behavioral health services;
- E. Long term physical medicine or rehabilitative services;
- F. Pharmacy services;
- G. Infertility services; and
- H. Other services, such as occupational therapy, nutritional, home health, homemaker, hospice and family planning services.

69.134~~1~~ “Tertiary services”: ~~means~~ health care services provided for the intensive treatment of critically ill patients who require extraordinary care on a concentrated basis in special diagnostic categories (e.g. burns, cardiovascular, neonatal, pediatric, oncology, transplants, etc.).

69.135~~42~~ “Utilization Review”: ~~a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review.~~

PART TWO

SECTION 69.2 APPLICATION AND CERTIFICATE OF AUTHORITY

69.201 No person shall establish or operate an MCO in the State of Delaware or enter this State for purposes of enrolling persons in an MCO without obtaining a “Certificate of Authority” under Chapter 91 of Title 16 of the Delaware Code. A foreign corporation shall not be eligible to apply for such certificate unless it has first qualified to do business in the State of Delaware as a foreign corporation pursuant to 8 Del. C., §371.

69.202 Each application for a Certificate of Authority shall be made in writing to the Department of Health and Social Services, shall be certified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Department (Appendix A) and shall set forth or be accompanied by the following:

- A. Organizational Information
 - 1. Brief history and description of current status of applicant, including an organization chart;
 - 2. A copy of the basic organizational documents such as the certificate of incorporation, articles of association, ~~partnership agreement, trust agreement~~ or other appropriate documents and amendments thereto;
 - 3. A list of the names, addresses and official positions of the persons who are to be responsible for the

conduct of the affairs of the applicant. Include all enrollees members of the Board of Directors or other governing board, the principal officers in the case of a corporation, and the partners or enrollees members in the case of a partnership or association; and

4. A list of positions; and names and resumes for all management personnel.

B. Health Services Delivery

1. A description of the plan of operation of the MCO. Include the following items:

a) a listing of basic health services (69.106) and supplemental health services (69.140) (~~as defined at 69.102 and 69.130 respectively~~) with utilization projections; and

b) the arrangements for delivery of all covered health services (including details as to whether outpatient services are provided directly or through referrals/purchase agreements with outside fee-for-service providers); a description of service sites or facilities (specifying days and hours of operation in the case of outpatient facilities); and all special policies or provisions designed to improve accessibility of services.

2. A sample of the contract, Copies of all executed contracts, agreements or arrangements between the MCO and providers, including individual physicians, IPAs, group practices, hospitals, laboratory services, nursing homes, home health agencies, and other providers. Any contract, agreement or arrangement which deviates from the sample must be submitted to the OHFLC as executed. In addition, copies of executed contracts or letters of agreement between an IPA or medical group and its member or non-member physicians and other health professionals must be submitted;

3. A list of participating physicians by specialty and by geographic area as well as a list of other health care personnel providing services. Each physician included on the list must be identified as accepting or not accepting new patients and if there are any limitations on that physician's accepting any enrollees as patients. Staffing ratios shall be prepared for each geographic area in which the MCO proposes to operate. Staffing ratios are the number of physicians or providers by specialty per enrollee;

4. For staff model MCOs, a list of facilities that show the capacity, square footage, and the legal arrangements for use of the facility (leases, subleases, contract of sale, etc.). Provide copies of leases, contracts of sale, or other legal agreements relating to the facilities to be operated by the MCO;

5. All of the applicant's utilization review and utilization management, utilization control, quality assurance mechanisms, policies, manuals, guidelines, and materials ~~including information on committee structures and criteria~~;

6. The arrangements for assuring continuity of

care for all services provided to enrollees. Include comments on policies related to the primary care physician's responsibilities for coordination and oversight of the enrollee's overall health care and the impact of the medical record keeping system on continuity of care;

7. Procedures utilized by the applicant for determining and ensuring network adequacy;

8. Procedures utilized by the applicant for the credentialing of providers;

9. Procedures for addressing enrollee grievances;

10. Any materials or procedures utilized by the applicant for measuring or assessing the satisfaction of enrollees; and

11. Procedures for monitoring enrollee access to participating providers including but not limited to:

a) appointment scheduling guidelines;

b) standards for office wait times; and

c) standards for provider response to urgent and emergent issues during and after business hours.

C. Enrollment and Marketing

~~1. A description of the target population, including projections of enrollment levels on a quarterly basis for at least the first three (3) years of operation and the key assumptions underlying these projections;~~

~~2. A description of the geographic area to be served, with a map showing service area boundaries, locations of the MCO's participating providers, PCPs, institutional and ambulatory care facilities, and travel times from various points in the service area to the nearest ambulatory and institutional services;~~

~~3. Identification of all information to be released to enrollees or prospective enrollees;~~

~~4. A description of the proposed marketing techniques and sample copies of any advertising or promotional materials to be used within Delaware or to which Delaware citizens would be exposed;~~

~~5. Enrollee handbooks proposed for use. A finalized enrollee handbook shall also be submitted upon completion; and~~

~~6. Procedures for notifying enrollees of plan changes.~~

D. Financial

1. Financial information submitted to the Department of Insurance shall be deemed to meet the requirement of Delaware Code, Title 16, Part VIII, Chapter 91, Section 9104(4).

~~1. A financial statement for the most recent fiscal year certified by a Certified Public Accountant (CPA);~~

~~2. Financial projections for a minimum of three (3) years. If deficits are anticipated, the projections should cover the period up to and including the year in which break-even is expected. Include projections of revenue and expenses; a projected balance sheet; a pro forma cash flow statement; and a pro forma statement of changes in financial~~

position. ~~Indicate the assumptions on which statements are based, including inflation and utilization assumptions;~~

~~3. Sources of financing (private and governmental) and, where appropriate, written assurances of the availability of financing;~~

~~4. A description of all reinsurance arrangements or risk sharing arrangements with providers; and~~

~~5. The proposed premiums for all classes of enrollee, co-payments, and the rating plan or rating rules used by the applicant.~~

69.203 Within sixty (60) days after receipt of a complete application for issuance of Certificate of Authority the Department shall determine whether the applicant, with respect to health care services to be furnished, has:

A. demonstrated the ability to provide such health services in a manner assuring availability, accessibility and continuity of services;

B. made arrangements for an ongoing health care quality assurance program;

C. the capability to comply with all applicable rules and regulations promulgated by the Department;

D. the capability to provide or arrange for the provision to its enrollees of basic health care services on a prepaid basis through insurance or otherwise, except to the extent of reasonable requirements of co-payments; and

E. for staff model MCOs, the staff and facilities to directly provide at least half of the outpatient medical care costs of its anticipated enrollees on a prepaid basis.

69.204 The Department shall issue a Certificate of Authority to any person filing an application under this section upon demonstration of compliance with these rules and regulations if:

A. The application contains all the information required under 69.202 of this Part;

B. The Department has not made a negative determination pursuant to 69.203 of this Part; and

C. Payment of the application fees prescribed in 16 Del. C. Chapter 91, has been made.

69.205 If within 60 days after a complete application for a Certificate of Authority has been filed, the Department has not issued such certificate, the Department shall immediately notify the applicant, in writing, of the reasons why such certificate has not been issued and the applicant shall be entitled to request a hearing on the application. The hearing shall be held within 60 days of receipt of written request therefor. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Chapter 101 of Title 29, and in accordance with applicable rules and regulations of the Department (63 Del. Laws, c.382, §1;66 Del. Laws, c. 124, §7.).

69.206 No Certificate of Authority shall be issued without a Certificate of Authority from the ~~Insurance Department DOI~~ under the relevant provisions of Title 18 or a statement from the ~~Insurance Department DOI~~ that the ~~Insurance Department DOI~~ Certificate of Authority is not required.

If a deposit is required, it shall be continuously maintained in trust. In case of a deficiency of deposit, the Insurance Commissioner shall transmit notice thereof to both the MCO and the Department. In case the deficiency is not cured within the allowed time, the Commissioner shall give notice thereof to the Department and the Department shall revoke its Certificate of Authority to the MCO.

PART THREE

SECTION 69.3 GENERAL REQUIREMENTS

69.301 Every MCO operating in this State shall file with the Department every manual concerning enrollee services which it proposes to use and any other manual upon request. Every filing shall indicate the effective date thereof.

69.302 Annual reports shall be filed with the Department by any MCO on or before June 1 covering the preceding fiscal year. Such reports shall include a financial statement of the MCO, its balance sheet and receipts and disbursements for the preceding fiscal year, and any changes in the information originally submitted or required under 69.2, 69.404 ~~E I~~, 69.405 B. and 69.705.

69.303 Contract Provisions

A. Every contract between an MCO and a participating provider shall contain the following language:

1. "Provider agrees that in no event, including but not limited to nonpayment by the MCO or intermediary, insolvency of the MCO or intermediary, or breach of this agreement, shall the provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an enrollee or a person (other than the MCO or intermediary) acting on behalf of the enrollee for services provided pursuant to this agreement. This agreement does not prohibit the provider from collecting coinsurance, deductibles or co-payments, as specifically provided in the evidence of coverage, or fees for uncovered services delivered on a fee-for-service basis to enrollees."

2. "In the event of an MCO or intermediary insolvency or other cessation of operations, covered services to enrollees will continue through the period for which a premium has been paid to the MCO on behalf of the enrollee or until the enrollee's discharge from an inpatient facility, whichever time is greater. Covered benefits to enrollees confined in an inpatient facility on the date of insolvency or other cessation of operations will continue until their

continued confinement in an inpatient facility is no longer medically necessary.”

3. The contract provisions that satisfy the requirements of Subsections 1. and 2. above shall be construed in favor of the enrollee, shall survive the termination of the contract regardless of the reason for termination, including the insolvency of the MCO, and shall supersede any oral or written contrary agreement between a provider and an enrollee or the representative of an enrollee if the contrary agreement is inconsistent with the hold harmless and continuation of covered services provisions required by Subsections 1. and 2. above.

4. Every contract between an MCO and a participating provider shall state that in no event shall a participating provider collect or attempt to collect from an enrollee any money owed to the provider by the MCO.

69.304 Amendments or Revisions of Contracts

Any significant amendment to or revision relating to the text or subtext of an approved provider contract shall be submitted to and approved by the Department prior to the execution of an amended or revised contract with the providers of an MCO.

69.305 The MCO shall establish a policy governing termination of providers. The policy shall include at least:

A. Written notification to each enrollee six (6) weeks prior to the termination or withdrawal from the MCO’s provider network of an enrollee’s primary care physician except in cases where termination was due to unsafe health care practice; and

B. Except in cases where termination was due to unsafe health care practices that compromise the health or safety of enrollees, assurance of continued coverage of services at the contract price by a terminated provider for up to 120 calendar days in cases where it is medically necessary for the enrollee to continue treatment with the terminated provider. In cases of the pregnancy of an enrollee, medical necessity shall be deemed to have been demonstrated and coverage shall continue to completion of postpartum care.

69.306 The Medical Director and physicians designated to act on his behalf shall be Delaware licensed physicians.

69.307 Prohibited Practices

A. No MCO or representative may cause or permit the use of advertising or solicitation which is untrue or misleading.

B. No MCO may cancel or refuse to renew the enrollment of an enrollee solely on the basis of her/his health. This does not prevent the MCO from canceling the enrollment of an enrollee if misstatements of her/his health were made at the time of enrollment, or prevent the MCO from canceling or refusing to renew enrollment for reasons

other than an enrollee’s health including without limitation, nonpayment of premiums or fraud by the enrollee.

C. An MCO contract shall contain no provision or nondisclosure clause prohibiting physicians or other health care providers from giving patients information regarding diagnoses, prognoses and treatment options.

D. An MCO shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition where such were incurred more than twelve (12) months following the date of enrollment in such plan or, if earlier, the first day of the waiting period for such enrollment.

E. An MCO shall not impose any preexisting condition exclusion relating to pregnancy or in the case of a child who is adopted or placed for adoption before attaining eighteen (18) years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

F. An MCO shall not offer incentives to a provider to provide less than medically necessary services to an enrollee.

G. An MCO shall not penalize a provider because the provider, in good faith, reports to state authorities any act or practice by the MCO that jeopardizes patient health or welfare.

H. A contract between an MCO and a provider shall not contain definitions or other provisions that conflict with the definitions or provisions contained in these regulations.

69.308 An MCO shall establish a mechanism by which the participating provider will be notified on an ongoing basis of the specific covered health services for which the provider will be responsible, including any limitations or conditions on services.

69.309 An MCO shall notify participating providers of the providers’ responsibilities with respect to the MCO’s applicable administrative policies and programs, including but not limited to payment terms, utilization review, quality assessment and improvement programs, credentialing, grievance procedures, data reporting requirements, confidentiality requirements and any applicable federal or state programs.

69.310 The rights and responsibilities under a contract between an MCO and a participating provider shall not be assigned or delegated by the provider without the prior written consent of the MCO.

69.311 An MCO is responsible for ensuring that a participating provider furnishes covered benefits to all enrollees without regard to the enrollee’s enrollment in the

plan as a private purchaser of the plan or as a participant in publicly financed programs of health care services. This requirement does not apply to circumstances when the provider should not render services due to limitations arising from lack of training, experience, skill or licensing restrictions.

69.312 An MCO shall notify the participating providers of their obligations, if any, to collect applicable coinsurance, co-payments or deductibles from enrollees pursuant to the evidence of coverage, or of the providers' obligations, if any, to notify enrollees of their personal financial obligations for non-covered services.

69.313 An MCO shall establish procedures for resolution of administrative, payment or other disputes between providers and the MCO.

69.314 Notice of Changes in MCO Operations

The MCO shall notify the Department of ~~Health and Social Services~~, in writing, on an ongoing basis, of any substantial changes in organization, bylaws, governing board, provider contracts or agreements, marketing materials, grievance procedures, enrollee handbooks, utilization management program, and any change of inpatient acute care hospitals. The Department shall be notified on at least a quarterly basis of changes in the provider network.

69.315 Changes in Ownership Interests

Certificates of Authority shall not be assignable or transferable in whole or in part. Accordingly, the holder of record of any Certificate of Authority to operate in Delaware, as a condition thereof, shall comply with all of the following requirements regarding changes in ownership interests. For the purposes of this section, changes in ownership interests shall refer to changes in the ownership of the holder of record of any Certificate of Authority and/or changes in ownership of any individual, corporation or other entity which, through the ownership of voting securities, by contract or by any other means, has the authority to or does in fact direct or cause the direction of the management and/or the policies of the MCO which is the subject of the Certificate of Authority at issue.

69.316 Examinations

A. The Department may make examinations concerning the quality of health care services of any MCO. The Department may make such examination as it deems necessary for the protection of the interests of the enrollees of the MCO, but not less frequently than every three (3) years;

B. Every MCO shall submit its books and records relating to health care services to such examinations. In the

course of such examinations, the Department may administer oaths to and examine the officers and agents of the MCO and of any health care providers with which it has contracts, agreements or other arrangements. The MCO shall require a provider to make health records available to the Department employees involved in assessing the quality of care or investigating the grievances or complaints of enrollees, and to comply with the applicable laws related to the confidentiality of medical or health records; and

C. The reasonable expenses of examinations under this section shall be assessed against the MCO being examined and remitted to the Department.

69.317 ~~Suspension or Revocation of Certificate of Authority.~~ Violations/Penalties

A. The Department may revoke or suspend a Certificate of Authority issued to an MCO pursuant to 16 Del. C. Chapter 91, or may place the MCO on probation for such period as it determines, or may publicly censure an MCO if it determines, after a hearing, that:

1. The MCO is operating in a manner which deviates substantially, in a manner detrimental to its enrollees, from the plan of operation described by it in securing its Certificate of Authority;

2. The MCO does not have in effect arrangements to provide the quantity and quality of health care services required by its enrollees;

3. The MCO is no longer in compliance with the requirements of 16 Del. C. §9104(b); or

4. The continued operation of the MCO would be detrimental to the health or well being of its enrollees needing services.

B. The Department may issue an order directing a health carrier or a representative of a health carrier to cease and desist from engaging in any act or practice in violation of the provisions of this act or may institute a proceeding to obtain injunctive relief.

1. Within twenty (20) calendar days after service of the cease and desist order, the health carrier may request a hearing on the question of whether acts or practices in violation of this act have occurred. This appeal shall not stay the cease and desist order.

~~B-C.~~ Proceedings in regard to any hearing held pursuant to this section shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, 29 Del. C. §101, and any applicable rules and regulations of the Department. Any decision rendered following a hearing shall set forth the findings of fact and conclusions of the Department as to any violations of this Chapter, and shall also set forth the reasons for the Department's choice of any sanction to be imposed. The Department's choice of sanction shall not be disturbed upon appeal, except for abuse of discretion.

~~C-D.~~ Suspension of a Certificate of Authority pursuant

to this section shall not prevent the MCO from continuing to serve all its enrollees as of the date the Department issues a decision imposing suspension, nor shall it preclude thereafter adding as enrollees newborn children or other newly acquired dependents of existing enrollees. Unless otherwise determined by the Department and set forth in its decision, a suspension shall, during the period when it is in effect, preclude all other new enrollments and also all advertising or solicitation on behalf of the MCO other than communication, approved by the Department, which are intended to give information as to the effect of the suspension.

~~D-E.~~ In the event that the Department decides to revoke the Certificate of Authority of an MCO the decision so providing shall specify the time and manner in which its business shall be concluded. If the Department determines it is appropriate, it may refer the matter of conservation or liquidation to the Insurance Commissioner, who shall then proceed in accordance with 18 Del. C., Chapter 59. In any case, after the Department has issued a decision revoking a Certificate of Authority, unless stayed in connection with an appeal, the MCO shall not conduct any further business except as expressly permitted in the Department's decision and it shall engage only in such activities as are directed by the Department or are required to assist its enrollees in securing continued health care coverage.

~~E-F.~~ The Department may require a corrective action plan from an MCO when the Department determines that the MCO is not in compliance with any of the regulations contained herein.

G. Civil Monetary Penalty (CMP)

1. A carrier that violates any provision of this act shall be liable to a civil penalty of not less than two hundred fifty dollars (\$250.00) and not greater than ten thousand dollars (\$10,000.00) for each day that the carrier is in violation of the act.

2. The Department shall give ten (10) calendar days written notice to the health carrier of its intent to levy such a penalty.

3. The health carrier may, within such 10 day period, give written notice of their desire to have a hearing. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Title 29, Chapter 101 of the Delaware Code and in accordance with applicable rules and regulations of the Department.

69.318 Fees

Every MCO shall pay the following fees:

A. For filing an application for a Certificate of Authority - three hundred and seventy-five dollars (\$375.00).

B. For filing an annual report - two hundred and fifty dollars (\$250.00).

69.319 Confidentiality of Health Information

Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any health care provider by any MCO shall be held in confidence and shall not be disclosed to any person except upon the express consent of the enrollee or applicant, or his physician, or pursuant to statute or court order for the production of evidence or the discovery thereof, or in the event of claim or litigation between such person and the MCO wherein such data or information is pertinent or as may be required by the Department in the course of their examinations in accordance with 69.316. The communication of such data or information from a health care provider to a MCO shall not prevent such data or information from being deemed confidential for purposes of the Delaware Uniform Rules of Evidence.

69.320 The MCO is responsible for meeting each requirement of these regulations. If the MCO chooses to utilize contract support or to contract functions under these regulations, the MCO retains responsibility for ensuring that the requirements of this regulation are met.

69.321 Specific standards may be waived by the Department provided that each of the following conditions are met:

A. Strict enforcement of the standard would result in unreasonable hardship on the MCO.

B. A waiver must not adversely affect the health, safety, welfare, or rights of any enrollee of the MCO.

C. The request for a waiver must be made to the Department, in writing, by the MCO with substantial detail justifying the request.

D. Prior to filing a request for a waiver, the MCO shall provide written notice of the request to each enrollee. Prior to filing a request for a waiver, the MCO shall also provide written notice of the request to the Department. The notice shall state that the enrollee has the right to object to the waiver request in writing to the Department.

Upon filing the request for a waiver, the MCO shall submit to the Department a copy of the notice and a sworn affidavit outlining the method by which the requirement was met. The MCO shall maintain proof of the method by which the requirement was met by the MCO for the duration of the waiver and make such proof available upon the request of the Department.

E. A waiver granted by the Department is not transferable to another MCO in the event of a change of ownership.

F. A waiver shall be granted for the term of the license.

PART FOUR**SECTION 69.4 QUALITY ASSURANCE AND OPERATIONS**

69.401 Health Care Professional Credentialing

A. General Responsibilities, an MCO shall:

1. Establish written policies and procedures for credentialing verification of all health care professionals with whom the MCO contracts and apply these standards consistently;

2. Verify the credentials of a health care professional before entering into a contract with that health care professional. The medical director of the MCO or other designated health care professional shall have responsibility for, and shall participate in, health care professional credentialing verification;

3. Establish a credentialing verification committee consisting of licensed physicians and other health care professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification;

4. Make available for review by the applying health care professional upon written request all application and credentialing verification policies and procedures;

5. Retain all records and documents relating to a health care professionals credentialing verification process for not less than four (4) years; and

6. Keep confidential all information obtained in the credentialing verification process, except as otherwise provided by law.

B. Nothing in these regulations shall be construed to require an MCO to select a provider as a participating provider solely because the provider meets the MCO's credentialing verification standards, or to prevent the MCO from utilizing separate or additional criteria in selecting the health care professionals with whom it contracts.

C. Selection standards for participating providers shall be developed for primary care professionals and each health care professional discipline. The standards shall be used in determining the selection of health care professionals by the MCO, its intermediaries and any provider networks with which it contracts. The standards shall meet the requirements of 69.401 A. and 69.401 D. Selection criteria shall not be established in a manner:

1. That would allow an MCO to avoid high-risk populations by excluding providers because they are located in geographic areas that contain populations or providers presenting a risk of higher than average claims, losses or health services utilization; or

2. That would exclude providers because they treat or specialize in treating populations presenting a risk of higher than average claims, losses or health services utilization.

D. Qualifications of primary care providers

1. Physicians qualified to function as primary care providers include: licensed physicians who have successfully completed a residency program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association in family practice, internal medicine, general practice, pediatrics, obstetrics-gynecology or who are diplomats of one of the above certifying boards approved by the American Board of Medical Specialties or one of the certifying boards of the American Osteopathic Association.

E. Verification Responsibilities, an MCO shall:

1. Obtain primary verification of at least the following information about the applicant:

a) Current license, certification, or registration to render health care in Delaware and history of same;

b) Current level of professional liability coverage, if applicable;

c) Status of hospital privileges, if applicable;

d) Specialty board certification status, if applicable; and

e) Current Drug Enforcement Agency (DEA) registration certificate, if applicable.

2. Obtain, subject to either primary or secondary verification:

a) The health care professional's record from the National Practitioner Data Bank; and

b) The health care professional's malpractice history.

3. Not less than every three (3) years obtain primary verification of a participating health care professional's:

a) Current license or certification to render health care in Delaware;

b) Current level of professional liability coverage, if applicable;

c) Status of hospital privileges, if applicable;

d) Current DEA registration certificate, if applicable; and

e) Specialty board certification status, if applicable.

4. Require all participating providers to notify the MCO of changes in the status of any of the items listed in this section at any time and identify for participating providers the individual to whom they should report changes in the status of an item listed in this section.

F. Health Care Professionals Right to Review Credentialing Verification Information

1. An MCO shall provide a health care professional the opportunity to review and correct information submitted in support of that health care professional's credentialing verification application as set forth below.

a) Each health care professional who is subject to the credentialing verification process shall have the right to review all information, including the source of that information, obtained by the MCO to satisfy the requirements of this section during the MCO's credentialing process.

b) An MCO shall notify a health care professional of any information obtained during the MCO's credentialing verification process that does not meet the MCO's credentialing verification standards or that varies substantially from the information provided to the MCO by the health care professional, except that the MCO shall not be required to reveal the source of information if the information is not obtained to meet this requirement, or if disclosure is prohibited by law.

c) A health care professional shall have the right to correct any erroneous information. The MCO shall have a formal process by which a health care professional may submit supplemental or corrected information to the MCO's credentialing verification committee and request a reconsideration of the health professional's credentialing verification application if the health care professional feels that the MCO's credentialing verification committee has received information that is incorrect or misleading. Supplemental information shall be subject to confirmation by the MCO.

69.402 Provider Network Adequacy

A. Primary, Specialty and Ancillary Providers

1. The MCO shall maintain an adequate network of primary care providers, specialists, and other ancillary health care resources to serve the enrolled population at all times. The MCO shall develop and submit annually to the Department policies and procedures for measuring and assessing the adequacy of the network. At a minimum, the network of providers shall include:

a) A sufficient number of licensed primary care providers under contract with the MCO to provide basic health care services. All enrollees must have immediate telephone access seven (7) days a week, twenty-four (24) hours a day, to their primary care provider or his/her authorized on-call back-up provider;

b) A sufficient number of licensed medical specialists available to MCO enrollees to provide medically necessary specialty care. The MCO must have a policy assuring reasonable access to frequently used specialists within each service area; and

c) A sufficient number of other health professional staff including but not limited to licensed nurses and other professionals available to MCO enrollees to provide basic health care services. The MCO shall cover nonparticipating providers at no extra cost to the enrollee if a plan has an insufficient number of providers within reasonable geographic distances and appointment times to

meet the medical needs of the enrollee.

B. Facility and Ancillary Health Care Services

1. The MCO shall maintain contracts or other arrangements acceptable to the Department with institutional providers which have the capability to meet the medical needs of enrollees and are geographically accessible. The network of providers shall include:

a) At least one licensed acute care hospital including at least licensed medical-surgical, pediatric, obstetrical, and critical care services in any service area no greater than thirty (30) miles or forty (40) minutes driving time from ninety percent (90%) of enrollees within the service area.

b) Surgical facilities including ~~acute care hospitals for major surgery, and for minor surgical procedures, hospitals,~~ licensed ambulatory surgical facilities, and/or physicians surgical practices. Such services shall be available in each service area no greater than thirty (30) miles or forty (40) minutes driving time from ninety percent (90%) of enrollees within the service area.

c) The MCO shall have a policy assuring access, ~~as evidenced by contract or other agreement acceptable to the Department,~~ to the following specialized services, as determined to be medically necessary; ~~Such services shall be reasonably accessible and shall include:~~

- (1) At least one hospital providing regional perinatal services;
- (2) A hospital offering pediatric intensive care services;
- (3) A hospital offering neonatal intensive care services;
- (4) Therapeutic radiation provider;
- (5) Magnetic resonance imaging center;
- (6) Diagnostic radiology provider, including X-ray, ultrasound, and CAT scan;
- (7) Emergency mental health service;
- (8) Diagnostic cardiac catheterization services in a hospital;
- (9) Specialty pediatric outpatient centers for conditions including sickle cell, hemophilia, cleft lip and palate, and congenital anomalies;
- (10) Clinical Laboratory certified under CLIA; and
- (11) Certified renal dialysis provider.

Such services shall be reasonably accessible. Evidence indicating such services shall include contracts or other agreements acceptable to the Department.

~~d) The MCO shall make acceptable service arrangements with the provider and enrollee, at no extra cost to the enrollee, if the appropriate level of service is not available at no extra cost to the enrollee. These services will not be limited to the State of Delaware. These services could include but are not limited to tertiary services, burn units and transplant services.~~

2. If offered by the plan, the MCO shall have a policy assuring access, ~~as evidenced by contract or other agreement acceptable to the Department,~~ to the following specialized services, as determined to be medically necessary; ~~Such services shall be reasonably accessible and may include:~~

- a) A licensed long term care facility with skilled nursing beds;
- b) Residential substance abuse treatment center;
- c) Inpatient psychiatric services for adults and children;
- d) Short term care facility for involuntary psychiatric admissions;
- e) Outpatient therapy providers for mental health and substance abuse conditions;
- f) Home health agency licensed by the Department;
- g) Hospice program licensed by the Department; and
- h) Pharmacy services.

Such services shall be reasonably accessible. Evidence indicating such services shall include contracts or other agreements acceptable to the Department.

3. The MCO shall make acceptable service arrangements with the provider and enrollee, at no extra cost to the enrollee, if the appropriate level of service is not available within the geographical service area at no extra cost to the enrollee. These services will not be limited to the State of Delaware. These services could include but are not limited to tertiary services, burn units and transplant services.

C. Emergency and Urgent Care Services

1. The MCO shall establish written policies and procedures governing the provision of emergency and urgent care which shall be distributed to each enrollee at the time of initial enrollment and after any revisions are made. These policies shall be easily understood by a layperson.

2. Enrollees shall have access to emergency care ~~(as defined at 69.10715)~~ twenty-four (24) hours per day, seven (7) days per week. The MCO shall cover emergency care necessary to screen and stabilize an enrollee and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition ~~(as defined at 69.10816)~~ existed.

3. Emergency and urgent care services shall include but are not limited to:

- a) Medical and psychiatric care, which shall be available twenty-four (24) hours a day, seven (7) days a week;
- b) Trauma services at any designated Level I or II trauma center as medically necessary. Such coverage shall continue at least until the enrollee is medically stable,

no longer requires critical care, and can be safely transferred to another facility, in the judgment of the attending physician. If the MCO requests transfer to a hospital participating in the MCO network, the patient must be stabilized and the transfer effected in accordance with federal regulations at 42 CFR 489.20 and 42 CFR 489.24;

- c) Out of area health care for urgent or emergency conditions where the enrollee cannot reasonably access in-network services;
- d) Hospital services for emergency care; and
- e) Upon arrival in a hospital, a medical screening examination, as required under federal law, as necessary to determine whether an emergency medical condition exists.

D. All enrollees shall be provided with an up-to-date and comprehensive list of the provider network upon enrollment and upon request, ~~and an Updates due to~~ provider changes must be provided at least quarterly.

69.403 Utilization Management

A. Utilization Management Functions

1. The MCO shall establish and implement a comprehensive utilization management program to monitor access to and appropriate utilization of health care and services. The program shall be under the direction of a designated physician and shall be based on a written plan that is reviewed at least annually. The plan shall identify at least:

- a) Scope of utilization management activities;
- b) Procedures to evaluate clinical necessity, access, appropriateness, and efficiency of services;
- c) Mechanisms to detect under utilization;
- d) Clinical review criteria and protocols used in decision-making;
- e) Mechanisms to ensure consistent application of review criteria and uniform decisions;
- f) System for providers and enrollees to appeal utilization management determinations in accordance with the procedures set forth; and
- g) A mechanism to evaluate enrollee and provider satisfaction with the complaint and appeals systems set forth. Such evaluation shall be coordinated with the performance monitoring activities conducted pursuant to the continuous quality improvement program set forth.

2. Utilization management determinations shall be based on written clinical criteria and protocols reviewed and approved by practicing physicians and other licensed health care providers within the network. These criteria and protocols shall be periodically reviewed and updated, and shall, with the exception of internal or proprietary quantitative thresholds for utilization management, be readily available, upon request, to affected providers and enrollees. All materials including internal or proprietary

materials for utilization management shall be available to the Department upon request.

3. Compensation to persons providing utilization review services for a MCO shall not contain incentives, direct or indirect, for these persons to make inappropriate review decisions. Compensation to any such persons may not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

B. Utilization Management Staff Availability

1. At a minimum, appropriately qualified staff shall be immediately available by telephone, during routine provider work hours, to render utilization management determinations for providers.

2. The MCO shall provide enrollees with a toll free telephone number by which to contact customer service staff on at least a five (5) day, forty (40) hours a week basis.

3. The MCO shall supply providers with a toll free telephone number by which to contact utilization management staff on at least a five (5) day, forty (40) hours a week basis.

4. The MCO must have policies and procedures addressing response to inquiries concerning emergency or urgent care when a PCP or her/his authorized on call back up provider is unavailable.

C. Utilization Management Determinations

1. All determinations to authorize services shall be rendered by appropriately qualified staff.

2. All determinations to deny or limit an admission, service, procedure or extension of stay shall be rendered by a physician. The physician shall be under the clinical direction of the medical director responsible for medical services provided to the MCO's Delaware enrollees. Such determinations shall be made in accordance with clinical and medical criteria and standards and shall take into account the individualized needs of the enrollee for whom the service, admission, procedure is requested.

3. All determinations shall be made on a timely basis as required by the exigencies of the situation.

4. An MCO may not retroactively deny reimbursement for a covered service provided to an enrollee by a provider who relied upon the written or verbal authorization of the MCO or its agents prior to providing the service to the enrollee, except in cases where the MCO can show that there was material misrepresentation, fraud or the patient was found not to have coverage.

5. An enrollee must receive upon request a written notice of all determinations to deny coverage or authorization for services required and the basis for the denial.

69.404 ~~Grievance~~ Appeal Procedure

A. Scope of Appeal

The following appeal procedure shall be utilized when the subject of the appeal is based upon medical

necessity (69.130) or appropriateness of services (69.104). For all other appeals, the MCO shall develop and implement written policies and procedures that require a review process and a written response to the appellant.

A. Enrollees Rights in Grievance/Appeal Procedure

1. All MCO enrollees, or any provider acting on behalf of an enrollee with the enrollee's consent, may appeal any utilization management determination resulting in a denial, termination, or other limitation of covered health care services. All enrollees and providers shall be provided with a written explanation of the appeal process upon enrollment, upon request and each time the methods and procedures are substantially changed and at least annually. The appeal process shall consist of an informal internal review by the MCO (Stage 1 appeal), a formal internal review by the MCO (Stage 2 appeal), and a formal external review (Stage 3 appeal) by an independent utilization review organization.

B. Appeal Procedure

1. Information Disclosure

An MCO shall provide enrollees with a written explanation of the appeal process upon enrollment, annually, upon request and each time the appeal process is substantially changed. An MCO shall also provide participating providers with a written explanation of the appeal process, upon initial participation with the MCO's network, upon request and each time the appeal process is substantially changed.

2. Stages of Appeal Process

An MCO shall establish an appeal process for appellants for review of coverage determinations based on medical necessity (69.130) or appropriateness of services (69.104). The appeal process shall consist of the following stages: an internal review by the MCO ("Stage 1 Appeal"), a second subsequent internal review by the MCO ("Stage 2 Appeal") and an external review ("Stage 3 Appeal"). Each stage shall provide for expedited review that shall not exceed seventy-two (72) hours, for appeals that involve an imminent, emergent, or serious threat to the appellant. In the event that the subject of the appeal concerns an emergency medical condition (69.116), both stages of internal review (stage 1 and 2) must be concluded within seventy-two (72) hours.

3. Petition for External Review form

All MCOs shall complete a DHSS approved form and forward it to the Department to initiate the Independent Health Care Appeals Program.

4. Waiver of Internal Review Process

In the event that the MCO fails to comply with any of the deadlines for completion of the Stage 1 or 2 appeals, or in the event that the MCO for any reason expressly waives its rights to an internal review of any appeal, then the appellant shall be relieved of his or her obligation to complete the MCO internal review process, and at the appellant's option, may proceed directly to the Stage 3

appeal process.

2. ~~No enrollee who exercises the right to an appeal shall be subject to disenrollment, contract termination or otherwise penalized by the MCO solely on the basis of filing any such appeal.~~

3. ~~At any stage of the appeal process, at the request of an enrollee, the MCO shall appoint a member of its staff, who has no direct involvement in the case, to represent the enrollee. An enrollee appealing a determination shall be specifically notified of the enrollee's right to have a staff member appointed to assist the enrollee.~~

5. Appellant Rights.

a) An MCO shall not disenroll, terminate or in any way penalize an enrollee who exercises the right to appeal solely on the basis of filing the appeal.

3-b) MCO Assistance

i. Upon the initiation of an appeal, an MCO shall notify an appellant of the right to have a staff member appointed to assist her/him with understanding the appeal process. Such assistance shall continue through the appeal process.

ii. ~~At any stage of the appeal process, at the request of An enrollee appellant may request such assistance at any stage of the appeal process.~~

iii. Upon such request, an MCO shall appoint a member of its staff who has had no prior direct involvement in the case to represent assist the enrollee appellant.

c) After an adverse determination, an appellant shall have the right to discuss a coverage determination with the medical director, or physician designee, of the MCO who made the coverage determination.

46. MCO Records

~~The~~ An MCO shall maintain written or electronic records to document all appeals received (a "grievance register"). For each grievance appeal the register an MCO shall contain maintain, at a minimum, the following information:

a) A general description of the reason for the grievance appeal;
 b) Date received;
 c) Date of each review;
 d) Resolution at each level stage of appeal;
 e) Date of resolution at each level stage; and
 f) Name and plan identification number of the enrollee appellant for whom the grievance appeal was filed.

7. Reporting

An MCO shall submit the following information to the Department within thirty (30) days after the close of each calendar quarter:

- a) The total number appeals (69.102) filed.
- b) The number of Stage 1 appeals. This shall

include only those appeals based upon medical necessity (69.130) and/or appropriateness of services (69.104).

- c) The number of Stage 1 appeals upheld.
- d) The number of Stage 1 appeals overturned.
- e) The number of Stage 2 appeals. This shall include only those appeals based upon medical necessity (69.130) and/or appropriateness of services (69.104).
- f) The number of Stage 2 appeals upheld.
- g) The number of Stage 2 appeals overturned.
- h) The number of petitions made to the

Independent Health Care Appeals Program.

~~BC. Informal Internal Utilization Management Appeal Process (Stage 1)-Stage 1 Appeal Procedure~~

1. Procedure

~~Each An MCO shall establish and maintain an informal internal appeal process (Stage 1) procedure whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent in which an appellant, who is dissatisfied with any MCO utilization management a coverage determination by the MCO, that is based on medical necessity or appropriateness of services, shall have the opportunity to discuss and appeal that the determination, with This appeal is made to the MCO's, who will then assign the medical director and/or the a physician designee, who rendered the determination. All such Stage 1 appeals shall be concluded as soon as possible in accordance with the medical exigencies of the case. In no event shall appeals involving an imminent, emergent or serious threat to the health of the enrollee exceed 72 hours. All other Stage 1 appeals shall be concluded within five (5) business days. If the appeal is not resolved to the satisfaction of the enrollee at this level, the MCO shall provide the enrollee and/or the provider with a written explanation of his/her right to proceed to a Stage 2 appeal, who has had no prior direct involvement with the appellant's case, to conduct the review.~~

2. Timeframes

A Stage 1 appeal shall be concluded as soon as possible in accordance with the medical exigencies of the case but no more than five (5) business days after receipt of the appeal. In no event shall appeals that involve an imminent, emergent, or serious threat to the health of the appellant exceed seventy-two (72) hours.

3. Written Notice of Determination

An MCO shall provide notice of the Stage 1 appeal determination to the appellant within five business days of receipt of the appeal. If such notice is provided verbally to the appellant, the MCO shall provide written notice of the determination to the appellant within five (5) business days of the verbal notice. In the event that the adverse determination is upheld, the written notice shall include the reason for the determination, an explanation of the appellant's right to proceed to a Stage 2 appeal and a review of the entire appeals process. This information shall include specific contact information (address and phone

number) that is appropriate for each appeal stage.

~~CD. Formal Internal Utilization Management Appeal Process (Stage 2) Stage 2 Appeal Procedure~~

~~1. Each An MCO shall establish and maintain an formal internal appeal process procedure in which an appellant who is dissatisfied with a Stage 1 appeal determination by an MCO shall have the opportunity to appeal the determination to the MCO. (Stage 2 appeal) whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with the results of the Stage 1 appeal, shall have the opportunity to pursue his/her appeal before a A panel, selected by the MCO, shall consist of at least two (2) physicians and/or other health care professionals selected by the MCO who have not been involved in the utilization management determination at issue. having no direct involvement with the appellant's case prior to this review, one of who should be in the same or similar specialty that typically manages the care under review. If the same or similar physician/health care professional is not a member of the panel, such physician/health care professional must consult on the health care service at issue and report such consultation in writing to the panel for consideration. An enrollee has the right to:~~

- ~~a) Attend the Stage 2 appeal;~~
- ~~b) Present his or her case to the review panel;~~
- ~~c) Submit supporting material both before and at the review meeting;~~
- ~~d) Ask questions of any representative of the MCO participating on the panel; and~~
- ~~e) Be assisted or represented by a person of his or her choice.~~

~~(See #4 below)~~

~~2. Written Notice of Meeting~~

~~An MCO shall acknowledge receipt of all Stage 2 appeals in writing to the appellant. This acknowledgement shall include the place, date and time of the Stage 2 appeal meeting and shall give the appellant at least fifteen (15) calendar days notice of the appeal meeting. The appellant may request a change in the meeting schedule to facilitate attendance.~~

~~3. Appeal Meeting~~

~~The MCO shall hold the Stage 2 appeal meeting during regular business hours at a location reasonably accessible to the appellant. If a face-to-face meeting is not practical for geographic reasons, the MCO shall offer the appellant the opportunity to communicate with the review panel, at the MCO's expense, by conference call, video-conferencing, or other appropriate technology. The MCO shall not unreasonably deny a request for postponement of the meeting made by an appellant. The appellant's right to a fair review shall not be conditional on the appellant's appearance at the Stage 2 appeal meeting.~~

~~4. Appellant Rights~~

~~An appellant has the right to:~~

- ~~a) Attend the Stage 2 appeal.~~
- ~~b) Present his or her case to the review panel.~~
- ~~c) Submit supporting material both before and at the appeal meeting.~~
- ~~d) Ask questions of any representative of the MCO participating on the panel.~~
- ~~e) Be accompanied and supported by a person of her/his choice in addition to her/his representative, and~~
- ~~f) Review all relevant information that is not confidential, proprietary or privileged.~~

~~2. Upon the request of an enrollee, a MCO shall provide to the enrollee all relevant information that is not confidential or privileged.~~

~~(See #4 above)~~

~~3. The enrollee's right to a fair review shall not be made conditional on the enrollee's appearance at the review.~~

~~(See #3 above)~~

~~4. The formal internal utilization management appeal panel shall have available consultant practitioners who are trained or who practice in the same specialty as would typically manage the case at issue or such other licensed health care professional as may be mutually agreed upon by the parties. In no event, however, shall the consulting practitioner or professional have been involved in the utilization management determination at issue. The consulting practitioner or professional shall participate in the panel's review of the case if requested by the enrollee and/or provider.~~

~~(See #1 above)~~

~~5. All such Stage 2 appeals must be acknowledged by the MCO, in writing, to the enrollee or provider filing the appeal within fourteen (14) calendar days of receipt.~~

~~(See #2 above)~~

~~5. Timeframes~~

~~A Stage 2 appeal shall be concluded as soon as possible in accordance with the medical exigencies of the case but no more than thirty (30) calendar days after receipt of the request for the Stage 2 appeal. In no event shall a Stage 2 appeal involving an imminent, emergent or serious threat to the health of the appellant exceed seventy-two (72) hours.~~

~~6. All such Stage 2 appeals shall be concluded as soon as possible after receipt by the MCO in accordance with the medical exigencies of the case. In no event shall appeals involving an imminent, emergent or serious threat to the health of the enrollee exceed 72 hours. Except as set forth in paragraph (7) below, all other Stage 2 appeals shall be concluded within thirty (30) calendar days of receipt.~~

~~(See #5 above)~~

~~7. Extensions~~

~~The MCO may extend the review Stage 2 appeal for up to an additional thirty (30) calendar days for~~

~~reasonable cause by submitting where it can demonstrate reasonable cause for the delay beyond its control and where it provides a written progress report and explanation for the delay to the enrollee and/or provider Department within the original thirty (30) calendar day review period. An MCO honoring an appellant's request for extension for necessity or convenience shall be deemed a reasonable cause. In no event, however, may an MCO extend the review period for an expedited appeal, applicable to appeals from determinations regarding urgent or emergent care be so extended~~

87. Written Notice of Determination

~~The review panel shall issue a written decision to the enrollee. The decision shall include:~~

~~An MCO shall provide written notice of the Stage 2 appeal determination to the appellant within five (5) business days of such determination. In the event of an adverse determination, such notice shall include:~~

- ~~a) The names and titles qualifications of the members of the review-Stage 2 appeal panel;~~
- ~~b) A statement of the panel's understanding of the nature of the grievance appeal and all pertinent facts;~~
- ~~c) The rationale for the review panel's determination;~~
- ~~d) Reference to evidence or documentation considered by the panel in making that decision determination;~~
- ~~e) In cases involving an adverse determination, the Instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and~~
- ~~f) A written notification of his/her The appellant's right to proceed to a an external Stage 3 appeal.~~

~~9. In the event that the MCO fails to comply with any of the deadlines for completion of the internal utilization management determination appeals set forth or in the event that the MCO for any reason expressly waives its rights to an internal review of any appeal, then the enrollee and/or provider shall be relieved of his/her obligation to complete the MCO internal review process and may, at his/her option, proceed directly to the external appeals process.~~

~~(See B4 above)~~

~~DE. Standard External Utilization Appeal Process(Stage 3)
3) Independent Health Care Appeals Program (External Appeal Process/Stage 3)~~

~~1. Each MCO shall establish and maintain a formal external review process (Stage 3) whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's written consent Upon receipt of an adverse determination at Stage 2, any appellant who is dissatisfied with the results of the Stage 2 appeal, shall have the opportunity to pursue her/his appeal before an independent utilization review organization.~~

~~2. The appellant must file the grievance within~~

~~sixty (60) calendar days of receipt of the adverse determination from the internal review process.~~

~~3. Upon receipt of a request for external review, the MCO shall fax the Petition for External Review form as soon as possible but within no more than three (3) business days to the Department and shall send a hard copy of the request to the Department by mail.~~

~~4. The Department shall assign an approved IURO (69.124) to conduct the external review and shall notify the MCO.~~

~~5. The assigned IURO shall, within five (5) calendar days of assignment, notify the appellant in writing by certified or registered mail, that the appeal has been accepted for external review. The notice shall include a provision stating that the appellant may submit additional written information and supporting documentation that the IURO shall consider when conducting the external review. Such written documentation must be submitted within seven (7) calendar days following the date of receipt of the notice.~~

~~a) Upon receipt of any information submitted by the appellant, the assigned IURO shall as soon as possible but within no greater than two (2) business days, forward the information to the MCO.~~

~~6. Within seven (7) business days after the receipt of the notification required in 69.404.E.4, the MCO shall provide to the assigned IURO, the documents and any information considered in making the internal appeal determination.~~

~~a) If the MCO fails to submit documentation and information or fails to participate within the time specified, the assigned IURO may terminate the external review and make a decision, with the approval of the Department, to reverse the internal appeal determination.~~

~~7. The external review may be terminated if the MCO decides to reverse its adverse determination and provide coverage or payment for the health care service that is the subject of the appeal.~~

~~a) Immediately upon making the decision to reverse its adverse determination, the MCO shall notify the appellant, the assigned IURO, and the Department in writing of its decision.~~

~~b) The assigned IURO shall terminate the external review upon receipt of the written notice from the MCO.~~

~~2- 8. Within forty-five (45) calendar days after the receipt of the request for external review, the assigned IURO shall provide written notice of its decision to uphold or reverse the adverse determination to:~~

- ~~a) The appellant;~~
- ~~b) The MCO; and~~
- ~~c) The Department.~~

~~The review panel shall schedule and hold a review meeting within forty-five (45) calendar days of receiving a request from an enrollee for a Stage 3 appeal.~~

The review meeting shall be held during regular business hours at a location reasonably accessible to the enrollee. In cases where a face-to-face meeting is not practical for geographic reasons, a MCO shall offer the enrollee the opportunity to communicate with the review panel, at the MCO's expense, by conference call, video conferencing, or other appropriate technology. The enrollee shall be notified, in writing, at least fifteen (15) calendar days in advance of the review date. The MCO shall not unreasonably deny a request for postponement of the review made by an enrollee.

3. Upon the request of an enrollee, a MCO shall provide to the enrollee all relevant information that is not confidential or privileged.

4. An enrollee has the right to:

- a) Attend the Stage 3 review;
- b) Present his or her case to the review panel;
- c) Submit supporting material both before and at the review meeting;
- d) Ask questions of any representative of the MCO participating on the panel; and
- e) Be assisted or represented by a person of his or her choice.

5. The enrollee's right to a fair review shall not be made conditional on the enrollee's appearance at the review.

9. The IURO shall include the following information in the notice sent pursuant to 69.404.E.8:

- a) The names and titles qualifications of the members of the review panel;
- b) A general description of the reason for the request for external review;
- c) The date the IURO received the assignment from the Department to conduct the external review;
- d) The date(s) the external review was conducted;
- e) The date of its decision;
- f) The principal reason(s) for its decision;
- g) The rationale for its decision;

References to the evidence or documentation, including practice guidelines and clinical review criteria, considered in reaching its decision.

6. The review panel shall issue a written decision to the enrollee within five (5) business days of completing the review meeting. The decision shall include:

- a) The names and titles of the members of the review panel;
- b) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts;
- c) The rationale for the review panel's decision;
- d) Reference to evidence or documentation considered by the review panel in making that decision; and
- e) In cases involving an adverse

determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination.

10. The decision of the IURO is binding upon the MCO.

F. Expedited External Utilization Appeal Process

1. An appellant may request an expedited external review with the MCO at the time the enrollee receives a final adverse determination if the enrollee has a medical condition where the timeframe for completion of a standard external review would seriously jeopardize the life or health of the enrollee or would jeopardize the enrollee's ability to regain maximum function

2. At the time the MCO receives a request for an expedited external review, the MCO shall immediately fax the Petition for External Review form to the Department and shall send a hard copy to the Department by mail.

3. If the Department determines that the review meets the criteria for expedited review, the Department shall assign an approved IURO to conduct the external review and shall notify the MCO.

4. At the time the MCO receives the notification of the assigned IURO, the MCO shall provide or transmit all necessary documents and information considered in making the final adverse determination to the assigned IURO electronically, by telephone, by facsimile or any other available expeditious method.

5. As expeditiously as the enrollee's medical condition permits or circumstances require, but in no event more than seventy-two (72) hours after the date of the receipt of the request for an expedited external review, the IURO shall:

- a) Make a decision to uphold or reverse the final adverse determination; and
- b) Immediately notify the appellant, the MCO, and the Department of the decision.

6. Within two (2) calendar days of the immediate notification, the assigned IURO shall provide written confirmation of the decision to the appellant, the MCO, and the Department

7. The decision of the IURO is binding upon the MCO.

G. Preliminary External Review

1. If an MCO receives an appellant's request for access to the Independent Health Care Appeals Program for a benefit denial (69.107) appeal that is excluded within the enrollee's benefit package, the MCO may file a motion to dismiss. The motion must be made in writing at the time the Petition for External Review Form is faxed to the Department and include any necessary supporting documentation.

2. Upon the written request of an MCO, the Department shall have the discretion to appoint an IURO to hear the motion to dismiss.

a) The request must be made in writing at the time the Petition for External Review Form is faxed to the Department and include any necessary supporting documentation.

3. Once assigned, an IURO will rule upon the motion to dismiss

4. If the motion to dismiss is denied, the external review procedure must be followed.

H. All costs for external IURO review shall be borne by the MCO. The MCO shall reimburse the Department for the cost of the review within ninety (90) calendar days of the receipt of the decision by the IURO.

E. I. The MCO shall include in its annual reports to the Department:

1. A description of the total number of grievances appeals handled;

2. The number of grievances appeals handled at each level of appeal;

3. A compilation of the causes underlying the appeals;

4. The resolution of the appeals; and

5. The number of appeals terminated during the external review as described in 69.404.E.7.

J. The Department shall approve IUROs eligible to be assigned to conduct external reviews.

1. Any IURO wishing to be approved to conduct external reviews shall submit an application form (as developed by the Department) and include with the form, all documentation and information necessary for the Department to determine if the IURO satisfies minimum qualifications.

2. The Department shall maintain a current list of approved IUROs.

69.405 Quality Assessment and Improvement

A. Continuous Quality Improvement

1. Under the direction of the Medical Director or her/his designated physician, the MCO shall have a system-wide continuous quality improvement program to monitor the quality and appropriateness of care and services provided to enrollees. This program shall be based on a written plan which is reviewed at least semi-annually and revised as necessary. The plan shall describe at least:

a) The scope and purpose of the program;

b) The organizational structure of quality improvement activities;

c) Duties and responsibilities of the medical director and/or designated physician responsible for continuous quality improvement activities;

d) Contractual arrangements, where appropriate, for delegation of quality improvement activities;

e) Confidentiality policies and procedures;

f) Specification of standards of care, criteria

and procedures for the assessment of the quality of services provided and the adequacy and appropriateness of health care resources utilized;

g) A system of ongoing evaluation activities, including individual case reviews as well as pattern analysis;

h) A system of focused evaluation activities, particularly for frequently performed and/or highly specialized procedures;

i) A system of monitoring enrollee satisfaction and network provider's response and feedback on MCO operations;

j) A system for verification of provider's credentials, recertification, performance reviews and obtaining information about any disciplinary action against the provider available from the Delaware Board of Medical Practice or any other state licensing board applicable to the provider;

k) The procedures for conducting peer review activities which shall include providers within the same discipline and area of clinical practice; and

l) A system for evaluation of the effectiveness of the continuous quality improvement program.

2. There shall be a multidisciplinary continuous quality improvement committee responsible for the implementation and operations of the program. The structure of the committee shall include representation from the medical, nursing and administrative staff, with substantial involvement of the medical director of the MCO.

3. The MCO shall assure that participating providers have the opportunity to participate in developing, implementing and evaluating the quality improvement system.

4. The MCO shall provide enrollees the opportunity to comment on the quality improvement process.

5. The program shall monitor the availability, accessibility, continuity and quality of care on an ongoing basis. Indicators of quality care for evaluating the health care services provided by all participating providers shall be identified and established and shall include at least:

a) A mechanism for monitoring enrollee appointment and triage procedures including wait times to get an appointment and wait times in the office;

b) A mechanism for monitoring enrollee continuity of care and discharge planning for both inpatient and outpatient services;

c) A mechanism for monitoring the appropriateness of specific diagnostic and therapeutic procedures as selected by the continuous quality improvement program;

d) A mechanism for evaluating all providers of care that is supplemental to each provider's quality improvement system;

e) A mechanism for monitoring network adequacy and accessibility to assure the network services the needs of their diverse enrolled population; and

f) A system to monitor provider and enrollee access to utilization management services including at least waiting times to respond to telephone requests for service authorization, enrollee urgent care inquiries, and other services required.

6. The MCO shall develop a performance and outcome measurement system for monitoring and evaluating the quality of care provided to MCO enrollees. The performance and outcome measures shall include population-based and patient-centered indicators of quality of care, appropriateness, access, utilization, and satisfaction. Data for these performance measures shall include but not be limited to the following:

- a) Indicator data collected by MCOs from chart reviews and administrative databases;
- b) Enrollee satisfaction surveys;
- c) Provider surveys;
- d) Annual reports submitted by MCOs to the Department; and
- e) Computerized health care encounter data.

7. The MCO shall follow-up on findings from the program to assure that effective corrective actions have been taken, including at least policy revisions, procedural changes and implementation of educational activities for enrollees and providers.

8. Continuous quality improvement activities shall be coordinated with other performance monitoring activities including utilization management and monitoring of enrollee and provider complaints.

9. The MCO shall maintain documentation of the quality improvement program in a confidential manner. This documentation shall be available to the Department and shall include:

- a) Minutes of quality improvement committee meetings; and
- b) Records of evaluation activities, performance measures, quality indicators and corrective plans and their results or outcomes.

B. External Quality Audit

1. Each MCO shall submit, as a part of its annual report due June 1, evidence of its most recent external quality audit that has been conducted. External quality audits must be completed no less frequently than once every three (3) years. Such audit shall be performed by a nationally accredited independent quality review organization ~~approved by the Department~~.

a) MCOs must submit the following information to the Department in order to receive approval for the independent quality review organization that will conduct the triennial reviews for the MCO:

- (1) evidence that the independent quality

review organization has been accredited by a nationally recognized private accrediting entity, and

(2) the current standards for independent quality review organizations as established and maintained by the accrediting entity.

2. The report must describe in detail the MCOs conformance to performance standards and the rules within these regulations. The report shall also describe in detail any corrective actions proposed and/or undertaken by the MCO.

C. Reporting and Disclosure Requirements

1. The Board of Directors of the MCO shall be kept apprised of continuous quality improvement activities and be provided at least annually with regular written reports from the program delineating quality improvements, performance measures used and their results, and demonstrated improvements in clinical and service quality.

2. An MCO shall document and communicate information about its quality assessment program and its quality improvement program, and shall:

- a) Include a summary of its quality assessment and quality improvement programs in marketing materials;
- b) Include a description of its quality assessment and quality improvement programs and a statement of enrollee rights and responsibilities with respect to those programs in the materials or handbook provided to enrollees; and

c) Make available annually to providers and enrollees findings from its quality assessment and quality improvement programs and information about its progress in meeting internal goals and external standards, where available. The reports shall include a description of the methods used to assess each specific area and an explanation of how any assumptions affect the findings.

3. MCOs shall submit such performance and outcome data as the Department may request.

PART FIVE

SECTION 69.5 ENROLLEE RIGHTS AND RESPONSIBILITIES

69.501 The MCO shall establish and implement written policies and procedures regarding the rights of enrollees and the implementation of these rights.

69.502 In the case of nonpayment by the MCO to a provider for a covered service in accordance with the enrollee's health care contract, the provider may not bill the enrollee. This does not prohibit the provider from collecting coinsurance, deductibles or co-payments as determined by the MCO. This does not prohibit the provider and enrollee from agreeing to continue services solely at the expense of the enrollee, as long as the provider clearly informs the enrollee

that the MCO will not cover these services.

69.503 The MCO shall permit enrollees to choose their own primary care physician. This choice may be more flexible, depending on the type of health plan purchased by the enrollee. When MCOs maintain from a list of health care professionals within the plan-, ~~T~~his list shall be updated as health care professionals are added or removed and shall include:

A. a sufficient number of primary care physicians who are accepting new enrollees; and

B. a sufficient number of primary care physicians that reflects a diversity that is adequate to meet the ~~diversity~~ needs of the enrolled populations' varied characteristics including age, gender, language, race and health status.

69.504 The MCO shall provide each enrollee with an enrollee's benefit handbook which includes a complete statement of the enrollee's rights, a description of all complaint and ~~grievance~~ appeal procedures, a clear and complete summary of the evidence of coverage, and notification of their personal financial obligations for non-covered services. The statement of the enrollee's rights shall include at least the right:

A. To available and accessible services when medically necessary, including availability of care twenty-four (24) hours a day, seven (7) days a week for urgent or emergency conditions;

B. To be treated with courtesy and consideration, and with respect for the enrollee's dignity and need for privacy;

C. To be provided with information concerning the MCO's policies and procedures regarding products, services, providers, ~~grievance/appeal~~ procedures and other information about the organization and the care provided;

D. To choose a primary care provider within the limits of the covered benefits and plan network, including the right to refuse care of specific practitioners;

E. To receive from the enrollee's physician(s) or provider, in terms that the enrollee understands, an explanation of her/his complete medical condition, recommended treatment, risk(s) of the treatment, expected results and reasonable medical alternatives. If the enrollee is not capable of understanding the information, the explanation shall be provided to her/his next of kin or guardian and documented in the enrollee's medical record;

F. To formulate advance directives;

G. To all the rights afforded by law or regulation as a patient in a licensed health care facility, including the right to refuse medication and treatment after possible consequences of this decision have been explained in language the enrollee understands;

H. To prompt notification, as required in these rules, of termination or changes in benefits, services or provider network;

I. To file a complaint or appeal with the MCO and to receive an answer to those complaints within a reasonable period of time; and

J. To file a complaint with the Department or the Commissioner.

69.505 The MCO shall establish and implement written policies and procedures regarding the responsibilities of enrollees. A complete statement of these responsibilities shall be included in the enrollee's benefit handbook.

69.506 The MCO shall disclose to each new enrollee, and any enrollee upon request, in a format and language understandable to a layperson, the following minimum information:

A. Benefits covered and limitations;

B. Out of pocket costs to the enrollee;

C. Lists of participating providers;

D. Policies on the use of primary care physicians, referrals, use of out of network providers, and out of area services;

E. Written explanation of the appeals process;

F. A description of and findings from the quality assurance and improvement programs;

G. The patterns of utilization of services; and

H. For staff model MCOs, the location and hours of its inpatient and outpatient health services.

69.507 The MCO shall provide culturally competent services to the greatest extent possible.

PART SIX

SECTION 69.6 REQUIREMENTS FOR STAFF MODEL MCOs

In addition to all other requirements of these regulations, staff model MCOs shall meet the requirements of this section.

69.601 Environmental Health and Safety

A. Office premises and other structures operated by the MCO must have appropriate safeguards for patients.

B. All buildings shall conform to all State and medical codes and all regulations applicable to services being offered. These codes shall include but are not limited to:

1. State Plumbing Code.

2. Waste Disposal Regulations.

3. Public Water Supply Regulations.

4. Food Service Requirements.

5. Radiation Control Regulations.

6. Hazardous Waste Regulations.

7. Air and Water Pollution Regulations.

8. Hand washing facilities shall be installed in accordance with applicable State and local regulations and

conveniently located.

9. Toilet facilities shall meet appropriate State and local regulations.

10. State Fire Code requirements.

C. The buildings must be architecturally accessible to handicapped individuals and comply with the Americans with Disabilities Act.

D. Measures must be taken to insure that facilities are guarded against insects and rodents.

E. Housekeeping

1. A housekeeping procedures manual shall be written and followed. Special emphasis shall be given to procedures applying to infectious diseases or suspect areas.

2. All premises shall be kept neat, clean, and free of litter and rubbish.

3. Walls and ceilings shall be maintained free of cracks and falling plaster and shall be cleaned and painted regularly.

4. Floors shall be cleaned regularly and in such a manner that it will minimize the spread of pathogenic organisms in the atmosphere; dry dusting and sweeping shall be prohibited.

5. Suitable equipment and supplies shall be provided for cleaning all surfaces.

6. Solutions, cleaning compounds and hazardous substances shall be properly labeled and stored in safe places.

69.602 Emergency Utilities or Facilities

A. The MCO shall be equipped to handle emergencies due to equipment failures. Emergency electrical service for lighting and power for equipment essential to life safety shall be provided in accordance with hospital regulations where appropriate. (Minimum Requirements for Construction of Hospital and Health Care Facilities, Section 7.32H.)

B. In facilities which provide hospital services, the emergency electrical system shall be so controlled that the auxiliary power is brought to full voltage and frequency and can be connected within ten (10) seconds.

C. Emergency utilities for MCOs and contract providers must be supplied according to procedures performed on the premises.

69.603 Construction

A. New construction or substantial modifications on an existing facility shall conform to applicable State, county and local codes, including the National Fire Protection Association Publication No. 101 - Life Safety Code, latest edition adopted by the State Fire Prevention Board.

B. Radiation requirements of the Authority on Radiation Protection shall be met.

C. Facility plans or modifications shall be submitted to the Department for review and approval prior to any work being begun.

69.604 Personnel

A. The office shall be staffed by appropriately trained personnel. Appropriate manuals shall be developed to serve as guidelines and set standards for patient care provided by nonprofessional personnel.

B. Offices with five (5) or more physicians shall have at least one (1) full time registered nurse (RN).

C. Nonprofessional personnel shall have appropriate in-service education on clinical operations and procedures. The in-service training program must be conducted at least annually.

D. Primary physician. There shall be at least one (1) full time or full time equivalent (F.T.E.) physician available on contract. There shall be at least one (1) F.T.E. primary physician for every 1,000 enrollees.

E. Medical Specialties. There shall be either full time or part-time physicians, other appropriate professional specialists, or written agreements adequate to ensure access to all needed services for enrollees.

69.605 Equipment

Each office operated by the MCO must have the necessary equipment and instruments to provide the required services. Equipment and instruments for services, when covered by written contract with medical specialists or other providers outside of the office, need not be present in the MCO's office. Where emergency services are provided in the office, equipment such as a defibrillator, laryngoscope and other similar equipment must be present.

69.606 Specialized Services

A. The MCO shall provide special services necessary for diagnosis and treatment such as ultra sound. Where it is not feasible to provide these services in the office, there shall be a written agreement for these services in a nearby location except for isolated rural areas where arrangements for these services shall be subject to review and approval by the Department.

1. The MCO's radiology services shall be supervised and conducted by a qualified radiologist, either full time or part-time; or, when radiology services are supervised and conducted by a physician who is not a qualified radiologist, the MCO shall provide for regular consultation by a qualified radiologist, who is under contract with the MCO and is responsible for reviewing all X-rays and procedures. The number of qualified radiological technologists employed shall be sufficient to meet the MCO's requirements. If the MCO operates a radiology service and provides emergency services, at least one (1) qualified technologist shall be on duty or on call at all times.

2. Pharmaceutical services, when provided by the MCO, must be under the direct supervision of a registered pharmacist who is responsible to the administrative staff for developing, coordinating and supervising all pharmaceutical

services; or, in the case of dispensing of pharmaceuticals by a physician, such dispensing shall not violate the requirements of State law. MCOs with a licensed pharmacy shall have a Pharmacy and Therapeutics Committee. Pharmaceutical services may be provided on the premises of the MCO or by contract with an independent licensed provider. The contract shall be available for inspection by the Department at all times.

3. When the MCO provides its own emergency services, facilities must be provided to ensure prompt diagnosis and emergency treatment including adequate Emergency Room space, separate from major surgical suites. In Emergency Room facilities provided for or arranged for by the MCO there shall be as a minimum: adequate oxygen, suction, CPR, diagnostic equipment, as well as standard emergency drugs, parenteral fluids, blood or plasma substitutes and surgical supplies. Radiology facilities, clinical laboratory facilities and current toxicology including antidotes shall be available at all times.

4. Personnel shall be trained and approved by an appropriate professional organization in the operation and procedures of emergency equipment.

69.607 Central Sterilizing and Supply

Autoclaves or other acceptable sterilization equipment shall be provided of a type capable of meeting the needs of the MCO and of a recognized type with approved controls and safety features. Bacteriological culture tests shall be conducted at least monthly. The maintenance program of the sterilization system shall be under the supervision of competent trained personnel.

PART SEVEN

SECTION 69.7 ADMINISTRATIVE REQUIREMENTS

69.701 Administration

The MCO shall designate an appropriate person or persons to handle the administrative functions of the MCO. These functions shall include the following responsibilities: interpretation, implementation and application of policies and programs established by the MCO's governing authority; establishment of safe, effective and efficient administrative management; control and operation of the services provided; authority to monitor or supervise the operation and in accordance with acceptable medical standards; and such other duties, responsibilities and tasks as the governing body or other designated authority may empower such individual(s).

69.702 Qualifications

Persons appointed to administrative positions in the MCO shall have the necessary current training and experience in the field of health care as appropriate to carry

out the functions of their job descriptions.

69.703 Medical Privileges

Participating physicians shall have hospital privileges commensurate with their contractual obligations. Physicians must be licensed in Delaware.

69.704 Medical Records

The MCO must maintain or provide for the maintenance of a medical records system which meets the accepted standards of the health care industry and the regulations of the Department.

A. These records shall include the following information: name, identification number, age, sex, residence, employment, patient history, physical examination, laboratory data, diagnosis, treatment prescribed and drugs administered.

B. The medical record should also contain an abstract summary of any inpatient hospital care or referred treatment.

C. Regulatory agencies shall have access to medical records for purposes of monitoring and review of MCO practices.

D. Enrollees' records shall be filed for five (5) years following active status before being destroyed.

69.705 Reporting Requirements and Statistics

The MCO shall submit reports as required by these regulations.

A. The MCO shall disclose to its enrollees the following information:

1. the patterns of utilization of its services based on the information in 69.405 A 6.; and
2. the location and hours of its inpatient and outpatient health services.

B. The following information is required to be submitted to the Department on an annual basis:

1. Physician visits per enrollee per year.
2. Hospital admissions per year and per 1,000 enrollees per year.
3. Hospital days per year and per 1,000 enrollees per year.
4. Average length of stay per hospital confinement.
5. Outside consultations per year and per 1,000 enrollees per year.
6. Emergency Room visits per year and per 1,000 enrollees per year.
7. Laboratory procedures per year and per 1,000 enrollees per year.
8. X-ray procedures per year and per 1,000 enrollees per year.
9. Total number of enrollees at the end of the year.
10. Total number of enrollees enrolled during the year.

11. Total number of enrollees terminated during the year.

12. Cost of operation.

13. Current provider directory including PCPs, specialists, facilities and ancillary health care services.

14. A statistical summary evaluating the network adequacy and accessibility to the enrolled population.

15. Annual ~~grievance/appeal~~ report as outlined in 69.404.I including total number of appeals, number of appeals at each grievance level, reason for appeals and resolution of appeals.

C. The following administrative reports are required by the Department whenever there is a change:

1. Full name of the Chief Executive Officer.
2. Full name of the Medical Director.
3. Address(es) of the office(s) in operation.
4. Name(s) of the hospital(s) used by the MCO

Appendix A

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEALTH FACILITIES LICENSING &
CERTIFICATION 302-577-6666 995-8521
Managed Care Organization APPLICATION FOR A
CERTIFICATE OF AUTHORITY AND ANNUAL
REPORT

A. IDENTIFYING INFORMATION

1. Name of applicant: _____
Address: _____

Telephone: _____

2. Chief Executive Officer: _____

3. Type of MCO: (Check one)
Staff Group Practice Individual Practice

Association Other _____

4. Anticipated date of operation: _____

5. Area of operation, i.e., county or statewide: _____

B. Statement of Certification and Acknowledgment:

I certify that the statements made in this application are accurate, complete, and current to the best of my knowledge and belief. I understand that this application does not relieve me of any responsibility under Part VIII, Title 16, Chapter 93 of the Delaware Code (~~Certificate of Need~~ Certificate of Public Review).

Signature of Chief Executive Officer Title Date

C. Fee Schedule (NOTE: Checks should be made payable to the State of Delaware)

Application Fee: \$375.00 _

Filing of Annual Report: \$250.00

D. Please return this application to:
Health Facilities Licensing & Certification
2055 Limestone Road, Suite 200
Wilmington, DE 19808

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122, 7906 (16 Del.C. 122, 7906)

NOTICE OF PUBLIC HEARING

These regulations, "The State of Delaware Regulations Governing a Detailed Plumbing Code," replace by rescission the current "State of Delaware Regulations Governing a Detailed Plumbing Code" previously adopted April 17, 1978, and most recently amended January 11, 1998. They are to be adopted in accordance with Chapter 1, Section 122 (3)(e), Title 16, **Delaware Code** and Chapter 79, Section 7906, Title 16, **Delaware Code** and will supersede all previous regulations concerning plumbing adopted by the former Delaware State Board of Health.

This comprehensive plumbing code establishes minimum regulations for plumbing systems using prescriptive and performance-related provisions. It is founded on broad-based principles that make possible the use of new materials and plumbing designs. The intent of this code is to provide a comprehensive set of regulations for plumbing systems consistent with and inclusive of the scope and content of a model plumbing code, the International Plumbing Code 2000.

A public hearing will be held on Friday, March 23, 2001 at 9:30 a.m., at the Jesse Cooper Building, third floor Room 309, located at the corner of Federal and Water Streets, Dover.

Copies of the proposed Code are available for review by appointment at the following locations:

Environmental Health Field Services
Williams State Service Center, 3rd floor
805 River Road
Dover, Delaware 19901
Phone: 302-739-5305

Environmental Health Field Services
2055 Limestone Road, Suite 100
Wilmington, DE 19808
Phone: 302-995-8650

Environmental Health Field Services
Georgetown State Service Center, Rm. 1000

546 S. Bedford Street
Georgetown, Delaware 19947
Phone: 302-856-5496

Anyone wishing to present his or her oral comments at the public hearing should contact Dave Walton at 302-739-4700 by March 19, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments on or before April 1, 2001 to:

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

Amendments To

STATE OF DELAWARE REGULATIONS GOVERNING A DETAILED PLUMBING CODE 2000 International Plumbing Code

These regulations were adopted April 17, 1978, effective August 1, 1978; amended December 19, 1983, effective February 1, 1984; amended April 26, 1991; amended February 19, 1992; amended May 11, 1995; amended January 11, 1998; amended [date to be determined], 2001 by the Secretary, Delaware Health and Social Services, in conformance within Chapter 79, Section 7906 and Chapter 1, Section 122(3)(e), Title 16, Delaware Code, and supersedes regulations previously adopted by the Delaware State Board of Health and the Secretary, Delaware Health and Social Services. These Regulations shall be effective [date to be determined].

SECTION 110.0 - ADOPTION:

That certain document entitled, "The International Plumbing Code/2000" is made a part hereof and the supplements therein include, identified as "Section 111.0., Additions, Deletions, Amendments and Clarifications," are hereby adopted as the "State of Delaware Regulations Governing A Detailed Plumbing Code." NOTE: The Amendments have been numbered to identify specific changes in the International Plumbing Code\2000.

SECTION 111.0 - ADDITIONS, DELETIONS, AMENDMENTS, and CLARIFICATIONS:

SECTION 111.1- TITLE - SECTION 101.1: is amended to read as follows:

These Regulations shall be known as the "State of Delaware Regulations Governing A Detailed Plumbing Code hereinafter referred to as 'this Code'".

SECTION 111.2 – SCOPE - SECTION - 101.2: is amended to delete the last sentence.

SECTION 111.3 - EXISTING INSTALLATIONS - SECTION - 102.2: is amended to read as follows:

The legal use and occupancy of any structure existing on July 1, 2000, or for which it had been heretofore approved, may be continued without change except as may be specifically covered in this Code or deemed necessary by the Deputy Code Official(s) for the general safety and welfare of the occupants and the public.

Exception:

Except that upon change of permit holder in facilities and operations regulated by the Delaware Division of Public Health such systems shall comply with the requirements of this Code and applicable regulations promulgated and standards established by the Delaware Division of Public Health.

SECTION 111.4 DUTIES AND POWERS OF THE CODE OFFICIAL AND PLUMBING INSPECTORS - SECTION 104.1: is amended to add the following sentence:

For the purpose of this document "Code Official" refers to the Secretary, Delaware Health and Social Services, or their designee. "Plumbing Inspectors" shall have such duties and powers as are enumerated in Title 16, Delaware Code, Section 7907 and shall have the authority of a Deputy Code Official as referenced in Section 103.3 of this Code.

SECTION 111.5 UNLAWFUL ACTS - SECTION 108.1: is amended to read:

It shall be unlawful for any person to work as a licensed plumber in the State of Delaware unless such person has received a license from the Delaware Department of Administrative Services, Division of Professional Regulation, showing that said person has been duly licensed as a plumber, except as provided by 24 Delaware Code 1813, and has a permit issued by the Division of Public Health.

Exception

The homeowner of a single-family residence occupied, or to be occupied by him/her, and not for sale, rent or lease, may perform plumbing work only on such residences itself, and/or auxiliary structures, and in compliance with a permit issued by the Division of Public Health, or applicable authority, and in compliance with all provisions of these regulations.

SECTION 111.6 - VIOLATION AND PENALTIES - SECTION 108.4: is amended to read:

Any person who shall violate any provisions of this Code, or shall fail to comply with the requirements thereof, or who shall install plumbing work in violation of an approved plan or directive of the Code Official or the Deputy Code Official(s), or of a permit or certificate issued under the provisions of this Code, shall be subject to penalties as provided by Chapter 79, Title 16, Delaware Code.

SECTION 111.7 – STOP WORK ORDERS - SECTION 108.5: is amended by deleting the language “shall be liable to a fine of not less than [AMOUNT] dollars or more than [AMOUNT]” and by adding:

shall be subject to penalties as provided by Chapter 79, Title 16, Delaware Code.

SECTION 111.8 - GENERAL DEFINITIONS - SECTION 202: is amended by adding the following definitions:

“Licensed Plumber: The term “Licensed Plumber” shall mean a person who has complied with the provisions of the Division of Professional Regulation and the Board of Plumbing Examiners, and has further met the certification, testing, bonding, and licensing requirements of the jurisdiction in which he/she plans to engage in the business of plumbing. The Licensed Plumber shall be recognized as being responsible for all work performed under a plumbing permit issued by the Division of Public Health.

“Supervision of Work: For the purposes of these regulations, supervision of work shall be defined as work completed under the permit of a licensed plumber while employed by the licensed plumber, or the same firm, partnership, corporation, or owners of the company as the licensed plumber.”

SECTION – 111.9 SEWER DEPTH - SECTION 305.6.1: is deleted in its entirety.

SECTION – 111.10 REQUIRED TESTS - SECTION 312.1: is amended by adding the following sentence at the end thereof:

In lieu of the presence of the deputy code official witnessing the test, the Licensed Plumber may certify in writing upon a prescribed form, that the plumbing system piping is in accordance with Section 312 of the regulations.

SECTION 111.11 - ACCESSIBLE PLUMBING FACILITIES - SECTION 404.1: is amended by the following:

All regulations pertaining to handicapped facilities in the International Plumbing Code will be governed by the most recent edition of the “American National Standards Institute (ANSI).

SECTION 111.12 – INSTALLATION - SECTION 502.1: is amended by adding the following sentence at the end thereof:

The first 12 inches of both hot and cold water lines shall be thermally rated for the maximum water temperature produced by the hot water heater.

SECTION 111.13 – SAFETY DEVICES - SECTION 504.6.2: is amended by deleting the existing language and

adding the following:

The discharge valve shall be equipped with an approved heat transfer fitting or metallic pipe.

SECTION 111.14 - TABLE 605.4 & 605.5: are amended by deleting the letters “M” and “WM” from copper tubing.

SECTION 111.15 – MATERIALS, JOINTS AND CONNECTIONS - SECTION 605.16.2: is amended by the adding the following sentence at the end thereof:

The use of all purpose glue is prohibited.

SECTION 111.16 - STANDPIPES - SECTION 802.4: is amended by adding the following sentence at the end thereof:

The top of standpipes shall be 42 inches (1066mm) above the finished floor.

SECTION 111.17 - MAIN VENT REQUIRED-SECTION 903.1: is deleted in its entirety and following is inserted in lieu of:

Every sanitary drainage system receiving the discharge of a sanitary fixture shall have a main vent three (3) inches in diameter.

SECTION 111.18 - PROCEDURES FOR LICENSE:

Every person desiring to register as a plumber engaged in the business of plumbing in the State of Delaware shall file an application with the Division of Professional Regulation, 861 Silver Lake Blvd., Dover, DE 19904.

SECTION 111.19 - VARIANCES: is amended by adding the following to read as follows:

Upon receipt of written application for a variance, the Deputy Code Official may:

(a) From time to time recommend granting written permission to vary from particular provisions set forth in this Regulation, when the extent of the variation is clearly specified and it is documented to the Secretary, Health and Social Services, or his/her appointed designee’s satisfaction that:

(1) Such variation is necessary to obtain a beneficial use of an existing facility, and:

(2) The variation is necessary to prevent a practical difficulty or unnecessary hardship; and

(3) Appropriate alternative measures have been taken to protect the health and safety of the public and assure that the purpose of the provisions from which the variation is sought will be observed.

(b) Within thirty (30) business days of the receipt of a written application for a variance, the Deputy Code Official shall recommend either granting the variance, or denying the variance or will request further information from the applicant.

(c) If the applicant has been denied a variance upon the recommendation of the Deputy Code Official, the applicant may appeal the decision by filing a written Notice of Appeal to the Secretary, Health and Social Services, or his/her designee, Division of Public Health, P.O. Box 637, Dover, Delaware 19903.

SECTION 111.20 – AIR ADMITTANCE VALVES – SECTION 917.1: is amended by adding the following sentence at the end of paragraph 917.1:

Air admittance valves must be approved by the Deputy Code Official prior to use or installation.

SECTION 111.21 – COMPUTERIZED VENT DESIGN - SECTION 919: is deleted in its entirety.

SECTION 111.22 – INTERCEPTORS AND SEPARATORS – SECTION 1003.3.4: is amended by adding the following to the end:

,or, be otherwise approved by the Code Official.

SECTION 111.23 – FUEL PIPING – SECTION 1201: is deleted in its entirety.

SECTION 111.24 – SPECIAL PIPING AND STORAGE SYSTEMS – SECTIONS 1202 - 1203: is deleted in its entirety and replaced with the following:

PLUMBING REQUIREMENTS IN FOOD ESTABLISHMENT KITCHENS

I. HANDSINK

A. This fixture, when located in food preparation, food dispensing, beverage dispensing (including bar service area), food storage and warewashing areas, must be certified or classified under an approved industry standard for food equipment, such as the National Sanitation Foundation (NSF) International, Environmental Testing Lab (ETL), Underwriter's Laboratory (UL) for Sanitation, Baking Industry Sanitation Standards Committee (BISSC), or equivalent.

B. A separate, single-compartment handwashing sink is **REQUIRED** in food preparation, food dispensing, and warewashing areas; and in, or immediately adjacent to, toilet rooms. Handsinks shall be installed within 25 travel feet within a direct line access of each primary work location.

C. A minimum hot water temperature of 110× F, delivered through a mixing valve or combination faucet, is **REQUIRED**.

D. If installed, self-closing, slow-closing, or metering faucets shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

E. A handwashing sink may not be used for any other

purpose.

F. An indirect drainline connection is not required.

G. Connection to a grease trap is not required.

II. FOOD PREPARATION SINK

A. Any sink in which food is washed or thawed under running water must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation, BISSC, or equivalent.

B. A food preparation sink may not be used for disposal of mop water or similar liquid wastes.

C. An indirect drainline connection through an air-gap is **REQUIRED**.

D. Connection to properly sized grease trap is **REQUIRED**.

III. SERVICE SINK (for use as janitorial sink, utility sink or mop sink)

A. Wherever practical, install this fixture outside of the food preparation, food dispensing, food storage and warewashing areas.

B. This fixture, when located in food preparation, food dispensing, food storage and warewashing areas, must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation, BISSC, or equivalent.

C. A minimum of one service sink or receptor is **REQUIRED** on each floor level of food operations. This fixture may be a sink or a curbed receptor.

D. An indirect drainline connection is not required.

E. Connection to a grease trap not required.

IV. WAREWASHING SINK

A. This fixture must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation or equivalent.

B. A sink of at least three separate compartments shall be provided for manually washing, rinsing and sanitizing equipment and utensils. Each sink compartment shall be large enough to accommodate the immersion of the largest equipment item or utensil.

C. A warewashing sink may not be used for handwashing or disposal of liquid wastes.

D. An indirect drainline connection is not required, unless this fixture is used for food preparation. (See paragraph IV.F. below for alternative use provision.)

E. Connection to a properly sized grease trap is **REQUIRED**.

F. Provision for alternative use of warewashing sink:

** If the warewashing sink will be used for washing or thawing food, a separate drainline connection from each sink compartment through an air-gap into a floor sink is **REQUIRED**. The installation of a properly sized grease trap downstream of the floor sink is **REQUIRED**. The

alternative use of a warewashing sink for food preparation requires prior approval from the Division of Public Health.

V. PRE-WASH SINK

A. This fixture must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation or equivalent.

B. An indirect drainline connection is not required.

C. Connection to a properly sized grease trap is **REQUIRED**.

D. If a food waste grinder is installed on this fixture, the grease trap must be designed and rated for such application, or a solids interceptor is required upstream of the grease trap.

VI. MECHANICAL WAREWASHER

A. This equipment must be certified or classified under an approved industry standard for food equipment, such as NSF International, ETL, UL for Sanitation or equivalent.

B. An indirect drainline connection through an air-gap is **REQUIRED**. (See paragraph VI.D below for alternative installation provision.)

C. Connection to a grease trap is **NOT APPROVED**, as elevated water temperatures, higher pressures and detergents have the capability of holding grease in suspension, which may then pass through and reduce the efficiency of the grease trap.

D. Provision for alternative installation of mechanical warewasher: If approved by the Division of Public Health, a direct drainline connection may be installed if the machine wastewater outlet is located within five feet (5 ft) of a properly trapped vented floor drain and the machine outlet is connected to the inlet side of the same properly vented floor drain trap.

VII. GREASE TRAP

A. Grease trap must be sized in accordance with PDI standard G101.

B. Grease trap connection to all fixtures that discharge grease-laden waste, including warewashing sinks, food prep sinks, pre-wash sinks for warewashing equipment, woks and other cooking equipment is **REQUIRED**.

In kitchens where trench drains or trough drains receive liquid waste from cooking equipment such as kettles or skillets, an indirect drainline connection from the equipment to a properly sized grease trap is **REQUIRED**.

C. Provision for alternative use of warewashing sink:

** If the warewashing sink will be used for washing or thawing food, a separate drainline connection from each sink compartment through an air-gap into a floor sink is **REQUIRED**. The installation of a properly sized grease trap downstream of the floor sink is **REQUIRED**. The alternative use of a warewashing sink for food preparation requires prior approval from the Division of Public Health.

PROCEDURE FOR SIZING A GREASE TRAP TO A SPECIFIC FIXTURE

1. Determine the liquid volume of the fixture in cubic inches draining to the grease trap.

2. Determine the liquid capacity of the fixture in gallons.

3. Determine the actual drainage load (75% of fixture capacity).

4. Determine the unit flow rate minimum for drainage period of 2 minutes.

Determine the unit liquid holding capacity minimum (40% of fixture capacity).

5. Select a unit corresponding to minimum unit flow rate and liquid holding capacity.

EXAMPLE OF SIZING FOR GREASE TRAP SELECTION

Select a grease trap to receive drainage from a three compartment warewashing sink with bowl dimensions of 18" W x 24" L x 12" D

1. Volume = 18in x 24in x 12in = 5184 cubic inches

2. Capacity = Volume (cu in) / 231 (cu in/gal) = 5184 / 231 = 22.4 gal

3. Drainage load = 22.4 gal x 0.75 = 16.8 x 3 compartments = 50.4, or approx. 50 gal

4. Unit flow rate minimum = 50 gal / 2 min = 25 gpm
Unit liquid holding capacity minimum = 67.3 x 0.40 = 26.9 gals

5. Select a grease trap with a minimum flow rate equal to or greater than **25 gpm**

The selected trap also must have a minimum liquid holding capacity of 26.9 gal.

VIII. WATER HEATER - Hot Water Supply Requirements

A. The water heater shall be sized to provide hot water as required to supply both the daily requirements and the hourly peak demands of the facility. The daily and hourly demand is based on the type of equipment and number of fixtures consuming hot water as required for food operations.

B. The total hot water availability in gallons per hour (gph) from a water heater is the sum of the unit storage capacity plus the recovery rate at a 100°F rise.

IX. UTILITY SERVICE INSTALLATION

A. Utility service lines including gas, plumbing and electrical shall be installed inside walls, above ceilings and below floors whenever structurally practical and in accordance with applicable code requirements.

B. If lines are run in front of walls, lines shall be installed with stand-off brackets or other secure mounting method, such that a minimum clearance of one inch (1")

exists between line and wall.

C. Exposed horizontal utility service lines may not be installed on the floor.

X. BACKFLOW PREVENTION

A. The air gap between the water supply inlet and the flood rim level of the plumbing fixture, food- or non-food equipment shall be at least twice the diameter of the water supply inlet and not less than one inch (1").

B. A backflow or back siphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (ASSE) series 1000 standards.

C. An air-gap or a backflow or back siphonage prevention device is required at water service connections on warewashing machines, steamers, and other food equipment.

D. Hose Connections Sillcocks, hose bibbs, wall hydrants and other openings with a hose connection shall be protected by an atmospheric type or pressure type vacuum breaker, or a permanently attached hose connection vacuum breaker.

E. Beverage Dispensers A double check valve with intermediate atmospheric vent conforming to ASSE 1012 is required on the water supply connection. A dual check valve conforming to ASSE 1032 is required on the beverage dispensing equipment.

F. No direct connection may exist between the sewage system and any drain originating from equipment in which food is placed.

G. Equipment and fixtures utilized for the storage, preparation and handling of food shall discharge through an indirect waste pipe by means of an air gap.

XI. JOINT SEALING

A. Joints formed where fixtures come in contact with walls or floors shall be sealed with an approved sealant to form a watertight joint against the mounting surface.

B. Where installation does not allow access for cleaning, fixtures shall be sealed to walls or adjoining equipment. Where not structurally practical, a minimum gap of one inch (1") shall exist between the fixture and walls or adjoining equipment.

SECTION 111.25 – APPENDIX F: is deleted in its entirety.

SECTION 111.26 - APPENDIX G: is deleted in its entirety.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
Section 122 (16 Del.C. 122)

SUMMARY OF PROPOSED REGULATIONS

STATE OF DELAWARE RULES AND REGULATIONS PERTAINING TO THE CONTROL OF COMMUNICABLE AND OTHER DISEASE CONDITIONS

These regulations replace regulations previously adopted August 2, 1984, and most recently amended March 13, 2000. They are to be adopted in accordance with Title 16, Part 1, Subchapter II, #122 et. Seq., Delaware Code. They will supersede all previous regulations concerning control of communicable and other disease conditions adopted by Delaware Health and Social Services.

The regulations establish and define authority for the control of communicable and other disease conditions in the State of Delaware. The regulations provide current required treatment for ophthalmia neonatorum. Reporting requirements for sexually transmitted diseases are clarified and simplified. Health care providers are required to report human immunodeficiency virus (HIV) infection in the same manner as other sexually transmitted diseases.

NOTICE OF PUBLIC HEARING

The Health Monitoring and Program Consultation Section, Division of Public Health of Delaware Health and Social Services, will hold a public hearing to discuss proposed Regulations for the Control of Communicable and Other Disease Conditions. These proposed regulations describe the reporting of HIV and other communicable diseases in the State of Delaware. The regulations apply to any health care provider, facility or laboratory diagnosing or treating individuals with a reportable disease condition.

This public hearing will be held April 9, 2001 in the Division of Natural Resources and Environmental Control (DNREC) Auditorium, 89 Kings Highway, Dover, DE from 4:00pm to 6:00pm.

Copies of the proposed regulation are available for review by calling:

Health Monitoring and Program Consultation
Division of Public Health
P.O. Box 637
Dover, DE 19901
Telephone: (302) 739-3033

Anyone wishing to present his or her oral comments at this hearing should contact Pat Zielen at (302) 739-3033 by

April 6, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by April 10, 2001 to:

Paul Silverman, Ph.D., Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19901

DELAWARE DEPARTMENT OF HEALTH & SOCIAL SERVICES

Regulations for the Control of Communicable and Other Disease Conditions

DIVISION OF PUBLIC HEALTH

Adopted August 2, 1984
Amended: Jun 21, 1986
Jan 6, 1989
Jun 16, 1989
Sep 1, 1989
Jan 12, 1990
Oct 19, 1990
Dec 10, 1993
Apr 13, 1995
Mar 13, 2000
Xxx, ss, 2001

**PART I
Applicable Codes**

These regulations are adopted by the Department of Health & Social Services pursuant to 16 Del. C. §122(1), (2), (3) (a and j), (4), (5); §128; §129; §151; §503; §504; §505; §507; §508; §702; §706 and 707. These regulations were originally adopted on August 2, 1984 effective September 1, 1984, and subsequently amended.

**PART II
Definitions**

When used in Parts II and III, the following terms shall mean:

1. "Carrier" - A person who harbors pathogenic organisms of communicable disease but who does not show clinical evidence of the disease and serves as a potential source of infection.
2. "Case" - A person whose body has been invaded by an infectious agent with the result that clinical symptoms have occurred.
3. "Child Care Facility" - Any organization or business created for, and having as its major purpose, the daily care and/or education of children under the age of 7 years.

4. "Communicable Disease" - An illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment.

5. "Contact" - A person or animal that has been in such association with an infected person or animal or a contaminated environment as to have had opportunity to acquire the infection.

6. "Designee" - The person named by the Director of the Division of Public Health to assume a specific responsibility.

7. "Division Director" - The Director of the Division of Public Health.

8. "Directly Observed Therapy (DOT)" - an adherence-enhancing strategy in which a health care worker or other designated person watches the patient swallow each dose of medication.

9. "Epidemic" or "Outbreak" - The occurrence in persons in a community, institution, region, or other defined area of cases of an illness of similar nature clearly in excess of normal expectancy.

10. HIV Infection - repeatedly reactive screening tests for HIV antibody (for example, enzyme immunoassay) with specific antibody identified by the use of supplemental tests such as Western Blot or immunofluorescence assay; or direct identification of virus in host tissues by virus isolation (for example, culture); or HIV antigen detection (for example p24 antigen); or a positive result on any other highly specific licensed test for HIV.

11. "Medical Examiner" - A physician appointed pursuant to 29 Del. C. §4703 or 7903(a)(3) who is authorized to investigate the causes and circumstances of death.

12. "Nosocomial Disease" - A disease occurring in a patient in a health-care facility and in whom it was not present or incubating at the time of admission.

13. "Notifiable Disease" - A communicable disease or condition of public health significance required to be reported to the Division of Public Health in accordance with these Rules.

14. "Notification" - A written or verbal report as required by any section of these Rules.

15. "Outbreak" - Refer to definition of "Epidemic".

16. "Post-Secondary Institution" - Means and includes state universities, private colleges, technical and community colleges, vocational technical schools and hospital nursing schools.

17. "Quarantine" - An official order that limits the freedom of movement and actions of persons or animals in order to prevent the spread of notifiable disease or other disease condition. The Division Director or designee shall determine which persons or animals are subject to quarantine

and shall issue appropriate instructions.

18. "Resistant Organism" - Any organism which traditionally was inactivated or killed by a drug but has, over time, developed mechanisms to render that drug ineffective.

19. "Sensitive Situation" - A setting, as judged by the Director of the Division of Public Health or designee in which the presence of a person or animal infected with or suspected of being infected with a notifiable or other communicable disease or condition which may affect the public health would increase significantly the probability of spread of such disease and would, therefore, constitute a public health hazard. Sensitive situations may include, but are not limited to, schools, child-care facilities, hospitals, and other patient-care facilities, food storage, food processing establishments or food outlets.

20. "Source of Infection" - The person, animal, object or substance from which an infectious agent passes directly to the host.

21. "Suspect" - A person or animal whose medical history and symptoms suggest that he or it may have or may be developing a communicable disease condition.

PART III Regulations

Section 1. Notifiable Diseases or Conditions to be Reported

The notifiable diseases specified in the Appendices to these regulations are declared as dangerous to the public health. The occurrence or suspected occurrence of these diseases, including those identified after death, shall be reported as defined in Section 3 to the Division of Public Health. Such reports shall be made within 48 hours of recognition except as otherwise provided in these regulations. Reports shall be made by telephone or in writing except for certain specified diseases as indicated by a (T) which shall be reported immediately by telephone. Certain diseases are reportable in number only and are indicated by an (N). The Division of Public Health may list additional diseases and conditions on its reporting forms for which reporting is encouraged but not required.

Section 2. Report of Outbreaks

Any person having knowledge of any outbreak of any notifiable disease or clusters of any illness which may be of public concern, shall report such outbreaks within 24 hours to the Division Director or designee.

Section 3. Reporting of Notifiable Diseases

3.1 Attending Practitioners

Reports required by Sections 1 and 2 shall be made to the Division Director or designee by any attending practitioner, licensed or otherwise permitted in Delaware to practice medicine, osteopathic medicine, chiropractic,

naturopathy, or veterinary medicine, who diagnoses or suspects the existence of any disease on the notifiable disease list or by the medical examiner in cases of unattended deaths.

3.2 Others

In addition to those who are required to report notifiable diseases, the following are requested to notify the Division Director or designee of the name and address of any person in his or her family, care, employ, class, jurisdiction, custody of control, who is suspected of being afflicted with a notifiable disease although no practitioner, as in Section 3.1 above, has been consulted: every parent, guardian, householder; every nurse, every dentist, every midwife, every superintendent, principal, teacher or counselor of a public or private school; every administrator of a public or private institution of higher learning; owner, operator, or teacher of a child-care facility; owner or manager of a dairy, restaurant, or food storage, food-processing establishment or food outlet; superintendent or manager of a public or private camp, home or institution; director or supervisor of a military installation; military or Veterans Administration Hospital, jail, or juvenile detention center.

3.3 Hospitals

3.3.1 The chief administrative officer of each civilian hospital, long-term care facility, or other patient-care facility shall (and the United States military and Veterans Administration Hospitals are requested to) appoint an individual from the staff, hereinafter referred to as "reporting officer," who shall be responsible for reporting cases or suspect cases of diseases on the notifiable disease list in persons admitted to, attended to, or residing in the facility.

3.3.2 Such case reports shall be made to the Division Director or designee within 48 hours of recognition or suspicion, except as otherwise provided in these regulations.

3.3.3 Reporting of a case or suspect case of notifiable disease by a hospital fulfills the requirements of the attending practitioner to report; however, it is the responsibility of the attending practitioner to ensure that the report is made pursuant to Section 3.1.

3.3.4 The hospital reporting officer shall also report to the Division Director or designee communicable diseases not specified in Section 1, should the disease occur in a nosocomial disease outbreak situation which may significantly impact the public health. Such reports shall be made within 24 hours of the recognition of such a situation.

3.4 Laboratories

3.4.1 Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiological examination shall report results of laboratory examinations of specimens indicating or suggesting the existence of a notifiable disease to the Division of Public Health within 48 hours of when the

results were obtained or as soon as possible, except as otherwise provided in these regulations.

3.4.2 The Director or designee may contact the patient or the potential contacts so identified from laboratory reports only after consulting with the attending practitioner, when the practitioner is known and when said consultation will not delay the timely control of the a communicable disease.

3.4.3 Laboratories identifying salmonella or shigella organisms in the stool specimens shall forward cultures of these organisms or the stool specimens themselves to the Public Health Laboratory for confirmation and serotyping.

3.4.4 Reporting of antibiotic resistant organisms
Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiologic examination yields a non-susceptible species of microorganism as listed in Appendix II, will report the infected person's name, address, date of birth, race, sex, site of isolation, date of isolation and MIC/Zone diameter to the Division of Public Health. In addition, the number of susceptible and non-susceptible isolates of any of these organisms shall be reported monthly to the Division of Public Health.

3.5 Confidentiality

Information identifying persons or institutions submitted in reports required in Sections 3.1 - 3.4 shall be held confidential to the extent permitted by law.

3.6 Information in Reports

Information included in reports required in Sections 3.1-3.4 shall contain sufficient information to contact the patient and/or the patient's attending physician. When available, the name, address, telephone number, date of birth, race, gender, and disease of the person ill or infected; the date of onset of illness; the name, address, and telephone number of the attending physician; and any pertinent laboratory information, shall be provided.

Section 4. Investigation of Case

4.1 Action to Be Taken

Upon being notified of a case or suspected case of a notifiable disease or an outbreak of a notifiable disease or other disease condition in persons or animals, the Director of the Division or designee may take action as permitted in these Rules, and additionally as deemed necessary to protect the public health. If the nature of the disease and the circumstances warrant, the Director of the Division or designee may make or cause to be made an examination of the patient to verify the diagnosis, make an investigation to determine the source of infection, and take other appropriate action to prevent or control the spread of the disease. These actions may include, but shall not be limited to, confinement on a temporary basis until the patient is no longer infectious,

and obligatory medical treatment in order to prevent the spread of disease in the community.

4.2 Examination of Patient

Any person suspected of being afflicted with any notifiable disease shall be subject to physical examination and inspection by any designated representative of the Division of Public Health, except that a duly authorized warrant or court order shall be presented to show just cause in instances where the suspect refuses such examination and inspection. Such examination shall include the submission of bodily specimens when deemed necessary by the Division Director or designee.

4.3 Sensitive Situations

4.3.1 No person known to be infected with a communicable disease or suspected of being infected with a communicable disease shall engage in sensitive situations as defined in Part II of these regulations until judged by the Division Director or designee to be either free of such disease or no longer a threat to public health. Such action shall be in accord with accepted public health practice and reasonably calculated to abate the potential public health risk.

4.3.2 When, pursuant to Section 4.3.1, it is necessary to require that a person not engage in a sensitive situation because that person is infected or suspected of being infected with a communicable disease, the Division Director or designee shall provide, in writing, instructions specifying the nature of the restrictions and conditions necessary to terminate the restrictions. These written instructions shall be provided to the person infected or suspected of being infected with a communicable disease and to that person's employer or other such individual responsible for the sensitive situation.

4.3.3 The Division Director or designee shall have the authority to exclude from attendance in a child care facility any child or employee suspected of being infected with a communicable disease that, in the opinion of the Division Director or designee, significantly threatens the public health. In addition, no person shall attend or be employed in a child care facility who has the following symptoms:

(a) unusual diarrhea, severe coughing, difficult or rapid breathing, yellowish skin or eyes, pinkeye, or an untreated louse or scabies infestation;

(b) fever (100°F by oral thermometer or 101°F by rectal thermometer or higher) accompanied by one of the following: unusual spots or rashes, sore throat or trouble swallowing, infected skin patches, unusually dark tea-colored urine, gray or white stool, headache and stiff neck, vomiting, unusually cranky behavior, or loss of appetite.

(c) any other symptoms which, in the opinion of the Division Director or designee suggest the presence of a communicable disease that significantly threatens the

public health. Exclusion from a childcare facility in this case shall be effective upon written notification pursuant to Section 4.3.2.

Section 5. Quarantine

5.1 Establishment

When quarantine of humans is required for the control of any notifiable disease or other disease or condition, the Division Director or designee shall have the authority to initiate procedures to establish a quarantine.

5.2 Requirements

5.2.1 The Division Director or designee shall ensure that provisions are made for proper observations of such quarantined persons as frequently as necessary during the quarantine period.

5.2.2 Quarantine orders shall be in effect for a time period in accord with accepted public health practice.

5.3 Transportation

5.3.1 Transportation or removal of quarantined persons may be made only with prior approval of the Division Director or designee.

5.3.2 Transportation or removal of quarantined persons shall be made in accordance with orders issued by the Division Director or designee.

5.3.3 Quarantine shall be resumed immediately upon arrival of quarantined person at point of destination for the period of time in accord with accepted public health practices.

5.4 Disinfection

5.4.1 Concurrent disinfection is required of infectious or potentially infectious secretions or excretions of any quarantined person or animal or of objects contaminated by such secretions or excretions. The collection, storage and disposal, of such contaminated matter and disinfection procedures shall be approved by the Division Director or designee.

5.4.2 Disinfection shall also be carried out at the termination of the period of quarantine and shall be applied to the quarter vacated. The disinfection procedures shall be as approved by the Division Director or designee.

Section 6. Control of Specific Communicable Diseases

6.1 Vaccine Preventable Diseases

6.1.1 All preschool children who are enrolled in a child care facility must be age-appropriately vaccinated against diseases prescribed by the Division Director. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation.

6.1.2 Any child entering private school must be age-appropriately vaccinated against diseases prescribed by

the Division Director, prior to enrolling in school. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation. This provision pertains to all children between the ages of 2 months and 21 years entering or being admitted to a Delaware private school for the first time including, but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from public schools.

6.1.3 Acceptable documentation of the receipt of immunization as required by Sections 6.1.1 - 6.1.2 shall include either a medical record signed by a physician, or a valid immunization record issued by the State of Delaware or another State, which specifies the vaccine given and the date of administration.

6.1.4 Immunization requirements pursuant to sections 6.1.1 - 6.1.2 shall be waived for:

(a) children whose physicians have submitted, in writing, that a specific immunizing agent would be detrimental to that child; and,

(b) children whose parents or guardians present a notarized document that immunization is against their religious beliefs.

6.1.5 Child care facilities and private schools (grades K-12) shall maintain on file an immunization record for each child. The facility will also be responsible to report to the Division Director or designee on an annual basis the immunization status of its enrollees.

6.1.6 Parents whose children present immunization records which show that immunizations are lacking will be allowed 14 days (or such time as may be appropriate for a particular vaccination) to complete the required age-appropriate doses of vaccine for their children. In instances where more than 14 days will be necessary to complete the age-appropriate immunization schedule, an extension may be allowed in order to obtain the required immunizations. Extension of the 14-day allowance because of missed appointments to receive needed immunizations shall not be permitted.

6.1.7 When a child's records are lost and the parent states that the child has completed his/her series of immunizations, or a child has been refused admission or continued attendance at a child care facility or private school for lack of acceptable evidence of immunization as specified in this regulation, a written certification must be provided by a health care provider who has administered the necessary age-appropriate immunizations to the child according to the current ACIP immunization schedule.

6.1.8 It is the responsibility of the child care facility or private school to exclude a child prior to admission or from continued attendance who has failed to

document required immunizations pursuant to this section.

6.1.9 Upon the occurrence of a case or suspect case of one of the vaccine preventable diseases specified in pursuant to sections 6.1.1 and 6.1.2, any child not immunized against that disease shall be excluded from the premises, until the Division Director or designee has determined that the disease risk to the unimmunized child has passed. Such exclusion shall apply to all those in the facility who are admitted under either medical or religious exemption as well as to those previously admitted who have not yet received vaccine against the disease which has occurred. If, in the judgment of the Division Director or designee, the continued operation of the facility presents a risk of the spread of disease to the public at large, he/she shall have the authority to close the facility until the risk of disease occurrence has passed.

6.1.10 All full-time students of post-secondary educational institutions and all full and part-time students in such educational institutions if engaged in patient-care related curriculums (included but not limited to nursing, dentistry and medical laboratory technology), shall be required to show evidence of immunity to measles, rubella and mumps prior to enrollment by the following criteria:

1. Measles immunity:

(a) persons born before January 1, 1957;

or

(b) physician documented history of measles disease; or

(c) serological confirmation of measles immunity; or

(d) a documented receipt from a physician or health facility that two doses of measles vaccine were administered after 12 months of age.

2. Rubella immunity:

(a) persons born before January 1, 1957; except women who could become pregnant; or

(b) laboratory evidence of antibodies to rubella virus; or

(c) a documented receipt from a physician or health facility that rubella vaccine was administered on or after 12 months of age.

3. Mumps immunity:

(a) persons born before January 1, 1957;

or

(b) physician diagnosed history of mumps disease; or

(c) laboratory evidence of immunity; or

(d) a documented receipt from a physician or health facility that mumps vaccine was administered on or after 12 months of age.

6.1.11 Immunization requirements pursuant to section 6.1.10 shall be waived for:

(a) A student whose licensed physician certifies that such immunization may be detrimental to the

student's health;

(b) A student who presents a notarized document that immunization is against their religious beliefs.

6.1.12 The student health service, the admissions office and the office of the university or college registrar are jointly responsible for implementing Section 6.1.10 through notification of immunization requirements, the collection and verification of documented vaccine histories, identification and notification of students not in compliance and imposition of sanctions for non-compliance.

6.1.13 Students who can not show evidence of immunity to measles pursuant to ~~7.1.10~~ 6.1.10 and who cannot show documented receipt of ever having received measles vaccine shall be permitted to enroll on the condition that 2 doses be administered within 45 days or at the resolution of an existing medical contraindication. ~~However, measles vaccine shall not be given closer than 28 days apart.~~ Students who cannot show evidence of immunity to rubella and/or mumps or who have had only 1 dose of measles vaccine shall be permitted to enroll on the condition that measles, mumps and rubella immunizations be obtained within 14 days or at the resolution of an existing medical contraindication. However, in implementing these requirements, doses of a measles containing vaccine shall not be given closer than 28 days apart.

6.1.14 The Division Director may maintain a registry of the immunization status of persons vaccinated against any vaccine preventable diseases (hereafter called an "immunization registry").

6.1.14.1 Physicians and other health care providers who give immunizations shall report information about the immunization and the person to whom it was given for addition to the immunization registry in a manner prescribed by the Division Director or designee.

6.1.14.2 The Division Director or designee may disclose information from the immunization registry without a patient's, parent's, or guardian's written release authorizing such disclosure to the following:

(a) The person immunized, or a parent or legal guardian of the person immunized, or persons delegated in writing by same.

(b) Employees of public agencies or research institutions, however only when it can be shown that the intended use of the information is consistent with the purposes of this section.

(c) Health records staff of school districts and child care facilities.

(d) Persons who are other than public employees who are entrusted with the regular care of those under the care and custody of a state agency including but not limited to operators of day care facilities, group, residential care facilities and adoptive or foster parents.

(e) Health insurers, however only when

the person immunized is a client of the health insurer.

(f) Health care professionals or their authorized employees who have been given responsibility for the care of the person immunized.

6.1.14.3 If any person authorized in subsection 6.1.14.2 discloses information from the immunization registry for any other purpose, it is an unauthorized release and such person may be subject to civil and criminal penalty.

6.2 Ophthalmia Neonatorum

See ~~16 Del. C. §803 and the Department of Health and Social Services regulations promulgated thereunder entitled "Regulations Governing Treatment of the Eyes of Newborns"~~.

Any physician, nurse, midwife, or other health care provider so permitted to under the law, who attends the birth of an infant in Delaware, shall provide or cause to be provided prophylactic treatment against inflammation of the eyes of the newborn. Said prophylactic treatment shall be provided within 1 hour of birth and consist of (1) 1% silver nitrate in single-dose containers, or (2) a 1-2 centimeter ribbon of sterile ophthalmic ointment containing tetracycline (1%) or erythromycin (0.5%) in single-use tubes, or (3) other treatment recommended for this purpose as published in the most recent edition of the U.S. Preventive Services Task Force, *Guide to Clinical Preventive Services*.

6.3 Sexually Transmitted Diseases (STDs)

6.3.1 ~~The following diseases Appendix I lists STDs regarded to~~ cause significant morbidity and mortality, can be screened, diagnosed and treated, or are of major public health concerns such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as sexually transmitted and reportable pursuant to Title 16 ~~Del.C.~~, Chapter 7. For the purposes of this section, a suspect is any person (a) having positive or clinical findings of a STD; or (b) in whom epidemiologic evidence indicates an STD may exist, or is identified as a sexual contact of an STD case, and is provided treatment for the STD on that basis.

~~6.3.1.1 Class A: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported individually.~~

~~Acquired Immune Deficiency Syndrome (AIDS), (only if satisfying the case definition of the federal Centers for Disease Control)~~

~~Chaneroid~~

~~Chlamydia trachomatis infections~~

~~Chlamydia trachomatis infections of newborns~~

~~Neisseria gonorrhoea infections (gonorrhoea and related conditions)~~

~~Granuloma inguinale~~

~~Hepatitis B~~

~~Herpes (congenital only)~~

~~Lymphogranuloma venereum~~

~~Pelvic Inflammatory Disease (only gonococcal and/or chlamydial)~~

~~Syphilis~~

~~6.3.1.2 Class B: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported by number only in demographic categories (for example, age and sex) or methods prescribed and furnished by the Division of Public Health, and from health care professionals or health facilities specified by the Section.~~

~~Herpes (genital)~~

~~Human Immunodeficiency virus (HIV)*~~

~~Human papillomavirus (genital warts)~~

~~*Tests which employ an ELISA technique to detect antibodies shall be reported only if confirmed with a Western Blot or other confirmatory test.~~

~~6.3.1.3 Class C: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported immediately by telephone or other rapid means of communication.~~

~~Congenital syphilis~~

6.3.2 Reporting STDs

6.3.2.1 A physician or any other health care professional who diagnoses, suspects or treats a ~~reportable Class A or Class C~~ STD and every administrator of a health facility or ~~state, county, or city~~ prison in which there is a case of a ~~Class A or Class C~~ reportable STD shall report such case to the Division of Public Health ~~specifying~~. ~~Unless reportable in number only as specified in Appendix I, reports provided under this rule shall specify~~ the infected person's name, address, date of birth, gender and race as well as the date of onset, name and stage of disease, type and amount of treatment given and the name and address of the submitting health professional. ~~Reports of Class A diseases shall be placed into the United States mail, telephoned, or otherwise routed to the appropriate agency of the Division of Public Health within one working day of diagnosis, suspicion or treatment. Reports of Class C disease shall be telephoned within one working day of diagnosis, suspicion or treatment.~~

6.3.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopic, cultural, serological, or other evidence suggestive of a ~~Class A or Class C~~ reportable STD shall notify the Division of Public Health. ~~Reports of Class A diseases shall be placed in the United States mail, telephoned, or otherwise routed to the appropriate agency of the Division of Public Health within one working day of identification of evidence suggestive of a STD. Reports shall include Unless reportable in number only as specified in Appendix I, reports provided under this rule shall specify~~ the name, date of birth, race, gender and address of the persons from whom the specimen was obtained, laboratory findings, and the name and address of

the physician and that of the processing clinical laboratory.

~~6.3.2.3 All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report Human Immunodeficiency Virus (HIV) as a Class A STD. Tests which employ an ELISA technique to detect antibodies shall be reported only if confirmed with a Western Blot or other confirmatory test.~~

Reports required by this Section for STD's designated with the letter "T" in Appendix I shall be made by telephone, fax, or other rapid electronic means within 1 working day. Reports required by this Section for STD's designated with the letter "N" in Appendix I shall be made at the request of the Division of Public Health, in number only, and in demographic categories specified by the Division of Public Health. All other reports required by this Section for STD's listed in Appendix I shall be placed into the United States mail, faxed, telephoned, or otherwise routed to the Division of Public Health within one working day of diagnosis, suspicion, or treatment.

6.3.2.4 All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of Title 16 Del. Code, §710, and §711. From information received from laboratory notifications, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person from whom a specimen was obtained. However, if delays resulting from informing the physician may enhance the spread of the STD, or otherwise endanger the health of either individuals or the public, the Division of Public Health may contact the person without first informing the attending physician.

~~6.3.2.5 Any person or facility required to report a STD under this Section laboratory that examines specimens for the purpose of finding evidence of an STD shall permit the Division of Public Health to examine the records of said laboratory in order to evaluate compliance with this section.~~

6.4 Infection with Human Immunodeficiency Virus (HIV)

6.4.1 HIV infection is regarded to cause significant morbidity and mortality, can be screened, diagnosed and treated, and is of major public health concern, such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as notifiable and reportable pursuant to Title 16 Del. Code, Chapter 5.

6.4.2 Reporting HIV Infection

6.4.2.1 A physician or any other health care provider who diagnoses or treats HIV and every administrator of a health care facility or prison in which there is an HIV infected person shall report such information to the Division of Public Health. Reports provided under

this rule shall specify the infected person's name, address, date of birth, gender, mode of transmission and race as well as the date of HIV positive laboratory result, and stage of disease, type and amount of treatment given and the name and address of the submitting health professional.

6.4.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields serological, or other evidence of HIV, shall notify the Division of Public Health. Reports provided under this rule shall specify the name, date of birth, race, gender and address of the person from whom the specimen was obtained, laboratory findings, and the name and address of the physician and that of the processing clinical laboratory.

6.4.2.3 Reports made on the basis of an HIV test to detect antibodies shall only be made if confirmed with a Western Blot or other confirmatory test.

6.4.2.4 All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report HIV consistent with 6.4.2.2.

6.4.2.5 Reports of HIV infection required by Section 6.4 shall be placed into the United States mail, using a special envelope that will be provided by the Division of Public Health, and routed to the Division within 48 hours of diagnosis or treatment. Any other reporting method must be approved in advance and must be in a time frame acceptable to the Division.

6.4.2.6 Any laboratory that examines specimens, or reporting source finding evidence of HIV, shall permit the Division of Public Health to examine the records of said laboratory, facility, or office in order to evaluate compliance with this section.

6.4.2.7 As it is the intent of the Division of Public Health to continue the availability of anonymous HIV counseling and testing, and as it is not the practice to collect the name or other identifying information from a person who is anonymously tested for HIV, and therefore no name is available to be reported, nothing in these regulations shall preclude the performance of anonymous HIV testing.

6.4.3 Confidentiality of HIV Reports

6.4.3.1 The Division of Public Health will evaluate reports of HIV for completeness and potential referrals for service. Once this function is completed, the patient's name will be converted to a code and then destroyed. From that time forward, the code will be used in lieu of the name to determine if the patient has been previously reported. In carrying out this function, the Division shall destroy the name as expeditiously as possible, but not later than 90 days from receipt of the report.

6.4.3.2 The Division of Public Health will evaluate its procedures for HIV reporting on a continuous basis after implementation for timeliness, completeness of reporting, and security of confidential information.

6.4.3.3 The Division of Public Health will follow the December 10, 1999 Morbidity and Mortality Weekly Report Recommendations and Reports, "CDC Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome" document as it pertains to patient records and confidentiality, or any subsequent revisions of said document.

6.4.3.4 All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of Title 16 Del. Code, §710, §711 and §1201-4, §1201A-4A. Any person aggrieved by a violation of this Section shall have a right of action in the Superior Court and may recover for each violation:

a. Against any person who negligently violates a provision of this regulation, damages of \$1,000 or actual damages, whichever is greater.

b. Against any person who intentionally or recklessly violates a provision of this subchapter, damages of \$5,000 or actual damages, whichever is greater.

c. Reasonable attorneys' fees.

d. Such other relief, including an injunction, as the court may deem appropriate.

e. Any action under this regulation is barred unless the action is commenced within 3 years after the cause of action accrues. A cause of action will accrue when the injured party becomes aware of an unauthorized disclosure.

6.4.3.5 From information received from reports of HIV infection, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person on whom the report is made. However, if delays resulting from informing the physician may enhance the spread of HIV, or otherwise endanger the health of any individuals, the Division of Public Health may contact the person without first informing the attending physician.

6.4.4 6.3.3 Privilege to Duty to Disclose the Identity of Sexual or Needle-sharing Partners of HIV Infected Patients and Their Partners

6.4.4.1 6.3.3.1 Any physician, or any other licensed health care professional personnel acting on the orders of a physician, (hereafter referred to as provider), diagnosing or caring for an HIV infected patient shall disclose the identity of the patient or the patient's sexual or needle-sharing partner(s) to the Division of Public Health so that the partner(s) may be notified of his or her risk of infection, provided that:

a. The patient's condition satisfies the Centers for Disease Control and Prevention definition of

AIDS, or has an HIV infection as evidenced by a positive antibody test which is confirmed by Western Blot, or based upon other tests accepted by prevailing medical opinion, the patient is considered to be infected with HIV;

b. The provider knows of an identifiable partner at risk of infection who may not have been informed of their potential risk; and

c. The provider believes there is a significant risk of harm to the partner; and

d. The provider believes that the partner does not suspect that he or she is at risk; and

e. d. Reasonable efforts have been made to counsel the patient pursuant to 16 Del. C. Section 1202(e), urging the patient to notify the partner, and the patient has refused or is considered to be unlikely to notify the partner; and

f. e. The provider has made reasonable efforts to inform the patient of the intended disclosure and to give the patient the opportunity to express a preference as to whether the partner be notified by the provider, the patient, or the Division.

6.4.4.2 6.3.3.2 Any provider diagnosing or caring for an HIV infected patient may shall also report to the Division of Public Health relevant facts about a when disclose the identity of the patient or the patient's sexual or needle-sharing partner to the Division so that the partner may be notified of his or her risk of infection, when:

a. The patient requests the provider to make such notification for the purposes of obtaining assistance in the notification of a partner; or

b. The patient that does not pose a threat to an identifiable partner but, in the professional judgment of the provider based upon stated intended acts, the patient may be dangerous threaten further spread of HIV to the general population. In this instance the conditions specified in Sections 6.3.3.4.4.1(a), 6.3.3.4.4.1 (d e) and 6.3.3.4.4.1 (e f) shall apply. Disclosure shall be for the purpose of providing appropriate counseling to the patient.

6.4.4.3 6.3.3.3 Procedures for disclosing information pursuant to this section shall be specified by the Division. Such procedures shall (a) include the requirement that, prior to the Division identifying and notifying a partner, reasonable efforts be made by the Division to counsel the patient and urge the patient's voluntary notification of a partner; (b) specify Division employees permitted to receive the disclosed information; and (c) describe the manner in which partners will be notified pursuant to these regulations.

6.4.4.4 6.3.3.4 The provider will prepare and maintain contemporaneous records of compliance with each element of these regulations.

6.3.3.5 Nothing in this section shall constitute a duty upon the provider to disclose the identity of the patient or the patient's sexual or needle-sharing partner to the Division for the purpose of notifying a partner of the risk

of HIV infection. A cause of action shall not arise under this section for the failure to make such disclosure.

6.5.4 ~~6.4~~ Tuberculosis

6.5.1 ~~6.4.1~~ Any person afflicted with or suspected of being afflicted with tuberculosis disease and in need of hospitalization and unable to pay the cost, shall be hospitalized at public expense wherever and whenever facilities are available and provided that private or third party funds are not available for this purpose.

6.5.2 ~~6.4.2~~ Reporting Tuberculosis

6.5.2.1 ~~6.4.2.1~~ Physicians, pharmacists, nurses, hospital administrators, medical examiners, morticians, laboratory administrators, and others who provide health care services to a person with diagnosed, suspected or treated tuberculosis (TB) shall report such a case to the Division of Public Health specifying the infected person's name, address, date of birth, race, gender, date of onset, site of disease, prescribed anti-TB medications, and, in the case of laboratory administrators, the name and address of the submitting health professional. A report shall be telephoned into the Division of Public Health within two working days of the provision of service or laboratory finding.

6.5.2.2 ~~6.4.2.2~~ Any person who is in charge of a clinical or hospital laboratory or other facility in which a laboratory examination of sputa, gastric contents, or any other specimen derived from a human body yields microscopic, cultural, serological or other evidence suggestive of tubercle bacilli shall notify the Division of Public Health by telephone within two working days of the occurrence.

6.5.2.3 ~~6.4.2.3~~ Any provider who has knowledge about a person with multiple drug-resistant tuberculosis (MDR-TB), even if the confirmed or suspected TB cases had been previously reported, shall report the occurrence to the Division of Public Health within two days of the occurrence.

6.5.2.4 ~~6.4.2.4~~ Persons with TB who have demonstrated an inability or an unwillingness to adhere to a prescribed treatment regimen, who refuse medication, or who show other evidence of not taking anti-TB medications as prescribed, shall be reported to the Division of Public Health within two days of the occurrence.

6.5.3 ~~6.4.3~~ Diagnostic Examinations

6.5.3.1 ~~6.4.3.1~~ Any persons suspected of having infectious tuberculosis shall have a Mantoux tuberculin skin test, a chest radiograph, and laboratory examinations of sputum, gastric contents or other body discharges as may be required by the Division Director or designee to determine whether said patient represents an infectious case of tuberculosis.

6.5.3.2 ~~6.4.3.2~~ The Division Director or designee shall determine the names of household and other contacts who may be infected with tuberculosis and cause

them to be examined for the presence of tuberculosis disease.

6.5.4 ~~6.4.4~~ Clinical Management

6.5.4.1 ~~6.4.4.1~~ In addition to fulfilling the reporting requirements of ~~6.4.1~~ 6.5.2, providers shall manage persons with active TB disease by following one of three courses of action:

(a) they shall immediately refer the client to the Division of Public Health for comprehensive medical and case management services; or

(b) they shall provide comprehensive assessment, treatment, and follow-up services (including patient education, directly observed therapy and contact investigation) to the client and his/her contacts consistent with current American Thoracic Society and the Centers for Disease Control and Prevention (ATS/CDC) guidelines; or

(c) they shall initiate appropriate medical treatment and refer the client to the Division of Public Health for coordination of community services and case management including directly observed therapy (DOT).

If the health care provider chooses (b) or (c) above, then the Division Director or designee may ask the health care provider for information about the care and management of the patient, and the health care provider shall assure that the requested information is communicated.

6.5.4.2 ~~6.4.4.2~~ Patients with infectious tuberculosis who are dangerous to public health may be required by the Division Director or designee to be hospitalized, isolated, or otherwise quarantined. Whenever facilities for adequate isolation and treatment of infectious cases are available in the home and patient will accept said isolation, it shall be left to the discretion of the Division Director or designee as to whether these or other facilities shall be used.

Section 7. Preparation for Burial.

See 16 Del. C. Chapter 31 and Department of Health and Social Services regulations promulgated thereunder, entitled "Regulations Concerning Care and Transportation of the Dead".

Section 8. Disposal of Infectious Articles, Remains

No person shall dispose of articles, or human or animal remains known or suspected to be capable of infecting others with a communicable disease in such a manner whereby exposure to such infectious agents may occur. See also "Regulations Concerning Care and Transportation of the Dead", Section 10 ("Disposition of Amputated Parts of Human Bodies").

Section 9. Diseased Animals.

9.1 Importation and Sale

No person shall bring into this state or offer for sale domestic or wild animals infected or suspected to be infected

with a disease communicable from animals to man.

9.2 Notification

It shall be the duty of persons having custody of care of animals infected or suspected to be infected with a disease transmitted from animals to man to notify the Division Director or designee of the infection.

Section 10. Notification of Emergency Medical Care Providers of Exposure to Communicable Diseases.

10.1 Definitions

For the purposes of this section, the following definitions shall apply.

a. "Emergency medical care provider" - fire fighter, law enforcement officer, paramedic, emergency medical technician, correctional officer, ambulance attendant, or other person who serves as employee or volunteer of an ambulance service and/or provides pre-hospital emergency medical service.

b. "Receiving medical facility" - hospital or similar facility that receives a patient attended by an emergency medical care provider for the purposes of continued medical care.

c. "Universal precautions" - those precautions, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments, that minimize the risk of transmission of communicable diseases between patients and health care providers. Universal precautions require that all blood, body fluids, secretions, and excretions of care providers use appropriate barrier precautions to prevent exposure to blood and body fluids of all patients at all times.

10.2 Universal Precautions

10.2.1 Didactic Instruction

Education and training with respect to universal precautions shall be a mandatory component of any required training and any required continuing education for all emergency medical care providers who have patient contact. Training shall be appropriately tailored to the needs and educational background of the person(s) being trained. Training shall include, but not be limited to, the following:

a. Mechanisms and routes of transmission of viral, bacterial, rickettsial, fungal, and mycoplasmal human pathogens.

b. Proper techniques of hand washing, including the theory supporting the effectiveness of hand washing, and guidelines for waterless hand cleansing in the field.

c. Proper techniques and circumstances under which barrier methods of protection (personal protective equipment) from contamination by microbial pathogens are to be implemented. The instruction is to include the theory supporting the benefits of these techniques.

d. The proper techniques of disinfection

and clean-up of spills of infectious material. This instruction is to include the use of absorbent, liquid, and chemical disinfectants.

e. Instruction regarding the reporting and documentation of exposures to infectious agents and the requirement for employers to have an exposure control plan.

f. The proper disposal of contaminated needles and other sharps. The instruction is to include information about recapping needles and using puncture-resistant, leak-resistant containers.

g. First aid and immediate care of wounds which may be incurred by an emergency medical care provider.

10.2.2 Practical or Laboratory Instruction

Practical sessions addressing the field application of the above didactic instruction must be part of the curriculum. The practical sessions shall provide a means of hands-on experience and training in the proper use of personal protective equipment, hand-washing disinfection, clean-up of infectious spills, handling and disposal of contaminated sharps, and the proper completion of reporting forms.

10.2.3 Approval of Curricula

Any provider of mandatory education and training and continuing education pursuant to this section must submit a curriculum for approval by the Division of Public Health and shall not utilize curricula that are not regarded by the Division of Public Health to be in substantial compliance with 10.2.1 and 10.2.2.

10.3 Communicable Diseases

10.3.1 Communicable Disease Defined

Exposure to patients infected with the following communicable disease agents shall warrant notification to an emergency medical care provider pursuant to this section:

- Human Immunodeficiency Virus (HIV)
- Hepatitis B Virus
- Hepatitis C Virus
- Meningococcal disease
- Haemophilus influenzae
- Measles
- Tuberculosis
- Uncommon or rare pathogens

10.3.2 Infection Defined

A patient shall be considered infected with a communicable disease when the following conditions are satisfied:

10.3.2.1 Blood-borne pathogens

a. HIV - ELISA and western blot (or other confirmatory test accepted by prevailing medical opinion) tests must be positive.

b. Hepatitis B - positive for hepatitis B surface antigen.

c. Hepatitis C - (1) IgM anti-HAV

negative, and (2) IgM anti-HBc negative or HBsAg negative, and (3) serum aminotransferase level more than two and one half times the upper limit of normal; or anti-HcB positive.

10.3.2.2 Air-borne pathogens

a. Meningococcal disease -compatible clinical findings and laboratory confirmation through isolation of *Neisseria meningitides* from a normally sterile site.

b. Haemophilus influenzae -compatible clinical findings of epiglottitis or meningitis and laboratory confirmation through isolation of *Haemophilus influenzae* from a normally sterile site or from the epiglottitis.

c. Measles - compatible clinical findings with or without laboratory confirmation by one of the following methods: (1) presence of the measles virus from a clinical specimen, or (2) four-fold rise in measles antibody level by any standard serologic assay, or (3) positive serologic test for measles IgM antibody.

d. Tuberculosis - compatible clinical findings of pulmonary disease and identification of either acid-fast bacilli in sputum or the pathogen by culture.

10.3.2.3 Uncommon or rare pathogens

Infection with uncommon or rare pathogens determined by the Division of Public Health on a case-by-case basis.

10.3.3 Exposure Defined

10.3.3.1 Blood-borne pathogens

Exposure of an emergency medical care provider to a patient infected with a blood-borne pathogen as defined in ~~10.3.2.1~~ 10.3.2.1 shall include a needle-stick or other penetrating injury with an item contaminated by a patient's blood, plasma, pleural fluid, peritoneal fluid, or any other body fluid or drainage that contains blood or plasma. Contact of these fluids with mucous membranes or non-intact skin of the emergency medical care provider or extensive contact with intact skin shall also constitute exposure.

10.3.3.2 Air-borne pathogens

Exposure of an emergency medical care provider to a patient infected with an air-borne pathogen as defined in ~~10.3.2.2~~ 10.3.2.2 shall be as follows:

a. Meningococcal disease and haemophilus influenza - Close contact with an infected patient's oral secretions or sharing the same air space with an infected patient for one hour or longer without the use of an effective barrier such as a mask.

b. Measles - Sharing confined air space with an infected patient, regardless of contact time.

c. Tuberculosis- Sharing confined air space with an infected patient, regardless of contact time.

10.3.3.3 Uncommon or rare pathogens

The Division of Public Health shall determine definition of exposure to an uncommon or rare pathogen on a case-by-case basis.

10.3.3.4 Ruling on infection and exposure

When requested by the emergency medical care provider or receiving medical facility, the Division of Public Health shall investigate and issue judgment on any differences of opinion regarding infection and exposure as otherwise defined in 10.3.

10.4 Request for Notification

10.4.1 Every employer of an emergency medical care provider and every organization which supervises volunteer emergency medical care providers must register the name(s) of a designated officer who shall perform the following duties. The designated officer shall delegate these duties as may be necessary to ensure compliance with these regulations.

a. receive requests for notification from emergency medical care providers;

b. collect facts relating to the circumstances under which the emergency medical care provider may have been exposed;

c. forward requests for notification to receiving medical facilities;

d. report to the emergency medical care provider findings provided by the receiving medical facility; and

e. assist the emergency medical care provider to take medically appropriate action if necessary.

10.4.2 Receiving medical facilities must register with the Division of Public Health the name or office to whom notification requests should be sent by an emergency medical care provider and who is responsible for ensuring compliance with this section.

10.4.3 If an emergency medical care provider desires to be notified under this regulation, the officer designated pursuant to ~~10.4.1~~ 10.4.1 shall notify the receiving medical facility within 24 hours after the patient is admitted to or treated by the facility on a form that is prescribed or approved by the State Board of Health.

10.5 Notification of Exposure to Air-borne Pathogens

10.5.1 Notwithstanding any requirement of 10.4.3, a receiving medical facility must make notification when an emergency medical care provider has been exposed to an air-borne communicable disease pursuant to 10.3.2.2 and 10.3.3.2. Such notification shall occur as soon as possible but not more than 48 hours after the exposure has been determined and shall apply to any patient upon whom such a determination has been made within 30 days after the patient is admitted to or treated by the receiving medical facility.

10.5.2 To determine if notification is necessary pursuant to this section, a receiving medical facility must review medical records of a patient infected with an air-borne communicable disease to determine if care was provided by an emergency medical care provider. If medical

records do not so indicate, the receiving medical facility shall assume that no notification is required.

10.6 Notification of Exposure when Requested

10.6.1 When a request for notification has been made pursuant to 10.4.3, the receiving medical facility shall attempt to determine if the patient is infected with a communicable disease and if the emergency medical care provider has or has not been exposed. Information provided on the request for notification and medical records and findings in possession of the receiving medical facility shall be used to make this determination. If a determination is made within 30 days after the patient is admitted to or treated by the receiving medical facility, the receiving medical facility shall notify the officer designated pursuant to 10.4.1 as soon as possible but not more than 48 hours after the determination. The following information shall be provided in the notification:

- a. The date that the patient was attended by the emergency medical care provider;
- b. Whether or not the emergency medical care provider was exposed;
- c. If the emergency medical care provider was exposed, the communicable disease involved.

10.6.2 If, after expiration of the 30-day period and because of insufficient information, the receiving medical facility has not determined that the emergency medical care provider has or has not been exposed to a communicable disease, the receiving medical care facility shall so notify the officer designated pursuant to Section 10.4.1 as soon as possible but not more than 48 hours after expiration of the 30-day period. The following information shall be provided in the notification:

- a. The date that the patient was attended by the emergency medical care provider;
- b. That there is insufficient information to determine if an exposure has occurred;

10.6.3 The receiving medical facility shall provide to the Division of Public Health a copy of each form completed pursuant to 10.4 which shall include information about whether or not the patient is infected, and if the emergency medical care provider is considered by the receiving medical facility to have been exposed.

10.7 Manner of Notification

A receiving medical facility must make a good faith effort, which is reasonably calculated based upon the health risks, the need to maintain confidentiality, and the urgency of intervention associated with the exposure, to expeditiously notify the officer designated pursuant to 10.4.1. If notification is by mail, and if, in the judgment of the receiving medical facility the circumstances warrant, the receiving medical facility shall ensure by telephone or other appropriate means that the designated officer of the emergency medical care provider has received notification.

10.8 Transfer of Patients

If, within the 30-day limitation defined in 10.5.1 and 10.6.1 a patient is transferred from a receiving medical facility to a second receiving medical facility, the receiving medical facility must provide the second facility with all requests for notification made by emergency medical care providers for that patient. The second receiving medical facility must make notification to the officer designated pursuant to 10.4.1 if the facility determines within the remaining part of the 30-day period that the patient is infected and shall otherwise comply with these regulations.

10.9 Death of Patient

If, within the 30-day limitation defined in 10.5.1 and 10.6.1, a patient is transferred from a receiving medical facility to a medical examiner, the receiving medical facility must provide the medical examiner with all requests for notification made by emergency medical care providers for that patient. The medical examiner must make notification to the designated officer if the medical examiner determines that the patient is infected with a communicable disease, and shall otherwise comply with these regulations.

10.10 Testing of Patients for Infection

Nothing in this regulation shall be construed to authorize or require a medical test of an emergency medical care provider or patient for any infectious disease.

10.11 Confidentiality

All requests and notifications made pursuant to these regulations shall be used solely for the purposes of complying with these regulations and are otherwise confidential.

Section 11. Enforcement

11.1 Authorization

The Department of Health and Social Services or the Director of the Division of Public Health or their designated representatives are authorized to enforce these regulations to accomplish the following:

11.1.1 To insure compliance of persons who refuse to submit themselves or others for whom they are responsible, including their animals, to necessary inspection, examination, treatment, sacrifice of the animal, or quarantine.

11.1.2 To insure coordination of actions of individuals, local authorities, or state authorities in the control of communicable disease.

11.1.3 To insure the reporting of notifiable diseases or other disease conditions as required in these Rules.

11.2 Penalties

Except as otherwise provided by the Delaware Code or this regulation, failure to comply with the requirements of this regulation will be subject to prosecution pursuant to 16 Del. C., §107. The Department of Health and Social Services may seek to enjoin violations of this

regulation.

APPENDIX I

NOTIFIABLE DISEASES

| | |
|------------------------------------------------|------------------------------------------------------------------------------------------|
| Acquired Immune Deficiency Syndrome (AIDS) (S) | Lymphogranuloma Venereum (S) |
| Anthrax (T) | Malaria |
| Botulism (T) | Measles (T) |
| Brucellosis | Meningitis (all types other than meningococcal) |
| Campylobacteriosis | Meningococcal Infections (all types) (T) |
| Chancroid (S) | Mumps (T) |
| Chlamydia trachomatis infection (S) | <u>Nosocomial Disease Outbreak (T)</u> |
| Cholera (T) | Pelvic Inflammatory Disease (resulting from gonococcal and/or chlamydial infections) (S) |
| Cryptosporidiosis | Pertussis (T) |
| Cyclosporidiosis | Plague (T) |
| Diphtheria (T) | Poliomyelitis (T) |
| E. Coli 0157:H7 infection (T) | Psittacosis |
| Encephalitis | Rabies (man, animal) (T) |
| Ehrlichiosis | Reye Syndrome |
| Foodborne Disease Outbreaks (T) | Rocky Mountain Spotted Fever |
| Giardiasis | Rubella (T) |
| Gonococcal Infections (S) | Rubella (congenital) (T) |
| Granuloma Inguinale (S) | Salmonellosis |
| Hansen’s Disease (Leprosy) | Shigellosis |
| Hantavirus infection (T) | Streptococcal disease (invasive group A) |
| Hemolytic uremic syndrome (HUS) | Streptococcal toxic shock syndrome (STSS) |
| Hepatitis A (T) | Syphilis (S) |
| Hepatitis B (S) | Syphilis (congenital) (T) (S) |
| Hepatitis C & unspecified | Tetanus |
| Herpes (congenital) (S) | Toxic Shock Syndrome |
| Herpes (genital) (N) | |

| | |
|------------------------------------------|----------------------------------|
| Histoplasmosis | Trichinosis |
| Human Immunodeficiency Virus (HIV) | Tuberculosis |
| Human papillomavirus (genital warts) (N) | Tularemia |
| Influenza (N) | Typhoid Fever (T) |
| Lead Poisoning | Vaccine Adverse Reactions |
| Legionnaires Disease | Varicella (N) |
| Leptospirosis | Waterborne Disease Outbreaks (T) |
| Lyme Disease | Yellow Fever (T) |

(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 II

DRUG RESISTANT ORGANISMS REQUIRED TO BE REPORTED

Staphylococcus aureus intermediate or resistance to Vancomycin (MIC >8ug/ml)

Streptococcus pneumoniae drug-resistant, invasive disease

DIVISION OF PUBLIC HEALTH

OFFICE OF EMERGENCY MEDICAL SERVICES

Statutory Authority: 16 Delaware Code, Chapters 97, 98 (16 Del.C. Ch. 97, 98)

SUMMARY

STATE OF DELAWARE RULES AND REGULATIONS PERTAINING TO AIR MEDICAL AMBULANCE SERVICES

These revised regulations replace regulations previously adopted on July 1, 1993. They are to be adopted in accordance with Chapters 97 and 98, Title 16, Delaware Code. They will supercede all previous regulations concerning air medical ambulance services.

The revised regulations establish and define the process for establishing and operating an air medical ambulance service within the State of Delaware. Prior to its revision, these regulations permitted air medical ambulance services in the State of Delaware to be provided only by the State Police or an out-of-state flight program. These revisions will permit private flight programs to be established in Delaware under the same parameters that presently exist for out-of-state flight programs and integrate it into the State Emergency Medical Services System under the oversight of the Department of Public Health.

NOTICE OF PUBLIC HEARING

The Office of Emergency Medical Services, Division of Public Health, Delaware Health and Social Services, will hold a public hearing to discuss proposed changes to the Air Medical Ambulance Services Regulations. The proposed changes will permit the establishment of commercial air medical ambulance operations in the State of Delaware and permit them to function under the same parameters afforded to out of state air medical ambulance operations.

This public hearing will be held March 21, 2001, at 10:00 AM in the Conference Room at the Delaware Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4-H, 655 S. Bay Road, Dover, Delaware

Copies of the proposed regulation are available for review by calling:

Office of Emergency Medical Services
Blue Hen Corporate Center, Suite 4-H
655 Bay Road,
Dover, Delaware 19901
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Debbie Vincent at (302) 739-4710 by March 20, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by March 31, 2001 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19901

REGULATIONS FOR AIR MEDICAL AMBULANCE SERVICES

Definitions

ABEM American Board of Emergency Medicine

ABOEM American Board of Osteopathic Emergency Medicine

ACLS (Advanced Cardiac Life Support) A syllabus and certification of the American Heart Association (AHA).

AIRCRAFT TYPE Particular make and model of helicopter or airplane.

AIR MEDICAL SERVICE A company or entity of a hospital or public service which provides air transportation to patients requiring medical care. This term may be used interchangeably with the term "air medical program" throughout the document.

AIR MEDICAL PERSONNEL Refers only to the patient care personnel involved in an air medical transport.

AIR MEDICAL TEAM Refers to the pilot(s) and patient care personnel who are involved in an air medical transport.

ALS MISSION The transport of a patient who receives care during an interfacility or scene response commensurate with the scope of practice of an EMT-Paramedic.

ALS PROVIDER A certified provider of skills required for advanced life support.

ATLS (Advanced Trauma Life Support) A syllabus and certification offered to physicians by the American College of Surgeons.

BLS MISSION The transport of a patient who receives care during an interfacility or scene response that is commensurate with the scope of practice of an EMT-B.

BLS PROVIDER A certified provider of skills required for basic life support.

BTLS (Basic Trauma Life Support) A syllabus offered by the American College of Emergency Physicians to provide a standard of care for the prehospital trauma victim.

CERTIFICATE Signifies a pilot level of competency, i.e., student, private, commercial. It can also refer to the type of service a company is qualified to provide under Federal Aviation Regulations.

CONSORTIUM PROGRAM An air medical service sponsored by more than one health care facility or entity.

CONTINUOUS QUALITY IMPROVEMENT (CQI) CQI is a management strategy that integrates dedication to a

quality product into every aspect of the service; it brings together a variety of personnel and management tools to examine the sources of problems within the system. CQI seeks to establish and remedy the root cause of problems by identifying and correcting the system's errors, rather than ascribing fault to individuals.

CONTROLLED AIR SPACE Air space designated as continental control area, terminal control area, or transition area within which some or all aircraft may be subject to air traffic control.

CRITICAL CARE MISSION The transport of a patient from an emergency department or critical care unit (or scene, RW) who receives care commensurate with the scope of practice of a physician or registered nurse.

CROSS COUNTRY (CC) Generally when the destination is greater than 25 nautical miles from the departure point or as designated by a geographic boundary.

The DSP cross country is 25 nautical miles outside of the state of Delaware.

DSP Delaware State Police

ELECTIVE TRANSPORTS Air medical transports that may not be medically necessary but are done for patient or physician preference; these often are fixed wing, prepaid scheduled transports.

ELT (Emergency locator transmitter) A radio transmitter attached to the aircraft structure which is designed to locate a downed aircraft without human action after an accident.

FAA Federal Aviation Administration

FAR Federal Aviation Regulation.

HEAD-STRIKE ENVELOPE The volume of air space which a person's head would potentially move through during any abrupt aircraft motion.

HELIPAD A small, designated area usually with a prepared surface, on an airport, landing/take-off area, or apron/ramp used for take-off, landing or parking helicopters.

HOT LOAD/UNLOAD The loading or unloading of patient(s) or equipment with rotors turning.

IABP (Intra aortic balloon pump) A cardiac assist machine which can be retrofitted into some types of aircraft.

IFR Instrument Flight Rules

INSTALLED EQUIPMENT Includes all items or systems on the aircraft at the time of certification and any items or systems subsequently added to the aircraft with FAA approval through a Supplemental Type Certificate (STC), FAA Form 8110 or Form 337 action.

IMC Instrument meteorological conditions.

INDEPENDENT PROGRAM Referring to an air medical service not sponsored by a hospital and operating under its own FAA certificate.

INFECTION CONTROL An approach to reducing the risk of disease transmission to care takers, patients and others

LOCAL **Day-local:** Less than 25 nautical miles from departure point to destination point with generally the same terrain elevation.

Night-Local: The urban area of the helicopter base with enough illumination to maintain ground reference.

The DSP local is within the State of Delaware and less than 25 nautical miles outside the State of Delaware.

MODALITIES Treatment plans and equipment used in the delivery of patient care.

PERSONNEL, SCHEDULED Staff employed by the air medical service with scheduled working hours during which air medical transport is their primary responsibility. This includes those who take call for the primary purpose of being available for air medical transport.

PERSONNEL, NON-SCHEDULED Staff employed in patient care roles by another department or facility who have received the helicopter orientation and may be utilized as a second crew member, particularly during a specialty transport

PHTLS Prehospital Trauma Life Support: A course offered by the American College of Surgeons to provide a standard of care for the prehospital victim.

PIC Pilot in command.

QUALITY ASSURANCE (OA) OA is a process of reviewing the quality of care delivered through the examination of known or potential problems. It measures the degree of compliance of the service's personnel with established standards.

SPECIALTY CARE MISSION The transport of a patient who requires care by professionals who can be added to the regularly scheduled personnel.

SPECIALTY CARE PROVIDER A provider of specialty care, such as neonatal, pediatric, etc.

VFR Visual Flight Rules.

I. Purpose

The purpose of these regulations is to provide minimum standards for the operation of Air Medical Ambulance Services in the State of Delaware. It is the further intent of these regulations to ensure that patients are quickly and safely served with a high standard of care and in a cost-effective manner.

II. General Provisions

A. No person or agency (governmental or private) may operate, conduct, maintain, advertise, engage in or profess to engage in air ambulance services in Delaware unless the agency or person holds a current valid certificate issued by the Division of Public Health (**the Division**).

B. Air ambulance services will provide access to its services without discrimination due to race, creed, sex, color, age, religion, national origin, ancestry, or ~~handicap~~ disability. Requests for service for those patients with a potentially life threatening illness or injury, who require rapid transportation, will be honored without prior inquiry as to the patient's ability to pay.

C. Air ambulance services ~~based outside of Delaware that provide intra or inter Delaware patient transfers~~ transport services within the state of Delaware, or interstate transport services that originate in Delaware shall be subject to all parts of these regulations, unless covered by mutual aid agreements entered into with the Division of Public Health, in conjunction with other applicable state laws.

D. All air ambulance services operated by hospitals licensed by the Department of Health and Social Services (the Department) will be subject to all parts of these regulations. A permit will be issued to approve air ambulance services operated by hospitals.

E. Pre-hospital scene works shall be conducted only by air ambulance services owned and operated by the State of Delaware, or private air ambulance services which have entered into appropriate agreements to provide such pre-hospital scene work with the Division of Public Health.

III. Application Process

A. An application for a certificate to operate an air ambulance service may be obtained from the Division of Public Health (the Division), Office of ~~Paramedic Administration~~ Emergency Medical Services (the Office). An application for an original or renewal certificate shall be submitted to the Office and shall include the following:

1. Name and address of the vendor of the ambulance service or proposed air ambulance service and the name and address under which the service will operate.

2. Name, address and FAA (Federal Aviation Administration) certification number of the aircraft operator.

3. Submission of the air medical service's mission statement and scope of service to be provided.

4. Experience and qualifications of the applicant to operate an air ambulance service.

5. Description of each aircraft to be used as an air ambulance, including the make, model, year of manufacture, registration number, name, monogram or other distinguishing designation and FAA air worthiness certification.

6. The geographical service area and the location and description of the places from which the air ambulance services is to operate.

7. Name, training, and qualifications of the air ambulance medical director who is responsible for medical care provided by the service.

8. Roster of medical personnel which includes level of certification or licensure.

9. Roster of pilots including training and qualifications.

10. Statement in which the applicant agrees to provide patient specific data to the Division for EMS system quality management program purposes.

11. Other information the Division deems necessary and prescribes as part of the application.

B. Change of ownership of the air ambulance service requires re-application for certification. An air ambulance certificate holder shall file with the Division an application for renewal of the air ambulance service certificate within 10 business days of acquisition of the service by the new owner.

IV. Certification Process

Within 30 days of receipt of an appropriately completed application from the proposed air ambulance service, the Office will notify the applicant in writing of the approval or disapproval of the application.

A. Certification Approval

1. The Division will issue a certificate to operate an air ambulance service after an on-site inspection and review conducted by the Office indicates that the applicant's service is in compliance with these regulations and other applicable laws.

2. No certificate to operate an air ambulance service shall be issued unless the applicant satisfies the Division that the certification requirements for the air ambulance, medical supplies and equipment, as well as the qualifications of medical and operating personnel, as discussed herein, have been satisfied.

3. Certification will be granted only to services that meet all Federal Aviation Regulations (FAR's) specific to the operations of the air medical service.

4. A certificate will be issued for three years from the date of issue and will remain valid for that time period

unless revoked or suspended by the Division.

5. The current certificate shall be posted in a conspicuous place in the air ambulance operations center and on, or in, the aircraft where it is clearly visible.

B. Denial of Certification

1. If the Division determines that deficiencies exist which warrant ~~disapproval~~ denial of the application, ~~written notice identifying the deficiencies will be given to the applicant along with the disapproval notice~~ the air medical service shall be provided a list of these deficiencies in writing.

2. The applicant shall have 30 days from receipt of the disapproval notice in which to:

a) Respond to the Division with plans to correct the deficiencies.

(1) After review of an acceptable plan, the Division will conduct a re-inspection consistent with an agreed upon time frame.

(2) If the Division is satisfied with the results of the re-inspection, The Division will promptly issue a certificate of approval. If the Division determines that deficiencies still exist, the Division will give the applicant written notice of disapproval, which shall identify deficiencies. The applicant shall have 30 days from receipt of the second refusal notice in which to ~~appeal the decision to the Secretary of the Department of Health and Social Services (the Department) or his designee~~ request a review of their application and accompanying documents by the Director of the Division of Public Health or their designee.

(a) If the result is a denial of application, the applicant may not reapply for a period of six (6) months.

or

~~(b) Appeal the decision to the Secretary of the Department~~

C. Renewal

~~1. The Division will notify the air ambulance service at least 90 days prior to the expiration date of the certification.~~

~~2. 1.~~ The service shall submit to the Division the renewal application postmarked at least 60 days prior to the expiration date of the certificate.

~~3. 2.~~ The criteria for certification renewal ~~is~~ are the same as the current requirements for original certification.

D. Inspections

1. The Division reserves the right to enter and make inspections at least quarterly and shall conduct, at a minimum, an annual inspection to ensure compliance with these regulations. Additional inspections may be conducted upon receipt of a complaint to the Division of Public Health or if there is a reasonable belief that violations may exist.

2. Upon request of an agent of the Division during regular business hours, or at other times when a reasonable belief that violations of these regulations may

exist, a certificate holder shall produce for inspection, the air ambulance, equipment, personnel and other such items as is determined by the Division's agent.

~~3. Within 30 days of the inspection, the air ambulance service shall be notified as to the result of the inspection.~~

~~4 3.~~ All records pertaining to the operation of the air medical service must be retained for a minimum of two (2) years.

E. Investigatory Procedures

1. Upon receipt of a written complaint describing specific violations of these regulations the Division will:

a) Initiate an investigation of the specific ~~changes~~ charges.

b) Notify the air ambulance service of the charges and investigation procedures.

c) Conduct and develop a written report of the investigation.

d. Notify the air ambulance service in writing of the results of the investigation with a request for a written response.

e. The Division will conduct an appropriate follow-up investigation.

~~2. If the Division determines that these regulations have been violated, the Division may suspend certification for a period of up to 30 days. The Division may revoke certification for repeated violations.~~

~~3. Upon suspension or revocation of an air ambulance certificate, the service shall cease operations and no person may permit or cause the service to continue.~~

~~4. The Division will provide public notification of suspension, including length of suspension period or revocation of an air ambulance service certificate.~~

F. Grounds for Suspension, Revocation or Refusal of an Air Ambulance Certification

1. The Division may, in compliance with proper administrative procedure as provided by law, suspend, revoke or refuse to issue certificates for the following reasons:

~~1. a)~~ A serious violation of these regulations. A serious violation is one ~~which that~~ which that poses a significant threat to the health and safety ~~to~~ of the public.

~~2. b)~~ Failure of the certified party or applicant to submit a ~~reasonable timetable~~ reasonable timetable plan to the Division to correct deficiencies and violations cited by the Division by the deadline requested by the Division.

(1) The plan must correct the deficiencies within the timeframe specified by the Division.

~~3. c)~~ The existence of a ~~continuing~~ continuing pattern of deficiencies or violations over a period of ~~3~~ three (3) or more years.

~~4. d)~~ Fraud or deceit in obtaining or attempting to obtain certification.

~~5. e)~~ Lending a certificate or borrowing or

using the certificate of another, or knowingly aiding or abetting the improper granting of a certificate.

~~6- f)~~ Incompetence, negligence or misconduct in operating the air ambulance service or in providing emergency medical services (EMS) to patients.

~~7- g)~~ Failure to employ or contract for a medical director responsible for the care provided by the air ambulance service.

~~8- h)~~ Failure to have appropriate medical equipment and supplies required for certification.

~~9- i)~~ Failure of the air ambulance service to have an aircraft equipped in compliance with these regulations.

~~10- j)~~ Failure of the aircraft operator to maintain required FAA certifications.

~~11- k)~~ Failure to employ a sufficient number of certified or licensed personnel to provide services during the time frames identified in the application and approved certification.

~~12- l)~~ Failure of the air ambulance service to be available during time periods specified upon in the approved certification. Exceptions to this requirement include unsafe weather conditions, commitment to another flight, grounding due to maintenance or other reasons that would prevent commitment to another flight, grounding due to maintenance or other reasons that would prevent response. The air medical service shall maintain a record of each failure to respond to a request for service, and make the record available upon request to the Division. Financial inability to pay does not constitute sufficient grounds to deny response for emergency air service.

~~13- m)~~ Failure of an air ambulance service to notify the Division of the change of ownership or aircraft operation.

~~14- n)~~ Abuse or abandonment of a patient.

~~15- o)~~ Unauthorized disclosure of medical or other confidential information.

~~16- p)~~ Willful preparation or filing of false medical reports or records, or the inducement of another to do so.

~~17- q)~~ Destruction of medical records.

~~18- r)~~ Refusal to render ~~EMS~~ emergency medical services because of a patient's race, sex, creed, national origin, sexual preference, age, ~~handicap~~ disability, medical problem or financial inability to pay.

~~19- s)~~ Misuse or misappropriation of drugs/medications.

~~20- t)~~ Failure to produce requested records for inspection or to permit examination of equipment and facilities shall be grounds for suspension, revocation or denial of certification provided, however, that not certificate shall be suspended, revoked or denied for a period not to exceed sixty days in the event that a dispute regarding the production of such records exists and remains unresolved,

except that such suspension or revocation may occur within the sixty day period if the Division determines that such action is necessary to prevent a clear and immediate danger to public health.

~~21- u)~~ Other reasons as determined by the Division which pose a significant threat to the health and safety of the public.

2. If the Division determines that these regulations have been violated, the Division may:

a) Place the service on probation until the deficiency is remedied and accepted by the Division.

(1) This will include a timeframe and method by which the service must demonstrate the deficiency or violation rectified.

(2) If an air medical service is unable to demonstrate that the deficiency or violation has been rectified within the specified timeframe it must submit a written progress report to the Director of Public Health requesting a deadline extension.

(a) Failure to comply will result in the 'Probation' status being changed to 'Suspension'.

(b) Failure to correct the deficiencies or violations within the extension period will result in suspension of the certificate.

b) Suspend certification for a period of up to 30 days.

(1) In circumstances where an alleged violation poses an immediate threat to public health is being investigated, the certification may be suspended during the investigation.

(2) The Division must investigate the violation and issue a written report containing the findings of the investigation.

(a) The report must describe the deficiencies or violations that must be corrected in order to reinstate certification.

(b) A hearing must be scheduled within thirty (30) days of the date of suspension.

(3) Upon suspension or revocation of an air ambulance certificate, the service shall cease operations and no person may permit or cause the service to continue.

(4) The air medical service must correct any deficiencies identified to be an immediate danger to public health within the suspension period.

(a) All other deficiencies or violations may be addressed in a correction plan submitted to the Division.

(b) The status of the air medical service certificate will be changed to 'Provisional' for implementation of the corrective plan.

c) Revoke certification.

(1) Violations or deficiencies that resulted in a 'Suspension' status and have not been rectified pursuant to the requirements of those sections will result in the

revocation of the air medical service's certificate.

(2) A hearing will be scheduled within thirty (30) days of the date of revocation.

d) Continue current certificate status.

e) The Division will provide public notification of their decisions involving probation, suspension-including the length of suspension period, or revocation of an air ambulance service certificate.

G. Emergency Suspension

1. Where the complaint alleges a violation of these regulations that constitute a serious and imminent threat to the public safety, the Division may order immediate suspension of the alleged violator's certification. Upon such emergency suspension, the Division shall promptly investigate and issue a written report.

G. Reinstatement Process

1. When an air medical service has corrected a problem that has resulted in suspension or revocation of their certificate, it shall notify the Division of Public Health in writing, requesting reinstatement.

2. Based on the recommendations of the Division, a review will be arranged to verify resolution of the problem.

3. Outcomes of the review will be:

a) Reinstatement of certification

b) Continuation of suspension or revocation.

H. Right of Appeal

~~Any air ambulance provider who's application or reapplication for certification has been denied or who's certification has been revoked or suspended may appeal to the Secretary of the Department within thirty (30) days of receipt of notice of such denial, suspension or revocation. The Secretary or his designee will conduct a hearing on the Division's action. The Division's actions shall not be automatically stayed during the pendency of the appeal. Any air ambulance provider who's application or reapplication for certification has been denied or who's certification has been revoked or suspended may appeal to the Secretary of the Department within thirty (30) days of receipt of notice of such denial, suspension or revocation. The Secretary or his designee will conduct a hearing on the Division's action. The Division's actions shall not be automatically stayed during the pendency of the appeal.~~

1. Any air medical ambulance service that has their certification revoked or suspended may appeal the decision.

2. Written notification of the intent to appeal must be received by the Director of Public Health within thirty (30) days of receipt of notice of such denial, suspension or revocation.

3. The Director or their designee will conduct a hearing on the Division's action.

4. Information pertinent to the case will be presented by a member of the Division's investigation committee (or the Office of EMS) and a representative of the

air medical service.

5. The hearing panel will make a recommendation to the Director that the decision stand, be reversed, or modified.

a) Specific recommendation for modification shall be outlined.

6. The Director of Public Health will make a decision based on the hearing panel's recommendations and will provide written notification of the action to the air medical service.

7. The Division's action shall not be automatically stayed during the pendency of the appeal.

I. Voluntary Discontinuation of Service

1. Certified Air Ambulance Services may not voluntarily discontinue service until ninety (90) days after the certificate holder notifies the Division in writing that the service is to be discontinued.

2. The Air Ambulance Service shall notify the Division in advance of anticipated temporary discontinuation of service expected to last at least seven (7) consecutive days.

V. Staffing

A. Air Medical Personnel Classifications

The aircraft, by virtue of medical staffing and retrofitting of medical equipment, becomes a patient care unit specific to the needs of the patient. Staffing shall be commensurate with the mission statement and scope of care of the air medical service.

1. Administrative Air Medical Staff

a) Medical Director

The Medical Director of the program is a physician who is responsible for supervising and evaluating the quality of medical care provided by the air medical personnel.

(1) Credentials/Experience

(a) The Medical Director shall be licensed and authorized to practice medicine in the state in which the air medical service is based. The medical director must have educational and clinical experiences in Emergency Medicine as well as other areas of medicine that are commensurate with the mission statement of the air medical service (e.g., adult trauma, pediatrics, neonatal transport, etc.). When specific missions fall outside the scope of expertise of the medical director, specialty care physicians must serve as consultants.

(b) The medical director shall be experienced in both air and ground emergency medical services (as appropriate to the mission statement) and be familiar with the general concepts of appropriate utilization of air medical services.

~~(c) Additionally, the medical director shall have the following educational experiences as appropriate to the mission statement and scope of care of the~~

air medical service:

~~(i) Certification by the American Board of Emergency Medicine (ABEM), or currency in Advanced Life Support (ACLS) according to current standards of the American Heart Association and currency in Advanced Trauma Life Support (ATLS) according to the current standards of the American College of Surgeons.~~

~~(ii) Specialty education consistent with the mission statement of the air medical service (e.g., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc. or equivalent education in these areas). Alternately, the medical directors must have immediate access to specialty physicians as consultants.~~

~~(iii) In-flight patient care capabilities and limitations (e.g., assessment and invasive procedures).~~

~~(iv) Infection control as it relates to prehospital, aircraft and hospital environment.~~

~~(v) Stress recognition and management.~~

~~(vi) Altitude physiology/stressors of flight.~~

(c) Additionally, the medical director shall have the following educational experiences as appropriate to the mission statement and scope of care of the air medical service:

(d) The Medical Director shall also have education in the following areas:

(i) Specialty education consistent with the mission statement of the air medical service (e.g., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc. or equivalent education in these areas). Alternately, the medical directors must have immediate access to specialty physicians as consultants.

(ii) In-flight patient care capabilities and limitations (e.g., assessment and invasive procedures).

(iii) Infection control as it relates to prehospital, aircraft and hospital environment.

(iv) Stress recognition and management.

(v) Altitude physiology/stressors of flight.

(2) General Areas of Responsibility

(a) The medical director must be actively involved in the quality assurance/continuous quality improvement (QA/CQI) program for the service.

(b) The medical director must be involved in administrative decisions affecting medical care for the service.

(c) The medical director must be

involved in training and continuing education of all air medical personnel for the service.

(d) The medical director ~~is~~ must be actively involved in the care of critically ill and/or injured patients.

(e) The medical director must be actively involved in orienting physicians providing on line (in-flight) medical direction to the policies, procedures and patient care protocols of the air medical service.

(f) When applicable, the medical director or his designee sets cabin air pressure altitude limits, for specific disease processes of the patient(s) (through policies and procedures) and maximum altitudes, for specific disease processes of the patient(s) for rotor wing transports.

b) Clinical Care Supervisor

The responsibility for supervision of patient care provided by the various clinical care providers (e.g., EMT-B, EMT-P, RN, etc.) will be the responsibility of the medical director, unless the responsibilities are assigned to another professional (flight nurse, flight physician, or flight paramedic) who possesses the knowledge, experience and is legally qualified to provide clinical supervision.

(1) Credentials/Experience

The clinical care supervisor must ~~have~~ possess the following qualifications:

~~(a) ABEM certified or currency in CPR, ACLS, and ATLS for physicians.~~

(a) If the clinical care supervisor is a Physician:

(i) ABEM, or ABOEM certified or currency in CPR, ACLS, and Advanced Trauma Life Support (ATLS).

~~(b) Currency in CPR, ACLS, and Flight Nurses Advanced Trauma Courses (may audit ATLS for nurses)~~

(b) If the clinical care supervisor is a Registered Nurse:

(i) Currency in CPR, ACLS and the Flight Nurse Advanced Trauma Course (FNATC).

(a) ATLS may be audited in lieu of FNATC.

~~(e) Currency in SPR, ACLS, and PHTLS or BTLS for paramedics~~

(c) If the clinical care supervisor is a Paramedic:

(i) Currency in CPR, ACLS, and PHTLS or BTLS (Advanced).

~~(d) Current specialty education consistent with the mission statement of the air medical service (i.e., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc.). Alternatively, the clinical care supervisor must have immediate access to specialty personnel as consultants.~~

~~(e) In-flight patient care limitations,~~

~~e.g., assessment and invasive procedures~~
~~(f) Infection control~~
~~(g) Stress recognition and~~
~~management~~
~~(h) Altitude physiology/stressors of~~
~~flight~~
~~(i.) Appropriate utilization of air~~
~~medical services~~
~~(helicopter services)~~
~~(j) Emergency Medical Services~~
~~(k) Hazardous materials scene~~
~~recognition and response (helicopter services)~~
(d) General Requirements regardless
of provider level:

(i) Current specialty education
consistent with the mission statement of the air medical
service (i.e., Neonatal Resuscitation Certification Program,
Pediatric Advanced Life Support, etc.). Alternatively, the
clinical care supervisor must have immediate access to
specialty personnel as consultants.

(ii) In-flight patient care
limitations, e.g., assessment and invasive procedures.

(iii) Infection control.
(iv) Stress recognition and
management.

(v) Altitude physiology/stressors
of flight.

(vi) Appropriate utilization of air
medical services.

(vii) Delaware Emergency
Medical Services system.

(viii) Hazardous materials scene
recognition and response (helicopter services).

(2) General Areas of Responsibility

~~(a) The clinical supervisor is actively~~
~~involved Active involvement in the flight program's QA/~~
~~CQI program process.~~

~~(b) The clinical supervisor is actively~~
~~involved Active involvement in all administrative decisions~~
~~affecting patient care for the service.~~

~~(c) The clinical care supervisor is~~
~~actively involved Active involvement in hiring, training, and~~
~~continuing education of all non-physician air medical~~
~~personnel for the service.~~

~~(d) The clinical care supervisor is~~
~~actively involved Active involvement in the care of the~~
~~critically ill and/or injured patients.~~

~~(e) Ensuring adequate mechanisms~~
~~are in place for evaluating the clinical practice of the patient~~
~~care providers.~~

2. Direct Care Providers

a) General

(1) The type of medical care providers
staffing each mission shall be directly related to the mission

type: advanced life support ~~mission~~, specialty care ~~mission~~
or basic life support ~~mission~~.

(2) All medical care providers must have
current appropriate state licensure or certification which
legally ~~shows~~ allows them to function in their respective
professions.

(3) Initial and continuing education
requirements for all levels of medical care providers are
specified in Appendix A.

a) b) Advanced Life Support (ALS) Mission
Providers

An Advanced Life Support (ALS) mission
is defined as the transport of a patient who receives care
during a prehospital or interfacility/interhospital transport
that is commensurate with the scope of practice of a flight
physician, flight nurse or flight paramedic.

(4) Interhospital/Interfacility Transports

(a) A minimum of two (2) air
medical team members are required to staff interhospital/
interfacility ALS missions. One of the air medical ALS
providers must be a member of the regular ALS staff of the
air medical ambulance service.

(b) All air medical team members
must be licensed, certified, or permitted according to the
appropriate state regulations with current re-licensing,
recertification, or re-permitting status.

(c) A qualified flight physician or
flight nurse must be designated as the primary care provider
during interfacility or interhospital transports.

(d) A flight paramedic or an
approved flight specialty care provider may serve as the
second ALS air medical team during an interfacility or
interhospital ALS mission.

~~(2) (i) The specialty care provider~~
~~must have expertise relative to the needs of the patient.~~

~~(3) (ii) The paramedic, on such~~
~~missions, must:~~

~~(a) Be a State of Delaware~~
~~certified paramedic, currently on duty with the Delaware~~
~~State Police paramedic service, or a paramedic on duty with~~
~~an out of state air medical ambulance service that is certified~~
~~to function in the State of Delaware.~~

(a) Be a State of Delaware
certified paramedic, functioning in accordance with the
Board of Medical Practice Regulations.

(b) Function according to
the statewide standard treatment protocol or under the
direction of an authorized medical control physician for that
service.

(c) One ALS air medical
care provider may be considered sufficient staff for ALS
missions, where the patient has been categorized and
documented as being stable, by the sending physician, and
requires 'limited ALS care'.

PROPOSED REGULATIONS

(i) 'Limited ALS care' shall mean patient assessment, monitoring and interventions common to, and within the scope of practice of the paramedic. Patients may require cardiac monitoring and/or intravenous therapy (without medication additives).

(ii) ~~An approved~~ A flight paramedic or RN may serve as the single care provider for the transport of stable ALS patients who meet the criteria as ~~described below~~, established by the operation or agency medical director.

(5) Prehospital Scene Responses

(a) Except as provided below, the Delaware State Police (DSP) paramedic service is the ~~only~~ primary air medical service authorized to engage in prehospital scene responses and transports in the State of Delaware.

~~(b) A DSP A DSP The flight paramedic will function as the primary care provider during all such scene response missions.~~

(b) A flight paramedic must be a crew member on all prehospital missions.

(i) The Aeromedical crew assumes patient care responsibility at the time the patient is secured on the aircraft.

(c) Non-scheduled personnel may be added as the second medical team member according to the protocols of the air medical services as long as an orientation has been conducted which includes in-flight treatment protocols, general aircraft safety, emergency procedures, operational policies, and infection control.

(d) Air medical ambulance services, other than DSP, may engage in prehospital scene responses and transports under certain unusual conditions ~~When when~~ requested by a county paramedic service. ~~The use of air medical ambulance services other than the State Police must occur only in disaster situations or other severe emergency situations where additional air medical support is needed.~~ Such services must have previously entered into a service ~~reciprocity~~ agreements with the Division and the Delaware State Police.

(e) All requests for air medical services, other than the DSP, must be initiated by the ~~county paramedic service~~ emergency communications center responsible for managing or coordinating Emergency Medical Services resources in the county which where the need for assistance exists.

(f) The request and use of an air medical ambulance services other than the DSP for prehospital services, requires the submission of a written report by the ground EMS service that utilized the air ambulance to the Office of ~~Paramedic Administration~~ Emergency Medical Services, within ~~7~~ seven (7) days of the request and/or response. The report must identify the conditions and circumstances precipitating the request.

(i) The "Air Medical Ambulance Service Use Report" (See Appendix D) shall be used to communicate this information.

(g) All patient care services provided by the air medical ambulance crew during a prehospital scene response shall be documented using the Delaware Emergency Data Information Network (EDIN).

(i) This shall be provided in addition to any documentation that the service generates internally.

(ii) The EDIN system is a secure Internet based data management system.

(a) Access to an Internet connection is necessary to provide the documentation required by these regulations.

~~b~~ c) Specialty Care Mission Providers

(1) A specialty care mission is defined as the transport of a patient requiring special patient care by one or more professionals who must be added to the regularly scheduled air medical team. Dedicated teams providing specialty-oriented care (e.g., neonatal transport teams, IABP transport teams) must follow the specific mission standards.

(2) The air medical team must, ~~at a minimum~~ minimally consist of a specially trained physician or registered nurse as the primary caregiver whose expertise must be consistent with the needs of the patient.

(3) Specialty care missions require at least two air medical team members while a patient(s) is on board. Personnel shall be available for each transport within a reasonable time determined by the service.

(4) All specialty team members must have received a basic minimum orientation to the air medical service which includes in-flight treatment protocols, general aircraft safety and emergency procedures, operational policies and infection control.

(5) Specialty care mission personnel must be accompanied by at least one regularly scheduled air medical staff member, of the air medical service, except when independent, dedicated flight specialty teams are used.

(6) Specialty care personnel must be educated in in-flight treatment modalities, altitude physiology, general aircraft safety, and emergency procedures.

~~e~~ d) Basic Life Support Mission Providers

A Basic Life Support (BLS) mission is generally defined as the transport of a patient who receives care during an interfacility/interhospital transport that is commensurate with the scope of practice of an Emergency Medical Technician-Basic (EMT-B). In the State of Delaware, when such care is provided in the air medical environment, it must be assumed, at a minimum, by a flight Emergency Medical Technician-Paramedic (EMT-P).

B. Pilot Personnel

1. There shall be a sufficient number of pilots

permanently assigned to the air medical service to provide services approved by the Division of Public Health, and which assures adequate crew rest as per FAA regulations.

2. All pilots must possess a commercial rotorcraft-helicopter airman's certificate.

3. Pilot in Command (PIC) must possess 2000 rotorcraft flight hours as PIC prior to assignment with an air medical service or be currently employed by the Delaware State Police (DSP) and have completed a DSP pilot training program.

4. A planned structure program must be provided for relief pilots, which at a minimum includes specific roles and responsibilities, and familiarization with the region served.

5. A lead pilot and designated safety officer must be appointed by the FAR 135 certificate holder to insure adherence to operational safety regulations for the program. Adequate training and experience in air medical missions management and evaluation skills must be possessed to carry out these duties.

6. The pilot has the right to decline or abort any portion of a mission if there is doubt as to the safety of the mission.

7. The pilot shall meet education and experience requirements as listed in Appendix A.

a) Pilots employed by DSP must comply with the requirements set by that agency.

C. General Staff Policies - Operational policies must be present to address the following areas:

1. Medical Flight Personnel

- a) Minimize duty-related fatigue
- b) Hearing protection
- c) Crash survivability
 - (1) Flame retardant clothing
 - (2) Seat belts/shoulder harnesses
 - (3) Head-strike protection
 - (4) Securement of on-board and carry-on

medical equipment

d) Protective clothing and dress codes relative to:

- (1) Mission type
- (2) Infection control
- e) Universal infection control
- f) Flight status during pregnancy
- g) Flight status during acute illnesses (especially respiratory ailments)

h) Flight status while taking medications that may cause dizziness

i) Weight/height and/or lifting abilities if appropriate

2. Pilot Personnel

- a) Minimize duty-related fatigue
- b) A policy of the certificate holder that

specifies higher weather minimums for new pilots for a time

frame based on the pilot's experience, flight time, local environment and personal adaptation. ~~The time frame shall be defined by an evaluation tool applied individually to each new pilot.~~ An evaluation tool applied individually to each new pilot by the flight program shall define the time frame.

VI. AIRCRAFT REQUIREMENTS

A. Medical Considerations

1. The aircraft shall have an interior medical configuration that is installed according to FAA criteria. Minimum specifications are listed in APPENDIX B.

2. The aircraft must be configured in such a way that the air medical personnel have access to the patient for the initiation and/or maintenance of basic advanced life support treatments.

3. The aircraft must be equipped with medical equipment and supplies consistent with the mission statement and scope of care. Minimum equipment and supplies required are identified in APPENDIX B.

4. The aircraft design and configuration must not compromise patient stability ~~in either~~ during loading, unloading or in-flight operations.

a) The aircraft must have an entry that allows loading and unloading without excessive movement of the patient or compromise to monitoring systems, without interfering with the pilot's vision. The cockpit should be capable of being shielded from light in the patient care area during night operations.

b) The cockpit must be sufficiently isolated, by protective barrier, to minimize distractions from the patient care compartment.

c) The interior of the aircraft must be climate controlled to prevent adverse effects upon the patient from temperature extremes.

d) The avionics shall not interfere with the functioning of medical equipment, nor shall the intravenous lines, manual or mechanical ventilation.

e) Adequate interior lighting shall be available to allow for patient care monitoring. Medical equipment shall not interfere with the avionics.

B. Aircraft Equipment

1. The aircraft must be equipped with a 180 degree controllable searchlight of at least 400,000 candle power for rotor-wing aircraft ~~(RW)~~.

2. Radio capabilities

a) Radios (as range permits) shall be capable of transmitting and receiving communications from:

- (1) Medical ~~direction~~ direction control
- (2) Flight operations center
- (3) Air traffic control
- (4) EMS and law enforcement agencies

~~(RW)~~

b) ~~Pilot is~~ The pilot must be able to control

and override radio transmissions from the cockpit in the event of an emergency situation.

e) ~~Flight team is~~ The flight crew must be able to communicate internally.

3. The aircraft must be equipped with a functioning emergency locator transmitter (ELT) in compliance with the applicable ~~FAR's~~ Federal Aviation Regulations (FARs).

4. A fire extinguisher must be accessible to air medical personnel and pilot(s) in compliance with applicable FARs.

C. Maintenance

Maintenance may be provided by an outside vendor who is FAA and manufacturer certified. If an in-house maintenance department is utilized, the following criteria must be met:

1. Credentials/Experience

a) Lead mechanic must possess 2 years of rotorcraft experience as a certified airframe and power plant mechanic prior to assignment with an air medical service.

b) The mechanic must be factory schooled or equivalent in an approved program, and FAR 135 qualified to maintain the aircraft designated by the air medical service.

2. Training related to the interior modification of the aircraft:

a) Shall prepare the mechanic for inspection of the installation as well as the removal and reinstallation of special medical equipment.

b) Supplemental training on service and maintenance of medical oxygen systems and a policy as to who maintains responsibility for refilling the medical oxygen system.

3. Staffing of Mechanics

a) A single mechanic on duty or on call 24 hours a day shall be relieved from duty for a period of at least 24 hours during any ~~7~~ seven (7) consecutive days, or the equivalent thereof, within any 1 calendar month.

b) Back-up personnel shall be provided to the mechanic during periods of extensive scheduled or unscheduled maintenance or inspection. Complexity of the aircraft and an increased number of flight hours may be considerations for increased mechanic staffing.

c) A policy of the certificate holder shall be in place that documents the disciplinary process for a mechanic.

4. Maintenance Facilities

a) There must be a mechanism/procedure for alerting flight and air medical personnel when the aircraft is not air worthy.

b) A hangar or similar-type facility shall be available for the mechanic to perform heavy maintenance.

VII. Visual Flight Rules (VFR) Weather Issues

A. VFR weather minimums shall be specified for day

and night local, and day and night cross country (CC).

B. The "local flying area" shall be determined by the operator based upon the operating environment.

C. There is a system of obtaining pertinent weather information.

1. The pilot in command (PIC) is responsible for obtaining weather information according to policy which shall address at a minimum:

a) Routine weather checks

b) Weather checks during marginal conditions

c) Weather trending

2. Communication between pilots, medical personnel, and communication specialists at shift change regarding the most current and forecasted weather is part of a formal briefing.

D. VFR "response" weather minimums:

Recommended minimums to begin a transport shall be no less than:

| CONDITIONS | CEILING | VISIBILITY |
|-------------------------------|----------|------------|
| DAY/LOCAL | 500 ft. | 1 mile |
| DAY/ Xcountry CC | 1000 ft. | 1 mile |
| NIGHT/LOCAL | 800 ft. | 2 miles |
| NIGHT/ Xcountry CC | 1000 ft. | 3 miles |

E. Policies include provisions for patient care and transport alternatives in the event that the aircraft must use alternate landing facilities due to deteriorating weather.

F. Instrument flight rules, (IFR) Weather Issues – When transitioning to an off-airport site after an instrument approach, the following shall apply:

1. Local VFR weather minimums shall be followed if within a defined local area and if the route and off-airport site are familiar.

2. Cross-country VFR weather minimums shall be followed if not in defined local area or if not familiar with route and off-airport site.

~~VII.~~ VIII. Helipad

A. Primary, receiving hospital(s) helipad(s) must be marked (with a painted H or similar landing designation), lighted for night operations, and be equipped with a device to identify wind direction. In addition, there shall be:

1. Unobstructed approach according to the FAA Advisory circular entitled Helipad Design Advisory Circular, AC 150/5390-2.

2. Evidence of compliance with local, state, or federal regulations including appropriate and adequate fire retardant chemicals.

3. Documented on-going safety programs for those responsible for loading and unloading patients or working around the helicopter on the helipad.

4. Evidence of adequate security-A minimum of one person to prevent bystanders from approaching the helicopter as it lands or lifts off, or perimeter security such as fencing, rooftop etc. A means must exist to monitor the primary helipad if accessible to the public (e.g., through direct visual monitoring or closed circuit TV).

5. There is limited distance from the helipad, (a limited distance is defined as not requiring intermediary transport of any type from the helipad to the receiving facility³), to the hospital in order to minimize the ~~affects~~ affects to the patient.

a) Patient monitoring shall continue without interruption between the helipad and the hospital.

b) Emergent patient interventions can be performed as needed between helipad and hearing protection is provided for all personnel who assist with patient hot loading and unloading.

~~*Facilities who are not currently in compliance with this regulation will be provided an exemption period of 5 years (from the effective date of these regulations) in which to relocate helipads.~~

6. Hearing protection is ~~provided for~~ provided for ~~worn by~~ all personnel who assist with patient hot loading and unloading.

B. Occasional or episodic use of helipad

Helipads used occasionally (at referring or receiving hospitals) shall be reviewed annually by the air medical service for:

1. Identification and removal of obstructions
2. Appropriate lighting (permanent or temporary for night operations)
3. Helicopter ingress/egress limitations
4. Adequate security - a minimum of one person to prevent bystanders from approaching the helicopter as it lands or lifts off.

5. Evidence of safety programs (through review of training program records) offered to personnel responsible for operations at the landing site and availability of appropriate fire retardant chemicals.

C. Temporary scene landings shall be secured

1. Perimeter lighting with handheld floodlights, emergency vehicles or other lighting source to clearly illuminate the designated landing area at night.
2. Free of overhead obstruction and ground debris.
3. Appropriate in size to the type of the aircraft.
4. Safety programs must be provided to public safety/law enforcement agencies to include:
 - a) Identifying and designating an appropriate landing zone (LZ).
 - b) Helicopter safety.
5. Two-way communications between helicopter and ground personnel.

IX. COMMUNICATIONS

A. The flight crew or a communication specialist must assume the responsibility of receiving and coordinating all requests for the air medical service.

1. Should a communication specialist be employed, training shall be commensurate with the scope of responsibility of the communications center personnel and include:

~~1.~~ a) EMT-B certification or equivalent knowledge and experience.

~~2.~~ b) Knowledge of Federal Aviation Regulations and Federal Communications Commission regulations pertinent to the air medical service.

~~3.~~ c) General safety rules and emergency procedures pertinent to air medical transportation and flight following procedures.

~~4.~~ d) Navigation techniques/terminology and understanding weather interpretation.

~~5.~~ e) Types of radio frequency bands used in air medical EMS.

~~6.~~ f) Assistance with the materials response and recognition procedure using appropriate reference materials.

B. Communication policies of the air medical service must reflect:

1. Aircraft must communicate, when possible, with ground units securing unprepared landing sites prior to landing.

2. A readily accessible post incident/accident plan must be part of the flight following protocol so that appropriate search and rescue efforts may be initiated in the event the aircraft is overdue, radio communication can not be established nor location verified

a) Written post incident/accident plans are easily identified and readily available.

b) Current phone numbers are easily accessed.

c) An annual drill is conducted to exercise the post incident/accident plan.

C. Continuous flight following must be monitored and documented and shall consist of the following:

1. Initial coordination to include communication and documentation of:

- a) Time call received
- b) Name and phone number of requesting agency
- c) Time aircraft departed
- d) Pertinent LZ information
- e) Number of persons on board
- f) Amount of fuel on board
- g) Estimated time of arrival (ETA)
- h) Diagnosis or mechanism of injury
- i) Referring and receiving physician and facilities (for inter facility transports) as per policy of the air medical service

j) Verification of acceptance of patient
 2. Communications during mission shall also be documented accordingly:

a) Direct or relayed communications to communications center (while in flight) specifying locations and ETAs, and deviations, if necessary.

b) Direct or relayed communications to communications center specifying all take-off and landing information.

c) Time between each communication:

(1) Time between each communication shall not exceed 15 minutes while in flight (If an IFR or VFR flight plan has been filed, may only be able to communicate with air traffic control, (ATC).

(2) Time between communications shall not exceed 45 minutes while on the ground.

(3) Alternate agencies are used to relay communications when direct contact is not possible.

D. The Communications Center must contain the following:

1. At least one dedicated phone line for the air medical service.

2. A system for recording all incoming and outgoing telephone and radio transmissions with time recording and playback capabilities. Recordings are to be kept for 30 days.

3. Capability to immediately notify air medical team and on-line medical direction (through radio, pager, telephone, etc.).

4. Back-up emergency power source for communications equipment, or a policy delineating methods for maintaining communications during power outages and in disaster situations.

5. Communications policy and procedures manual.

X. EMS SYSTEM INTEGRATION

A. The air medical service shall be integrated with and communicate with other public safety agencies, including ground emergency service providers. This must include participation in regional quality assurance reviews, regional disaster planning and mass casualty incident drills ~~(RW)~~.

B. The air medical service must interface (through telephone calls and outreach programs) with existing communications centers, public safety and law enforcement agencies, as well as with local off-line medical directors, as appropriate for prehospital ALS missions.

C. The air medical service must ensure continuity of care and expeditious treatment of patients by utilizing state EMS medical protocols and procedures, whenever applicable.

D. The air medical service shall facilitate integration of all emergency services and transport modalities by supporting joint continuing education programs and

operational procedures, ~~such as for:~~

~~1. Hazardous materials recognition and response.~~

~~2. 1. Disaster response/triage.~~

~~3. 2. Interface of the air medical team with other regional resources.~~

3. Safety program consisting of patient preparation and personal safety around the aircraft to include landing zone (LZ) designation for rotary wing services.

4. Patients considered appropriate for transport by the air medical service.

E. The service shall promote a timely feedback to referring agency, facility or physician about patient outcome and treatment rendered before, during, and after transport where appropriate.

F. The flight service shall provide a planned, structured safety program ~~must be provided~~ to public safety/law enforcement agencies and hospital personnel who interface with the air medical service which includes:

1. ~~Lz~~ Landing zone designation and preparation.

2. Personal safety in and around the helicopter for all ground personnel.

3. Procedures for day/night operations, conducted by the air medical team, specific to the aircraft:

a) High and low reconnaissance.

b) Communication and coordination with ground personnel.

c) Approach and departure path selection.

Procedures for the pilot to ensure safety during ground operations in the ~~Lz~~ landing zone with or without engines running.

e) Procedure for the pilot to have ground control during engine start and departure from a landing site.

G. ~~Records are kept~~ The service shall maintain records of initial and recurrent training provided by the air medical service ~~of to prehospital, and~~ referring and receiving ground support personnel.

XI. POST INCIDENT/ACCIDENT PLAN

A Post Incident/Accident Plan ~~is~~ shall be written and understood by all program personnel and shall include at a minimum:

A. List of personnel to notify in order of priority (for communication specialist to activate) in the event of a program incident/accident. Two major goals in activating a notification list include:

1. Provide rapid rescue response.

2. Insure accurate information dissemination.

B. Preplanned time frame to activate the post incident/accident plan for overdue aircraft.

C. Procedure to secure all documents and tape recordings related to the particular incident/accident.

D. Procedure to deal with releasing information to the press.

XII. PROFESSIONAL AND COMMUNITY EDUCATION

A professional and community education program and/or printed information with the target audience to be defined by the air medical service shall include but not be limited to:

- A. Hours of operation, phone number, and procedure to access.
- B. Capabilities of air medical personnel.
- C. Type of aircraft and operational protocols specific to type.
- D. Service area for the aircraft.
- E. Preparation and stabilization of the patient.
- F. Safety program consisting of patient preparation and personal safety around the aircraft to include landing zone (LZ) designation for rotor wing services.
- G. Patients considered appropriate for transport by the air medical service, (Generally, an appropriate transport is one which enhances patient outcome, safety or cost effectiveness over other modes of transport).

XIII. INFECTION CONTROL

A. Policies and procedures addressing patient transport issues involving communicable diseases, infectious processes and health precautions for emergency personnel as well as for patients must be current with the local standard of practice, standards of OSHA and as published by the center for Disease Control (CDC).

B. Policies and procedures must be written and readily available to all personnel of the air medical service.

C. Additional medical and agency resources pertinent to infection control must be identified and made available in the policy manual to all air medical personnel.

D. Education programs will include the institution's/service's infection control resources, programs, policies and CDC recommendations. Policies and procedures will be reviewed on an annual basis.

E. Air medical personnel transporting patients must practice preventative measures lessening the likelihood of transmission of pathogens. Policies and procedures address:

- 1. Personnel health concerns including record of:
 - a) Physical exams.
 - b) Immunization history – air medical personnel are encouraged to have tetanus and hepatitis B immunization.
 - c) Verification of post-vaccination antibody status, if immunized against hepatitis B.
 - d) Annual tuberculosis testing (purified protein derivative).
 - e. Measles, mumps, rubella (MMR) immunization.

2. Management of communicable diseases and infection control in the transport environment is outlined in policies:

- a) Use of gloves, eye and mouth protection.

b) Sharps disposal container for contaminated needles and collection container for soiled disposable items on the aircraft.

c) Cleaning and disinfecting with appropriate disinfectant of the patient cabin area, equipment, and personnel's soiled uniforms.

d) Mechanism for identifying those at risk for exposure to an infectious disease.

e) A plan for communication between the air medical service personnel, EMS providers, and hospital when exposure is suspected/confirmed to include what follow-up is necessary.

(1) Written notification shall go out in an expedient manner.

(2) Follow-up is documented.

f) A policy for special provisions for transporting infected or possibly infected victims.

g) Proper cleaning or sterilization of all appropriate instruments or equipment.

h) Hand washing before and after each patient.

XIV. QUALITY ASSURANCE/CONTINUOUS QUALITY IMPROVEMENT

A. There is an established Quality Assurance/Continuous Quality Improvement Program which provides on-going monitoring and evaluation of the quality and effectiveness of the air medical ambulance service.

B. The QA/CQI program shall be comprehensively integrated, including activities related to patient care, communications, aviation, operations and equipment maintenance. The required elements and considerations of the written QA/CQI plan are listed in APPENDIX C.

C. The Medical Director has the primary responsibility for ensuring timely review of patient care activities and issues, utilizing the medical record and pre-established criteria. A committee consisting of the medical director along with representatives of management, medical and non-medical personnel should be considered as a mechanism for ensuring initiation and continuation of QA/CQI program.

D. The air medical service has a policy and procedure manual available to all personnel which is reviewed, at least, annually for accuracy, completeness and currency.

E. The air medical service has established patient care guidelines/standing orders which must be reviewed annually (for content accuracy) by management, QA/CQI committee members and the Medical Director.

F. The QA/CQI program must be closely linked with risk management, so that concerns related through the risk management program can be followed up through the continuous quality improvement program.

XV. GENERAL POLICIES

A. There are well-defined lines of authority with a

clear reporting mechanism to upper level management.

B. Air medical personnel understand the organizational structure and the chain of command.

C. A policy shall be in place that clearly explains the air medical service's disciplinary process for all levels of staff.

D. Management policies encourage ongoing communications between all levels and types of air medical service personnel.

E. There are formal, periodic staff meetings for which minutes are kept on file. There are defined methods for disseminating information between meetings.

F. For public or private institutions and agencies that contract with an aviation firm to provide air medical services, there shall be a policy that specifies the lines of authority between the medical management team and the aviation management team.

G. Management sets guidelines for press related issues and marketing activities.

1. Policies Relating to Patient Management

a) Management ensures, through policy, that all transfers of patient care occur from a lower level of care to an equal or higher level of care except for elective transfers for patient convenience or returning a patient to a referring facility.

b) A patient record shall be maintained on all patients utilizing the services of an air medical ambulance. The record shall be used to document care given during transport, as well as all other relevant patient related factors, such as status prior to, during at the end of transport.

c) A copy of the patient record will be left at the receiving hospital to facilitate continuity of care. A copy will be kept on file by the air medical ambulance service for a period of time to include that of the statute of limitations.

d) The air medical ambulance services has written policies and procedures which indicate what therapies can be performed without on-line medical direction.

e) Inter facility transports require physician referral/acceptance to ensure continuity of care and establish patient care parameters during the transport. Patient transfer protocols must comply with existing Federal requirements.

f) Management ensures an appropriate utilization review process based on:

(1) Medical benefits to the patient:

(a) Timeliness of the transport as it relates to the patient's clinical status.

(b) Transport to an appropriate receiving facility; an appropriate receiving facility may include:

(i) A hospital or facility where the patient has previously undergone specialized treatment and where the patient's previous medical records are located.

(ii) A facility at too great a

distance for ground transport.

(iii) A facility with a specialized level of care not available in the referring hospital.

(c) Specialized air medical personnel expertise available during transport that would otherwise not be available.

(d) Safety of the transport environment.

2. Cost of the transport:

a) A structured, periodic review of flights (to determine transport appropriateness or that the mode of transport enhances medical outcome, safety or cost effectiveness over other modes of transport) performed at least semi-annually and resulting in a written report.

b) Hospital or non-hospital based program director/administrator is oriented to ~~FAR's~~ FARs that are pertinent to the air medical service.

3. Policies Pertaining to Safety

a) A Safety Committee shall meet at least quarterly with written reports sent to management and kept on file as dictated by policy. The responsibilities of the safety committee may be assumed by the QA/CQI committee.

b) Written variances relating to "safety" issues will be addressed in Safety Committee meetings. The committee will promote communications between air medical personnel and pilots addressing safety practice, concerns, issues and questions.

c) Recommendations for operational and safety issues will be reviewed by management.

APPENDIX A - EDUCATIONAL REQUIREMENTS

Initial education preparation and requirements will be guided by each air medical ambulance service's mission statement, scope of care provided, levels of care providers, state requirements and medical direction.

I. ALS, RN, MD and SPECIALTY CARE PROVIDERS; Scheduled Crew

Prior to functioning as a provider in an air medical service, all ALS and Specialty care personnel must present documentation of having successfully completed an education program that validates minimum knowledge levels and skill competencies in the following identified areas:

A. Didactic Component that includes:

1. Advanced airway management

2. Altitude physiology; gas laws; stressors of flight

3. Anatomy, physiology and assessment of the adult, pediatric and neonatal patients

4. Oxygen therapy in the air medical environment

5. Mechanical ventilation and respiratory physiology for adults, pediatric and neonatal patients as appropriate to the mission statement and scope of care

provided by the air medical service.

6. Respiratory emergencies
7. Recognition and management of cardiac emergencies including lethal dysrhythmias
8. Hemodynamic monitoring, pacemaker and automatic implantable cardiac defibrillator (AICD) management
9. Intra-aortic balloon pump, central lines, Swan Ganz and arterial catheters, left and right ventricular devices and extra corporeal membrane oxygenation (ECMO) when applicable
10. Environmental emergencies
11. High risk obstetric emergencies (bleeding, trauma, medical)
12. Neonatal emergencies (respiratory distress, cardiac, surgical)
13. Pediatric emergencies (medical, trauma)
14. Infection control practices and procedures
15. Metabolic/endocrine emergencies
16. Adult trauma and burns
17. Stress recognition and management
18. Toxicology
19. Pharmacology
20. Disaster and triage management**
21. Survival training, if applicable
22. Hazardous materials scene recognition and response**
23. Scene management/rescue/extrication**

B. Clinical Component that includes experiences in providing:

1. Critical intensive care
2. Emergency care
3. Neonatal Intensive care
4. Obstetrics
5. Pediatric critical care
6. Prehospital care**
7. Invasive procedures (or mannequin equivalent)

for refreshing specific skills, i.e.: endotracheal intubation

*Refers to Inter hospital/inter facility ALS providers only

** Refers to Prehospital ALS providers only.

NOTE: Specialty Care Providers must have included in their educational programs, additional content material and skills specific for their specialty area.

C., Continuing Education

1. Documentation of each scheduled crew ALS, RN, MD or Specialty care provider completion of a minimum of 48 hours of air medical refresher/continuing education every two years must be kept on file by the air medical ambulance service and submitted to the Office biennially.

2. Continuing education/staff development programs, specific and appropriate to the mission statement and scope of care of the air medical ambulance service, must

be provided.

3. Continuing education/staff development programs must include reviews and/or updates of the following areas:

- a) Aviation-safety issues
- b) Altitude physiology
- c) Management of emergency/critical care adults, pediatric and neonatal patients (medical and trauma)
- d) Obstetrical emergencies
- e) Invasive procedures labs
- f) Stress Management
- g) Infection control
- h) Hazardous materials scene recognition and response
- i) Survival training, if applicable
- j) Current certification must be maintained

in the following areas:

(1) CPR (Cardio-pulmonary Resuscitation per guidelines of the American Heart Association)

(2) ACLS*

(3) ATLS*/Flight Nurse Advanced Trauma Course**/PHTLS*** (specific certification depends on level of care provider)

(4) PALS

(5) Neonatal Resuscitation Course (neonatal specialty care providers, only)

* Physicians must be either ABEM /ABOEM or ACLS & ATLS certified

** Nurses may elect to audit ATLS

*** Paramedics may elect to be certified in Basic Trauma Life Support (BTLS)

~~**H. (Appendix A Section II did not exist)**~~

II. Educational Requirements specific to the air medical in-flight environment for all air medical providers.

~~**ALL AIR MEDICAL PROVIDERS**~~

A. Air medical patient transport considerations (assessment, treatment, preparation, handling, equipment)

1. Day and night flying protocols
2. EMS communications
3. EMS systems
4. General aircraft safety annually to include:
 - a) aircraft evacuation procedures
 - b) communications during an emergency situation and knowledge of emergency communication frequencies
 - c) in-flight and ground fire suppression procedures
 - d) in-flight emergency and emergency landing procedures (e.g., position, oxygen, securing

equipment)

e) safety in and around aircraft including FAA rules and regulations pertinent to safety for air medical team members, patients, and lay individuals

f) specific capabilities, limitations and safety measures for each aircraft used

g) use of emergency locator transmitter (ELT)

5. Ground operations

IV. III. Pilot Training Requirements

A. Initial training shall, at a minimum, consist of:

1. Training in specific type of aircraft as follows:

a) Less than 100 hours in aircraft type

(1) Factory school or equivalent (ground and flight)

(2) Twenty-five (25) hours as pilot in command in aircraft type prior to EMS missions

(3) Five (5) hours as pilot in command or at the controls prior to EMS missions

(4) Ten (10) hours as pilot in command or at the controls prior to EMS missions if transitioning from a single to a twin engine aircraft

b) Over 100 hours in aircraft type

(1) Part 135 check ride (for ~~part~~ Part 135 certificate holders)

(2) Five (5) hours local area orientation

2. Minimum requirements for area orientation

a) Five (5) hours area orientation of which two hours must be at night as pilot in command or at the controls prior to EMS missions

b) Training hours in aircraft type and area orientation may be combined depending on the experience and background of the pilot

3. Terrain and weather considerations specific to the program's geographic area

4. Instrument Meteorological conditions (IMC) recovery procedures by reference to instruments

5. A structured orientation must be conducted for relief pilots which at a minimum must include: roles, responsibilities, and familiarization with the region served

6. Orientation to the hospital or health care system associated with the air medical service

7. Orientation to infection control, medical systems installed on the aircraft and patient loading and unloading procedures

8. Orientation to the EMS and public service agencies unique to the specific coverage area

B. Quality assurance and competency must be ensured through methodologies including monthly operational reviews, ensuring pilot proficiency in both standard and emergency procedures. Remediation must be implemented as deficiencies are identified.

C. Annual recurrent training will minimally include:

1. Factory or equivalent refresher course

2. FAR Part 135 training requirements

3. IMC recovery procedures

4. Flight by reference to instruments

APPENDIX B - Aircraft and equipment

The certificate holder must meet all Federal Aviation Regulations specific to the operations of the air medical ambulance service.

A. AIRCRAFT MEDICAL CONFIGURATION STANDARDS

1. Air medical personnel assure that all medical equipment is in working order through checklists.

2. All equipment (including specialized equipment) and supplies must be secured according to FAR's.

3. Personnel must be in seatbelts (and shoulder harnesses if installed) for all take-offs and landings according to FAA regulations.

4. Patients are restrained with straps that must comply with FAA regulations.

5. A policy must be in place to address refusal to transport patients who may be considered a threat to the safety of the flight and/or air medical personnel.

6. Patients under 60 pounds (27 kg), excluding transport isolette patients, shall be provided with an appropriately sized restraining device (for patient's height and weight) which is further secured by a locking device.

7. The pilot(s), flight controls, throttles (RW) and radios are physically protected from an intended or accidental interference by the patient, air medical personnel or equipment and supplies.

8. A minimum of one stretcher shall be provided that can be carried to the patient:

a) The stretcher and the means of securing it for flight must be consistent with FARs.

b) The stretcher shall be large enough to carry the 95th percentile adult American patient, full length in the supine position (the 95th percentile adult American male is 6 ft. and 212 lbs.).

c) The stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available.

d) The head of the stretcher is capable of being elevated at least 30 degrees for patient care and comfort.

9. Medical oxygen system - oxygen is installed according to FAA regulation and is capable of being shut off from inside the aircraft. Medical personnel can determine ~~if oxygen is on by~~ oxygen status using in-line pressure gauges mounted in the patient care area.

10. Each gas outlet is clearly marked for

identification.

11. Supplemental lighting system will be installed in the aircraft for use in situations in which standard lighting is insufficient for patient care.

a) A self-contained lighting system powered by a battery pack or a portable light with a battery source must be available.

b) A means of protecting the cockpit from light in the patient care area shall be provided for night operations or use of red lighting (if not able to isolate the patient care area) to restrict light intensity.

12. Electric power outlet (with a minimum of 750 voltage amperage capacity) is provided, 28 volt DC and/or 115 volt AC, with sufficient output to meet the requirements of the complete specialized equipment package without compromising the operation of any electrical aircraft equipment.

13. No smoking signs are prominently displayed inside the cabin.

14. The air medical personnel "head-strike envelope" is clear of all obstructions.

B. ADDITIONAL OPERATIONAL POLICIES

There shall be specific policies and procedures regarding aircraft operations and evidence of training in the following areas:

1. Written patient loading and unloading procedures.

2. Specific policies concerning circumstances for hot loading or unloading if practiced.

3. Refueling policies for normal and emergency situations: Refueling with the engine running, rotor turning, and/or passengers on board is not recommended. However, emergency situations of this type can arise. Specific and rigid procedures should be developed by the operator to handles these occurrences. ~~Such "hot fueling" procedures will be covered by the operator's training program.~~ Refueling policies will address:

a) Refueling with engine(s) running or shut down.

b) Refueling with air medical personnel or patient(s) on board.

4. Specific policy to address the combative patient. Additional physical and/or chemical restraints should be available and used for combative patients who potentially endanger himself, the staff or the aircraft.

C. MEDICAL MANAGEMENT and EQUIPMENT REQUIREMENTS

1. Airway Maintenance and Oxygen Delivery

a) Objectives:

(1) The ability to initiate and maintain an airway with adequate ventilatory support for both adult and pediatric patients must be present.

(2) Adequate amounts of oxygen must be available for every mission.

(3) Oxygen flow can be stopped at or near the oxygen source from within the aircraft.

(4) A variety of oxygen delivery devices which are consistent with the scope of care must be present.

(5) The following indicators ~~are~~ must be available to personnel while in flight:

(a) quantity of oxygen remaining in the onboard oxygen supply system.

(b) measurement of oxygen liter flow

(6) There must be a back-up source of oxygen (of sufficient quantity to get safely to the ground for replacement) in the event the main system fails.

(7) Oxygen flow meters and outlets must be padded, flush mounted, or so located to prevent injury to personnel.

b) Required Equipment:

(1) Oral and nasopharyngeal airway adjuncts

(2) Oxygen supplies, including PEEP valves, appropriate for age and potential needs of patients

(3) Bag-Valve-Masks with oxygen reservoirs (assorted sizes appropriate to age of patients)

(4) Suction equipment (installed and portable) with appropriate suction tubes (sizes and types)

(5) Laryngoscope and tracheal intubation equipment

(6) Chest decompression and cricothyroidotomy equipment

(7) Pulse Oximeter

(8) Capnography (wave form)

(9) And all other equipment required to comply with the Delaware Standard Treatment Protocols.

2. Intravenous Fluids

a) Objectives:

(1) Fluids and supplies must be readily available.

(2) Hangers/hooks are available that secure the IV solutions in place.

(3) All hooks are padded and/or flush mounted to prevent injury to personnel.

(4) Glass IV containers are prohibited unless explicitly required by medication administration specifications.

b) Equipment:

A variety of IV solutions, tubing and catheters which potentially may be needed must be carried.

3. Medications

a) Objectives:

(1) Medications must be easily accessible.

(2) Controlled substances are to be secured in a manner consistent with state laws.

(3) Medications are stored in such a manner as to protect them from temperature extremes.

b) Equipment and Supplies:

(1) All services whose scope of service include ALS and specialty care missions will carry ACLS the drugs required to comply with current Delaware Standard Treatment Protocols.

(2) Medications required by a specific specialty care mission must be carried on board during the mission.

(3) Appropriate medication administration equipment must be present.

4. Cardiac Monitoring, Defibrillation and External Pacing

a) Objectives:

(1) External cardiac pacing must be available.

(2) Equipment must be secured and positioned so that displays are clearly visible and usable to the attending personnel.

(3) The aircraft must allow for in-flight, 'effective' CPR.

(a) 'Effective' is defined as CPR that produces a compression pulse.

b) Equipment Required:

(1) Cardiac monitor/Defibrillator and External Cardiac ~~Pacer~~ Pacemaker:

(2) Pediatrics paddles must be present if appropriate to the scope of service.

(3) Extra power sources are available for cardiac monitor, defibrillator and external ~~pacer~~ cardiac pacemaker.

(4) Automatic blood pressure device

d) Evidence of reporting QA/CQI activities through established QA/CQI organizational structure

e) Evidence of on-going re-evaluation of action plans until problem resolution occurs

4. Quarterly review shall monitor, at a minimum, the following:

a) Reason for transport

b) Mechanism of injury or illness

c) Medical interventions performed or maintained

(1) Time of intervention consistently documented

(2) Patient's response to intervention documented

(3) Appropriateness of interventions performed or omission of needed interventions

d) Patient's outcome (morbidity and mortality) at the time of arrival at destination (including any change in condition during flight)

e) Timeliness of the transport

f) Safety practices

(1) Safety issues may be handled through the Safety Committee when a problem is identified.

(2) QA/CQI personnel may collect data and refer to the Safety Committee for action and resolution.

g) Operational criteria to include at a minimum the following ~~quantity~~ indicators:

(1) Number of aborted and canceled flights due to weather

(2) Number of aborted and canceled flights due to maintenance

(3) Number of aborted and canceled flights resulting in the use of alternative modes of transport due to patient condition.

5. Utilization appropriateness (~~RW~~) - the following indicators may trigger a review of the EDIN record by the Office of Emergency Medical Services, or their designate, to determine the medical appropriateness of the transport, based upon patients who are:

a) ~~Who are discharged~~ Discharged home directly from the Emergency Department, or discharged within 24 hours of admission

b) Transported without an IV line or oxygen

c) In ~~which~~ cardiopulmonary arrest where CPR is in progress at the referring location

d) ~~Who are not~~ Not transferred from a critical care unit, emergency department, or other specialty care unit.

e) "Scheduled transports"

f) Air transported more than once for the same illness or injury within 24 hours

g) Transported from the scene of an injury ~~with a trauma score of 15 or greater or fails to meeting area-specific triage criteria for a critically injured trauma patient and fails to meet the criteria outlined in the "Prehospital Trauma Triage Scheme" in Section VI of the State Trauma System~~

APPENDIX C – Quality Management

1. ~~There is a~~ The service or organization shall have a written QA/CQI plan which includes the following components:

a) Responsibility/assignment of accountability

b) Scope of care

c) Important aspects of care

d) Indicators

e) Thresholds for evaluation which are appropriate to the individual service

f) Methodology

2. ~~There will be regularly scheduled~~ The service or organization shall regularly hold QA/CQI meetings.

3. The service or organization's monitoring and evaluation process ~~has~~ shall have the following characteristics:

a) Driven by important aspects of care identified by the air medical service's QA/CQI plan

b) Indicators and control thresholds are used to objectively monitor the important aspects of care

c) Evidence of QA/CQI studies and evaluation in compliance with written QA/CQI plan

Regulations.

h) Transported interfacility, and the receiving facility is not a higher level of care than the referring facility

i) Transported from the scene of an injury to any hospital which was not the closest appropriate and available trauma center (based on regional trauma plans, if present)

6. For both QA/CQI and utilization review programs, there shall be evidence of actions taken in problem areas and the evaluation of the effectiveness of that action.

Appendix D – Glossary

~~ABEM – American Board of Emergency Medicine~~

~~ABOEM – American Board of Osteopathic Emergency Medicine~~

~~ACLS (Advanced Cardiac Life Support) – A syllabus and certification of the American Heart Association (AHA).~~

~~AIRCRAFT TYPE – Particular make and model of helicopter or airplane.~~

~~AIR MEDICAL SERVICE – A company or entity of a hospital or public service which provides air transportation to patients requiring medical care. This term may be used interchangeably with the term "air medical program" throughout the document.~~

~~AIR MEDICAL PERSONNEL – Refers only to the patient care personnel involved in an air medical transport.~~

~~AIR MEDICAL TEAM – Refers to the pilot(s) and patient care personnel who are involved in an air medical transport.~~

~~ALS MISSION – The transport of a patient who receives care during an interfacility or scene response commensurate with the scope of practice of an EMT-Paramedic.~~

~~ALS PROVIDER – A certified provider of skills required for advanced life support.~~

~~ATLS (Advanced Trauma Life Support) – A syllabus and certification offered to physicians by the American College of Surgeons.~~

~~BLS MISSION – The transport of a patient who receives care during an interfacility or scene response that is commensurate with the scope of practice of an EMT-B.~~

~~BLS PROVIDER – A certified provider of skills required for basic life support.~~

~~BTLS (Basic Trauma Life Support) – A syllabus offered by the American College of Emergency Physicians to provide a standard of care for the prehospital trauma victim.~~

~~CERTIFICATE – Signifies a pilot level of competency, i.e., student, private, commercial.~~

~~It can also refer to the type of service a company is qualified to provide under Federal Aviation Regulations.~~

~~CONSORTIUM PROGRAM – An air medical service sponsored by more than one health care facility or entity.~~

~~CONTINUOUS QUALITY IMPROVEMENT (CQI) – CQI is a management strategy that integrates dedication to a quality product into every aspect of the service; it brings together a variety of personnel and management tools to~~

~~examine the sources of problems within the system. CQI seeks to establish and remedy the root cause of problems by identifying and correcting the system's errors, rather than ascribing fault to individuals.~~

~~CONTROLLED AIR SPACE – Air space designated as continental control area, terminal control area, or transition area within which some or all aircraft may be subject to air traffic control.~~

~~CRITICAL CARE MISSION – The transport of a patient from an emergency department or critical care unit (or scene, RW) who receives care commensurate with the scope of practice of a physician or registered nurse.~~

~~CROSS COUNTRY (CC) – Generally when the destination is greater than 25 nautical miles from the departure point or as designated by a geographic boundary.~~

~~The DSP cross country is 25 nautical miles outside of the state of Delaware.~~

~~DSP – Delaware State Police~~

~~ELECTIVE TRANSPORTS – Air medical transports that may not be medically necessary but are done for patient or physician preference; these often are fixed wing, prepaid scheduled transports.~~

~~ELT (Emergency locator transmitter) – A radio transmitter attached to the aircraft structure which is designed to locate a downed aircraft without human action after an accident.~~

~~FAA – Federal Aviation Administration~~

~~FAR – Federal Aviation Regulation.~~

~~HEAD-STRIKE ENVELOPE – The volume of air space which a person's head would potentially move through during any abrupt aircraft motion.~~

~~HELIPAD – A small, designated area usually with a prepared surface, on an airport, landing/take-off area, or apron/ramp used for take-off, landing or parking helicopters.~~

~~HOT LOAD/UNLOAD – The loading or unloading of patient(s) or equipment with rotors turning.~~

~~IABP (Intra aortic balloon pump) – A cardiac assist machine which can be retrofitted into some types of aircraft.~~

~~IFR – Instrument Flight Rules~~

~~INSTALLED EQUIPMENT – Includes all items or systems on the aircraft at the time of certification and any items or systems subsequently added to the aircraft with FAA approval through a Supplemental Type Certificate (STC), FAA Form 8110 or Form 337 action.~~

~~IMC – Instrument meteorological conditions.~~

~~INDEPENDENT PROGRAM – Referring to an air medical service not sponsored by a hospital and operating under its own FAA certificate.~~

~~INFECTION CONTROL – An approach to reducing the risk of disease transmission to care takers, patients and others~~

~~LOCAL Day local: Less than 25 nautical miles from departure point to destination point with generally the same terrain elevation.~~

PROPOSED REGULATIONS

~~Night Local: The urban area of the helicopter base with enough illumination to maintain ground reference.~~

~~The DSP local is within the State of Delaware and less than 25 nautical miles outside the State of Delaware.~~

~~MODALITIES Treatment plans and equipment used in the delivery of patient care.~~

~~PHTLS Prehospital Trauma Life Support: A course offered by the American College of Surgeons to provide a standard of care for the prehospital victim.~~

~~PIC Pilot in command.~~

~~QUALITY ASSURANCE (QA) QA is a process of reviewing the quality of care delivered through the examination of known or potential problems. It measures the degree of compliance of the service's personnel with established standards.~~

~~SPECIALTY CARE MISSION The transport of a patient who requires care by professionals who can be added to the regularly scheduled personnel.~~

~~SPECIALTY CARE PROVIDER A provider of specialty care, such as neonatal, pediatric, etc.~~

~~VFR Visual Flight Rules.~~

APPENDIX D Air Medical Ambulance Service Use Report

Agency: _____ County (circle): NewCastle Kent Sussex

Incident #: _____ Incident Date: _____

Incident Location: _____

Incident Type: Medical Trauma Medical/Trauma Peds OB

Patient Priority: 1 2 3

Air Medical Service: _____

Radio Designation: _____

Responded From: _____

DSP Available? Y N Reason not utilized or not available: _____

ALS 10-8: _____ ALS 10-2: _____

Helo Request: Helo 10-8: Helo 10-2: _____

Circumstances

(Briefly describe the factors or circumstances that contributed to the use of this Air Medical Service)

Submitted by (print): _____

Signature: _____

Date: _____

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 Del.C. 505)

PUBLIC NOTICE

Food Stamp Program

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 / Food Stamp Program is proposing to implement policy changes to the following sections of the Division of Social Services Manual: 1) DSSM 9042: Households applying for food stamps whose gross income is at or below 200% of the Federal Poverty Level are categorically eligible; 2) DSSM 9028.1: Moved joint application processing language to a new section, from DSSM 9042 to DSSM 9028.1; and, 3) DSSM 2012: Clarifies the rule on deceased recipients that eligible individuals may receive benefits up to and including the date of his/her death to include the Food Stamp Program and the Medicaid Program.

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 Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by March 31, 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

9042 ~~ABC/GA~~ and Categorically Eligible Households [273.2(j)]

~~Notify households applying for ABC/GA of their right to apply for food stamp benefits at the same time and permit them to do so. These households' food stamp eligibility and benefit levels are to be based solely on food stamp eligibility criteria. However, any household in which all members are recipients of ABC/GA and/or SSI benefits are to be considered eligible for food stamps because of their ABC/GA/SSI status in accordance with DSSM 9042.2.~~

Recipients include individuals authorized to receive ABC/GA and/or SSI benefits but who have not yet received payment. In addition, persons are considered recipients if the ABC/GA or SSI benefits are suspended or recouped. Persons entitled to ABC/GA benefits because the grant is less than \$10. are also considered ABC/GA recipients.

~~Households, whether jointly processed and/or eligible because of their ABC/GA/SSI status will be certified in accordance with the notice, procedural and timeliness requirements of the food stamp regulations.~~

Households applying for food stamps whose gross income is at or below 200 percent of the Federal poverty level are categorically eligible unless specifically excluded in DSSM 9042.2 or 9042.3. The household is categorically eligible because Delaware uses TANF funds to provide pregnancy prevention information. Reduction of out-of-wedlock pregnancies is the 3rd purpose of the TANF program.

The authorization to receive information and/or services for pregnancy prevention is included on all applications for food stamps as follows:

AUTHORIZATION FOR RECEIPT OF PREGNANCY PREVENTION INFORMATION

You are authorized to receive pregnancy prevention information. If you wish to receive this information you can call Planned Parenthood at 1-800-230-PLAN (7526). If you wish to get teen pregnancy prevention information, you may also call the Alliance for Adolescent Pregnancy Prevention at 1-800-499-WAIT (9248). You can also call the Delaware Helpline at 1-800-464-4357 for the Public Health Family Planning clinic in your area.

9028.1 Joint Application Processing

Notify households applying for ABC/GA of their right to apply for food stamp benefits at the same time and permit them to do so. These households' food stamp eligibility and benefit levels are to be based solely on food stamp eligibility criteria. However, any household in which all members are recipients of ABC/GA and/or SSI benefits are to be considered eligible for food stamps because of their ABC/GA/SSI status in accordance with DSSM 9042.2 .

Recipients include individuals authorized to receive ABC/GA and/or SSI benefits but who have not yet received payment. In addition, persons are considered recipients if the ABC/GA or SSI benefits are suspended or recouped. Persons entitled to ABC/GA benefits because the grant is less than \$10. are also considered ABC/GA recipients.

Households, whether jointly processed and/or eligible because of their ABC/GA/SSI status, will be certified in accordance with the notice, procedural and timeliness requirements of the food stamp regulations.

DSSM 2012 Deceased ~~Cash Assistance~~ Recipients

Eligible individuals may receive benefits up to and including the date of his/her death.

For Cash Assistance:

If a recipient dies after midnight of the first day of the month, but before he has received his grant or was unable

to endorse and cash it, the check may be returned to the Payments Section, DMS. There it will be marked "Payable to the estate of" the recipient. The name of the person handling the estate will be designated as payee. The check will be sent to the person handling the estate.

For Food Stamps:

If the deceased recipient was the only household member, the food stamp benefits are returned to the agency.

If the deceased recipient is the payee of the benefit for a household, the remaining household members are eligible for the benefit at the same level for the current month, and if eligible due to ten day notice, for the next month s benefit.

For Medical Assistance:

Individuals may receive benefits up to and including the date of his/her death.

For Long Term Care:

Institutions may receive vendor payment up to and including the date of death.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. 505)

PUBLIC NOTICE

Medicaid/Medical Assistance Program

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 Program is proposing to implement new policy to the Division of Social Services Manual, Sections 17170 through 17170.6 titled, Section 4913 Disabled Children. These are proposed eligibility rules for a mandatory categorically needy eligibility group enacted under the Balanced Budget Act of 1997.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulation must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by March 31, 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.

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 as in effect on April 1, 1996.

17170.3 Continuing Disability Reviews

The rules in 20 CFR 416.990 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.

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.

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)

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

Delaware Regulations Governing Hazardous Waste (DRGHW).

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

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing miscellaneous changes to the DRGHW that correct existing errors, adds clarification or enhances the current program.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 & 63.

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

NONE

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday April 10, 2001 beginning at 7:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. In addition, those affected by the proposed amendments are invited to attend workshop conducted on March 29, 2001.

7. PREPARED BY:

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

**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 Combustors

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](#).

DIVISION OF FISH & WILDLIFE

Statutory Authority: 7 Delaware Code,
Section 1902(a), (7 Del.C. §1902(a))

REGISTER NOTICE

SAN # 2000-17

1. TITLE OF THE REGULATION

Shellfish Regulations

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

A new shellfish regulation is proposed to require

recreational crabbers using a crab pot to use a Bycatch Reduction Device in each entrance in order to reduce the capture of diamond back terrapins commonly found in shallow water areas where recreational crabbers tend to set their pots, i.e., Indian River and Bay, Rehoboth Bay, Little Assawoman Bay, Big Assawoman Bay and tributaries to the Delaware River and Bay.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, §1902(a)

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

None

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover Delaware 19901, (302)739-3441. A public hearing on these proposed amendments will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover DE at 7:30 PM on Tuesday, March 20, 2001. The record will remain open for written comments until 4:30 PM on March 30, 2001.

7. PREPARED BY:

Charles A. Lesser (302)-739-3441, February 6, 2001

Proposed Shellfish Regulation

S-34 NON COMMERCIAL CRAB POT DESIGN: BYCATCH REDUCTION DEVICE

a) It shall be unlawful for the owner of any non-commercial crab pot to place said crab pot in the tidal waters of this State unless said crab pot has a bycatch reduction device securely attached in each entrance such that each crab entering said crab pot must pass through the bycatch reduction device. A bycatch reduction device shall mean a metal or plastic rigid rectangle that measures no more than 1.75 inches by 4.75 inches.

DIVISION OF FISH & WILDLIFE

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

REGISTER NOTICE

SAN # 2001-05, 06 and 07

1. TITLE OF THE REGULATION

To amend Tidal Finfish Regulations in order to remain in compliance with fishery management plans adopted by the Atlantic States Marine Fisheries Commission.

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

Tidal Finfish Regulation No. 21, SCUP SIZE LIMIT is proposed to be amended to adjust the recreational size limit from 7 inches to 8 inches and add a daily creel limit of 50 scup in order to reduce fishing mortality by 33% relative to the 2000 coast wide landings.

Tidal Finfish Regulation No. 23, BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS, is proposed to be amended to authorize the Division of Fish and Wildlife to adjust commercial quarterly trip (possession) limits during each of the four quarters on an as needed basis for black sea bass according to limits established by the Atlantic States Marine Fisheries commission and authorize the closure of the commercial black sea bass fishery in any quarter when the Atlantic States Marine Fisheries Commission determines a quarterly quota is filled rather than the National Marine Fisheries Service.

Tidal Finfish Regulation No. 27, SPINY DOGFISH; CLOSURE OF FISHERY, is proposed to be adopted to permanently close the commercial fishery for spiny dogfish in order to eliminate fishing mortality until this stock is recovered.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

These regulations are required for Delaware to be in compliance with amended fishery management plans. If Delaware does not comply, that particular fishery may be closed by the Secretary of the U.S. Department of Commerce.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code §903 (e)(2)(a).

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

None

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence

and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover Delaware 19901, (302)739-3441. A public hearing on these proposed amendments will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover DE at 7:30 PM on Tuesday, March 20, 2001. The record will remain open for written comments until 4:30 PM on March 30, 2001.

7. PREPARED BY:

Charles A. Lesser, (302)-739-3441, February 6, 2001

PROPOSED REGULATIONS

TIDAL FINFISH REGULATION 21. SCUP SIZE LIMIT.

a) It shall be unlawful for any recreational fisherman to have in possession any scup, **Stenotomus chrysops**, that measures less than ~~seven (7)~~ eight (8) inches, total length.

b) It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to possess any scup that measures less than nine (9) inches, total length.

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

d) It shall be unlawful for any recreational fisherman to have in possession more than 50 scup at or between the place where said scup were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

TIDAL FINFISH REGULATION NO. 23 BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS

a) It shall be unlawful for any person to have in possession any black sea bass **Centropritis striata** that measures less than ten (10) inches, total length.

b) Is omitted intentionally.

c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the ~~following quantities~~ quantity of black sea bass ~~during the quarter listed.~~ determined by the Atlantic States Marine Fisheries Commission for any quarter.

~~First Quarter (January, February and March)–~~

~~9,000 pounds.~~

~~Second Quarter (April, May and June)–~~

~~3,000 pounds.~~

~~Third Quarter (July, August and September)–~~

~~2,000 pounds.~~

~~Fourth Quarter (October, November and~~

~~December)– 3,000 pounds.~~

The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission. One trip shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware.

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

TIDAL FINFISH REGULATION NO. 27, SPINY DOGFISH; CLOSURE OF FISHERY

a) It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish, **Squalus acanthias**.

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
COMMISSION ON ADULT ENTERTAINMENT
ESTABLISHMENTS**

24 DE Admin. Code 1600
Statutory Authority: 24 Delaware Code,
Sections 1604(g), 1618(c),
(24 Del.C. §§1604(g),1618(c))

**ADOPTION OF RULES AND
REGULATIONS** |

ORDER ADOPTING RULES AND REGULATIONS

AND NOW, this 13th day of February, 2001, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Commission on Adult Entertainment Establishments of the State of Delaware (hereinafter "the Commission") enters this Order adopting Rules and Regulations.

Nature of the Proceedings

Pursuant to its authority under 24 **Del.C.** §1618(c), the Commission has proposed to adopt Rules and Regulations imposing sanctions for violations of certain provisions of

Title 24, Chapter 16. These sanctions include fines and license suspensions. Notice of the public hearing on the Commission's proposed rule adoption was published in the *Delaware Register of Regulations* on January 1, 2001 and in two Delaware newspapers of general circulation, all in accordance with 29 **Del.C.** §10115. The public hearing was held as noticed on Thursday, February 1, 2001. The Commission deliberated and voted on the proposed rule amendments immediately following the public hearing, voting unanimously to adopt the rules and regulations. This is the Commission's Decision and Order **ADOPTING** the rules as proposed.

Evidence and Information Submitted at Public Hearing

The Commission received no written comments in response to the notice of intention to adopt the proposed rule revisions. No public comment was received at the February 1, 2001 public hearing.

Findings of Fact and Conclusions

As outlined in the preceding section, the public was given the required notice of the Commission's intention to adopt regulations and was offered an adequate opportunity to provide the Commission with comments on the proposed changes. The Commission concludes that its consideration of the proposed Rules and Regulations is within its specific authority to promulgate regulations imposing sanctions for

violations of Chapter 16 under 24 **Del.C.** §1618(c). The Commission finds that adoption of the proposed rules and regulations is necessary to comply with and enforce 24 **Del.C.** Chapter 16, and for the full and effective performance of the Commission's duties under that chapter. The Commission finds that the proposed rules allowing for the imposition of fines and/or suspensions will allow the Commission to have necessary latitude in sanctioning licensees for violations which are not severe enough to justify license revocation. The Commission, therefore voted to adopt the rules and regulations as published.

ORDER

NOW, THEREFORE, by unanimous vote of the Commission on Adult Entertainment Establishments, **IT IS HEREBY ORDERED THAT:**

1. The proposed Rules and Regulations are *approved and adopted* in their entirety, in the exact text attached hereto as Exhibit "A".

2. 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(e).

3. The Commission reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

BY ORDER OF THE COMMISSION ON ADULT ENTERTAINMENT ESTABLISHMENTS

(as authenticated by a quorum of the Commission):

Mary C. Boudart, Chair
James C. Brannon, Jr., Member
Joan Wachstein, Member

1600 Commission On Adult Entertainment Establishments

Rule 1.0 Sanctions for Violations

1.1 Pursuant to 24 **Del.C.** §1618(c), the Commission may, following a hearing, impose civil fines and/or license suspensions for violations of the following statutes:

- 1.1.1 24 **Del.C.** §1608
- 1.1.2 24 **Del.C.** §1610
- 1.1.3 24 **Del.C.** §1611
- 1.1.4 24 **Del.C.** §1617
- 1.1.5 24 **Del.C.** §1622
- 1.1.6 24 **Del.C.** §1629

1.2 The Commission may, in its discretion, impose fines of no less than \$250.00 and no more than \$1000.00 and/or license suspensions of no less than one (1) day and no more than sixty (60) days for each violation of the laws set forth at Rule 1.1.

1.3 If a penalty imposed by the Commission, pursuant to this rule, is not complied with pursuant to the terms of the

Commission's Order, the Commission shall convene a hearing for the licensee to show cause why the license should not be revoked and/or additional penalties imposed.

1.4 Nothing in this rule shall prohibit the Commission from imposing a license revocation in lieu of or in addition to any penalty established under this rule, if license revocation is a penalty authorized by statute for the specific offense(s).

DIVISION OF PROFESSIONAL REGULATION BOARD OF NURSING

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

MODIFICATION OF REGULATIONS SECTION NO. 6.10.1.1

ORDER

Pursuant to due notice of time and place of hearing published in the News Journal and in the Delaware State News (Exhibit No. 1) and in compliance with the requirements of 29 **Del.C.** §10115, the Delaware Board of Nursing ("Board") under its authority to enact rules and regulations specified in 24 **Del.C.** §1906(1), conducted a public hearing concerning proposed modifications to the Rules and Regulations of the Board. The proposed modifications and additions were published in the Delaware Register of Regulations Volume 4, Issue 7, Monday, January 1, 2001 beginning at Page 1069. (Exhibit No. 2).

The public hearing was held on February 14, 2001 as scheduled in Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Kent County, Delaware. A quorum of the Board was present for the hearing.

SUMMARY OF THE EVIDENCE

The following summary of the evidence and information is provided pursuant to 29 **Del.C.** § 10118.

Iva J. Boardman, R.N., M.S.N., Executive Director of the Board of Nursing, was sworn and testified concerning the development of the proposed modification to the Rules and Regulations of the Board. Ms. Boardman noted that the proposed modification was consistent with the Nurse Licensure Compact and reduced the burden on Delaware employers by eliminating reports concerning nurses who were licensed by the Delaware Board of Nursing. The modification provides for reports only for nurses practicing in Delaware under licenses issued by their home state which is a member of the Licensure Compact.

There were no written comments received by the Board

of Nursing concerning the proposed change to the Rules and Regulations; no members of the public appeared at the public hearing; and there were no oral comments made at the public hearing.

FINDINGS OF FACT AND CONCLUSIONS

The Board finds that the procedures required for the modification of Rules and Regulations have been accomplished as required and that the proposed change furthers the public purposes of the Board of Nursing, reduces the burden on Delaware nursing employers, and is reasonable, appropriate, and proper for formal adoption by the Board. The change requires the Executive Director of the Board to request information from nursing employers concerning nurses employed "with a nursing license from another compact state".

DECISION AND ORDER

Based upon the findings and conclusions set forth above, the undersigned, constituting a quorum of the Delaware Board of Nursing, adopt the proposed modification to the Rules and Regulations published in the Register of Regulations in Volume 4, Issue 7, Monday, January 1, 2001, beginning at page 1069 as a modification to the Rules and Regulations of the Board, effective March 11, 2001 after publication of this Order and the final Regulation in the Register of Regulations. Since there is no change to the modification as proposed, the final regulation will be the same as set forth in the hereto attached Exhibit "2".

SO ORDERED this 14th Day of February 2001.

| | |
|-------------------------------------|----------------------------|
| Gwen Hines LPN | Robert Lawson, |
| Debora Boyle-Borkowski, | Public Member |
| RN, APN | Sallie Seger, LPN |
| Jan Monihan, RN | Doris Dayton, |
| Diana Padula, LPN | Public Member |
| Ruth Fournier, RN | Beulah Gray, Public Member |
| Helen Perkins, LPN | |
| Janet West, RN, Vice-President | |
| Deborah Maichle, RN, MSN, President | |

6.0 Requirements and Procedures for Licensure

6.1 Examinations

6.1.1 The Board declares that the National Council Licensure Examination-RN (NCLEX-RN) and the National Council Licensure Examination-PN (NCLEX-PN) are the required examinations for licensure in Delaware. The Division of Professional Regulation has the authority to review and approve the content and validity of examinations.

6.1.2 Up to July 1982, the passing score for professional nurse candidates was a standard score of 350 on

each test of the State Board Test Pool Examination.

6.1.3 Effective July 1, 1982, the passing score for Registered Nurse candidates was 1600 on the NCLEX-RN and 350 on NCLEX-PN.

6.1.4 Effective July 1, 1988, results are reported and recorded as pass or fail.

6.1.5 The candidate shall take the licensing examination within 90 calendar days following graduation from a Board approved program of professional or practical nursing and not there after without petitioning the Board for specific authorization to test after the 90 day period. Such petitions may be granted by the Board upon a showing of good cause.

See 3 DE Reg. 1373 (4/1/00)

6.1.6 To be eligible to take the examination for licensure for practical nursing, the applicant must be a graduate of a Board approved program for practical nursing. A graduate of a program for professional nursing will be denied permission to take the examination for licensure as a practical nurse.

6.1.7 The candidate shall file two applications for each examination.

6.1.7.1 The NCLEX application shall be filed with a non-refundable fee.

6.1.7.2 The candidate shall file a completed and notarized Delaware application for licensure by examination, along with the required fee.

6.1.7.3 In addition, the candidate shall file a signed official school transcript indicating the date of graduation or date degree was conferred. If this is not possible, a certifying letter from the director indicating the candidate had completed the program will be accepted until an official transcript is available.

6.1.7.4 The candidate shall present the admission card issued by the Board in order to be admitted to any portion of the examination.

6.1.8 A candidate who has been accepted but is unable to attend the scheduled examination must notify the Board prior to the starting time or during the first day of examination with a specific reason for not attending. If the reason is acceptable to the Board, (e.g. candidate is ill, death in immediate family, accident, etc.) the Delaware application for licensure by examination will be extended to the next examination date.

6.2 Temporary Permits Prior to Examination

6.2.1 Prior to the employment starting date the candidate shall submit a notarized application for a temporary permit on a form provided by the Board.

6.2.2 The temporary permit is a limited license authorizing professional or practical nursing practice only at the institution employing the graduate, and only under supervision and pending the results of the examination.

6.2.3 Any graduate who has completed the requirements of a state board of nursing approved program

of professional or practical nursing and who has filed for licensure by examination in Delaware may be employed in professional or practical nursing, working under the direct supervision of a Registered Nurse pending results of the licensing examination.

6.2.4 Direct supervision means supervision by a Registered Nurse on the same assigned unit during the same time period. The term "unit" is defined as one staffed unit of a maximum of forty patients.

6.2.5 In order to practice nursing in Delaware with a temporary permit, a recent graduate of a state board of nursing approved program of nursing in another state must file an application for licensure before beginning to practice. If the graduate has taken, or is scheduled to take, the NCLEX Examination in the state in which the program is located, the applicant shall file an application for licensure by endorsement in Delaware.

6.2.5.1 Candidates must submit written documentation that they are candidates for the NCLEX in the state in which the examination is being written.

6.2.6 The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

6.2.7 Only a candidate approved to take an examination scheduled after graduation from an approved State Board of Nursing program in the United States or its territories may be issued a temporary permit to practice nursing, good until the release of the examination results.

6.2.8 The temporary permit shall terminate forthwith if a candidate fails to take the examination in the time prescribed. The Board will notify the candidate's employer of the termination of the permit. The candidate shall return the permit to the Board.

6.2.9 If extenuating circumstances exist, the candidate may apply to the Board for reissuance of a temporary permit. If the reason is acceptable, the permit may be reissued. (Refer to Section 6.7, Temporary Permits)

6.3 Test Results

6.3.1 In the case of a successful candidate, the results are released in the following order: the candidate, the director of the school of nursing and the news media. In the case of the unsuccessful candidate the results are released in the following order: the candidate, the employer, and the director of the school program.

6.3.2 A successful candidate will receive the test results and a copy of the Law regulating the practice of nursing in Delaware, (24 Del.C. Ch. 19), and a certificate of registration with a permanent license number.

6.3.3 A letter to unsuccessful candidates will accompany the test results to advise them of their status and the procedure to be followed for re-examination.

6.3.4 Candidates for licensure who fail the National Council Licensure Examination may not be employed in nursing, are not permitted to practice nursing as

defined in the Law, and must return the temporary permit upon receipt of the failure notification.

See 3 DE Reg. 1373 (4/1/00)

6.3.5 The candidate's employer shall be notified that the temporary permit is not valid, and the candidate may not be employed in nursing until the NCLEX has been passed.

See 3 DE Reg. 1373 (4/1/00)

6.3.6 The applicant shall retake the examination within a one-year period following notification of failure in order to be eligible for re-examination and not there after without petitioning the Board for specific authorization to retest after the one-year period. Such petitions may be granted by the Board upon a showing of good cause to allow for further examination. There is a fee for each re-examination. Any candidate who graduated following the date of February 1982 may retake NCLEX for an unlimited number of times within a five year period from the date of graduation from an approved nursing education program. Notwithstanding the foregoing, any candidate who graduates from an approved nursing education program after April 30, 2000 may retake NCLEX an unlimited number of times within a two year period from graduation and not there after without petitioning the Board for specific authorization to retest after the two year period. Such petitions may be granted by the Board upon a showing of good cause to allow further examination.

See 3 DE Reg. 1373 (4/1/00)

6.4 Requirements for Applicants Graduating from Foreign Programs

6.4.1 Applicants graduating from programs outside of the United States and not licensed by the State Board Test Pool Examination or NCLEX in another state:

6.4.1.1 Must have been issued a certificate of licensure by the licensing agency in the state, territory, or country where the nursing program is located;

6.4.1.2 Must submit a certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the educational requirements of a curriculum for the preparation of professional nurses which is equivalent to the approved professional schools in Delaware;

6.4.1.3 Must submit official English translations of all required credentials;

6.4.1.4 Must, in instances when completion of a four-year high school course study or its equivalent cannot be verified, take the high school equivalence examination given by a State Department of Education;

6.4.1.5 Must submit evidence that the program from which applicant is a graduate meets the approved standards adopted by the Board (24 Del.C. §§1910, 1914) and Rules and Regulations: 2.5. (If the program does not include the areas specified in the above curricula, the deficiencies must be made up before the applicant is eligible to take NCLEX);

6.4.1.6 Are allowed one year from the date of Board review of the completed application to make up all deficiencies, including the taking of the initial examination;

6.4.1.7 Effective July 1, 1982, professional nurse applicants must have passed the NCLEX examination (with a minimum standard score of 1600) and practical nurse applicants must have passed the NCLEX examination (with a minimum standard score of 350) within four examination opportunities, within a period of two years or original notification of failure.

6.4.1.8 Effective July 1, 1988, results are reported and recorded as pass or fail.

6.4.1.9 May be issued a temporary permit and may be employed in professional or practical nursing if the applicant has met all of the Board's prerequisites for taking the NCLEX in Delaware and is scheduled to do so;

6.4.1.10 May work only at the institution employing the applicant, under the direct supervision of a registered nurse pending results of the first licensing examination.

6.4.1.11 Must meet all other requirements for licensure.

6.4.2 All applications will be reviewed by the Board to determine if the applicant is eligible to take the NCLEX Examination or to determine if applicant's educational qualifications are as Board prescribed and may be eligible for licensure by examination.

6.4.3 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination from 1970 - 1979 are eligible for licensure by endorsement.

6.4.4 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination, first administered August 1980, are eligible for licensure by endorsement with a passing score of 400. (September 15, 1981)

6.4.5 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination after that examination became graded on a pass or fail basis are not eligible for licensure by endorsement and must pass the NCLEX. (June 8, 1996)

6.5 Licensure by Endorsement

6.5.1 All endorsement applicants shall:

6.5.1.1 Submit a completed, signed, and notarized application on a form provided by the Board.

6.5.1.2 Remit the required non-refundable fee.

6.5.1.3 Attach to the application a photocopy of a current license indicating date of expiration.

6.5.1.4 Provide official verification of original licensure in another jurisdiction on a form acceptable to the Board.

6.5.1.5 An applicant for endorsement must have completed high school or must have passed a nationally standardized test, and be otherwise qualified for licensure.

6.5.1.5.1 The Board shall request a

reference on a form supplied by the Board from:

6.5.1.5.1.1 the applicant's immediate past employer(s) in the past six months. Such reference(s) should be given by the nursing employer, or if the immediate past employer is not a nursing professional, by the applicant's immediate supervisor (e.g. physician, director, manager). In the case of someone engaged in solo practice or who is self-employed, the reference shall be provided by at least one professional colleague with whom the individual has most recently worked for at least six months in the past five years.

6.5.1.5.1.2 in the event of no previous nursing employer, the Director of the applicant's approved nursing education program. Any unsatisfactory reference shall be brought to the attention of the Board for review.

6.5.1.5.2 If the applicant has not been employed in nursing a minimum of 1000 hours in the past five years or a minimum of 400 hours of nursing practice within the previous two years, the applicant must give evidence of satisfactory completion of an approved refresher program within a two-year period before licensure by endorsement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional/practical nursing.

6.5.1.5.3 All completed applications for endorsement will be submitted to the Board for consideration of approval.

6.5.1.5.4 Issuance of a license shall be considered as notice of approval of the application.

6.5.1.5.5 All applications will be purged in accordance with Division policy.

6.5.2 Registered Nurses

6.5.2.1 The Board may issue a license to practice professional nursing as a Registered Nurse by endorsement, without a written examination, to an applicant who has been duly licensed as a Registered Nurse under the laws of another state, territory, or foreign country if, in the opinion of the Board, the applicant meets the qualifications for licensure in this state.

6.5.2.2 As of 1950 and thereafter, the State Board Test Pool Examination for professional nursing is the licensing examination authorized for use by all boards of nursing in jurisdictions in the United States. (In July 1982, the examination was re-titled National Council Licensure Examination-RN (NCLEX-RN). Prior to this date, examinations constructed by state boards of nursing are acceptable, providing such examinations include all of the required clinical areas: medicine, surgery, obstetrics-gynecology, pediatrics, psychiatry). Until 1953, the passing score required for each of the tests was 70%.

6.5.2.3 Those applicants graduating as of 1953 and thereafter are required to show evidence of clinical experience in medical nursing, surgical nursing, psychiatric

nursing, nursing of children, and obstetrical nursing.

6.5.2.4 An applicant for licensure by endorsement must be a graduate of a State Board of Nursing approved school of nursing, and be otherwise qualified for licensure.

6.5.3 Licensed Practical Nurses

6.5.3.1 Effective October 1, 1963, waiver or equivalency licensure is not acceptable in Delaware. The Board may issue a license to practice nursing as a Licensed Practical Nurse, without a written examination, to an applicant who has been licensed as a Practical Nurse or a person entitled to perform similar services under a different title under the laws of any state, territory or foreign country if, in the opinion of the Board, the applicant has the qualifications required for the licensing of practical nurses.

6.5.3.2 Candidates for licensure are required to have theory and clinical experience in medical nursing, surgical nursing, psychiatric nursing, obstetrical nursing, and nursing of children.

6.5.3.3 The applicant must be a graduate of a Board approved program for practical nursing.

6.5.3.4 A licensed practical nurse applicant for licensure by endorsement must have passed the NCLEX-PN.

6.5.3.5 An applicant for endorsement must be otherwise qualified for endorsement.

6.6 Licensure: Biennial Renewal and Reinstatement

6.6.1 Biennial Renewal of Licensure

6.6.1.1 In order to practice nursing in Delaware with or without financial compensation, Registered Nurses or Licensed Practical Nurses who are duly licensed under any provision of 24Del.C. Ch. 19 shall renew their licenses biennially, prior to December 31 of the biennium. In the event that applicant for renewal or reinstatement of licensure has not been actively employed in professional or practical nursing in the past five years, the applicant will be required to give evidence of satisfactory completion of a professional or practical nursing refresher program within an approved agency within a two-year period to renewal before licensure will be granted, In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.6.1.1.1 Registered Nurses - the license shall be valid for two calendar years expiring each odd-numbered year on dates established by the Department of Administrative Services.

6.6.1.1.2 Licensed Practical Nurses - the license shall be valid for two calendar years expiring each even-numbered year on the dates established by the Department of Administrative Services.

6.6.1.2 The applicant shall indicate nursing employment within the past five years before the renewal application will be processed. A minimum of 1000 hours of nursing practice within the past five years or a minimum of

four hundred hours of nursing practice within the past two years is required for licensure by renewal or reinstatement. Verification of completion of the practice hours will occur for a minimum of 1% of the total number of licensees with notice of the audit two months prior to the renewal in a biennium. An additional 2% will be audited within six months of renewal of licensure. See 9.0, for Mandatory Continuing Education requirements.

6.6.1.2.1 Upon receipt of such notice, the licensee must submit verification of compliance for the period being audited/verified. Verification will be done on a form supplied by the Board office that includes employer's name, title, address, telephone number, job title, and dates of employment.

6.6.1.2.2 The employer will submit the completed form directly to the Board office.

6.6.1.2.3 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

6.6.1.2.4 An unsatisfactory verification or audit shall result in Board action.

6.6.1.2.5 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

6.6.1.3 An application for renewal of license will be mailed at least 12 weeks prior to the expiration date of current licensure.

6.6.1.4 Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing their license by the expiration date.

6.6.1.5 Renewal application, along with the required fee, shall be returned to the Board office and postmarked no later than the last day of the month before the month of expiration.

6.6.1.6 Licenses that have lapsed may be reinstated by the Board upon satisfactory explanation by the licensee of failure to renew and after payment of a penalty fee.

6.6.1.7 During the month of expiration, the Board may issue a renewal certificate upon receipt of a renewal application, the documentation of nursing employment, the renewal fee and late fee.

6.6.2 Reinstatement of Licensure

6.6.2.1 Registered Nurses or Licensed Practical Nurses who fail to renew their licenses by February 28, May 31, and September 30, of the renewal period shall be considered to have lapsed licenses and shall not practice nursing in the state of Delaware. After February 28, May 31, and September 30 of the current licensing period, any requests for reinstatement of a lapsed licensed shall be presented to the Board for action. All applicants shall have a minimum of 1000 hours of nursing practice within the previous five years or a minimum of four hundred hours of nursing practice within the past two years before licensure

by reinstatement will be granted. The practice of nursing can be with or without financial compensation. In the event the applicant has not been actively employed in nursing as described above, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reinstatement. In the event no refresher course is available, the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.6.2.2 The applicant shall file a notarized application for reinstatement of licensure. The application shall be accompanied by a satisfactory reference from a current or previous employer, renewal fee and penalty fee.

6.6.3 It is unprofessional conduct and a violation of Delaware Law to practice without a license. The Board may refuse a license or refuse to renew a license of a professional nurse or a practical nurse who practices without a current license.

6.6.4 Reinstatement Hearings

6.6.4.1 Hearings for consideration of reinstatement licensure may be held for those applicants who file for reinstatements more than 90 days after the renewal period and who have been practicing nursing without a current license, or who have submitted an unsatisfactory explanation for failure to renew.

6.6.4.2 A notice of hearing shall be sent to the Registered Nurse or Licensed Practical Nurse. The hearing shall be conducted in accordance with the Administrative Procedures Act and the Nurse Practice Act.

6.6.4.3 The Board shall make determination for reinstatement of licensure or shall determine that the Registered Nurse or Licensed Practical Nurse shall be subject to the penalties provided for violations of the Nurse Practice Act.

6.6.4.4 Upon determination that licensure shall be reinstated, the Board shall issue a license to practice nursing.

6.7 Temporary Permits

6.7.1 The temporary permit is a limited license authorizing professional, practical or graduate nursing practice only at the employing institution for no longer than an initial 90 day period.

6.7.2 Nurses who produce current evidence of licensure to practice nursing in another state and who have applied for endorsement may be issued a temporary permit to practice nursing for a maximum of 90 days, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice within the past two years.

6.7.3 A temporary permit to practice nursing for a maximum of 90 days may be issued to persons who have requested reinstatement of their licensure, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing

practice in the past two years.

6.7.4 All applicants seeking temporary permits to practice professional, practical or graduate nursing in Delaware must:

6.7.4.1 Prior to employment starting date, submit a notarized application for endorsement or examination, completing the portion for a temporary permit, and indicating employer.

6.7.4.2 Have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours in the past two years, if applying for reinstatement or endorsement, with current evidence of licensure from another state.

6.7.4.3 Have been accepted as a nurse employee in Delaware. The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

6.7.4.4 Have graduated from a State Board of Nursing approved program.

6.7.4.5 Pay a licensure fee which is not refundable.

6.7.5 Upon completion of all requirements, a temporary permit will be issued for no longer than 90 days with subsequent renewal periods of 60 and 30 days sequentially.

6.7.6 The Executive Director shall:

6.7.6.1 Keep a register of permits.

6.7.6.2 Refrain from issuing a temporary permit in any doubtful situation until further evidence is obtained or until the Board has given approval.

6.7.7 In the absence of the Executive Director, the President may issue a temporary permit with the same restrictions.

6.8 Inactive Status

6.8.1 A person previously licensed by the Board and not engaged in the practice of nursing in the state of Delaware, but desiring to maintain the right to use the title Registered Nurse or Licensed Practical Nurse, may apply and be granted inactive status by the Board in accordance with these regulations.

6.8.2 A nurse desiring inactive status shall send a written notice to the Board with fee. Upon receipt of notice and fee the Board shall place the name of the person on an inactive status list and shall issue a certificate. The person shall not practice nursing in this state.

6.8.3 A licensee on inactive status shall use the appropriate title, Registered or Licensed Practical Nurse, followed by (INACTIVE).

6.8.4 A licensee will receive a certificate of inactive status with the term Inactive Registered Nurse or Inactive Licensed Practical Nurse printed across the top.

6.8.5 A notice of inactive status shall be sent to all persons on the inactive list at renewal time. To receive a certificate of inactive status, the licensee shall return the

renewal notice with the fee.

6.8.6 All applications from persons on inactive status who decide to resume active status will be presented to the Board for review for reinstatement.

6.8.7 In the event the applicant has not been actively practicing nursing within the previous five years, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reactivation, or participate in an alternate Board approved method of evaluating current knowledge in professional or practical nursing. All applicants shall have a minimum of 1000 hours of nursing within the previous five years or a minimum of four hundred hours of nursing practice within the previous two years. See 9.0 for Mandatory Continuing Education requirements.

6.9 Loss of License, Change of Name/address

6.9.1 If a license is lost, stolen or destroyed, the licensee shall submit a letter to the Board explaining the loss. A letter indicating the original number and expiration dates shall be issued by the Executive Director in lieu of a duplicate license.

6.9.2 Licensees who legally change their names and wish to change the name on the license, shall provide notarized copies of evidence, such as marriage licenses or court actions. The maiden name will be retained on the license.

6.9.3 Notice of change of address shall be submitted in writing within 30 days of the change. All notices from the Board will be sent to the last address provided by the licensee or applicant to the Board.

6.9.4 A list of license numbers of lost, stolen or otherwise destroyed licenses shall be kept on file in the Board office.

6.10 Register of Nurses Licensed in Delaware

6.10.1 Licensure Verification

6.10.1.1 Following the official renewal period, the Executive Director shall request each employer or employing agency to submit to the Board by April 15 a list of all nurses employed with a nursing license from another compact state. The list shall include the following information:

See 3 DE Reg. 1373 (4/1/00)

6.10.1.1.1 Name of employee, alphabetized by last name;

6.10.1.1.2 Classification (Registered Nurse, Licensed Practical Nurse, Advanced Practice Nurse or nurse holding temporary permit);

6.10.1.1.3 License number; and

6.10.1.1.4 Expiration date of current license or temporary permit.

6.10.1.2 Individuals submitting the list attest by their signatures that they viewed each current registration of licensure and advanced practice recognition.

6.10.1.3 The list will be checked by the

Executive Director. If it is not possible to verify current licensure, the Executive Director will immediately notify the employer by letter.

6.10.1.4 The Executive Director shall prepare a summary of the survey to be presented to the Board.

6.10.2 Release of Information

6.10.2.1 The Executive Director may release to a citizen of Delaware the following information:

6.10.2.1.1 Whether or not the individual was or is currently licensed,

6.10.2.1.2 Date of original licensure,

6.10.2.1.3 Under what condition license was issued (examination, endorsement, or waiver),

6.10.2.1.4 Whether license was ever suspended or revoked following a hearing.

6.10.2.2 Additional information may be released pursuant to the Freedom of Information Act.

DIVISION OF PROFESSIONAL REGULATION

BOARD OF PHARMACY

24 DE ADMIN. CODE 2500

Statutory Authority: 24 Delaware Code,
Section 2509 (24 Del. C. 2509)

ADOPTION OF RULES AND REGULATIONS

A Public Hearing was held to receive comments on January 10, 2001 at the regularly scheduled meeting of the State Board of Pharmacy. The Board considered proposed changes to Regulations I and VI and a new Regulation XV as published in the Register of Regulations, Vol. 4, Issue 6, December 1, 2000.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The following is a summary of the written comments which are attached as exhibits.

1. A memorandum dated October 30, 2000 was received from Rita Mariani, Chairperson, for the State Council for Persons with Disabilities. The Council suggested the public is better served with electronic record retention longer than two years. Examples in support of this recommendation were FDA recalls and malpractice claims after discovery of an injury that can take longer than two years.

2. A letter dated November 9, 2000 was received from Diane L. Darvey, Pharm.D., J.D., Director, State Pharmacy Affairs, for the National Association of Chain Drug Stores (NACDS). The correspondence incorporated changes to the

proposed rule. NACDS recommended that some responsibilities of the pharmacist-in-charge should be transferred to the permit holder instead, particularly the administrative and operational functions. NACDS recommended replacing the terms “assure” or “insure” with terms such as “maintain” or “prohibit” to clarify tasks or responsibilities. Finally, NACDS insert a new provision for checking the system for accurate dispensing.

The following is a summary of the verbal comments

1. Suzanne E. Raab-Long, Vice President, Professional Services, from Delaware Healthcare Association expressed support for Regulation XV

FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

1. The Board finds that a comprehensive regulation related to Automated Pharmacy Systems is necessary to establish safeguards to protect the public.

2. The change recommended to increase the retention period to three years is found to be in the best interest of the public for the reasons given in the correspondence related to FDA recalls and liability. The change was included in the revised proposal published December 1, 2000.

3. The proposal from NACDS to transfer operational and administrative responsibilities from the pharmacist-in-charge to the permit holder better reflects the authority and responsibility of each in practice. The changes were incorporated in the version published December 1, 2000.

4. The Board concludes that the words “assure” and “insure” correctly convey the requirements necessary for public safety makes no changes.

5. The Board finds that the suggestion by NACDS to include a sub-paragraph that requires the pharmacist-in-charge to periodically check the automated pharmacy system for accurate dispensing serves the public interest. A provision was included in the December 1, 2000 published proposal as XV.C.2. Pharmacy Practice, paragraph a.(g)(iv) which addresses the responsibilities of the pharmacist-in-charge. The Board also included the phrase “or authorized designee” to permit delegation of some tasks by the pharmacist-in-charge.

6. There were no public comments relating to the proposed Regulations I and VI changes.

DECISION AND EFFECTIVE DATE

The Board adopts the changes to Regulation I. Pharmacist Licensure Requirements, Regulation VI. Pure Drug Regulations, and new Regulation XV. Automated Pharmacy Systems. to be effective 10 days following final publication in the Register of Regulations.

TEXT AND CITATION

The text of the Regulations hereby promulgated is as it appeared in the Register of Regulations, Vol. 4, Issue 6, December 1, 2000.

STATE BOARD OF PHARMACY

Calvin A. Freedman, R.Ph. Karen J. Dey, R.Ph.
President

Yvonne Brown, R.Ph. Ruth B. Melvin,
Vice President Public Member

John E. Murphy, R.Ph. Charles D. Davis,
Public Member

Martin Golden, R.Ph. Donna L. Dagen,
Public Member

Regulation I

Pharmacist Licensure Requirements

D. Continuing Education Educational Programs

§ 5. Criteria for Awarding Continuing Education Credits

Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.

(1) a. In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.

(2) b. In order to receive full credit for non ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

(3) c. The Committee will only assign credit for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

(4) d. A maximum of 2 credit hours will be awarded for First Aid, attendance at a Board of Pharmacy meeting and ~~or~~ CPR/BCLS courses one time only per registration period.

(5) e. Credit for Instructors of Continuing Education

(a)(1) Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware Board of Pharmacy.

(b)(2) Any pharmacist whose primary responsibility is the education of health professionals shall

be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

(e)(3) Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

(d) (4) A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

(6) f. Credit for On the Job Training:

(a) (1) The Board of Pharmacy does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

(b) (2) All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

(e) (3) No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

(d) (4) A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

E. The Verification of Continuing Education

~~The pharmacist will be responsible for providing the Board with verification of completion of the required continuing education programs by such means as designated by the Board. A pharmacist shall complete the required continuing education and submit the signed renewal form with appropriate fees to the Board of Pharmacy. A pharmacist shall retain the supporting documentation, such as certification of completion for a minimum of six years. The Board will randomly audit the documentation of at least 10% of licensed pharmacists every biennial term. Supporting documentation may be requested for up to six years. Pharmacists who were not selected for audit do not send supporting documentation to the Board. Submitting a false documentation may constitute grounds for discipline under 24 Del. C. §2518 (a) (1).~~

Regulation VI Pure Drug Regulations

C. Anyone who repacks and labels drugs in convenient quantities for their own subsequent use must maintain a log on the premises showing the date repacked, the quantity

repacked, the control number, expiration date and name and strength of the drug. Repacking must be done under the supervision of a registered pharmacist or any other person authorized to dispense under 24 Del.C. §2513. Each container must have a label containing the name of the drug, its strength, the manufacturer's control number, the expiration date if applicable, the name of the manufacturer, or the name and strength of the drug and a conference code number which would enable the control number, manufacturer and expiration date to be retrieved from the log. Nothing in this regulation precludes the Federal laws and regulations.

1. Beyond use date for single unit and unit dose containers.

The beyond use date for these products shall be one year or less, unless the stability data or the manufacturer's labeling indicates otherwise. To use this date, the dispenser repacking the product must maintain the facility and packaging at controlled room temperature not to exceed 25°C. The plastic material used for repacking must provide better protection against moisture permeation than polyvinyl chloride.

Regulation XV Automated Pharmacy Systems

A. Purpose and Scope

1. The purpose of this regulation is to recognize the use of automated pharmacy systems in community, institutional, and long term care pharmacy settings.

B. Definitions

1. "Automated Pharmacy Systems" include, but are not limited to, mechanical systems that perform operations or activities, other than compounding or administration, relative to storage, packaging, dispensing, or distribution of medications, and which collects, controls, and maintains all transaction information.

C. Automated Pharmacy Systems – General Requirements

1. Personnel

a. Duties and Responsibilities of the Permit Holder

1. The Permit Holder has the following responsibilities:

(a) Assuring that the Automated Pharmacy System is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards.

(b) Developing and implementing an ongoing quality assurance program that monitors performance of the Automated Pharmacy System, which is

evidenced by written policies and procedures developed by the pharmacy.

(c) Providing the Board with 60 days prior written notice of the installation, removal, substantive change of Automated Pharmacy Systems. Such notice must include, but is not limited to:

(i) the name and address of the pharmacy;

(ii) the location of the automated equipment; and

(iii) the identification of the responsible pharmacist.

(iv) policies and procedures for system operations (for initial installations).

(d) Obtaining written approval and authorization from the Board of Pharmacy prior to implementation.

2. Pharmacy Practice

a. Automated Pharmacy Systems

(1) Automated Pharmacy Systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Board of Pharmacy, and licensed health care facilities where legally permissible and shall comply with the following provisions:

(a) Documentation as to type of equipment, serial numbers, content, policies and procedures, and location shall be maintained on-site in the pharmacy for review by an agent of the Board of Pharmacy. Such documentation shall include, but is not limited to:

(i) Name and address of the pharmacy and/or licensed health care facility where the Automated Pharmacy System(s) is being used;

(ii) Manufacturer's name and model;

(iii) Description of how the device is used;

(iv) Quality assurance procedures to determine continued appropriate use of the automated device; and

(v) Polices and procedures for system operation, safety, security, accuracy, patient confidentiality, access, and malfunction.

(b) Automated pharmacy Systems shall be used only in setting where there is an established program of pharmaceutical care that ensures medication orders are reviewed by a pharmacist in accordance with established policies and procedures and good pharmacy practice.

(c) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(d) Automated Pharmacy Systems shall have adequate security systems and procedures, evidenced by written policies and procedures, to:

(i) Prevent unauthorized access and to comply with Federal and State regulations; and

(ii) Maintain patient confidentiality.

(e) Records and/or electronic data kept by Automated Pharmacy Systems shall meet the following requirements:

(i) All events involving the contents of the Automated Pharmacy System must be recorded electronically; and

(ii) Records must be maintained by the pharmacy and must be readily available to the Board. Such records must be maintained for a period of three (3) years and shall include:

(a) identity of system accessed;

(b) identification of the individual accessing the system;

(c) type of transaction;

(d) name, strength, dosage form, and quantity of the drug accessed;

(e) name of the patient for whom the drug was ordered; and

(f) such additional information as the pharmacist-in-charge may deem necessary.

(f) Access to and limits on access (e.g., security levels) to the Automated Pharmacy System must be defined by policy and procedures and must comply with State and Federal regulations.

(g) The pharmacist-in-charge or authorized designee shall be responsible for:

(i) Assigning, discontinuing, or changing access to the system.

(ii) Ensuring that access to the medication complies with State and Federal regulations.

(iii) Ensuring that the Automated Pharmacy System is filled/stocked accurately and in accordance with established, written policies and procedures that ensure accuracy.

(iv) Checking the automated pharmacy system for accurate dispensing of medications at appropriate periodic intervals.

(h) The filling/stocking of all medication in the Automated Pharmacy System shall be accomplished by qualified personnel under the supervision of a licensed pharmacist.

(i) Community/Outpatient Pharmacy – A final check by the pharmacist is required after the medication is placed in the final container prior to dispensing and administration to the patient.

(ii) Hospital/Institution – Unit based or centralized dispensing requires the same level of supervision required in Regulation IX - B3 which states: "Supportive personnel may be utilized in assisting the pharmacist. These persons must be supervised by a registered pharmacist who is present within the hospital and

is responsible for the activities of those persons”.

(i) A record of medication filled/stocked into an Automated Pharmacy System shall be maintained and shall include identification of the persons filling/stocking and checking for accuracy.

(j) All containers of medications stored in Automated Pharmacy System shall be packaged and labeled in accordance with Federal and State laws and regulations.

(k) All aspects of handling controlled substances shall meet the requirements of all State and Federal laws and regulations.

(l) The Automated Pharmacy System shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the Automated Pharmacy System, all in accordance with existing State and Federal law.

(m) The Automated Pharmacy System shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing State and Federal law.

Revised July 13, 2000

DIVISION OF PROFESSIONAL REGULATION

COUNCIL ON REAL ESTATE APPRAISERS

24 DE Admin. Code 2930

Statutory Authority: 24 Delaware Code,
Section 2934 (24 Del.C. 2934(a))

A Public Hearing was held to receive comments on February 20, 2001 at the regularly scheduled meeting of the Council on Real Estate Appraisers. At the meeting that followed, the Council considered comprehensive changes to its rules and regulations that were published in the Register of Regulations, Vol. 4, Issue 7, January 1, 2001.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact with Respect to the Evidence and Information

The Council has received direction from the Delaware Sunset Committee and these rules will implement the changes required by Recommendation 11 of the 2000 Joint Sunset Committee Final Report dated May 30, 2000.

Decision and Effective Date

The Council on Real Estate Appraisers hereby adopts

comprehensive changes to the Rules and Regulations as proposed to be effective 10 days following final publication in the Register of Regulations.

Text and Citation

The text of the Rules and Regulations appears in the Register of Regulations, Vol. 4, Issue 7, January 1, 2001.

Council on Real Estate Appraisers

Philip J. McGinnis, Chairperson

Charles Brown

William Tansey

Arana Pettyjohn

Jill K. Morrison

Dated: 2/20/01

Council on Real Estate Appraisers

- 1.0 Application for Appraiser License or Certificate
- 2.0 Appraiser Licensing and Certification
- 3.0 Examination
- 4.0 General Appraisal Practice
- 5.0 Temporary Practice & Reciprocity
- 6.0 Qualifying Mass Appraisal Experience
- 7.0 Standards of Appraisal Practice
- 8.0 Complaints; Hearing Procedures; Final Decisions
- 9.0 Public Disclosure
- 10.0 Change and Modification to Rules and Regulations
- 11.0 Severability
- 12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Application for Appraiser License or Certificate

1.1 Application

1.1.1 A person who wishes to file an application for a real property appraiser license or certificate may obtain the required form upon request to the Council. In general, the form calls for information such as the applicant's name and address, the applicant's social security number, places of residence and employment, experience, education, and other information as may be necessary to identify the applicant and review the applicant's qualifications for licensure or certification.

1.2 Filing and Fees

1.2.1 Properly completed applications together with the appropriate fee(s) must be received in the Council's office prior to scheduling the examination.

1.2.2 A fee set by the Division of Professional Regulation will be charged for the following:

1.2.2.1 Initial application and licensure for appraiser trainee license

1.2.2.2 Initial application and licensure for

- licensed real property appraiser license
 - 1.2.2.3 Initial application and certification for certified residential real property appraiser certificate
 - 1.2.2.4 Initial application and certification for certified general real property appraiser certificate
 - 1.2.2.5 Renewal fee
 - 1.2.2.6 Duplicate license and certificate fee
 - ~~1.2.2.7 Inactive status fee~~
 - 1.2.2.8 Roster fee
 - ~~1.2.2.9 Printing fee~~
 - 1.2.2.10 Federal Appraiser Registry fee
 - 1.2.2.11 Letter of Good Standing
 - 1.2.2.12 Copies of the Uniform Standards of Professional Appraisal Practice

1.2.3 Fees shall be made payable to the “State of Delaware,” and mailed to the Delaware Council on Real Estate Appraisers, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, Delaware 19904. For further information, please contact the Administrative Assistant to the Council at (302) 739-4522.

2.0 Appraiser Licensing and Certification

2.1 Qualifications for Appraiser Licensure and Certification

2.1.1 Applicants for certification as a state certified general or residential real property appraiser ~~and for licensed real property appraiser must~~ shall satisfy the qualification requirements stated in 24 Del.C. §2934, which adopts by reference “Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law 101-73, and any subsequent amendments thereto or any regulations promulgated thereunder” and “qualification criteria established by the Appraiser Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto.” A summary of the criteria set by the Appraiser Qualification Board (AOB) is available from the Division of Professional Regulation and designated “Informational Supplement to the Regulations.” The Supplement is regularly updated by the Council but the most current information is available directly from the AOB whose address and website are provided on the Supplement.

2.1.2 Applicants for licensure as a State licensed real property appraiser shall satisfy the qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto. A summary of the criteria set by the Appraiser Qualification Board (AOB) is available from the Division of Professional Regulation and designated “Informational Supplement to the Regulations.” The Supplement is regularly updated by the Council but the most current information is available directly from the AOB whose address and website are provided on the Supplement.

~~2.1.2~~ 2.1.3 Applicants for licensure as a state licensed appraiser trainee shall have successfully completed

~~a minimum of 45 classroom hours of education on real estate matters satisfactory to the Council, of which fifteen (15) classroom hours shall be on the topic of the Code of Professional Ethics and Uniform Standards of Professional Appraisal Practice. satisfy the qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation and any subsequent amendments thereto. A summary of the criteria set by the Appraiser Qualification Board (AOB) is available from the Division of Professional Regulation and designated “Informational Supplement to the Regulations.” The Supplement is regularly updated by the Council but the most current information is available directly from the AOB whose address and website are provided on the Supplement.~~

2.2 License and Certificate Renewal

2.2.1 In September of each odd numbered year, the Division of Professional Regulation will send renewal notices to the mailing address on file of all licensed and certified appraisers. Certificates and licenses will expire on October 31st of each odd numbered year.

2.2.2 As a condition of renewal, all licensees and certificate holders, either ~~active or inactive~~, resident or reciprocal, shall be required to satisfy the continuing education requirements set forth in rule 2.3 of this Section.

~~2.2.3 Any person who acts or professes to be a state licensed or state certified real property appraiser while their appraiser license or certificate has expired will be subject to disciplinary action and penalties as described in 24 Del.C. Ch. 29.~~

2.3 Continuing Education

2.3.1 As a prerequisite to renewal of a real property appraiser license or certificate, the licensee or certificate holder shall present evidence satisfactory to the Council of having completed during the immediately preceding two (2) years, the number of classroom hours of instruction, approved by the Council as set by the Appraiser Qualifications Board (AOB) as from time-to-time amended, as provided by 24 Del.C. §2934(c).

2.3.2 As a prerequisite to renewal of a license, certificate and trainee license, a seminar dealing with updating of Uniform Standards of Professional Appraisal Practice (USPAP) or a seminar dealing with USPAP shall be required in each license period. A minimum of four (4) hours will be required. The seminars must be approved by the Council.

2.4 Inactive Status

2.4.1 ~~A licensee or certificate holder may request to be placed on inactive status for a period not to exceed two (2) years. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council, a licensee or certificate holder shall be placed on inactive status for a period not to exceed two (2) years. The Council may grant extensions if the licensee or certificate holder shows due cause.~~

~~2.4.2 A licensee or certificate holder on inactive status shall not be entitled to act as a state licensed or state certified real property appraiser. However, in order to continue to hold an appraiser license or certificate, a licensee or certificate holder on inactive status must renew his/her license or certificate, including payment of the prescribed renewal fee and completion of all continuing education.~~

~~2.4.3 A licensee or certificate holder on inactive status may request to be returned to active status at any time. Such request shall be directed to the Council and shall be in writing. Upon written request to the Council and payment of all necessary fees, a licensee or certificate holder on inactive status shall be returned to active status.~~

~~2.5 Expired License or Certificate~~

~~2.5.1 Expired real property appraiser licenses and certificates may be reinstated within twelve (12) months after expiration upon proper application and payment of the renewal fee plus a late filing fee as set by the Division of Professional Regulation.~~

~~2.5.2 Licenses and certificates expired for more than twelve (12) months may be considered for reinstatement upon proper application, payment of the renewal fee plus late filing fee, provision of proof of having obtained continuing education equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed, and successful completion of the examination as required in Section 3 herein. Further, the reinstatement application must meet the current requirements of the AQB for education and experience.~~

~~2.6 Payment of License and Certificate Fees~~

~~Checks in payment of real property appraiser license and certificate fees which are returned unpaid shall be considered cause for license or certificate denial, suspension, or revocation.~~

~~2.7 2.4 Duplicate License or Certificate Fee~~

~~2.4.1 By submitting a written request to the Council and paying the appropriate fee as set by the Division of Professional Regulation, a licensee or certificate holder may obtain a duplicate real property appraiser license, certificate or pocket card to replace an original license, certificate or pocket card which has been lost, damaged, destroyed, or if the name of the licensee or certificate holder has been lawfully changed. An official copy (notarized) of a marriage license, divorce decree or court order of a name change must accompany a request for a change of name.~~

~~2.8 2.5 Federal Appraiser Registry~~

~~Licenses and certificate holders are required to be enrolled in the federal roster or registry of state licensed and state certified real property appraisers. The fee established for that purpose shall be paid annually biennially by the licensee or certificate holder to the State of Delaware.~~

3.0 Examination

3.1 Examination

3.1.1 The Council shall review each application to determine whether the applicant is qualified to sit for the examination. Such review shall consider the applicant's education and whether the applicant has been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application. If the applicant meets the education requirement for the license or certificate applied for and has not been convicted of a felony, substance abuse or fraud within the last five years preceding the date of application, the applicant shall be entitled to take the appropriate examination.

3.1.2 Applicants for licensure as a state licensed real property appraiser and for certification as a state certified residential or general real property appraiser shall successfully complete the examination as endorsed by the AQB and approved by the Council on Real Estate Appraisers. The prerequisites to sit for the applicable examination are completion of the education/classroom hour requirement and not having been convicted of a felony, substance abuse or fraud within the five years preceding the date of the application.

~~3.1.3 For the examination to be considered valid, the experience requirement must be satisfied within two (2) years of the date of successful completion of the examination. Should the experience requirement not be met within the two (2) year period, the examination will be considered invalid and it will be necessary to re-apply and pay the required fee as if no examination had been taken.~~

~~3.1.4 3.1.3 The passing scores on the examinations shall be the scores recommended as passing by Assessment Systems, Inc., the successor agency or company then contracted by the Division of Professional Regulation for administering the examination as endorsed by the Council on Real Estate Appraisers.~~

~~4.0 General Appraisal Practice Duties and Responsibilities of State Licensed Appraiser Trainees; Supervision of State Licensed Appraiser Trainees; Trainee License Renewals~~

~~4.1 Appraisal Office Administration Administrative Responsibilities~~

~~4.1.1 A certified or licensed appraiser shall be designated as the supervisory appraiser by each appraisal firm, each combined real estate brokerage and appraisal firm, and each branch office of such firms for which real estate appraisals are performed by:~~

~~4.1.1.1 Two (2) or more state licensed or state certified real property appraisers who are employed by or associated with the firm; or~~

~~4.1.1.2 Licensed appraiser trainees who are employed by or associated with the firm and who assist a state licensed or state certified real property appraiser in the performance of real estate appraisals.~~

~~4.1.2 The certified or licensed appraiser so~~

designated shall be responsible for:

4.1.2.1 The proper display of licenses and certificates of all state licensed and state certified real property appraisers employed by or associated with that office of the firm, and ascertaining whether each licensee or certificate holder employed by or associated with the firm has complied with Rule 2.2 of these Rules and Regulations;

4.1.2.2 The proper notification to the Council of any change of business address or trade name of that office of the firm and the registration of any assumed business name adopted by the firm for its use;

4.1.2.3 The proper conduct of advertising of appraisal services by or in the name of the firm;

4.1.2.4 The property retention and maintenance of records relating to appraisals conducted by or on behalf of the firm;

4.1.2.5 The maintenance of a record for each of the firm's state licensed appraiser trainees that generally describes the nature and extent of assistance rendered in connection with each appraisal; and

4.1.2.6 The maintenance of a record for each of the firm's state licensed and state certified residential real property appraisers that generally describes the nature and extent of assistance rendered by the state licensed real property appraiser when assisting a state certified residential or general real property appraiser and any assistance rendered by the state certified residential real property appraiser when assisting a state certified general real property appraiser in performing an appraisal.

4.1.3 No licensee or certificate holder shall be so designated for more than one appraisal firm, combined real estate brokerage and appraisal firm, or branch office of such firms.

4.1.4 Each certified or licensed appraiser so designated shall notify the Council in writing of any change in his/her status of the certified or licensed appraiser so designated within ten (10) days following the change.

4.1.5 Each certified or licensed appraiser so designated shall be located at the office for which he/she is responsible for direct and personal supervision thereof.

4.1.1 A State licensed real property appraiser shall utilize the term "State licensed real property appraiser"; a State certified residential real property appraiser shall utilize the term "State certified residential real property appraiser"; and a State certified general real property appraiser shall utilize the term "State certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A State licensed appraiser trainee shall use the term "State licensed appraiser trainee" and shall only co-sign appraisals along with a State licensed or State certified real property appraiser. Approved abbreviations are as follows:

DE Cert Gen followed by the certification number,

DE Cert Res followed by the certification number,

DE Lic Appr followed by the license number,

DE Appr Trainee followed by the license number.

4.1.2 The real property appraiser license or certificate of a State licensed or State certified real property appraiser shall be prominently displayed at the appraiser's place of business.

4.1.3 The biennial license or certificate renewal pocket card issued by the Council to each State licensed or State certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

4.1.4 When advertising or otherwise holding himself/herself out as a real property appraiser, a State licensed real property appraiser shall identify himself/herself as a "State licensed real property appraiser." A State certified residential real property appraiser shall identify himself/herself as a "State certified residential real property appraiser". A State certified general real property appraiser shall identify himself/herself as a "State certified general real property appraiser."

4.1.5 Licensure or certification as a real property appraiser is granted only to persons and does not extend to a business entity. A State licensed or State certified real property appraiser doing business as a partnership, association, corporation, or other business entity shall not represent in any manner to the public that the partnership, association, corporation, or other business entity is either licensed or certified by the State of Delaware to engage in the business of real estate appraising.

4.1.6 All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.1.7 Each written appraisal report prepared by or under the direction of a State licensed or State certified real property appraiser shall bear the signature of the State licensed or State certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the appropriate title such as "State licensed appraiser trainee" (as co-signer only), "State licensed real property appraiser," "State certified residential real property appraiser," or the designation "State certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1.1. Said certified or licensed appraiser shall be fully responsible for the content of the report prepared under his or her direction. Where applicable, each appraisal report shall also indicate whether or not the State licensed or State certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

4.1.8 Each State certified or State licensed appraiser shall be responsible for the proper maintenance and retention of the appraisal records.

~~4.2 Supervision of State Licensed Appraiser Trainees~~
~~Responsibilities of Supervisors of State Licensed Trainees~~

4.2.1 A state licensed appraiser trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that he/she is actively and personally supervised by a state certified or licensed real property appraiser, provided that the appraisal report is reviewed and signed by the state certified or licensed real property appraiser, and provided that the licensed or certified appraiser accepts total responsibility for the appraisal report.

4.2.2 A state licensed or state certified real property appraiser may employ a person(s) as a state licensed appraiser trainee(s) to assist in the performance of real estate appraisals, provided that the state licensed or state certified real property appraiser:

~~4.2.2.1 Actively and personally supervises~~
~~Provides direct supervision of the State licensed appraiser trainee as defined in the Uniform Standards of Professional Appraisal Practice (USPAP); "Direct Supervision" means to:~~

~~4.2.5.1.1 4.2.2.1.1 personally inspect with the trainee the interior and exterior of each property appraised;~~

~~4.2.5.1.2 4.2.2.1.2 personally review each appraisal report prepared by the trainee;~~

~~4.2.5.1.3 4.2.2.1.3 accept full responsibility for the report;~~

~~4.2.5.1.4 4.2.2.1.4 assign work to the trainee only if the trainee is competent to perform such work; and~~

~~4.2.5.1.5 4.2.2.1.5 approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements;~~

4.2.2.2 Reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a state licensed appraiser trainee is utilized;

4.2.2.3 Complies with all provisions of ~~Rule 4.8 of this Section~~ 4.1.7 regarding appraisal reports; ~~and if applicable,~~

4.2.2.4 ~~Prepares and furnishes to the certified or licensed appraiser designated under 4.1, and to each state licensed appraiser trainee whose services were utilized in connection with the appraisal, a report on a form prescribed by the Council describing the nature and extent of assistance rendered by the state licensed appraiser trainee and places a copy of such report in the supporting file for the appraisal. Reviews and approves an trainee's experience log maintained pursuant to 4.3.2.2. The supervisor shall make available to the trainee a copy of any appraisal report that the~~

trainee signed that is requested for review by the Council:

~~4.2.5.5 4.2.2.5 Supervises no more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.2.5.1.1 4.2.3;~~

~~4.2.5.6 4.2.2.6 Signs an affidavit affirming that he/she is a State licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers; and~~

~~4.2.2.7 Immediately advises the Council in writing when the certified or licensed appraiser is no longer supervising the trainee. The writing shall include the last known address of the appraiser trainee along with a copy of the letter from the supervisor to the trainee advising the trainee that his/her employment has been terminated or the letter of resignation from the trainee to the supervisor, whichever is applicable.~~

4.2.3 After the trainee successfully completes seventy-five (75) hours of education on real estate matters satisfactory to the Council, and has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule ~~4.2.2.1 4.2.2.1.1~~, provided the trainee is competent to perform the inspection.

~~4.3 Responsibilities of State Licensed Appraiser Trainees~~

~~4.2.3 4.3.1 All appraiser trainees must be licensed as required under 24 Del.C. Ch. 29.~~

~~4.2.4 The holder of a real property appraiser trainee license issued pursuant to 24 Del.C. §2934(d) and Rule 2.1.2 shall have the following duties and responsibilities:~~

~~4.3.2 A State licensed trainee may assist in the performance of real estate appraisals provided that:~~

~~4.2.4.1 4.3.2.1 The trainee shall only work under the direct supervision of one or more a State licensed or State certified real property appraiser(s); an individual who is no longer supervised shall not engage in the act of appraising until a new license is issued showing a new supervisor;~~

~~4.2.4.2 4.3.2.2 The trainee shall maintain an appraisal experience log on a form provided by the Council and certified by the supervising appraiser;~~

~~4.2.4.3 4.3.2.3 The trainee shall inspect the property and participate in the appraisal process in order to sign the report appraisal and to receive experience credit for the hours spent. The report appraisal shall be signed by the trainee as follows:~~

Assisted by:

_____, Trainee

Name: _____

License Number: _____

~~4.2.4.4~~ ~~4.3.2.4~~ The trainee shall ensure that the experience log is available at all times for inspection by the Council; and

~~4.2.4.5~~ ~~4.3.2.5~~ When performing appraisal assignments, the trainee shall carry on his/her person the license issued by the Council.

~~4.2.5~~ A supervising appraiser must be a State licensed or state certified real property appraiser, and shall have the following duties and responsibilities:

~~4.2.5.1~~ The supervisor shall at all times be responsible for and provide direct supervision of the work performed by the trainee in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). "Direct Supervision" means to:

~~4.2.5.1.1~~ personally inspect with the trainee the interior and exterior of each property appraised;

~~4.2.5.1.2~~ personally review each appraisal report prepared by the trainee;

~~4.2.5.1.3~~ accept full responsibility for the report;

~~4.2.5.1.4~~ assign work to the trainee only if the trainee is competent to perform such work; and

~~4.2.5.1.5~~ approve and sign the report as being independently and impartially prepared and in compliance with USPAP, these rules and regulations, and applicable statutory requirements.

~~4.2.5.2~~ At least once a month, the supervisor shall sign the experience log required to be kept by the trainee and shall affix his/her license or certification number.

~~4.2.5.3~~ The supervisor shall make available to the trainee a copy of any appraisal report that the trainee signed that is requested for review by the Council.

~~4.2.5.4~~ After the trainee successfully completes seventy-five (75) hours of education on real estate matters satisfactory to the Council, and has obtained two hundred fifty (250) hours of residential appraising or one thousand (1,000) hours of non-residential appraising experience as defined by the Appraisal Qualifications Board in its appraisal qualifications criteria, the supervisor and the trainee may jointly apply to the Council on a form provided by the Council, for an exemption that would allow the supervisor to sign the report without inspecting the property as provided by Rule 4.2.2.1, provided the trainee is competent to perform the inspection.

~~4.2.5.5~~ The supervisor shall not supervise more than three (3) trainees whose application for exemption has not been approved by the Council pursuant to Rule 4.2.5.1.1.

~~4.2.5.6~~ The supervisor must sign an affidavit affirming that he/she is a state licensed or certified Real Property Appraiser and that he/she shall comply with all rules and policies regarding supervisory appraisers.

~~4.2.5.7~~ The supervisor shall comply with all provisions of Rule 4.8 regarding appraisal reports.

~~4.2.6~~ Pursuant to Rule 2.3 a Real Property Appraiser Trainee's licenses may be renewed only two (2) times.

~~4.2.7~~ When an appraiser trainee is discharged or terminates his/her employment with a licensed or certified real estate appraiser by such licensed or certified real estate appraiser shall immediately notify the Council in writing of such termination. At the time of the written notification to the Council, the licensed or certified appraiser shall address a communication to the last known address of such appraiser trainee, which communication shall advise the appraiser trainee that his/her employment has been terminated. A copy of the communication to the appraiser trainee shall accompany the notification to the Council. No such appraiser trainee shall perform any of the acts contemplated by this Chapter or engage directly or indirectly in the business of an appraiser trainee until the Council shall issue a new license showing change of employment and business location.

~~4.3~~ Supervision of Licensed or Certified Residential Appraisers and Trainees

~~4.3.1~~ When a state licensed real property appraiser assists a state certified residential or general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified real property appraiser, the state certified real property appraiser shall:

~~4.3.1.1~~ Actively and personally supervise the state licensed real property appraiser;

~~4.3.1.2~~ Review the appraisal report and supporting data used in connection with the appraisal;

~~4.3.1.3~~ Comply with all provisions of Rule 4.8 of this Section regarding appraisal reports; and if applicable,

~~4.3.1.4~~ Prepare and furnish to the certified or licensed appraiser designated under 4.1, and to each state licensed real property appraiser whose services were utilized in connection with the appraisal, a report on a form prescribed by the Council describing the nature and extent of assistance rendered by the state licensed real property appraiser and place a copy of such report in the supporting file for the appraisal.

~~4.3.2~~ When a state certified residential real property appraiser assists a state certified general real property appraiser in the performance of a real estate appraisal and the resulting appraisal report is to be signed by the state certified general real property appraiser, the state certified general real property appraiser shall perform those supervisory acts set forth in 4.2.1 of this Rule with regard to the activities of the state certified residential real property appraiser.

~~4.4~~ Use of Titles

~~4.4.1~~ Licensure or certification as a real property

appraiser is granted only to persons and does not extend to a business entity.

4.4.2 A state licensed real property appraiser shall utilize the term "state licensed real property appraiser"; a state certified residential real property appraiser shall utilize the term "state certified residential real property appraiser"; and a state certified general real property appraiser shall utilize the term "state certified general real property appraiser" when performing and signing appraisals. The terms "certified" or "licensed" shall not be used in connection with appraisals or appraisers in any other form. A state licensed appraiser trainee shall use the term "state licensed appraiser trainee" and shall only co-sign appraisals along with a state licensed or state certified real property appraiser. Approved abbreviations are as follows:

DE Cert Gen followed by the certification number,

DE Cert Res followed by the certification number,

DE Lic Appr followed by the license number,

DE Appr Trainee followed by the license number.

4.5 Display of Licenses and Certificates

4.5.1 The real property appraiser license or certificate of a state licensed or state certified real property appraiser shall be prominently displayed at the appraiser's place of business. Pursuant to Rule 4.1 the license or certificate of the supervisory appraiser and the license or certificate of each licensee or certificate holder engaged in real estate appraisal activities at the office of the supervisory appraiser shall be prominently displayed at such office.

4.5.2 The biennial license or certificate renewal pocket card issued by the Council to each state licensed or state certified real property appraiser shall be retained by the licensee or certificate holder as evidence of licensure or certification.

4.6 Advertising

4.6.1 When advertising or otherwise holding himself/herself out as a real property appraiser, a state licensed real property appraiser shall identify himself/herself as a "state licensed real property appraiser." A state certified residential real property appraiser shall identify himself/herself as a "state certified residential real property appraiser." A state certified general real property appraiser shall identify himself/herself as a "state certified general real property appraiser."

4.6.2 A state licensed or state certified real property appraiser doing business as a partnership, association, corporation, or other business entity shall not represent in any manner to the public that the partnership, association, corporation, or other business entity is either licensed or certified by the State of Delaware to engage in the business of real estate appraising.

4.7 Change of Name or Address

4.7.1 All licensees and certificate holders shall notify the Council in writing of each change of business address, residence address, or trade name within ten (10) days of said change. The address shall be sufficiently descriptive to enable the Council to correspond with and locate the licensee or certificate holder.

4.8 Appraisal Reports

4.8.1 Each written appraisal report prepared by or under the direction of a state licensed or state certified real property appraiser shall bear the signature of the state licensed or state certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "state licensed appraiser trainee" (as co-signer only), "state licensed real property appraiser," "state certified residential real property appraiser," or the designation "state certified general real property appraiser," or the approved abbreviations as specified in Rule 4.1. Where applicable, each appraisal report shall also indicate whether or not the state licensed or state certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance.

4.8.2 When a state licensed or certified real property appraiser signs an appraisal report prepared by another person, including a subcontractor acting under the direction or supervision of the appraiser, such appraiser shall be fully responsible for the content of the report.

5.0 Temporary Practice & Reciprocity

5.1 Temporary Practice

The Council may grant temporary licensing or certification privileges in accordance with 24 Del.C. §2935(a).

5.2 Reciprocity

The Council may grant a reciprocal license in accordance with 24 Del.C. §2935(b) to applicants certified or licensed in another state whose requirements for certification or licensure are substantially equivalent to the State of Delaware without being registered with and duly licensed or certified by the Council on Real Estate Appraisers.

6.0 Guidelines for Qualifying Mass Appraisal Experience

6.1 Qualifying Mass Appraisal Experience

6.1.1 The Delaware Council on Real Estate Appraisers ("Council") has developed an application for ad valorem tax assessors to apply mass appraisal experience toward licensure or certification. The application is different from the application for independent fee appraisers, and, therefore, the Council has prepared this document as supplemental explanation of the mass appraisal experience guidelines set forth in the Tax Assessor's Application for

Real Estate Appraiser License or Certificate. The State of Delaware under 24 Del.C. §~~2932~~ 2934(c), sets forth specifically:

~~6.1.1.1~~ “(c) The Council on Real Estate Appraisers is required to include in its regulations educational experience and testing requirements for licensure and certification of real estate appraisers that ensure protection of the public interest. Educational experience and testing requirements for certified and licensed appraisers must specifically meet the criteria established under Title XI of the Financial Institutions Reform Recovery Act of 1989, public Law 101-73 ~~42 U.S.C. & 1833 a et seq.~~, and any subsequent amendments thereto or any regulations promulgated thereunder. (67 Del Laws, C. 381 ss1; 68 Del. Laws, c. 140, ss 5-7, 15.)”

6.1.2 Further, The Appraiser Qualifications Board of the Appraisal Foundation has issued as additional explanation “Interpretations/Clarifications” to accompany the qualifying criteria for appraiser licensure and certification, which specifically sets forth:

~~6.1.2.1~~ “Experience credit should be awarded to ad valorem appraisers who demonstrate that they (1) use techniques similar to those used by appraisers to value properties and (2) effectively use the appraisal process.

6.1.3 Components of the mass appraisal process that should be given credit are highest and best use analysis, model specification (developing the model), and model calibration (developing adjustments to the model). Other components of the mass appraisal process, by themselves, shall not be eligible for experience credit.

6.1.4 Mass appraisals shall be performed in accordance with USPAP Standard 6.” In order to evaluate the experience qualifications of ad valorem tax assessors with mass appraisal experience, the Council will review such applications considering the above - mentioned criteria, and shall review work samples for compliance with USPAP Standard 6. It is important to note that any individual appraisal reports prepared in conformity with USPAP Standards 1 and 2 are fully creditable as appraisal experience using the hourly scheme set forth in the category for Full Appraisals in the Real Property Tax Assessor’s Application for Real Estate Appraiser License or Certificate. Such reports are often prepared by ad valorem appraisers for defense of value work. Ad valorem appraisers are encouraged to apply for experience credit for full appraisals as well as for mass appraisal experience. An hour of experience is defined as actual verifiable time spent performing tasks in accordance with the Council Rules and Regulations. USPAP Standard 6 sets forth in detail the required work and the reporting of that work for ad valorem tax purposes. Unlike the fee appraiser who prepares and signs a report for each value estimate, the ad valorem appraiser typically prepares analyses and reports that support the appraisals for groups of properties. These efforts are

focused on the specification and calibration of models (validation schedules) for these groups of properties.

6.1.5 Mass appraisal experience hours are awarded for completing appraisals pursuant to the USPAP Standard 6. Currently, a minimum of 2,000 hours ~~over a two (2)-year period~~ is required for all applicants for licensure ~~or certification~~. A minimum of 1,000 a minimum of 2,500 hours is required for all applicants for certified residential, and a minimum of 3,000 hours is required for all applicants for certified general, of which a minimum of 1000 hours must be obtained in non-residential valuation if applying for the General Certification. The State of Delaware has the same qualification criteria as published by the Appraiser Qualifications Board of the Appraisal Foundation.

6.1.6 As stated in the Real Property Tax Assessor’s Application for Real Estate Appraiser License or Certificate, applicants seeking mass appraisal experience credit must demonstrate their experience using one of the following options:

6.1.6.1 Develop the mass appraisal system (model specification and calibration that includes highest and best use analysis) or;

6.1.6.2 Adjust an existing mass appraisal system to local market conditions (model calibration that includes highest and best use analysis).

~~6.1.7~~ ~~6.1.6.2.1~~ Data collection for purposes of mass appraisal, defined as the on-site collection of property characteristics, is not by itself creditable as appraisal experience. However, as part of mass appraisal model specification and/or calibration, the applicant accepts responsibility for the accuracy of market (sales) data used to develop and/or calibrate the models. Therefore, it is important that the applicant have a working familiarity with the range of properties in the sales sample and thus creditable experience is allowed for sales verification work in conjunction with the mass appraisal model specification/calibration process.

~~6.1.8~~ ~~6.1.6.2.2~~ The applicant must have a documented data collection manual that specifies how each property characteristic was measured. For each property characteristic that influences the final value for any property, a complete specification of the variable must be available in the mass appraisal model (schedule) documentation. This documentation must detail how each property characteristic influences value and it must provide a basis in terms of market evidence for using these characteristics.

~~6.1.9~~ ~~6.1.6.2.3~~ If the applicant is using an existing mass appraisal system, either mass appraisal vendor supplied or a commercial cost service, documentation must exist which supports how the valuation system was calibrated to local market conditions. If the cost approach is used, documentation must exist which illustrates the extraction of depreciation schedules from local market analysis.

~~6.1.10~~ ~~6.1.6.2.4~~ If the applicant develops the mass

appraisal model (schedule) specification, evidence derived directly from the local market must be available that supports the use of each property characteristic. For property characteristics included in the model that have a marginal influence on value (items generally included for public relations purposes), such items should be specifically identified and their contribution to value detailed.

6.2 Mass Appraisal Experience Log

6.2.1 Applicants seeking mass appraisal experience credit must complete the attached Mass Appraisal Experience Log on a form approved by the Council. Use the key on the Mass Appraisal Experience Log form for creditable experience. The information included in each column is as follows:

6.2.1.1 ~~Date of Activity~~—State the specific dates of the activity. If a range of dates is appropriate, be sure that the activity occurred continuously over that period. (Example: March 23-24, 1992)

6.2.1.2 ~~Value Date~~: Applicants applying for ad valorem, mass appraisal experience completed in Delaware must list the month and year of the valuation date.

6.2.1.3 ~~Property Class~~: Use the key on the form for identifying the property type:

6.2.1.3.1 Residential (less than 5 units)

6.2.1.3.2 Multi-Family (2-4 units)

6.2.1.3.3 Commercial

6.2.1.3.4 Industrial

6.2.1.3.5 Special purpose properties

6.2.1.4 ~~City/Town~~: Municipality where the mass appraisal work was used to generate appraisals.

6.2.1.5 ~~Type of Activity~~: Use the key on the form for identifying the property type. The creditable types of activity are listed as follows:

6.2.1.5.1 ~~Highest and Best Use Analysis~~—Detail analysis used to determine highest and best use of a site both as if vacant and as developed.

6.2.1.5.2 ~~Model Specification~~—Development of the valuation schedules. Such documentation should include the approach to value (cost, market or income), identification of how factors (property characteristics) were selected, the quantification of these factors (dollar or percentage adjustments) and how the relationship among the factors was determined.

6.2.1.5.3 ~~Model Calibration~~—Adjusting the valuation schedules using the generally accepted techniques, such documentation should include any statistical analyses employed to set unit prices and percentage adjustments.

6.2.1.6 ~~Hours~~: Only the actual working hours on the associated activity are creditable. Only time specifically spent on the activity is creditable. Working full-time on a revaluation project does not automatically translate into 40 hours per week of creditable appraisal experience. The applicant must be precise in detailing the activities and

when they took place. In evaluating the number of hours of credit requested, any unusual number of hours claimed for a particular activity may result in further review of the supporting documentation. Note That Data Collection and Field Review Activities by Themselves Are Not Creditable Experience.

6.2.1.7 ~~Position Title~~: List your position at the time of activity.

6.2.1.8 ~~Documentation Location~~: State the physical location of the documentation which details each activity for which experience credit is requested. It is advisable to secure copies of any documentation not in your possession prior to applying for experience credit. The Applicant Is Responsible for the Production of this Documentation. Therefore, it is important that the applicant claim credit only for the activities for which documentation can be immediately produced.

6.2.1.9 Upon request the applicant may be asked to submit sworn statements from witnesses who can verify his/her claimed experience.

7.0 Standards of Appraisal Practice

7.1 Appraisal Standards

7.1.1 In performing the acts and services of a state licensed or state certified real property appraiser, every appraiser trainee, state licensed and state certified real property appraiser shall comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" and any subsequent amendments thereto, promulgated by the Appraisal Standards Board of the Appraisal Foundation or its successor organization, which standards are hereby adopted by reference.

7.1.2 Copies of the "Uniform Standards of Professional Appraisal Practice" are available upon request to The Appraisal Foundation, 1029 Vermont Avenue, N.W., Suite 900 Washington, D.C. 20005-3517 and are made available by the Council from time-to-time.

8.0 Complaints and Hearing Procedures; Final Decisions

8.1 Complaints

8.1.1 The Council incorporates by reference the procedures for investigation of complaints by the Division of Professional Regulation as set forth in 29 Del.C. §§8810-8807.

8.2 Hearing Procedures

8.2.1 All hearings shall be in accordance with the Administrative Procedures Act, 29 Del.C. §§10121-10129.

8.2.2 At least 30 days before the date fixed for the hearing, the Council shall cause a copy of the complaint, together with a notice of the time and place fixed for the hearing, to be personally delivered or served upon the accused real estate appraiser. In cases where the accused real estate appraiser cannot be located or where personal service cannot be effected, substitute service shall be

effected in the same manner as with civil litigation. The accused real estate appraiser shall also be advised of his/her rights, as follows:

8.2.2.1 That he/she has the right to appear personally and to be represented by counsel;

8.2.2.2 That he/she has the right to cross-examine any witness who may appear against him/her and produce witnesses and evidence in his/her own defense; and

8.2.2.3 That he/she is entitled to the subpoena power of the Council to ensure the attendance of any witnesses he or she intends to call. If the accused wishes to avail himself/herself of the Council's subpoena power, he/she must submit to the Council, in writing and no later than fifteen (15) days prior to the date of the hearing, the names and addresses of the witnesses whose attendance he/she wishes the Council to compel.

8.2.3 All hearings shall be informal and shall not be bound by the formal rules of evidence. All testimony shall be taken under oath. All testimony which the Council determines to be relevant, reliable, and probative and not unduly repetitious, shall be admissible. Objections to the admission or exclusion of evidence shall be brief and shall state the grounds for objection. Any offer of proof which is made in connection with the objection to the admission of evidence shall consist of a statement of that which the offeror contends would be abused by such evidence. Where the offered evidence concerns a document, a copy of the same shall be marked for identification.

8.2.4 All testimony shall be recorded either by a court reporter or by means of an electronic recording device. In the event electronic means are used, the electronic record shall be preserved until after the time for appeal of the Council's decision has expired with no appeal being taken. The Council shall maintain a permanent written record of all hearings in the form of official minutes.

8.2.5 Hearings shall be conducted in the following manner:

8.2.5.1 The Council shall open the hearing with a brief statement of the purpose of the hearing.

8.2.5.2 The Council shall then receive the evidence which is offered to support the charges which have been proffered against the accused real estate appraiser.

8.2.5.3 The accused real estate appraiser shall be afforded an opportunity to cross-examine any witness who may testify against him/her.

8.2.5.4 After all of the evidence which supports the charges has been received, the accused real estate appraiser may present a brief statement of that which he/she intends to establish.

8.2.5.5 The accused real estate appraiser may then testify in his/her own behalf and present witnesses and evidence in his/her defense.

8.2.5.6 All witnesses who appear before the Council shall be subject to examination by the Council.

8.3 Transcripts

Transcripts of the proceedings may be obtained by the accused real estate appraiser or any other person interested in the hearing upon written request and payment of the costs involved in preparing the same.

8.4 Return of Documentary Evidence

Any documentary evidence which is submitted to the Council shall be returned to the owner thereof upon written request for the return of such documents within 120 days of the Council's final decision. Otherwise, the Council may dispose of such evidence at its discretion.

8.5 Final Decision

8.5.1 If, on the basis of the evidence presented at the hearing, the Council finds, by a majority vote of all members, that the complaint has merit, the Council shall take such action permitted under Subchapter II, 24 **Del.C.** Ch. 29 as it deems necessary. The Council's decision shall be in writing and shall include:

8.5.1.1 A brief statement of the evidence presented;

8.5.1.2 The Council's findings of fact;

8.5.1.3 What record evidence these findings are based upon; and

8.5.1.4 The Council's conclusions of law.

8.5.2 A copy of the Council's decision shall be mailed immediately by certified mail, return receipt requested, to the accused real estate appraiser. The Council's decision shall become effective on the 30th day after the date it is mailed or served on the accused real estate appraiser, unless there is a stay pending appeal by the accused real estate appraiser ordered by the Superior Court.

9.0 Public Disclosure

9.1 Public Notice

9.1.1 All meetings shall be convened in compliance with the Freedom of Information Act (FOIA) in 29 **Del. C.** Chapter 100.

Public notice of all meetings shall be given seven (7) days prior to all meetings.

9.1.1 The notice will be posted at the Division of Professional Regulation Office in Dover, Delaware, according to the Freedom of Information Act.

9.1.2 Said notice shall include the agenda, as well as the date, time, and location of each meeting.

9.2 Meeting Minutes

Minutes shall be kept of all meetings in accordance with the Freedom of Information Act.

9.2.1 Said minutes shall include a record of those present.

9.2.2 The minutes shall also include a record by individual members, on each vote taken, as well as any action agreed upon.

9.2.3 It shall be the responsibility of the Council's Administrative Assistant to prepare said minutes and keep a

copy on file with the Division of Professional Regulation.

9.3 Council Records

9.3.1 It shall be the responsibility of the Council's Administrative Assistant to ~~safeguard~~ maintain the Council's records and to make them accessible to the general public.

9.3.2 No citizen of the State of Delaware shall be denied reasonable access to the public records of the Council. Copies of records may be obtained from the Administrative Assistant at a cost per page as established by the Division.

9.3.3 The Council shall not be obligated to disclose to the general public any matter which intrudes upon an individual's personal or private affairs which is not a public record in which the public has not legitimate interest. Records will be open to the public in reference to the Freedom of Information Act.

10.0 Change and Modification to Rules and Regulations

10.1 ~~Changes/Modifications~~ The Council may, change or modify these Rules and Regulations ~~as dictated by the evolution of appraisal practice after providing for the Public Notice/Hearing as required, if any.~~ as provided in 29 Del. C. §§10111-10119.

11.0 Severability

11.1 ~~Severability~~ If any part of these rules and regulations is held invalid, unconstitutional or otherwise contrary to law, then it shall be severable and the remaining portions hereof shall remain and continue in full force and effect.

12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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

12.2 The chairperson of the regulatory ~~Board~~ Council 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.

12.3 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~~ Council chairperson or that chairperson's designate(s).

12.4 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~~ Council 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~~ Council.

12.5 Failure to cooperate fully with the participating ~~Board~~ Council 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~~ Council 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.

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

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

12.6.2 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~~ Council 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~~ Council 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.

12.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any

treatment information from anyone within the approved treatment program.

12.6.4 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~~, Council as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the ~~Board~~ Council in addition to the administrative costs associated with the Voluntary Treatment Option.

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

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

12.7 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~~ Council 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.

12.8 The participating ~~Board's~~ Council'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.

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

12.10 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~~ Council shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

12.11 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.

12.12 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~~ Council'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

14 DE Admin. Code 103

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

REGULATORY IMPLEMENTING ORDER

804 IMMUNIZATIONS

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education approves the amendments to regulation 804 Immunizations. Regulation 804 Immunizations is amended in order to update the language and to bring the regulation in line with the requirements of the Division of Public Health. The amendments include changes in 2.0 including adding a reference to public health recommendations in 2.0, adding DTaP to 2.1, recommending a booster dose of Td at five years instead of ten in 2.1.1, modifying the references to the doses of the oral polio vaccine in 2.2, allowing two doses of CDC approved Hepatitis B vaccine for children ages 11-15 in 2.4, and recommending one dose of varicella in 2.7.

Changes to 3.0 include adding DTaP to 3.3.1 and allowing schools to admit students after the first dose of the Hepatitis B Series in 3.3.5. In 3.1 and in 4.0 the reference to the physician or public health agency has been changed to the state licensed health care practitioner.

Changes to 4.0 and 5.0 include correcting the way the *Delaware Code* is referenced in the regulation.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on December 22, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

A letter was received from the State Council for Persons

with Disabilities with recommendations for improving the regulation. The changes were not substantive and hence do not require re-advertising of the regulation. They include correcting a grammatical/formatting error in 3.3.4, adding language in 3.1, 3.4 and 4.0 to accommodate the student who has reached the statutory age of majority and adding a reference to regulation 901 Education of Homeless Children and Youth, 6.0 concerning Immunizations. The reference in this regulation makes it clear that schools must help homeless students to get the immunizations required for school entry and this is accomplished through the school nurse who assists in contacting doctors who can provide the immunizations.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend this regulation to update it and bring it in line with the requirements of the Division of Public Health.

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 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, on February ____, 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 _____ day of February, 2001.

DEPARTMENT OF EDUCATION
Valerie A Woodruff, Secretary of Education

804 Immunizations

1.0 Definition of School Enterer: A school enterer is any

child between the ages of two months and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from nonpublic schools.

2.0 The following minimum immunizations will be required for all school enterers. Children who enter school prior to age 4 shall follow current Division of Public Health recommendations. Disease histories for measles, rubella and mumps will not be accepted unless serologically confirmed.

2.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other approved vaccine) or diphtheria, tetanus (DT) vaccine or a combination of these vaccines with the following exceptions: (1) a child who received a fourth dose prior to the fourth birthday must have a fifth dose; (2) a child who received the first dose of Td (adult) at or after age seven may meet this requirement with only three doses of Td (adult).

2.1.1 A booster dose of Td (adult) is recommended for all students, five years at ten year intervals for all students after the last DTaP, DTP or DT dose was administered.

2.2 ~~Four~~ Three or more doses of inactivated polio virus (IPV), oral polio vaccine (OPV), or four doses of inactivated polio virus (IPV) or a combination of these vaccines with the following exception: ~~If the third primary dose of OPV or IPV is administered on or after the fourth birth date, a fourth dose is not required.~~ A child who received a third dose prior to the fourth birthday must have a fourth dose.

2.3 Two doses of measles vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. The combination vaccines of measles, mumps, rubella (MMR) can be used to meet this requirement.

2.4 Three doses of Hepatitis B vaccine beginning in the 1999-2000 school year with kindergarten and grade seven. (By adding a grade at each of the levels, by the year 2004-2005 all students will be required to have the vaccine.) Two doses of CDC approved vaccine for children ages 11 – 15 may be used.

2.5 One dose of rubella vaccine administered after the age of 12 months.

2.6 One dose of mumps vaccine administered after the age of 12 months.

2.7 One dose of varicella is recommended.

3.0 Certification of Immunization

3.1 ~~[The A] parent[s or]~~ legal guardian~~[s of school enterers]~~ caregiver or a school enterer who has reached the statutory age of majority (18), 14 Del. C. Section 131(a)(9),] shall present a certificate specifying the month, day, and year that the immunizations were administered by

the ~~physician or public health agency state licensed health care practitioner.~~

3.2 According to [~~Delaware Code, Title 14, Section 131~~ **14 Del. C. Section 131**], a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent[, ~~or~~] legal guardian[, ~~caregiver or a school enterer who has reached the statutory age of majority (18), 14 Del. C. Section 131(a)(9).~~] shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.

3.3 A school enterer may be conditionally admitted to a Delaware school district by presenting a statement from a state licensed health care practitioner who ~~physician or public health agency which~~ specifies that the school enterer:

3.3.1 has received at least one dose of DTaP, DTP, or DT and

3.3.2 has received at least one dose of IPV or OPV ~~or IPV~~ and

3.3.3 has received at least one dose of measles, mumps and rubella (MMR) vaccine.

3.3.4 ~~without documentation for the first or second dose of measles should be admitted after the first dose. A second dose is required between 30 and 90 days after the first dose. (MMR can be used to meet this requirement.)~~

~~[without documentation for the first, second, and third doses of completion of the Hepatitis B series, should be admitted after the first dose. A second dose should be given at least one month after the first dose; a third dose should be given at least four months after the first dose and at least two (2) months after the second dose (beginning in September, 1999).] [has received the first dose of the Hepatitis B series. See Regulation 901 Education of Homeless Children and Youth 6.0 School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth. To that end, school districts shall:~~

6.1 assist homeless children and youth in meeting the immunization requirements.]

3.4 If the school enterer fails to complete the series of required immunizations according to the Division of Public Health's recommended schedule, the parent[, ~~or~~] legal guardian [, ~~caregiver or a school enterer who has reached the statutory age of majority (18), 14 Del. C. Section 131(a)(9).~~] will be notified the child will be excluded according to 14 Del. C. Section 131.

4.0 Lost or Destroyed Medical Records: When an immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent[, ~~legal guardian, caregiver or a school enterer who has reached the statutory age of majority (18), 14 Del. C. Section 131(a)(9).~~] shall sign a written statement to this

effect and must obtain at least one dose of DTaP, DTP or DT, one dose of IPV or OPV, ~~one dose of Hepatitis B or IPV~~ and immunization against measles, mumps and rubella. ~~Beginning in 1999-2000, Hepatitis B will be needed.~~ Evidence that the vaccines were administered shall be presented to the superintendent or designated person. An exemption to this requirement would be a statement from a [~~physician state licensed health care practitioner~~] demonstrating serological evidence of immunity to measles, mumps or rubella.

5.0 Exemption from Immunization:

5.1 Exemption from this requirement may be granted in accordance with 14 Del. C. Section 131.

5.2 Alternative dosages or immunization schedules may be accepted with the written approval of the Division of Public Health.

6.0 Verification of School Records: The Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

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

Adoption of the State of Delaware Rules and Regulations Governing The Licensing and Registration of Operators of Public Water Supply Systems |

Nature of the Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems. The DHSS's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122(3)(c).

On November 1, 2000 (Volume 4, Issue 5), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 1, 2000, or be presented at a public hearings on November 21 and 22,

2000, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings of Fact:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the November 1, 2000, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing The State of Delaware Regulations for the Licensing and Registration of Operators of Public Water Supply Systems are adopted and shall become effective March 10, 2001, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
2/15/01

SUMMARY OF EVIDENCE

STATE OF DELAWARE RULES AND REGULATIONS GOVERNING THE LICENSING AND REGISTRATION OF OPERATORS OF PUBLIC WATER SUPPLY SYSTEMS

Public hearings were held on November 21, 2000, in the Artesian Water Company Building, Newark, Delaware; and on November 22, 2000, in the Blue Hen Corporate Center in Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed Delaware Health and Social Services (DHSS) Rules and Regulations Governing the Licensing and Registration of Operators of Public Water Supply Systems. The announcements regarding the public hearings were advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Edward Hallock, Program Administrator, Office of Drinking Water, Division of Public Health, made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. The City Manager of Rehoboth Beach and a representative of Pittsburgh Paint Group (PPG) commented on the proposed regulations. No written comments were received during the comment period. Public comments and the DHSS (Agency)

responses are as follows:

1. The City of Rehoboth took exception to amendments made to section 7.106. Specifically, the sentence inserted requiring that applicants be employed by and working at a water system in Delaware at the time of application. There was concern that this requirement could prevent Delaware water systems from getting expert help from outside of the State.

Agency Response: DHSS recommends deleting this amendment to Section 7.106. In lieu of that amendment, DHSS recommends amending the first sentence under Section 7.200, titled, Issuance of License, by inserting the underlined words below.

"On satisfactory fulfillment of the requirements provided in this regulation **and providing proof of employment at a Delaware water system**, the candidate shall be issued a suitable license by the Secretary, upon recommendation by the Advisory Council." The intent of the amendment to Section 7.106 was to prevent out-of-state water operators from obtaining a Delaware license and using the license to apply for reciprocity in other states versus actually working in Delaware. Making this modification will ensure a Delaware Base Level Water Supply Operator License is only issued to individuals working for water systems in Delaware and provide water system operators the flexibility to effectively and efficiently hire qualified water system operators.

2. Reciprocity should be in these regulations.

Agency Response: DHSS does not recommend any changes to this regulation based on this comment. Reciprocity is part of this program and is addressed in Section 7.600. To summarize, Delaware may issue a license of comparable classification without examination to any person who holds a certificate or license in any state, territory, or possession of the United States or any country. As long as the certification or license does not conflict with the provisions of this regulation and are of a standard not lower than specified by this regulation.

3. How does this apply to Pittsburgh Paint Group Industries (PPG)?

Agency Response: DHSS does not recommend changes to the proposed regulations based on this comment. According to State law, all public water systems (serving 25 or more consumers) except seasonal supplies, which are those that are only open part of the year, must be operated by licensed water system operators. Since your company has over 100 employees, your water supply system would need to be overseen by a licensed water supply system operator.

Additional Agency Response: Based partly on this comment and the fact that the licensing grandfather clause deadline in the proposed regulation is unrealistic, DHSS

recommends extending the licensing grandfather clause deadline in Section 6.204 of this regulation from January 1, 2001 to July 1, 2001. Extending this proposed deadline to July 1, 2001, was addressed at the beginning of both hearings and no comments against such an extension were given. Extending this deadline will give public water supply systems, such as PPG Industries, adequate time to meet the personnel-licensing requirement of this regulation.

Changes recommended in this Summary of Evidence were made as a result of public comment to the draft regulations.

The public comment period was open from November 1, 2000 to December 1, 2000.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

**REGULATIONS FOR THE LICENSING AND
REGISTRATION OF OPERATORS OF PUBLIC
WATER SUPPLY SYSTEMS**

**ADOPTED SEPTEMBER 2, 1997 BY THE
SECRETARY, DELAWARE HEALTH AND SOCIAL
SERVICES UNDER AUTHORITY OF 16 Delaware
Code Section 122(3)(c), Revised [March 10, 2001]**

SECTION 1 - PURPOSE

1.100 It is the purpose of this regulation to protect the public health and to provide for the development and protection of the potable water supply systems of this State; to provide for the classification of public water systems; to require the licensing of operators of these systems; to provide procedures for such licensing and registration; to create an Advisory Council for Certification; to provide for reciprocal arrangements; and to prescribe penalties for violation of this regulation.

SECTION 2 - DEFINITIONS

2.101 **Advisory Council:** Advisory Council for Certification of Public Water System Operators, as established by this regulation.

2.102 **Base Level License:** A water treatment and/or distribution license in which the following information is covered: general water system information; disinfection by hypochlorination; and distribution operation and maintenance for water supply systems having a flow of less than five hundred (500) gpm at twenty (20) psi.

2.103 **Circuit Rider:** A certified water operator who operates and/or is the direct-responsible-charge (DRC) for more than one (1) public water system.

2.104 **Combined Treatment/Distribution System:** Any water supply system which is composed of a water treatment facility as defined in 2.117 together with a water

distribution system as defined in 2.113.

2.105 **Continuing Education Unit (CEU):** A measure of professional, educational training, where one (1) CEU is equal to ten (10) hours of classroom and/or laboratory training.

2.106 **Department:** Delaware Health and Social Services.

2.107 **Direct-Responsible-Charge (DRC):** Certified water system operator(s) assigned accountability for performance of active, on-site operational duties.

2.108 **Director:** Director of the Division of Public Health

2.109 **Division:** Division of Public Health.

2.110 **Educational Contact Hour:** The amount of time spent at a water operators or water distribution operators training course, after initial certification, not including travel time or lodging time. For purposes of these Regulations, the initial base certification course does not qualify as educational contact hours and one (1) hour of time spent in a training course is equal to one (1) educational contact hour.

2.111 **Endorsement:** Any water treatment operation as listed in Section 5.201 which is over and above the base level license as defined in Section 2.102.

2.112 **Operator:** A licensed person who works in a water treatment facility and/or a water distribution system who may be a DRC or may work under a DRC.

2.113 **Person:** Any individual, partnership, firm, association, joint venture, public or private corporation, trust, state commission, Advisory Council, public or private institution, utility, cooperative, municipality or any other political subdivision of this State, or any other legal entity.

2.114 **Public Water System:** A water supply system for the provision to the public of piped water for human consumption through pipes or other constructed conveyances either directly from the user's free flowing outlet or indirectly by the water being used to manufacture ice, foods and beverages or that supplies water for potable or domestic purposes for consumption in more than three dwelling units, or furnishes water for potable or domestic purposes to employees, tenants, members, guests or the public at large in commercial offices, industrial areas, multiple dwellings or semi-public buildings, including, but without limitation, rooming and boarding houses, motels, tourist cabins, mobile home parks, restaurants, camps of all types, day and boarding schools, clubhouses, hospitals and other institutions, or offers any water for sale for potable or domestic purposes. ~~For the purposes of this definition, consecutive water supplies as defined in the State of Delaware Regulations Governing Public Drinking Water Systems are excluded. Public water systems are classified as follows:~~

A. "Community Water System (CWS)" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves

at least twenty-five (25) year-round residents;

B. "Non-Transient Non-Community Water System (NTNCWS)" means a public water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year;

C. "Non-Community Water System (NCWS)" means a public water system which has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year;

D. "Miscellaneous Public Water System (MPWS)" means a public water system that is neither community, non-community nor non-transient non-community.

2.115 **Secretary, Delaware Health and Social Services:** The Administrator of the Department of Health and Social Services of the State of Delaware.

2.116 **Water Distribution System:** That portion of the water supply system in which water is stored and conveyed from a water treatment plant, groundwater well, or other supply point to the free-flowing outlet of the ultimate consumer.

2.117 **Water Supplier:** Any person who owns, operates, or manages a public water system.

2.118 **Water Supply System:** Includes the work and auxiliaries for collection, treatment, storage, and distribution of water from the source of supply to the free-flowing outlet of the ultimate consumer.

2.119 **Water Treatment:** Any process which is meant to alter the physical, chemical or bacteriological quality of the water.

2.120 **Water Treatment Facility:** That portion of the water supply system which is meant to alter the physical, chemical, or bacteriological quality of the water being treated.

SECTION 3 - ADVISORY COUNCIL FOR CERTIFICATION OF PUBLIC WATER SYSTEM OPERATORS

3.100 An Advisory Council for Certification of Public Water System Operators shall be appointed by the Secretary, Delaware Health and Social Services to advise and assist the Secretary in the administration of this regulation. The Advisory Council shall hold at least quarterly meetings each calendar year and such special meetings as it deems necessary.

3.200 Membership:

3.201 The Advisory Council will consist of a minimum of nine (9) members and with the following representation:

A. one (1) member representing the Division of Public Health who shall serve as Advisory Council Secretary/Treasurer, responsible for maintaining all appropriate records and conducting the daily business of the

Advisory Council.

B. three (3) members representing the general public

C. two (2) representatives from local government agencies with managerial responsibility for water treatment and/or water distribution in a public water system with the following representation:

(1) one (1) member representing a local government agency having a population greater than or equal to 10,001 and;

(2) one (1) member representing a local government agency having a population less than or equal to 10,000

D. one (1) member representing business or industry

E. one (1) member representing a public water utility.

F. one (1) member holding a valid water operator's license, or who is eligible to be licensed under this regulation.

3.202 Advisory Council members will serve a five (5) year term with the right to resign at their request or until such time as a re-appointment or a replacement appointment is made.

A. Initially one (1) member will be appointed for a term of one (1) year, one (1) for a term of two (2) years, two (2) for a term of three (3) years, two (2) for a term of four (4) years and two (2) for a term of five (5) years.

B. The Division representative will serve an unlimited term at the discretion of the Secretary.

3.203 Advisory Council appointees shall represent all counties of the State, with at least one (1) member each from New Castle, Kent and Sussex Counties.

3.204 The Secretary may remove any member of the Advisory Council for misconduct, incapacity, or neglect of duty, and shall be the sole judge of the sufficiency of the case for removal.

3.205 The Secretary shall fill any vacancy. Such an interim appointment shall be for the duration of the term.

3.300 Responsibility and Authority:

3.301 The Advisory Council, with the consent of the Secretary, shall establish such procedures and guidelines as may be necessary for the administration of this regulation. These procedures and guidelines shall include but not be limited to the following:

A. procedures for examination of candidates and the granting of licenses;

B. procedures for the renewal of licenses;

C. procedures for the suspension, revocation and failure to renew licenses;

D. guidelines for evaluating equivalency of training and examinations conducted by recognized agencies and institutions;

E. guidelines for evaluating equivalency of other

licensing and certification programs for the purpose of according reciprocal treatment.

F. procedures for the collection and disbursement of fees.

3.302 The Advisory Council shall possess the necessary authority as delegated by the Secretary to carry out all activities required for the proper administration of this regulation. Such authority includes:

A. the development of rules and regulations, to be adopted by the Secretary, concerning the licensing of operators of public water systems;

B. establishing the method of examination for each license applicant, including preparation, administration, and grading of examinations;

C. the recommendation to the Secretary regarding the issuance and renewal of licenses;

D. the recommendation of disciplinary sanctions to the Secretary on operators who violate Section 10 of this regulation.

SECTION 4 - LICENSE REQUIREMENTS FOR PUBLIC SUPPLY WATER SYSTEMS

4.100 Water Supply Treatment Facilities

Two years following the effective date of this regulation, any public water supply system treatment facility must be under the direct-responsible-charge of a person possessing a valid base level water operator's license, defined in Section 2.102 of these regulations, and all applicable endorsements, if any, for the treatment facility to be operated.

4.200 Water Supply Treatment Facility Operators

Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible-charge (DRC) and/or operate any public water supply system treatment facility unless said person possesses a valid base level water operator's license and applicable endorsements, if any, for the treatment facility to be operated.

4.300 Water Supply Distribution Systems

Two years following the effective date of this regulation, any public water distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and, at a minimum, a distribution endorsement.

4.400 Water Supply Distribution System Operators

Two years following the effective date of this regulation, it shall be illegal for any person to be in a position of direct-responsible charge (DRC) and/or operate any public water supply distribution system, capable of producing greater than five hundred (500) gallons per minute (gpm) at twenty (20) pounds per square inch (psi), unless

said person possesses a valid base level water operator's license and, at a minimum, a distribution endorsement.

4.500 Combined Treatment/Distribution Supply Systems

4.501 The license requirements stipulated in 4.100 and 4.300 apply separately and equally to both the water supply treatment facility operator and the water supply distribution facility operator of a combined treatment/distribution supply system.

4.502 Any water supply treatment facility which is part of a combined public water treatment/distribution system must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and all applicable endorsements, as defined by the Division, if any, for the treatment facility to be operated.

4.503 Any water supply distribution system which is part of a combined public water treatment/distribution system and is capable of producing greater than five hundred (500) gpm at twenty (20) psi must be under the direct-responsible-charge of a person possessing a valid base level water operator's license and, at a minimum, a distribution endorsement.

4.504 The requirement of a distribution endorsement as stated in Section 4.503 may be waived if the owner can demonstrate to the Division that all distribution system operation and maintenance is contracted out to another licensed operator.

4.600 Notification to Division of Public Health

Within twenty-six (26) months of the effective date of this regulation, any owner of a public water supply system treatment facility, distribution system, or combined treatment/distribution system must provide to the Division a list of all persons in direct-responsible-charge and all operators who have been duly licensed under these regulations. Further, the owner must notify the Division in writing of any additions, deletions, or other change in the number of licensed direct-responsible-charges or operators within thirty (30) days of such change.

4.700 Temporary Variance

4.701 A temporary variance from the license requirements provided in Sections 4.100, 4.300 and 4.500 of this regulation may be granted by the Secretary, upon recommendation by the Advisory Council, to the owner of a public water system treatment facility, distribution system, or combined treatment/distribution system, when it is demonstrated to the satisfaction of the Advisory Council that the owner has unexpectedly lost a licensed operator and/or is unable to hire a licensed operator in spite of good faith efforts. Such temporary variance may be issued with any special conditions or requirements deemed necessary to assure the protection of the public health.

4.702 Notification of the unexpected loss of a licensed operator must be sent to the Advisory Council by the owner within thirty (30) days pursuant to 4.600 of this regulation.

Application for a temporary variance must be made to the Advisory Council on forms provided by the Advisory Council no later than thirty (30) days following such initial notification. After thorough review of the application and any other information required by the Advisory Council as being pertinent to the issuance of a temporary variance, the Advisory Council shall make a recommendation to the Secretary. The Secretary ~~notify~~ notifies the applicant in writing of his/her decision to approve or deny the temporary variance.

4.703 A temporary variance shall be valid only for that facility or system for which issued, and for a period of time as specified by the Secretary, but which shall not exceed six (6) months.

4.704 Extension of Temporary Variance

When it is demonstrated to the satisfaction of the Secretary that the owner holding a temporary variance has continued to act in good faith in attempting to hire a licensed operator but is unable to do so, one (1) extension of the original variance may be granted at the discretion of the Secretary, upon recommendation by the Advisory Council, for a period of time not to exceed six (6) months. Requests for an extension of a temporary variance must be made to the Advisory Council in writing no later than one (1) month prior to the expiration date of the original variance.

SECTION 5 - CLASSIFICATION OF PUBLIC WATER SYSTEMS

5.100 The Division of Public Health shall classify all public water systems in accordance with the criteria hereby established.

5.200 Water Supply Facilities

5.201 Public water system supply facilities shall be classified according to the treatment process(es) it operates. General treatment processes shall be grouped into categories hereby called endorsements. Within each endorsement shall be specific unit processes, hereby called endorsement sub-categories, see appendix A for a list of these sub-categories. The Division will specify which endorsements and endorsement sub-categories a public water system needs based upon the most recent sanitary survey conducted by the Division. The list of endorsements ~~are~~ is as follows:

- A. Disinfection
- B. Chemical Feed
- C. Filtration
- D. Surface Water Operations
- E. Other Specified Treatment
- F. Distribution

5.202 The Advisory Council shall amend Appendix A as is necessitated by the creation of new treatment technologies.

5.203 In the event of an emergency, such as source water contamination, in which a treatment process is required to protect the public's immediate health and which

the DRC and/or operator is currently not licensed for, an emergency endorsement may be added to the DRC's and/or operator's license provided that prior approval, by the Division, is granted. This emergency endorsement shall be issued for a period not to exceed one (1) year, without the express written consent of the Secretary.

SECTION 6 - LICENSE CLASSIFICATION AND OPERATOR QUALIFICATIONS

6.100 License Classification

6.101 One (1) regular water supply operator license class is hereby established:

Base Level Water Supply Operator with all applicable endorsements as stated in Section 5.201.

6.102 Three (3) specialty class licenses are also established:

- A. Water Supply Operator-in-Training (OIT)
- B. Circuit Rider
- C. Grandfather Clause

6.200 Operator Qualifications

6.201 Base Level Water Supply Operator

- A. High School Diploma or equivalent and one (1) year of acceptable operating experience, or;
- B. Three (3) years of acceptable operating experience, and;
- C. Successful completion of the base level written examination;

6.202 Water Treatment Operator-In-Training (OIT)

An operator who lacks either the education or experience requirements for a base level license may, with the approval of the Secretary, upon recommendation by the Advisory Council, and after successful completion of the base level written examination, receive an interim Operator-in-Training (OIT) license, for a maximum of three (3) years, pending fulfillment of the regular license requirements.

6.203 Circuit Rider

To be classified as a circuit rider, an operator must be able to meet the following criteria:

A. Must be certified for all endorsements required for the water systems for which he/she is in direct-responsible-charge and/or operates.

B. Spend a recommended number of three (3) visits each week at each water system ~~which~~ that he/she is in direct-responsible-charge. This number may be adjusted by the Advisory Council based upon a yearly review.

1. The number of visits spent each week at each water system must be documented on forms, provided by the Division, and submitted upon request.

C. The distances between each water system shall be such that, in the event of an emergency, the circuit rider will be able to reach the water system within two (2) hours of first being notified of the emergency.

6.204 Grandfather Clause: A valid, base level license and any applicable endorsements shall be issued by the

Secretary, upon recommendation by the Advisory Council, to the individual(s) certified by the governing body or owner of a public water system to have been in responsible charge and/or operated a water facility on the effective date of this regulation, under the following criteria:

the individual(s) can provide documentation to the Advisory Council attesting to the fact they have been in a position of Direct-Responsible-Charge and/or operated a water facility for at least five (5) years prior to the adoption date of these Regulations; and

any application for a license pursuant to this section must be submitted on or before ~~January 1, 2001~~ July 1, 2001.]

6.205 A license and endorsement(s) granted under Section 6.204 of these Regulations shall not be transferable to another water system, ~~provided that the endorsement(s) necessary to operate the new water system are the same as the endorsement(s) for the water system in which the grandfathered license was originally issued.~~

SECTION 7 - LICENSING PROCEDURES

7.100 Examinations

7.101 The Advisory Council or its authorized designee ~~shall~~ may enter into a contract with third party to prepare, administer and grade written examinations required for each category and classification of license. A minimum score of seventy percent (70 %) shall be required to pass the examination. Examinations are confidential and remain the property of the Advisory Council. Due to unusual and extenuating circumstances, the Advisory Council may waive the requirements for the written examination, in which case an oral recorded examination shall be conducted and retained by the Advisory Council.

7.102 Schedule

Examinations shall be held at places and times designated by the Advisory Council, and shall be held at least semiannually. Advance public announcement shall be made by the Advisory Council at least two (2) months prior to the scheduled examination date.

7.103 Applications

Candidates wishing to take any license examination must submit an application to the Advisory Council at least thirty (30) days prior to the announced date of the examination on forms provided by the Advisory Council. No application form shall require a picture of the applicant, require information relating to citizenship, place of birth, or length of State residency, nor shall it require personal references

7.104 Application Review and Notification

The Advisory Council shall review all applications submitted and determine the eligibility of each candidate to sit for the particular examination applied for. Each candidate approved for examination shall be notified in writing by the Advisory Council of the time and place of the

next examination for which the candidate is eligible. Such notification shall be given at least two (2) weeks prior to the examination date.

7.105 Fraudulent Applications

Where the Council has found to its satisfaction that an application has been fraudulent, or that false information has been intentionally supplied, it shall report its finding to the Attorney General for further action.

7.106 Eligibility

Approved applications for examination shall remain valid for one (1) year. Any approved candidate who fails to appear for an examination during the one (1) year period following the first notification of eligibility must submit a new application for examination to the Advisory Council. ~~Applicants must be employed by and working at a water system in Delaware at the time of application.]~~

7.107 Appeal of Rejected Applications and Failed Examinations

Where the application of a person has been refused or rejected, the applicant may appeal in writing, via certified mail, to the Secretary within thirty (30) days. Any applicant who failed the examination has the right to appeal before the Advisory Council.

7.108 Re-Examination

Any candidate who fails to pass an examination may apply for re-examination upon subsequent scheduled examination dates. Candidates are permitted to sit for the same examination two (2) times per year. If both examinations are failed, the candidate must wait one (1) year prior to re-examination.

7.200 Issuance of License

On satisfactory fulfillment of the requirements provided in this regulation, **[and providing proof of employment at a Delaware water system,]** the candidate shall be issued a suitable license by the Secretary, upon recommendation by the Advisory Council. The license shall indicate all endorsements for which the operator is qualified and the date of issuance.

7.300 Renewal of License

7.301 Licenses shall be renewed every two (2) years unless suspended, revoked for cause, or invalidated under 7.400. The deadline renewal date shall be the month and day of the original license issuance. Application for renewal must be submitted to the Advisory Council on forms provided by the Advisory Council at least sixty (60) days prior to the deadline renewal date.

7.302 In addition to Section 7.301, all operators, including grandfathered operators, must receive an additional amount of training, as approved by the Advisory Council, every two (2) years in order to renew their licenses, as shown below.

A. ~~Twelve (12)~~ Twenty (20) educational contact hours ~~and one and one half (1.5) CEUs~~ every two (2) years; for operators who have endorsements on their licenses.

~~systems whose distribution system is capable of producing a flow of greater than 500 gpm at 20 psi.~~

B. Twelve (12) educational contact hours every two (2) years; for operators with a base level license, systems whose distribution system is not capable of producing a flow of greater than 500 gpm at 20 psi.

7.303 Any license ~~which that~~ has not been renewed in accordance with 7.301 and 7.302 shall be automatically invalidated. Such expired license may be revalidated without examination upon payment of the appropriate fee within one (1) year from the expiration date. Licenses not reinstated within one (1) year shall submit a new application to the Advisory Council and may be required to sit for the appropriate written examination.

7.400 Denial of Renewal, Suspension, or Revocation of Licenses and Placement on Probation

The Secretary may suspend or revoke the license of an operator, after considering the recommendations of the Advisory Council, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly. Said recommendations to the Secretary by the Advisory Council shall be made upon the Advisory Council conducting a hearing in accordance with provisions established under these regulations. Examples of actions which may result in denial of renewal, suspension or revocation of a license or placement on probation include, but are not limited to; failure to notify the Division of chemical overfeeds and other emergencies, failure to respond to an emergency, etc..

7.500 Fees

7.501 The fee schedule as authorized by 16 Delaware Code Section 122(3)(c) and set forth below shall take effect on the effective date of this regulation.

A. Application for Initial Annual License \$50.00

B. Application for Renewal of Annual License... \$50.00

7.502 All application fees are payable upon application. ~~All fees are non-refundable.~~

7.600 Reciprocity

A license of comparable classification may be issued without examination to any person who holds a certificate or license in any state, territory, or possession of the United States or any country, if in the judgment of the Secretary, the requirements under which the certification or license was issued do not conflict with the provisions of this regulation or any rules promulgated hereunder, and are of a standard not lower than that specified by this regulation.

SECTION 8 - PREEMPTION

8.100 The provisions of these regulations preempt existing regulations of this State insofar as they relate to or

conflict with the provisions of this regulation.

SECTION 9 - SEVERABILITY

9.100 Each Section of this regulation and every part of each Section is an independent Section and part of a Section, and the holding of any Section or part thereof to be unconstitutional, void, or invalid for any cause does not affect the validity or constitutionality of any other Section or part thereof which shall continue valid and effective.

SECTION 10 - DISCIPLINARY PROCEDURES

10.100 Grounds for Discipline

The conditions and actions of an applicant or licensed operator which may result in disciplinary action as set forth in 10.300 of this Section includes, but is not limited to, the following list. If after following the Disciplinary Procedures as stated in Section 10.200, the Council finds that, after conducting an investigation and hearing an applicant or licensed operator:

A. Has acted fraudulently or with material deception in order to be certified; or

B. Has engaged in illegal, incompetent or negligent conduct in the provision of water system operation; or

C. Has as an operator or otherwise, in the practice of his or her profession, ~~knowingly~~ engaged in an act of consumer fraud or deception, or engaged in the restraint of competition, or participated in price-fixing activities; or

D. Has violated a lawful provision of this Section or any lawful rule or regulation established here under.

10.200 Disciplinary Procedures

10.201 Notice of Violation: Whenever the Director has reason to believe that a violation of any of these Regulations has occurred or is occurring, the Director shall notify the alleged violator and the Secretary. Such notice shall be in writing, may be sent by Certified Mail, or hand delivered, shall cite the Regulation or Regulations that are allegedly being violated, and shall state the facts which form the basis for believing that the violation has occurred or is occurring.

10.202 Investigation: Whenever the Director issues a Notice of Violation, an investigation shall be conducted to determine if the alleged violations have occurred or are occurring. One member of the Advisory Council shall act as the investigator and shall report the findings of the investigation to the Advisory Council. Upon review of all the facts concerning the alleged violation(s), the Advisory Council will vote on recommended disciplinary sanction(s), as listed in Section 10.300. The investigative member of the Advisory Council will not vote on the recommended disciplinary actions. The Advisory Council shall report to the Secretary and the Director with the findings of fact and recommendations for disciplinary action.

10.203 Hearing Request: Any operator who has received a Notice of Violation may submit a request for a

hearing to the Director within 30 days via certified mail. A hearing will be held within 180 days.

10.300 Disciplinary Sanctions

Persons regulated under this Section who have been determined to be in violation of this Section may be subject to the following disciplinary actions:

- A. Issuance of a letter of reprimand
- B. Placement on probationary status
- C. Imposition of a fine not to exceed \$1,000 for each offense
- D. Suspension of License
- E. Revocation of License

SECTION 11 - PENALTY CLAUSE

11.100 Any person who neglects or fails to comply with this regulation shall be subject to penalty as provided in 16 Delaware Code 107.

APPENDIX A

Listed below are the general endorsement categories. Under each general category is a list of the endorsement sub-categories (unit processes) associated with each general category.

A. Disinfection

- 1. Hypochlorination (Calcium or Sodium), powder or liquid
- 2. Gas Chlorination
- 3. Ozonation
- 4. Bromination
- 5. Iodine
- 6. Chloramines
- 7. Chlorine Dioxide
- 8. Ultraviolet Light

B. Chemical Feed

- 1. Lime - Soda Ash Addition
- 2. pH Adjustment
- 3. Inhibitor - bimetallic phosphate, hexametaphosphate, orthophosphate, polyphosphate
- 4. Sequestering
- 5. Permanganate
- 6. Peroxide
- 7. Fluoridation

C. Filtration

- 1. Activated Carbon, powder or granulated
- 2. Sand - Pressure, Rapid, Slow
- 3. Reverse Osmosis
- 4. Greensand
- 5. Activated Alumina
- 6. Ion Exchange
- 7. Cartridge
- 8. ~~Diatomaceous~~ Diatomaceous Earth

- 9. Ultrafiltration
- 10. Microfiltration

D. Surface Water Operations

- 1. Algae Control
- 2. Coagulation
- 3. Flocculation
- 4. Rapid Mix
- 5. Sedimentation
- 6. Sludge Treatment

E. Other Specified Treatment

- 1. Aeration - Cascade, Diffused, Packed Tower, Slat Tray or Spray
- 2. Dechlorination - using reducing agents, sodium bisulfate, sodium sulfide, or sulfur dioxide
- 3. Distillation
- 4. Bone Char
- 5. Electrodialysis

F. Distribution

- 1. Flow less than 500 gpm at 20 psi
- 2. Flow greater than 500 gpm at 20 psi

DIVISION OF PUBLIC HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES
Statutory Authority: 16 Delaware Code,
Section 9705 (16 Del.C. §9705)

**Adoption of the State of Delaware
Rules and Regulations Governing
Advanced Life Support Interfacility
Transportation** |

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Advanced Life Support Interfacility Transportation. The DHSS's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 97 and Chapter 98.

On December 1, 2000 (Volume 4, Issue 6), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 31, 2000, or be presented at a public hearing on December 21, 2000, after which time DHSS would review information, factual

evidence and public comment to the said proposed regulations.

Verbal and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

FINDINGS OF FACT:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the December 1, 2000, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing The State of Delaware Advanced Life Support Interfacility Transportation are adopted and shall become effective March 10, 2001, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
2/15/01

SUMMARY OF EVIDENCE

STATE OF DELAWARE RULES AND REGULATIONS GOVERNING ADVANCED LIFE SUPPORT INTERFACILITY TRANSPORTATION

A public hearing was held on December 21, 2000, at 10:00 AM, in the conference room of the Delaware Office of Emergency Medical Services (OEMS), Blue Hen Corporate Center, Suite 4-H, 655 Bay Road, Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed Delaware Health and Social Services (DHSS) Rules and Regulations Governing Advanced Life Support Interfacility Transportation (ALS-IFT). The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Chris Hainsworth, Management Analyst from the Office of Emergency Medical Services, Division of Public Health, made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Public testimony was given at the public hearing and two letters were received commenting on the proposed regulations during the comment period. The first letter was from the State Council for Persons with Disabilities (SCPD), and the second letter was from the Delaware Healthcare Association. Public comments and the

DHSS (Agency) responses are as follows:

1. The ALS-IFT regulations were not coordinated through the Delaware Emergency Medical Services Oversight Committee (DEMSOC).

Agency Response: Although there is no legal obligation to have proposed regulations reviewed and approved by DEMSOC, these regulations were discussed at the May 24, 2000, DEMSOC meeting. In addition, announcements regarding these regulations were published in the Delaware State News, The News Journal and the Delaware Register of Regulations in accordance Delaware Law.

2. A private company could come into Delaware and start advertising as a paramedic service as a result of these regulations.

Agency Response: After a careful review of the regulation, Section IX.A.1.b. (1)(b), will be modified to prohibit an Advanced Life Support Interfacility Transport Organization (ALS-ITO), from using the terms paramedic or paramedic service on any of their advertisements. It was discovered that in the proposed regulations, the word "not" was unintentionally omitted from this section.

3. Can the term "paramedic" be reserved only for a job description that includes pre-hospital care?

Agency Response: The term paramedic is clearly defined in Title 16, Delaware Code, Chapter 97. Paramedics meet certification requirements defined by the Board of Medical Practice and are supervised by a Delaware licensed physician. Rather than being defined by a job description, the term paramedic is defined by training and qualifications.

4. How would an out-of-state paramedic be certified in Delaware?

Agency Response: The certification process for out-of-state paramedics is virtually the same as a paramedic in Delaware. Appendix A of these regulations sets forth the paramedic certification process in detail.

5. Can an existing 911 paramedic agency in Delaware be grandfathered in as an ALS-ITO?

Agency Response: Because Delaware paramedics and paramedic agencies already meet the requirements of these regulations, all that will be required is for the existing paramedic agency to let the State Office of Emergency Medical Services (OEMS), know their intent to function as an ALS-ITO.

6. Paramedics and medical directors hired by private companies to perform ALS-IFT may not be as competent as Delaware paramedics and medical directors.

Agency Response: Private company paramedics and medical directors will be required to meet the same

certification and performance standards as Delaware paramedic agencies. This regulation adequately addresses paramedic certification, paramedic competence and ALS-ITO medical direction requirements.

7. Although not specifically addressed, will this regulation require hospitals to collect new or additional "outcomes" analysis data?

Agency Response: This regulation does not require or request hospitals to provide new or additional data for "outcomes" analysis. The only additional data that a hospital would be requested to provide would be if they were operating a paramedic service. A paramedic report would be generated using the Emergency Data Information Network (EDIN). This is a report that every paramedic must complete for every patient contacted. However, the data in this report only covers the transport. Nothing that occurs within the facility or outcome data is part of this form.

8. Amend Section IV of the regulations to require the list of patient rights be provided to each ALS-IFT patient and include a contact address and telephone number on the list. Doing this will facilitate patient awareness of rights and procedures for filing a complaint against the ALS-ITO.

Agency Response: DHSS recommends modifying Section IV, paragraph 10 to include a contact address and telephone number. Making these changes would not only notify the patient of the regulatory agency, but would also provide direct contact information for said agency. At the same time, this information given to the patient will be a source of motivation for ALS-ITO attendants to provide good customer service.

On the second part of this comment, DHSS does not recommend modifying these regulations to mandate that an ALS-ITO give each patient a list of patient rights. The patient rights as listed in Section IV of these regulations were meant to communicate from the regulatory organization to the ALS-ITO the expectation of good customer service. This is a merely list of basic customer service expectations. In addition, no other emergency medical service in Delaware is required by regulation to give the patient a list of rights.

As a result of the above comment, DHSS recommends Section IV of these regulations, titled, "Patients Rights" be renamed "Patient Service Expectations." Doing so will better reflect the contents of this section and prevent further confusion.

9. A violation of patient rights under Section IV of these regulations, should be cause for a Designation Review Process as outlined in Section X.B.

Agency Response: DHSS does not recommend mandating in this regulation that a violation of patient rights

in Section IV be cause for a Designation Review as outlined in Section X.B. Using these patient rights or customer service expectations as a trigger for a Designation Review would create requirements that do not currently exist for any paramedic or basic life support service in Delaware. It may also circumvent any attempt on an ALS-ITO's part to provide the patient with an internal avenue to address such customer service problems.

10. There was a concern that the five dispositions the Investigation Panel may select at the conclusion of a Designation Review (Section X.D.) may unduly limit DPH's ability to correct a transgression without placing a provider on probation or suspending their right to operate. A suggestion was made to add authorization for the Panel to recommend that the Organization take specific remedial action.

Agency Response: Section X.D., of this regulation, identifies five disposition outcomes of a Designation Review Panel as: probation, suspension, revocation, monitoring, and reporting. These dispositions enhance, rather than limit, the Designation Review Panel's ability to correct problems. The disposition "probation" authorizes the Panel to recommend specific remedial action that will need to be taken by the ALS-ITO without affecting their ability to operate. "Monitoring" and "reporting" would be used in instances where a complaint could not be substantiated by the Panel to justify probation or suspension but would allow continued observation of the circumstances. If this means identifying areas requiring remedial action, the Panel still has the authority to compel the ALS-ITO to correct the transgression.

11. In December 2000, Executive Order # 83, was issued by Governor Thomas Carper, prohibiting State agencies from discrimination based on gender or sexual orientation.

Agency Response: DHSS recommends modifying Section X.B., paragraph 16 of this regulation to include the words, "gender or sexual orientation." Section X.B., paragraph 16, lists reasons why the regulatory agency can suspend, revoke or refuse to issue a designation certificate to operate an ALS-ITO in Delaware. Adding these words to this paragraph will be in keeping with the non-discriminatory intent of Executive Order # 83.

In addition to changes recommended in this Summary of Evidence, minor grammatical corrections were made as a result of public comment to the draft regulations.

The public comment period was open from December 1, 2000 to December 31, 2000.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

Advanced Life Support Interfacility Transportation
Final Draft

[Definitions

['911 ALS Organization': An EMS organization that has been designated to provide ALS services to calls originating from a 911 center.

ACLS: American Heart Association Advanced Cardiac Life Support course.]

Advanced Life Support: The advanced level of prehospital and interhospital health care that includes basic life support functions plus cardiac monitoring, defibrillation, administration of specific medications, drugs and solutions, intravenous therapy, and other authorized treatments and procedures.

Advertising: Any information communicated by oral, written, electronic, or any graphic means including flyers, newspapers, business cards, letterhead, radio, television, telephone directories, or internet websites. It also includes ambulance markings. It does not include novelty items such as pens, pencils and mugs.

Air Medical Service: An organization that provides medical transportation utilizing either fixed wing or rotor-wing vehicles.

ALS: Advanced Life Support

ALS-IFT: Advanced Life Support – Interfacility Transport

ALS-ITO: An organization or service that provides Advanced Life Support - Interfacility Transport.

Ambulance: Any publicly or privately owned vehicle, as certified by the State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and intended to be used for and is maintained or operated for the transportation upon the streets and highways of this state for persons who are sick, injured, wounded, or otherwise incapacitated or helpless.

BCLS: American Heart Association Basic Cardiac Life Support course

Board of Medical Practice: Body that oversees medical practice in Delaware under 24 Del.C. 19.

BOMP: see Board of Medical Practice

Certification Process: Process by which a paramedic certified in another state may receive reciprocity to function in the State of Delaware. (Refer to Appendix A).

Cost per Unit Hour: A ratio measure of fiscal performance. It is calculated by summing all costs associated with providing a service (i.e. staffing, fuel, vehicle expenses, supply . . .) for a particular period and dividing by the number of unit hours that were produced by the service during the same period.

Designation: Status provided by the Division of Public Health to an ambulance service allowing them to

provide Advanced Life Support Interfacility Transportation.

Designation Probation: Organization may provide ALS Interfacility Transportation but performance will be monitored as recommended changes are implemented. Continued infractions may result in suspension or revocation of service designation.

Designation Reinstatement: The Organization may resume provision of ALS-IFT in the State of Delaware.

Designation Revocation: The Organization may not provide ALS Interfacility Transport services in the State of Delaware for a period of one year before re-applying for ALS-ITO Designation.

Designation Suspension: The Organization may not provide ALS Interfacility Transport services until recommended changes are implemented and reviewed by the OEMS.

Division: Refers to the Division of Public Health

EDIN: See 'Emergency Data Information Network'

Emergency Call: Any request for medical assistance that is received by a 911 Public Safety Access Point (PSAP).

Emergency Data Information Network: Internet based data collection system for the State EMS system.

Emergency Medical Technician: A person who has been trained in basic emergency care procedures and has been certified by the Delaware Fire Prevention Commission to perform them in the State of Delaware.

Inter-facility Transportation: Movement of a patient between two medical facilities.

Medical Facility: An agency, institution, or establishment where people receive acute, inpatient, outpatient, or long term health care.

Non-911 ALS Organization: An organization that is approved to provide ALS services to calls that do not originate from a 911 center.

OEMS: Office of Emergency Medical Services, Division of Public Health

Office: Refers to the Office of Emergency Medical Services, Division of Public Health

Optional ALS Skill: A skill, procedure, or medication that has been approved by the BOMP for use by ALS-ITO paramedics. Optional skills are only for use by 'non-911' organizations.

Organization: An ALS Interfacility Transportation Organization

Organization Medical Director: Medical Director hired or contracted to oversee the medical care provided by an ALS-ITO.

PALS: American Heart Association Pediatric Advanced Life Support course

Paramedic: A person who has been trained in advanced life support procedures and has been certified by the Division of Public Health and the Board of

Medical Practice to perform them in the State of Delaware.

Patient Contact Activity: Any activity involving contact between a patient and an ALS-ITO provider involving assessment, treatment, and/or transportation services being provided to the patient by the provider.

PHTLS: The National Association of EMTs and the Committee on Trauma of the American College of Surgeons Prehospital Trauma Life Support course.

Physician: An individual authorized to practice medicine in Delaware under 24 Del.C. 17.

PSAP: Public Safety Access Point. Location / agency that receives 911 calls for public safety assistance.

Registered Nurse: An individual authorized to practice registered nursing in Delaware under 24 Del.C. 17.

Unit Hour: A basic EMS productivity measure. A unit that is staffed and available for service for one hour generates 'a unit hour'.]

I. Purpose

The purpose of these regulations is to permit the use of paramedics, under the oversight of the Division of Public Health, to manage patients while in transit between medical facilities or within a healthcare system. It includes approval of an organization to provide a service with a paramedic, as well as define their scope of practice and medical oversight. Data reporting to the Division of Public Health is included for the purposes of evaluating the performance of the State EMS system, of which Inter-facility Transport is a component, regardless of the level of medical care provided.

II. Authority

This regulation is promulgated under the authority of 16 Del. C., Chapters 97 and 98.

The statewide paramedic program, a "coordinated advanced life support system under qualified medical supervision", was established under the direction of the Office of Emergency Medical Services, Division of Public Health, Department of Health and Social Services (16 Del. C. §9801 (a)). "Except for those activities and responsibilities for basic life support and other emergency services which are under the jurisdiction of the State Fire Prevention Commission, the Office [of EMS] shall have jurisdiction over the development, implementation, and maintenance of a statewide paramedic system (16 Del.C. §9803)".

~~["The EMS system shall provide for transfer of patients to facilities and programs which offer such follow up care and rehabilitation as necessary to effect the maximum recovery of the patient. The transfer of patients...to the specialty care unit, and to follow up care and rehabilitation centers are all within the scope of a total EMS system~~ The transfer of patients to specialty

care, or rehabilitation, or follow-up care centers is within the scope of the State EMS system](16 Del. C. §9705 (j))²². ~~It should also be understood that "the use of paramedics to assist in the transfer of patients to facilities and programs which offer such follow up care and rehabilitation as is necessary to effect the maximum recovery of the patient, shall be permitted when deemed medically necessary"~~ The use of paramedics to facilitate these transfers] is a function of the statewide paramedic program (16 Del. C. §9801 (g)).

Other functions of the Office of EMS as it relates to advanced life support interfacility transportation are found in 16 Del.C., Chapter 97. The OEMS was created with the responsibility of providing assistance and advice for activities related toward the planning, development, improvement and expansion of emergency medical services (16 Del.C. §9704 (a)). This includes 'monitoring and evaluating transportation services in Delaware to assure that patients in the EMS system have access to effective and efficient transportation to appropriate treatment facilities' (16 Del.C. §9705 (d)).

The OEMS is primary staff to the Delaware Emergency Medical Services Oversight Council (DEMSOC) in addition to functioning as the body having jurisdiction over the state paramedic program. In this capacity, the Office shares ~~fin a~~ the] responsibility for "monitoring the [State] EMS system to ensure that all elements are functioning in a coordinated, effective, and efficient manner in order to reduce morbidity and mortality for the citizens of Delaware and to ensure quality of emergency medical services (16 Del. C. §9703).

III. General Provisions

A. ALS Interfacility Transport Organizations will provide access to their services without discrimination due to race, color, creed, sex, nationality, age, or disability.

B. All organizations employing the services of paramedics to provide ALS Interfacility Transportation in the State of Delaware are subject to all of the provisions and limitations of this regulation and oversight by the Division of Public Health except:

1. Organizations owned or operated by or under the jurisdiction of the federal government and used exclusively for government purposes.

2. Agencies or organizations whose ambulances travel through Delaware, regardless of frequency exclusively for the purpose of interstate travel where patients are neither discharged nor picked up in the State.

3. An organization based outside of Delaware that transports patients to and from Delaware for diagnostic or therapeutic services within the same calendar day.

C. No person, agency or organization may operate, conduct, maintain, advertise, engage in or profess to engage in Advanced Life Support Interfacility Transportation services in Delaware utilizing paramedics as advanced life

support providers unless the agency or person holds a current designation certificate from the Division of Public Health with the exception of:

1. Organizations owned or operated by or under the jurisdiction of the federal government and used exclusively for government purposes.

2. Organizations whose units travel through Delaware, regardless of frequency, exclusively for the purpose of interstate travel where patients are neither picked up nor dropped off in the State.

3. An organization based outside of Delaware that exclusively transports a patient to and from a Delaware location for diagnostic or therapeutic service within the same calendar day.

D. If a vehicle is used to provide transportation services, or an organization provides transportation services that are both excepted and non-excepted under these regulations, its ambulance, clinical providers, and operator shall comply with the regulations when not operating as an excepted service or organization.

E. If the Division of Public Health believes that an ambulance is picking up or discharging patients and is required to be functioning under these regulations, the Division, or a appointed representative, may require the crew and management to provide information sufficient to determine whether the organization is required to comply with the regulation or is exempt.

F. Organizations that provide Interfacility Transportation Services that originate within the State of Delaware but do not utilize paramedics for Advanced Life Support Inter-facility Transports, must comply with the following sections of these regulations only:

1. Data Reporting¹

G. Communication

1. All communication regarding this regulation should be made to:

Delaware Division of Public Health
Office of Emergency Medical Services
Blue Hen Corporate Center
Suite 4H
655 Bay Rd
Dover, DE 19901

H. Public Information

1. The Division of Public Health shall maintain a current list of designated Advanced Life Support Interfacility Transport Organizations (ALS-ITO) and shall provide this list as requested. The list shall contain the name of the ALS-ITO and their unit designations that will be used in radio communications.

2. The Delaware Freedom of Information Act shall govern responses to requests for public records of the

1. Section VIII-G (2)

Division of Public Health.

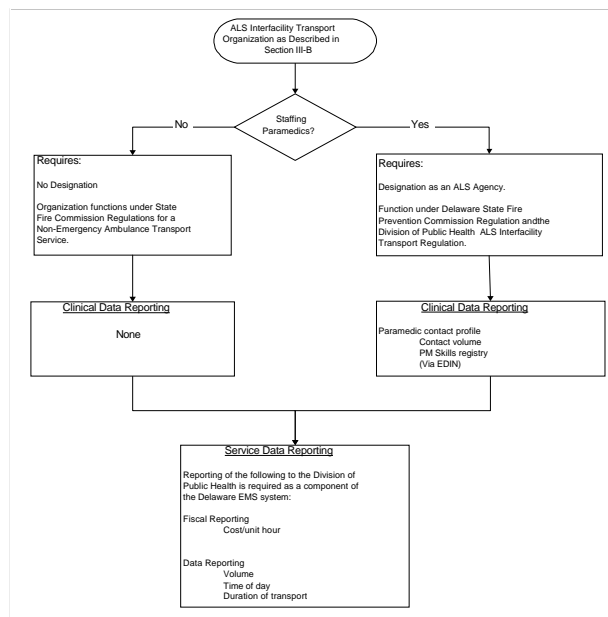


Figure 1. Application of ALS-IFT Regulations

IV. ~~Patent Rights~~ Patient Service Expectations]

A. Each ALS-ITO shall provide each patient:

1. Considerate and respectful care
2. Information necessary in order to give informed consent for treatment, transport, or both.
3. The opportunity to refuse treatment or transport when competent to do so.
4. Reasonable privacy concerning a patient's transportation and care.
5. Confidentiality of all communication and records related to patient transportation and care except as otherwise required by law.
6. Reasonable response to a request for service once the ALS-ITO is engaged to provide service.
7. Reasonable continuity of care once the ALS-ITO is engaged to provide service.
8. An opportunity to examine and receive an explanation of the patient's bill.
9. An environment in the ambulance that is free from hazards and annoyances to include but not limited to:
 - a) Smoking
 - b) Loud radio
 - c) Loud conversation by the crew.
10. Information that the ALS-IFT units in Delaware are regulated by the Division of Public Health. [Communication should be directed to the Division of Public Health, Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4H, 655 Bay Rd, Dover DE 19901. Phone number (302) 739-6637.]

V. Designation

A. Purpose

To qualify an organization to provide Advanced Life Support services in the State of Delaware under 16 Del.C. §9809(b).

B. Eligibility

To be eligible to apply for ALS-ITO designation, an organization shall:

1. Be qualified to conduct business in the State of Delaware.
 - a) Evidenced by a Delaware business license, unless a non-profit corporation.
 2. Possess a permit from the Delaware Fire Prevention Commission as either an Emergency or Non-Emergency BLS Ambulance Service.^{1, 2}
 3. Own or operate at least one ambulance that is certified by the Delaware State Fire Prevention Commission (DSFPC).
 4. Employ drivers with a valid motor vehicle license.
 5. Have insurance coverage as outlined in Section VIII – I of these regulations.
 6. Have computer equipment and Internet access that is compatible for integration into the Delaware Emergency Data Information Network.
 7. Apply for Designation.

C. Application

An organization seeking Designation to provide ALS-IFT in Delaware shall ~~fr~~ submit a completed application on the required form to the Division of Public Health.

1. Submit a completed application on the required form to the Division of Public Health.

~~2.~~ **1.] A completed application will contain:-**

- a) The Organization's:
 - (1) Name
 - (2) Main physical business address.
 - (3) Billing address
 - (4) Telephone number
 - (5) Fax number
 - (6) Name of the principal contact person for communication with the Division of Public Health.
 - (7) Name of the principal contact person for daily operations.
 - (8) Entity type
- b) Documentation that the Organization is qualified to do business in Delaware and a signed agreement that it will take all actions necessary to remain qualified to do business in Delaware.
- c) All trade names that the organization, its

1. Delaware Fire Prevention Commission BLS Regulation
 2. This regulation requires the Organization to maintain an office of operations within the State of Delaware.

parent, or subsidiary has done business under.

d) Information about management personnel and owners:

- (1) Names
- (2) Addresses
- (3) Telephone numbers
- (4) Titles

e) Street addresses of any locations from which the organization intends to operate, including:

- (1) Location from which units are dispatched.
- (2) Location where records are kept.
- (3) Location where crews are quartered.
- (4) Location where ambulances are parked or stored

f) Information about employees who may be providing health care:

- (1) Name
- (2) Documentation of the following certifications:

- (a) Delaware Paramedic certification, or Delaware EMT-B certification.
- (b) BCLS
- (c) Delaware Emergency Vehicle Operator card or equivalent~~fr~~.

(i) An equivalent as approved by the Delaware Fire Prevention Commission, [as approved by the Delaware Fire Prevention Commission.]³

(d) Motor vehicle license

(3) Non-Delaware certified providers must receive reciprocity before they may function in Delaware^{4, 5}.

g) Information about the Organization Medical Director

- (1) Name
- (2) Address
- (3) Telephone number
- (4) E-mail address
- (5) Evidence of Credentials

(a) Delaware medical license.

(b) Board certification in an appropriate specialty approved by the State Medical Director.

(6) A description of their role, responsibilities, and authority within the Organization.

h) Information about the ambulances

- (1) A list of the units that will be utilized

3. DSFPC BLS Regulation Part. VII, Operational Requirements Sec C (3)
 4. 16 Del.C. §§ 9809-9810
 5. Refer to Appendix A for certification process.

for ALS-IFT with tag, VIN, and unit designation.

(2) Documentation from the Delaware State Fire Prevention Commission that each ambulance that the Organization intends to use for ALS-IFT has received a permit for service in the State of Delaware.

(3) A diagram of the numbering, lettering, and symbols that will be displayed on the units.

i) A copy of the operational policies of the organization. [These should include but are not limited to policies governing responses, transport practices, security of Controlled Dangerous Substances (CDS), and training.]

~~(1) These should include but are not limited to policies governing responses, transport practices, security of Controlled Dangerous Substances (CDS), and training.]~~

j) Insurance Information

(1) A certificate of liability insurance that verifies that coverage that complies with Section VIII - I is in effect and lists:

The Division of Public Health-Office
of Emergency Medical Services
Blue Hen Corporate Center
Suite 4H
655 Bay Rd
Dover DE 19901

as a party entitled to notification ten days prior to any of the following changes to the insurance policies required by regulation:

- (a) Non-renewal or cancellation
- (b) Changes in coverage or level of

insurance.

(2) A certificate of motor vehicle insurance that identifies by VIN all motor vehicles covered under the insurance policy.

k) A description of the Quality Management activities in the company or organization.

(1) Include samples of reports describing activities related to:

- (a) Clinical performance
- (b) Operational performance

l) A signed written statement that:

(1) There has been no attempt for the purpose of obtaining or attempting to obtain a designation, to knowingly and willfully:

- (a) Falsify, conceal, or omit a material fact,
- (b) Make any false, fictitious, incomplete, or fraudulent statements or representations,
- (c) Make or use any false writing, document, or entry knowing the same to contain any false, fictitious, or fraudulent statements.

(2) The signer is authorized by the Organization identified on the application to sign the

application form to execute the sworn statement.

m) Any additional information that the Division of Public Health may consider necessary.

~~(n) 2] The application shall be signed by:~~

~~[(1) a)] If a sole proprietorship, the owner,~~

~~[(2) b)] If a partnership, a duly authorized~~

partner,

~~[(3) c)] If a corporation, a duly authorized~~

corporate official,

~~[(4) d)] If a limited liability company, a~~

duly authorized member.

D. Review

1. The application must be completed and returned with all accompanying materials to the Division of Public Health either in person or by certified mail.

2. The Division of Public Health will review the application of the proposed ALS-ITO and conduct an on-site inspection and review to determine whether the applicant organization is in compliance with these regulations and other applicable laws.

a) The inspection/review may include any or all of the following:

(1) Inspection of the supporting documents,

(2) A survey to inspect the ambulance service facilities, vehicles, and/or equipment,

(3) A conference with the applicant(s).

3. The applicant will be notified of the status of their application by certified letter.

a) Approval

(1) A Designation certificate will be provided from the Division of Public Health if all requirements are met as discussed herein.

(2) The current certificate, or a facsimile, shall be posted in a conspicuous place in each office of operations and in each ambulance that is used for ALS-IFT in the State of Delaware.

b) Denial

(1) If the Division determines that deficiencies exist which warrant the disapproval of the application, written notice will be given to the applicant with the disapproval notice.

(2) The applicant will have thirty (30) days from the receipt of the disapproval notice in which to respond to the Division with plans to correct the deficiencies.

(3) After review of an acceptable plan, the Division will conduct a re-inspection consistent with an agreed upon time frame.

(4) If the Division is satisfied with the results of the re-inspection, a certificate of Designation will be issued.

(5) If the deficiencies still exist, the Division will give the applicant a written notice of

disapproval that shall identify the deficiencies.

(6) The applicant shall have thirty (30) days from receipt of the second written notice in which to appeal the decision to the Secretary of the Department of Health and Social Services or his/her designee.

4. Before accepting a Designation, the Organization shall notify the Division of Public Health in writing of any changes in the information submitted in the application regarding:

- a) The ambulances
- b) Personnel
- c) Ownership
- d) Any other material in the application.

E. Designation Term

1. Designation as a Delaware ALS-ITO is valid for a term of three years.

2. The Designation expires at midnight of the expiration date.

3. A revoked or surrendered designation certificate expires immediately upon notification.

4. All ALS-IFT services must cease and desist at the time Designation expires.

F. Designation transfer

1. ALS-ITO Designation may not be transferred without the written approval of the Division of Public Health.

2. The owner(s) of a Designated ALS-ITO wishing to transfer or acquire the assets or stocks of another company may submit a letter of intent for the purposes of transferring the organization and designation to the successor organization.

G. Merger/Acquisition

A prospective purchaser of the stock or assets of an Organization, with the written permission of the current ownership may apply to the Division of Public Health for a preliminary determination of the eligibility of the prospective purchaser to receive ALS-ITO Designation under Section V.

H. Sale/Cessation of Operations

1. An ALS-ITO sold without a transfer of Designation shall cease ALS operations at midnight of the day before ownership is transferred.

2. An Organization ceasing operations shall return the ALS-ITO Designation certificate to the Division of Public Health within fourteen (14) days of the cessation date.

VI. Re-designation

A. Review Process

1. The Organization shall submit the application postmarked no later than sixty (60) days before the certificate expiration date.

2. The organization will complete an application with a cover letter identifying any changes from the previous review.

3. The criteria for designation renewal are the same as for original designation.

VII. Inspection Surveys

A. The Division of Public Health, or a duly appointed representative, reserves the right to enter and make inspections at least quarterly and shall conduct, at a minimum, an annual inspection survey to ensure compliance with these regulations. **Additional inspections may be conducted upon complaint or a reasonable belief that violations may exist.**

~~1. Additional inspections may be conducted upon complaint or a reasonable belief that violations may exist.~~

B. Survey visits may be made to any location used or occupied by the organization during regular business hours, or at other times when a reasonable belief that violations of these regulations may exist.

1. Upon request of an authorized agent of the Division of Public Health, the designated organization shall produce for inspection:

- a) The ambulances used for ALS-IFT.
- b) Equipment
- c) Personnel
- d) Records required by these regulations
- e) Any other items as determined by the agent.

2. Authorized representatives of the Division of Public Health may survey an ambulance used for ALS-IFT whenever it is in service.

C. Survey visits shall, at the discretion of an authorized representative of the Division of Public Health, include:

1. A review of all required records.
2. Conferences with the staff.
3. Audit of business locations, vehicles, equipment and qualifications of staff.

D. The ALS-ITO shall be notified in writing of the results of the inspection.

VIII. Organization Requirements

A. Statute / Regulatory Compliance

The Organization must comply with the requirements of all parts of this regulation and associated federal, state, and local statutes and regulations.

B. Medical Director

1. The Organization shall retain the services of a Delaware licensed physician who agrees to assume the physician responsibilities for the Organization and providers as defined in 16 Del.C. §9806 (b) and will comply with all required areas of this regulation.

2. Role and Function – the role and responsibilities of the medical director include:

- a) Provide medical oversight and quality control of interfacility advanced life support.
- b) Establish and ensure compliance with

standing orders and treatment protocols.

c) Provide review and evaluate the medical interventions of the paramedics.

d) Monitor the EMS providers for skill degradation and recommend appropriate remedies to the provider organization.

e) Offer technical assistance to the EMS providers they serve as medical director.

f) Oversee the training and certification of the ALS providers.

g) Determine policy guiding transport priority classifications (i.e. emergency vs. non-emergency response and transportation determinants).

h) Investigate issues related to clinical proficiency.

i) Serve as a liaison with the State Medical Director's Office.

C. Air Medical Service

A non-exempt Organization that will be providing Air Medical ALS-IFT must comply with the requirements of the OEMS Regulation for Air Medical Ambulance Services in addition to the ALS Interfacility Transport Regulations.

D. Provider Certification

All EMS providers must be certified to function in Delaware.¹ The following are requirements for certification in Delaware.²

1. Paramedic

a) NREMT-P, BCLS, ACLS, PALS, PHTLS/BTLS, and Emergency Vehicle Operator (or equivalent as determined by the State Fire Prevention Commission).

(1) Flight crews are excepted from the EVO requirement.

2. Emergency Medical Technician

a) NREMT-B (or Delaware EMT-B), BCLS, and Emergency Vehicle Operator (or equivalent as determined by the State Fire Prevention Commission).

E. Ambulances

1. The Delaware State Fire Prevention Commission must permit each transport ambulance for use in the State of Delaware.

2. Units that are used exclusively for advanced life support services may be marked "Advanced Life Support", "Critical Care Transport", or "Mobile Intensive Care" to describe the level of service provided.

a) This marking is not required.

b) Units that are used for Basic Level Transportation as well as Advanced Life Support Transport services may not be marked as above.

c) If marked, all markings must be 3-in. (minimum) reflective lettering.

3. In instances of vehicular conditions that may precipitate or aggravate a medical condition or create a potential hazard to public health, the vehicle may not be driven with passengers or patients on board until repairs are completed. These conditions include but are not limited to:

a) Carbon monoxide hazards

(1) An occupant complains of symptoms or has been affected by carbon monoxide as a result of riding in the ambulance.

(2) Carbon monoxide levels that have been detected at a level of 9ppm in the interior of the ambulance.

(3) A mechanical condition exists that may present a carbon monoxide hazard to the occupants.

b) Specific mechanical defects or hazards including:

(1) Faulty brakes

(2) Tire wear

c) Any other mechanical condition that may pose a threat, direct or indirect, to public health.

4. Equipment Requirements

a) The following equipment must be carried aboard each ambulance used for ALS Interfacility Transport.

(1) All equipment required by the Delaware State Fire Prevention Commission.³

(2) All equipment needed to provide any and all care under the protocols of the Delaware ALS Standing Orders.⁴

~~[(a) An ambulance may not be operated with absent or faulty oxygen, resuscitation, or aspiration equipment.]~~

(3) All medications listed in the Delaware Paramedic Formulary and those included in the Standing Orders as an 'Optional Skill' (See Section XIII).

b) Equipment must be stowed or secured in a manner as to prevent it from becoming injury-producing projectiles in the event of a crash.

F. Security of Narcotics and other Controlled Dangerous Substances

1. All medications falling under Schedule II, III, and IV of the Controlled Dangerous Substance Act of 1970 that are stored or carried on board the unit must be secured under double lock with the exceptions:

a) Medications brought on board an ambulance by medical facility personnel for possible use during a transport must be secured according to the policies of that facility and may not be stored aboard the unit after the facility personnel are returned to the medical facility and have separated themselves from the transport team.

b) Medications carried on the charge

1. 16 Del. C. §9809 (a)

2. Refer to Appendix A for the certification process.

3. DSFPC BLS Regulation Appendix A

4. Refer to the OEMS ALS Standard Equipment list.

provider's person do not require double lock security.

2. Keys to access the secured medications must be in the possession of the charge clinical provider, or the responsible person, on the ambulance at all times.

G. Data Reporting

1. The following data must be reported to the Division of Public Health on a continuous basis.

a) Clinical

(1) All Paramedic activity related to a patient contact must be reported through the Delaware Emergency Data Information Network (EDIN)¹.

(2) In the event that EDIN is out of service, all records will be maintained in paper form using the Delaware Paramedic Report until EDIN is available again. The paper records will be entered into EDIN at such time that the system is available.

b) Volume

(1) An EDIN Interfacility Report shall be completed for each transport performed by the ALS-ITO.

c) Any data as requested by the Division of Public Health for the purposes of system quality management or system performance evaluation.

2. The following data pertaining to the operation, or portion of the operation, related to ALS interfacility transportation must be reported to the Division of Public Health on a quarterly basis, within thirty (30) days of the end of the quarter. The Division of Public Health will use these data for the purposes of monitoring the transportation services as required in 16 Del.C. §9705(d) as well as provide them to the Delaware EMS Oversight Council for the purposes of determining the overall statewide EMS system performance as required by 16 Del.C. §9703 (e).

a) Fiscal

(1) Cost per unit hour

b) Operational

(1) Unit hour production

(2) Transport volume

c) Any data as requested by the Division of Public Health for the purposes of system quality management or system performance evaluation.

H. Records / Documentation

The following records, or a copy, must be maintained at the Delaware operations office for all providers participating in the organization's ALS-IFT operation.

1. Personnel

a) The Organization shall maintain a current list of the following personnel: EMS providers, registered nurses, any other medical personnel employed.

b) The list shall include the employee's full name, certification number, level, date of issue, and date of

expiration.

2. Training

a) Training records for each employee shall contain evidence of:

(1) Initial orientation and competency assessment.

(2) Continuing education, and

(3) All other training required as part of this regulation.

b) Training records should be maintained to document the date training was provided, course outline, attendance, instructor's name and qualifications.

3. Continuing Education

a) Credit for continuing education programs must be applied for through the OEMS prior to the course being held as per the OEMS Education policy.

4. Records retention

a) All records pertaining to the operation of the ALS-ITO must be retained for a minimum period of two (2) years.

b) Medical records documenting patient care provided by the organization (i.e. patient care reports) must be retained for a minimum of seven (7) years.

I. Insurance coverage

1. An ALS-ITO may not be designated to provide service in Delaware unless it maintains continuous insurance of the following types and amounts:

a) General liability insurance of not less than \$1 million.²

b) Motor vehicle liability insurance coverage not less than \$1 million individual and \$3 million aggregate per occurrence.³

c) Worker Compensation coverage in the amount required by 19Del.C. §2306.

2. The general liability coverage must provide payment of damages as a result of:

a) Any bodily injury to, death of, individuals in accidents resulting from any cause which the ALS-ITO is liable.

b) Property damage, or loss of property, including personal property resulting from any cause for which the Organization is liable.

3. The financial responsibility requirements for motor vehicle liability coverage shall conform to 21 Del.C. §2901.

4. The financial responsibility for the worker's compensation insurance shall comply with 19 Del.C. §§ 2321-2334.

1. 16 Del.C. 9705(k)

2. DSFPC BLS Regulation Part X, Sec A (4)

3. DSFPC BLS Regulation Part X, Sec A (5)

IX. Operations**A. Designation**

1. An agency must be designated¹ as an ALS Interfacility Transport Organization by the Delaware Department of Health and Social Services, Division of Public Health in order to:

a) Provide ALS services during any medical transport originating in Delaware.

b) Advertise as a Delaware Advanced Life Support Organization.²

(1) All advertisements and invoices shall contain the legal name and the phrase "A Designated Delaware ALS Interfacility Transport Organization".

(a) Advertisements may also include the words "Mobile Intensive Care Service", "Critical Care Transport Service", or "Advanced Life Support".

(b) ~~Organizations~~ [An ALS-ITO] utilizing paramedics ~~may~~ **shall not** include the words "Paramedics" or "Paramedic Service" [on any of their advertisements].

(2) Advertisements include but are not limited to business cards, letterhead, newsletters, brochures, flyers, etc.

B. Scope of Services

1. ALS Interfacility Transportation is defined as the medically necessary transportation of a patient requiring the provision of medical care that exceeds the scope of practice of an EMT-Basic that originates at a Delaware medical facility with a destination at another medical facility.

2. Operations as an ALS Interfacility Transport Organization are limited to 'non-911' emergency and non-emergency transports with the following exceptions:

a) As a component of a disaster plan.

b) As part of a 'mutual aid' agreement approved by the OEMS.

(1) The agreement must specifically address:

(a) Remuneration for services rendered.

(b) Response time performance.

c) At an incident where the ALS-IFT unit coincidentally arrived before the jurisdiction 911 organization.

3. In instances where the crew of an uncommitted ALS-ITO ambulance chooses to render care at a '911' incident before the jurisdictional '911' ALS agency is present on scene, the following procedures shall apply:

a) The ALS-ITO unit shall immediately contact the jurisdictional PSAP and report the nature and

location of the incident.

b) The ALS-ITO personnel shall provide medical care within their scope of practice to any persons in need of it until a jurisdictional EMS unit arrives at the scene.

c) Patient care responsibilities and scene control shall be deferred to the jurisdictional authorities as they arrive or as they request.

d) The ALS-ITO unit may, but will not be required to, provide transportation services if a request is made by the Incident Commander and this request is approved by a representative of the jurisdictional ALS agency.

(1) The responsibility for providing the service remains with the jurisdictional ALS agency until it is accepted by the ALS-ITO.

e) Documentation of the patient contact must be completed using the appropriate EDIN form at the time of transfer to the receiving medical facility.

4. A 911-ALS organization or PSAP may not direct emergency calls to an ALS-ITO unless a mutual aid agreement, approved by the OEMS, exists between the jurisdictional 911 ALS service and the ALS-ITO.

a) The agreement must specifically address:

(1) Remuneration for services rendered,

(2) Response time performance requirements.

C. Standing Orders**1. Use**

a) The scope of practice for paramedics providing ALS Interfacility Transport services is defined by the Delaware Paramedic Standing Orders.

(1) The State Medical Director and the Board of Medical Practice (BOMP) must approve any changes to the paramedic scope of practice (Refer to Section XII of these regulations).

2. Protocol Variances

a) If a paramedic performs a function that is outside of the scope of practice as defined by the Delaware Paramedic Standing Orders, the following activity must occur:

(1) The Organization Medical Director must be notified of the violation immediately.

(2) The paramedic must submit a written report of the incident to the Organization Medical Director within twenty-four (24) hours of the incident.

(3) The Organization Medical Director shall notify the State Medical Director's Office of any and all incidents of potential protocol violations within five (5) working days of receiving the incident report.

b) The Organization Medical Director and/ or the company shall investigate the incident and provide a written report of the investigation and its conclusions to the State Medical Director through the Organization Medical Director within fourteen calendar days of the incident.

1. Refer to Section V for the designation process.

2. Comply with 16 Del. C. §9809 (c)

c) The State Medical Director will review the incident based on the reports and issue a recommendation for action if appropriate.

(1) The State Medical Director reserves the right to initiate an independent investigation.

(2) The State Medical Director may immediately suspend the paramedic's certification for a period of thirty days in order to prevent a clear and imminent danger to public health¹.

d) A review may also be initiated by a written complaint to the Division of Public Health – Office of Emergency Medical Services.

D. Crew Configuration

1. The crew shall consist of at least two providers.

a) At least one provider must be a certified Delaware paramedic.

b) The other provider must at least be a Delaware EMT-B.

(1) The EMT-B may not function as a primary care provider.

2. An ALS-ITO may not transport patients requiring care that is beyond the scope of practice of a Delaware paramedic unless the patient is accompanied by a healthcare provider authorized under Delaware law to provide the required level of care in compliance with federal medical transport/transfer regulations.

E. Personnel Identification

1. All personnel shall display identification that includes their photograph, last name, and position/certification level.

2. All EMTs and paramedics must carry a Delaware issued certification card at all times while on duty.

3. Identification must be visible on the front of the outermost garment.

4. ~~[Require that]~~ All personnel [shall] only display insignia for valid certification and personal identification.

5. Agencies shall provide assurance that their personnel do not wear or display identification that suggests affiliation with another agency, service, organization, department, or company other than the ALS-ITO or a healthcare facility that is involved in the patient's care.

F. Ambulance Operation

1. Ambulances are to be operated in accordance with 21Del.C. §4106 by licensed operators possessing a Delaware emergency vehicle operator (EVO) card or an equivalent as determined by the Delaware State Fire Prevention Commission.²

2. Lights and sirens are to be used by ALS-IFT

vehicles only in the following situations:

a) Enroute to an emergency call as determined and documented by the transferring physician.

b) Transporting a Priority 1 patient as determined and documented by the transferring physician.

c) Transporting a patient meeting the criteria determined by the Organization Medical Director as requiring emergency transportation.

G. Medical Control

1. Authority

a) The transferring physician is responsible for providing medical control for the patient transfer until the patient reaches the destination facility.

X. Designation Review

A. Purpose

To provide a mechanism to identify conditions that may affect public health and protect public health until the problems are resolved.

B. Cause

The Division of Public Health may, in compliance with proper administrative procedures as provided by the law, suspend, revoke, or refuse to issue designation certificates for any of the following reasons:

1. A serious violation of these regulations. (Defined as one that poses a significant threat to the health and safety of the public.)

2. Revocation of permit as a BLS Ambulance Service by the Delaware State Fire Prevention Commission.³

3. Failure to submit a reasonable timetable to correct deficiencies and violations cited by the Division.

4. The existence of a continuing pattern of deficiencies.

5. Fraud or deceit in obtaining or attempting to obtain certification.

6. Lending a certificate or borrowing or using the certificate of another, or knowingly aiding or abetting the improper granting of a certificate.

7. Incompetence, negligence, or misconduct in operating or providing ALS Interfacility Transport services. This includes but is not limited to patterns such as a failure to follow medical command or a failure to respond to a transport request.

8. Failure to employ or contract for a medical director responsible for services as outlined in this regulation.

9. Failure to have appropriate medical equipment and supplies required for certification.

10. Failure of the ALS Interfacility Transport Organization to notify the Division of Public Health of a

1. 16 Del.C. §9806 (6)

2. DSFPC BLS Regulation Part VII, Operational Requirements Sec C (2)

3. Refer to DSFPC Regulation of BLS Ambulance Services Part XI

change of ownership.

11. Abuse or abandonment of a patient.

12. Unauthorized disclosure of medical or other confidential material.

13. Willful preparation or filing of false medical reports or records, or the inducement of another to do so.

14. Destruction of medical records.

15. Failure to provide data to the Division of Public Health as required, either through EDIN or via report.

16. Refusal to render services on the basis of a patient's race, color, creed, ~~sex~~, gender or sexual orientation, nationality, age, or disability.

17. Misuse or misappropriation of drugs/medications.

18. Failure to produce requested records for inspection or to permit the examination of equipment shall be grounds for suspension or revocation or the denial of certification. However the certificate shall not be suspended, revoked or denied for a period of longer than sixty (60) days in the event that a dispute regarding the production of these records exists and remains unresolved. Such suspension, revocation, or denial may occur for the entire sixty (60) day period if the Division determines that such action is necessary to prevent a clear and immediate danger to public health.

19. Conviction of the Organization or owner(s) of a crime, including Medicare or Medicaid fraud, relating adversely to the person's capability of owning or operating the Organization.

20. Non-compliance with COBRA/EMTALA.

21. Other reasons as determined by the Division which pose a significant threat to public health and safety.

C. Initiation

1. The Designation Review Process can be initiated by:

a) A written or verbal complaint indicating a violation of these regulations.

b) Failure to participate in data reporting.

c) Failure to correct deficiencies identified by the Division of Public Health.

D. Investigation

1. Upon initiation of the Designation Review Process the Division of Public Health will:

a) Receive written notification of the violation from the identifying agent accompanied by supporting documentation.

b) Convene an investigation panel

(1) The panel will consist of the Paramedic Administrator (OEMS), the State Medical Director and any other subject matter expert deemed appropriate.

c) The panel will initiate an investigation of the allegation(s).

(1) The ALS Interfacility Transport

Organization will be notified in writing with a request for its written response.

(2) The investigation panel will conduct an appropriate follow-up investigation.

d) The Investigation Panel will submit its report and recommendation to the Director of the Division of Public Health.

(1) Panel Recommendations

(a) The panel may recommend any of the following actions:

(i) Designation Probation

(a) The Investigation Panel will determine the recommended length of probation and include recommended conditions that must be met by the end of the probationary period.

(b) If adopted by the Division Director, these conditions will be verified by a representative of the Division of Public Health at the end of the probationary period or at an earlier time as requested in writing by the Organization.

(i) The Division of Public Health will confirm reinstatement in writing before operations may resume.

(c) Additional infractions occurring during the probation period will result in an immediate review for Designation Suspension by the Division of Public Health.

(d) Failure to meet the conditions will result in a review for Designation Suspension by the Division of Public Health.

(ii) Designation Suspension

(a) The Investigation Panel will recommend the length of suspension and any conditions to be met for reinstatement.

(b) If adopted by the Division Director, the Organization may not provide ALS services in Delaware for the duration of the suspension.

(i) A representative of the Division of Public Health must verify that any conditions for reinstatement have been met before ALS services may be resumed.

(ii) The Division of Public Health will confirm reinstatement in writing before operations may resume.

(iii) Designation Revocation

(a) The Investigation Panel will recommend revocation and any conditions to be met before the Organization may reapply for designation.

(b) If adopted by the Division Director, the Organization may not provide ALS services in Delaware and may not re-apply for ALS-ITO Designation for a period of not less than one year from the date of Revocation.

(i) The Division of

Public Health will verify that any conditions have been met as part of the re-application process.

(b) If probation, suspension or revocation is not recommended the Investigation Panel may recommend follow up monitoring or reporting.

e) The Division Director will provide written notification to the ALS Interfacility Transport Organization of the results of the investigation and the disposition of the Organization's designation.

f) The involved Organization will have the right to contest any decision of the Division of Public Health. Written notification of the intent to contest must be made to the Director of the Division of Public Health within thirty (30) days of notification of action.

(1) The Division Director shall offer a public hearing to review the decision in accordance with 29 Del.C.101.

(2) The Division Director shall name a hearing officer and schedule a hearing in accordance with 29 Del.C. 101.

E. Appeals

1. The involved Organization will have the right to appeal any decision of the Director of the Division of Public Health. Written notification of the intent to appeal must be made to the Secretary of the Department of Health and Social Services within thirty (30) days of notification of action.

XI. Certification Review

A. Initiation

1. The Organization Medical Director may initiate a review of medical performance on the basis of a variance, complaint, or EDIN review.

2. The Division of Public Health may also initiate a review on the basis of a variance, complaint, or an EDIN review.

B. Investigation

1. The Organization Medical Director performs the initial investigation.

a) The Organization Medical Director shall remove the paramedic from patient care status pending a review of the incident by the State Medical Director's Office.

2. Findings of this investigation will be forwarded to the State Medical Director's Office within ten working days of completion of the investigation.

a) The State Medical Director has the authority to suspend the paramedic's certification for up to 30 days in order to prevent a clear and imminent danger to public health¹.

3. The State Medical Director will review the

incident and forward findings and recommendations to the Board of Medical Practice².

a) Issues concerning nursing performance will be addressed by the State Medical Director with the organization's clinical nursing supervisor and/ or to the Board of Nursing.

4. The BOMP will review the incident and decide appropriate action.

XII. Scope of Practice Expansion

A. Purpose

The environment and the needs of patients who are moving within the health care system are different from those of patients who are being transported into the healthcare system. This section provides a mechanism for expanding the scope of practice of paramedics functioning in the Interfacility transport component of the EMS system in order to meet these needs.

B. Limitations

1. 'Optional Skills that are approved for use in 'non-911' transport services may be used only in 'non-911' transports.

2. At no time may they be used during '911' transports without BOMP approval.

C. Review

1. Proposal

a) A proposal of the new protocol shall be submitted to the State Medical Director's Office from the Organization's Medical Director. The proposal shall include a description of the skill, procedure, or medication, a description of the need and any supporting documentation, the training that will be required and the credentials of the person or agency that will providing it, and the methods that will be used to evaluate proficiency.

2. Protocol Review Process

a) The State Medical Director will review the proposal and have the option of setting up a meeting with the writer to discuss the proposal.

b) If the proposal is denied, the State Medical Director will notify the Organization of the denial in writing with the reasons for denial or.

c) The State Medical Director will attach a recommendation to it and forward the request to the Board of Medical Practice (BOMP).

d) The BOMP will review the proposal and determine whether the proposed skill, procedure, or medication will be added to the Delaware Standing Orders as an 'Optional ALS Skill'.

XIII. 'Optional Skills'

A. Skills that have been designated an "Optional Skill"

1. 16 Del.C. §9806 (6)

2. 16 Del.C. §9812

may be used by paramedics employed by an ALS-ITO that has been approved by the State Medical Director to use the skill, procedure, or medication.

B. The Organization Medical Director will need to supply the following information to the State Medical Director before the paramedics employed by the ALS-ITO may function under the expanded Standing Orders:

1. A list of the trained providers.
2. Documentation of the initial training provided and skill verification.
3. A schedule for annual continuing education on the optional skill.

[XIV. Definitions

'911 ALS Organization': An EMS organization that has been designated to provide ALS services to calls originating from a 911 center.

ACLS: American Heart Association Advanced Cardiac Life Support course.

Advanced Life Support: The advanced level of prehospital and interhospital health care that includes basic life support functions plus cardiac monitoring, defibrillation, administration of specific medications, drugs and solutions, intravenous therapy, and other authorized treatments and procedures.

Advertising: Any information communicated by oral, written, electronic, or any graphic means including flyers, newspapers, business cards, letterhead, radio, television, telephone directories, or internet websites. It also includes ambulance markings. It does not include novelty items such as pens, pencils and mugs.

Air Medical Service: An organization that provides medical transportation utilizing either fixed wing or rotor wing vehicles.

ALS: Advanced Life Support

ALS IFT: Advanced Life Support Interfacility Transport

ALS ITO: An organization or service that provides Advanced Life Support Interfacility Transport.

Ambulance: Any publicly or privately owned vehicle, as certified by the State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and intended to be used for and is maintained or operated for the transportation upon the streets and highways of this state for persons who are sick, injured, wounded, or otherwise incapacitated or helpless.

BCLS: American Heart Association Basic Cardiac Life Support course

Board of Medical Practice: Body that oversees medical practice in Delaware under 24 Del.C. 19.

BOMP: see Board of Medical Practice

Certification Process: Process by which a paramedic certified in another state may receive reciprocity to

function in the State of Delaware. (Refer to Appendix A).

Cost per Unit Hour: A ratio measure of fiscal performance. It is calculated by summing all costs associated with providing a service (i.e. staffing, fuel, vehicle expenses, supply...) for a particular period and dividing by the number of unit hours that were produced by the service during the same period.

Designation: Status provided by the Division of Public Health to an ambulance service allowing them to provide Advanced Life Support Interfacility Transportation.

Designation Probation: Organization may provide ALS Interfacility Transportation but performance will be monitored as recommended changes are implemented. Continued infractions may result in suspension or revocation of service designation.

Designation Reinstatement: The Organization may resume provision of ALS IFT in the State of Delaware.

Designation Revocation: The Organization may not provide ALS Interfacility Transport services in the State of Delaware for a period of one year before re-applying for ALS ITO Designation.

Designation Suspension: The Organization may not provide ALS Interfacility Transport services until recommended changes are implemented and reviewed by the OEMS.

Division: Refers to the Division of Public Health

EDIN: See 'Emergency Data Information Network'

Emergency Call: Any request for medical assistance that is received by a 911 Public Safety Access Point (PSAP).

Emergency Data Information Network: Internet based data collection system for the State EMS system.

Emergency Medical Technician: A person who has been trained in basic emergency care procedures and has been certified by the Delaware Fire Prevention Commission to perform them in the State of Delaware.

Inter-facility Transportation: Movement of a patient between two medical facilities.

Medical Facility: An agency, institution, or establishment where people receive acute, inpatient, outpatient, or long term health care.

Non-911 ALS Organization: An organization that is approved to provide ALS services to calls that do not originate from a 911 center.

OEMS: Office of Emergency Medical Services, Division of Public Health

Office: Refers to the Office of Emergency Medical Services, Division of Public Health

Optional ALS Skill: A skill, procedure, or medication that has been approved by the BOMP for use by ALS ITO paramedics. Optional skills are only for use by 'non-911' organizations.

Organization: An ALS Interfacility Transportation

Organization

~~Organization Medical Director: Medical Director hired or contracted to oversee the medical care provided by an ALS ITO.~~

~~PALS: American Heart Association Pediatric Advanced Life Support course~~

~~Paramedic: A person who has been trained in advanced life support procedures and has been certified by the Division of Public Health and the Board of Medical Practice to perform them in the State of Delaware.~~

~~Patient Contact Activity: Any activity involving contact between a patient and an ALS ITO provider involving assessment, treatment, and/or transportation services being provided to the patient by the provider.~~

~~PHTLS: The National Association of EMTs and the Committee on Trauma of the American College of Surgeons Prehospital Trauma Life Support course.~~

~~Physician: An individual authorized to practice medicine in Delaware under 24 Del.C. 17~~

~~PSAP: Public Safety Access Point. Location / agency that receives 911 calls for public safety assistance.~~

~~Registered Nurse: An individual authorized to practice registered nursing in Delaware under 24 Del.C. 17~~

~~Unit Hour: A basic EMS productivity measure. A unit that is staffed and available for service for one hour generates 'a unit hour'.]~~

~~[XV. XIV.] Appendix A~~

~~Delaware Reciprocity and Certification Procedures for Nationally Registered Paramedics~~

~~1.0 Purpose~~

~~1.1 This policy describes the procedure by which Nationally Registered paramedics, with an offer of employment by an Advanced Life Support (ALS) agency recognized by the Division of Public Health, may be certified as a paramedic in Delaware.~~

~~1.2 This document also describes the procedures all Delaware certified paramedics must follow for re-certification.~~

~~2.0 Application for Certification~~

~~2.1 Upon a valid offer of employment, the candidate shall complete a Delaware Application for Paramedic Certification.~~

~~2.2 The candidate shall attach current and legible photocopies of the following course completion/certification/registration cards:~~

~~2.2.1 National Registry of Emergency Medical Technician - Paramedic~~

~~2.2.2 Basic Cardiac Life Support (Healthcare Provider)~~

~~2.2.3 Advanced Cardiac Life Support~~

~~2.2.4 Pediatric Advanced Life Support~~

~~2.2.5 Prehospital Trauma Life Support or Basic Trauma Life Support – Advanced.~~

~~2.2.6 State certification/license from each state in which they are currently practicing or hold a current certification/license.~~

~~2.2.7 National Registry test results~~

~~2.3 The candidate shall attach a statement from their paramedic training program indicating:~~

~~2.3.1 That the candidate successfully completed the program (month and year).~~

~~2.3.2 That the program was compliant with the Department of Transportation EMT-Paramedic National Standard Curriculum (indicate year of curriculum).~~

~~2.4 The candidate shall contact the Healthcare Integrity and Protection Data Bank at 1-800-767-6732 or through the internet at www.npdb-hipdb.com and request a self-query.~~

~~2.4.1 The candidate shall submit the original copy of the results of the data bank query at the time of application (this requirement becomes effective January 1, 2000).~~

~~2.4.2 The data bank query shall not be older than 60 days at the time the Application for Paramedic Certification is submitted to the OEMS.~~

~~2.5 The candidate shall submit an original copy of a criminal background check by a certified police agency in their state of residence. The criminal background check shall include past felony convictions.~~

~~2.5.1 If the employing agency conducts a criminal background check as a prerequisite for employment, the agency of hire may document the results of the background check and attach it to the Application for Paramedic Certification.~~

~~2.6 The candidate shall then submit the Application for Paramedic Certification and all supporting documents to the OEMS.~~

~~2.7 The OEMS shall perform an appropriate investigation of the Application for Paramedic Certification and notify the hiring agency within 15 working days of the receipt of the application.~~

~~3.0 Clinical Skill Verification~~

~~3.1 Once the Application for Paramedic Certification has been approved by the OEMS, the candidate shall schedule an appointment with the OEMS designee for clinical skill verification and a State Protocol examination.~~

~~3.2 The candidate must demonstrate competency in performing the following paramedic skills and activities on manikins and/or live patients as required by the State EMS Medical Director:~~

~~3.2.1 Vital signs (blood pressure, pulse, respiratory rate, SaO₂)~~

~~3.2.2 Intravenous cannualization~~

~~3.2.3 Intramuscular/subcutaneous medication~~

administration

- 3.2.4 Endotracheal intubation
- 3.2.5 Nasotracheal intubation
- 3.2.6 Needle cricothyrotomy
- 3.2.7 Thoracic decompression
- 3.2.8 External jugular vein cannualization
- 3.2.9 Synchronized cardioversion
- 3.2.10 External cardiac pacing
- 3.2.11 Adult and Pediatric drug dosages
- 3.2.12 Intraosseous cannualization
- 3.2.13 12-Lead ECG performance and

interpretation (effective January 1, 2002)

3.2.14 Electronic End-Tidal CO₂ use (effective January 1, 2002)

3.2.15 Continuous Positive Airway Pressure (CPAP) (effective January 1, 2002)

3.3 The candidate will be given two opportunities to successfully demonstrate competency. A brief review of the competency standards will be conducted for the candidate if they fail to demonstrate competency on the first attempt.

3.4 The candidate shall successfully complete the State of Delaware Paramedic Standing Orders examination.

3.4.1 Passing score is 80%.

3.5 Failure of any skill on the second attempt or not receiving a passing score on the protocol examination will result in invalidation of this attempt for certification.

3.5.1 The candidate may re-attempt the clinical skills competency evaluation and/or protocol examination no sooner than three (3) working days after the first attempt.

3.6 Upon passing the Standing Orders examination, the candidate shall submit a check in the amount determined by the Board of Medical Practice and made payable to the Division of Professional Regulation.

4.0 Paramedic Certification

4.1 Upon successful completion of the processes outlined in Section 2.0 and 3.0, the candidate will be eligible to receive paramedic certification through the Delaware Board of Medical Practice (BOMP).

4.2 Candidates for paramedic certification are not allowed to practice as a paramedic until receiving official notification through the OEMS of the granting of either a temporary permit or full certification by the BOMP.

4.3 Paramedic certification through the BOMP is an individual responsibility. Paramedics certified in Delaware are required to meet the standards as outlined in BOMP Regulation 28 and the requirements of the State EMS Medical Director in order to practice as a paramedic.

4.4 Paramedics may only perform paramedic level skills while employed and on-duty as a paramedic with an advanced life support agency recognized by the Division of Public Health.

4.5 Paramedics must carry the BOMP issued paramedic certification card on their person at all times while on-duty

as a paramedic.

5.0 Competency Evaluation

5.1 Each paramedic upon achieving certification as a Delaware paramedic, must be certified by their agency medical director as competent to practice. This shall be achieved through a process as described in the OEMS document, *Evaluation of Field Competency*.

6.0 Paramedic Recertification

6.1 Eligibility for recertification is based upon completion of the following requirements per the State EMS Medical Director, the OEMS and the BOMP Regulation 28.

6.2 The paramedic must complete an OEMS approved EMT-Paramedic Refresher program consistent with Department of Transportation guidelines.

6.2.1 Paramedics employed through the state-supported paramedic programs are required to attend the OEMS Refresher/Continuing Education program.

6.3 The paramedic must complete 24 hours of continuing education approved by the OEMS.

6.3.1 Each paramedic is required to attend mandatory continuing education programs as designated by the State EMS Medical Director.

6.4 Maintain, throughout the certification period, valid course completion cards/certification/registration cards in the following disciplines:

6.4.1 National Registry of Emergency Medical Technician-Paramedic

6.4.2 Basic Cardiac Life Support (Healthcare Provider)

6.4.3 Advanced Cardiac Life Support

6.4.4 Pediatric Advanced Life Support

6.4.5 Prehospital Trauma Life Support or Basic Trauma Life Support – Advanced.

6.5 Agency Directors shall certify to the OEMS on official letterhead by April 15 that all paramedics within their agency due to re-register with the National Registry in that calendar year, have met the requirements of paragraph 6.4.

6.6 Complete the OEMS *Clinical Skills Competency Program* and submit the required certification of competency, signed by the agency Medical Director, to the OEMS by February 15 of the year that the paramedic is due to re-register.

6.7 Complete the BOMP recertification materials and mail the required fee to the BOMP.

**DIVISION OF PUBLIC HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES**

Statutory Authority: 16 Delaware Code,
Section 9705 (16 Del.C. §9705)

**Adoption of State of Delaware
Rules and Regulations Governing
The State of Delaware Early
Defibrillation Program** |

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“DHSS”) initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Early Defibrillation Program. The DHSS’s proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code Chapter 97, Section 9705 (p)(1).

On September 1, 2000 (Volume 4, Issue 3), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 30, 2000, or be presented at a public hearing on September 25, 2000, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

FINDINGS OF FACT:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing The State of Delaware Early Defibrillation Program are adopted and shall become effective March 10, 2001, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
2/15/01

**SUMMARY OF EVIDENCE
STATE OF DELAWARE RULES AND
REGULATIONS GOVERNING THE EARLY
DEFIBRILLATION PROGRAM**

A public hearing were held on September 25, 2000, in

room 309 of the Jesse Cooper building in Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed Delaware Health and Social Services (DHSS) Rules and Regulations Governing The Delaware Early Defibrillation Program. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Robert Ross, Training Administrator from the Office of Emergency Medical Service, Division of Public Health, made the agency’s presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Although no public testimony was given at the public hearing, two letters were received commenting on the proposed regulations during the comment period. The first letter was from the State Council for Persons with Disabilities (SCPD), supporting the proposed regulations. The second letter was from a member of the public that had recently attended a national CPR conference at which public access AED programs were discussed. His recommendations and the DHSS (Agency) responses are as follows:

1. The writer proposed a “fire extinguisher” model for identification and placement of an AED in a facility.

Agency Response: Conceptually, the “fire extinguisher” model is a good idea. Fire extinguishers are simple to use, highly visible and need to be readily accessible to the general public. However, unlike a fire extinguisher, an AED is considered a medical device and as such requires specialized training to safely operate. To this end, this regulation provides specific AED protocols for trained users and prohibits untrained individuals to use an AED. Placing an AED where untrained individuals could readily access and use them could cause further harm to the victim, lead to a violation of this regulation and not provide the user legal immunity from liability. A four inch decal is provided to public organizations (fitness clubs, museums, and other facilities where the public gathers) to be placed on the doors of the main entrance to a building. Since the regulation allows the service provider to choose the best method for deploying their AED, it would not be practical to mandate particular signage for the organization.

2. The writer suggested that enough AEDs should be purchased and located as to be available at the scene of collapse within a three-minute turnaround.

Agency Response: This is a recommendation and a goal for the system. The actual recommendation from the American Heart Association for out-of-hospital cardiac arrest is three to five minutes. To reduce the response time to a collapsed victim, House Bill 332 requires that all police cars on patrol be equipped with an AED by January 1, 2001. It is beyond the scope of a regulation to make this

requirement of an agency; community or an individual as it will require significant funds to reach this goal.

3. The writer suggested the AED owning organization should be responsible for inspection and maintenance of the unit.

Agency Response: Under the regulation, an AED must be maintained in accordance with the manufacturer's specifications. The owning organization is responsible for the maintenance and must keep written records of preventative maintenance, inspections, and repairs to the AED.

3. The respondent suggested that a committee within an organization oversee the company's AED program.

Agency Response: This regulation requires that an Early Defibrillation Service have a single contact person, or service coordinator. This single point of contact will ensure updated information from the OEMS is received by an organization. An organization may have more than one individual take care of maintenance and inspections of the AED, but there can only be one contact person. Multi-site organizations may have a contact person at each site. Also, an Early Defibrillation Service needs to notify OEMS within 14 days of changes in the original application which include changes in the service coordinator, equipment, and/or operational procedure.

4. The writer suggested that a site inspection should be initiated upon notification of the installation of an AED. The purpose of this visit would be for the service coordinator to meet the state's AED coordinator, or his or her representative, and to find out where the AED is located.

Agency Response: With the anticipated number of AEDs that will be placed in service and the limited personnel available in the OEMS, it would be difficult and costly to conduct initial surveys. OEMS has the authority to inspect an Early Defibrillation Service's AED(s), records, and documentation.

5. The respondent suggested that post event follow up (human contact) should be provided the AED user, similar to the critical incident stress debriefing (CISD) programs used for the fire service and EMS personnel.

Agency Response: It is beyond the scope of the regulation to require an organization to provide critical incident stress debriefing for employees. However, several outlets are available for these services, such as local emergency services' CISD teams and a company's employee assistance program.

There were no changes made to the draft regulations.

The public comment period was open from September 1, 2000 to September 30, 2000.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

Delaware Early Defibrillation Program

1.0 Purpose

1.1 This regulation establishes:

1.1.1 The criteria for training and right to practice of emergency responders to administer automatic external cardiac defibrillation in an out-of-hospital environment;

1.1.2 Standards identified by the State Emergency Medical Services Medical Director for certification of Early Defibrillation Services through the Office of Emergency Medical Services; and,

1.1.3 Procedures to assure equipment and training standardization, quality assurance and improvement and uniform data collection.

2.0 Authority

2.1 This regulation is written and promulgated by the Delaware Department of Health and Social Services, pursuant to 16 DelCode, Chapter 97.05.

3.0 Definitions

ABEM: American Board of Emergency Medicine

ACLS: Advanced Cardiac Life Support

Board: The Delaware State Board of Medical Practice

CPR: Cardiopulmonary Resuscitation

Certification: Recognition by the Office of Emergency Medical Services that an agency, organization or business has met the requirements to provide Early Defibrillation services.

Defibrillation: The administration of electrical impulses to the heart to stop and/or convert ventricular fibrillation or pulseless ventricular tachycardia into a viable rhythm.

Department: The Department of Health and Social Services.

Division: The Division of Public Health

EMS: Emergency Medical Services

Early Defibrillation Provider: A member or employee of an Early Defibrillation Service who has completed training in SAED operation and use under the requirements set forth in this regulation.

Early Defibrillation Service: Any agency, organization or company, certified as such by the State Office Of Emergency Medical Services, that employs or retains providers who have completed an SAED training program to use semi-automatic defibrillation equipment.

FDA: Federal Food and Drug Administration.

First Responder Team: An organized group of individuals within a corporation, business or agency

designated by that agency to respond to emergency situations.

Medical Control: Physician direction, through protocols, supervision and quality control of Early Defibrillation Services and/or Providers by the State Office Of Emergency Medical Services Medical Director.

Office or OEMS: The State Office of Emergency Medical Services.

Protocol: Currently approved and accepted procedures describing specific steps a provider must follow in assessing and treating a patient.

Renewal: Periodic training and demonstration of competence in the application and use of semi-automatic defibrillation equipment.

Right to Practice: An Early Defibrillation Provider is granted the right to practice as such by the State EMS Medical Director upon the completion of an approved initial or renewal SAED training course and when functioning as a member of an approved Early Defibrillation Service. The right to practice can be suspended or revoked by the State EMS Medical Director.

SAED: Semi-Automatic External Defibrillator. A device capable of, (1) analyzing a cardiac rhythm, (2) determining the need for defibrillation, (3) automatically charging, and, (4) advising a provider to deliver a defibrillation electrical impulse.

Service Coordinator: A designated appointee from an Early Defibrillation Service responsible for administration of the Early Defibrillation Program for their respective Service.

Service Director: President, Chief Executive Officer or any other individual who is administratively responsible for a corporation, business or agency.

State Coordinator: An individual appointed by the Director, State Office of Emergency Medical Services to administer the Early Defibrillation Program at the State level.

State Medical Director: The State Office of Emergency Medical Services Medical Director, who provides medical control, supervision, and quality control for the Early Defibrillation Program.

Training /Certifying Agency/Center: Any training facility, approved by the State Medical Director, that engages in the training of Early Defibrillation Providers in accordance with the requirements set forth in this regulation.

Ventricular Fibrillation: A lethal disturbance in the normal rhythm of the heart characterized by rapid, irregular and ineffective twitching of the lower chambers, or ventricles, of the heart.

Ventricular Tachycardia: A potentially lethal dysrhythmia originating in the ventricles of the heart. A pulse may or may not be present.

4.0 General Provisions

4.1 This regulation applies to any organization or

individuals participating in the Delaware Early Defibrillation Program.

4.2 Early Defibrillation Services shall not allow any individual who does not meet the requirements established in this regulation to operate SAED equipment.

4.3 The OEMS, or it's designee, shall retain the right to inspect any Early Defibrillation Service's defibrillation equipment and any records or documentation associated with the Early Defibrillation Program.

4.4 Automatic External Defibrillators are classified as medical devices by the Board.

4.5 SAED manufacturers, their representatives or agents are required to notify the OEMS of the sale and placement of an AED within the State of Delaware.

4.6 The OEMS will be responsible for notifying the jurisdictional public safety answering point of the placement of an SAED within the boundaries of their jurisdiction.

5.0 Eligibility

5.1 Any agency, organization or business, within the State of Delaware, routinely providing Basic Life Support services, First Responder services or maintains an organized First Responder Team on the premises, is eligible to become an Early Defibrillation Service.

5.2 Any agency, organization or business from another state providing Basic Life Support services, First Responder Services or maintains an organized First Responder Team on the premises routinely operating within the State of Delaware, is eligible to become an Early Defibrillation Service as approved by the State Emergency Medical Services Medical Director.

6.0 Medical Direction

6.1 Program Medical Director

6.1.1 The Early Defibrillation Program shall be under medical supervision of the State EMS Medical Director or his/her designee.

6.1.2 The State EMS Medical Director shall be responsible for:

6.1.2.1 Overseeing medical and training operations for the program;

6.1.2.2 Approve the appointment of personnel responsible for medical supervision and training of early defibrillation providers;

6.1.2.3 Approve SAED training courses for instructors and instructor-trainers.

6.1.2.4 Approve initial training and renewal courses for program providers;

6.1.2.5 Establish and assure compliance with Quality Assurance/Quality Improvement (QA/QI) policies, practices and procedures

6.1.2.6 Establish Early Defibrillation Program medical protocols.

6.1.3 The Medical Director is granted the authority

to suspend or revoke an Early Defibrillation Provider's right to practice with cause.

7.0 Early Defibrillation Service Requirements

7.1 Agencies, corporations or businesses desiring to provide Early Defibrillation Services must make application to the OEMS prior to implementation of the program.

7.2 Information to be provided with the application package shall include:

7.2.1 OEMS approved application;

7.2.2 Other information as required by the OEMS.

7.3 Upon approval, Early Defibrillation Services will be issued a certificate with a unique service identification number by the OEMS.

7.3.1 The copy of the certificate must be displayed in the immediate proximity of each SAED held by the Early Defibrillation Provider agency.

7.4 Triennial Re-certification

7.4.1 Application for re-certification as an Early Defibrillation Service must be filed every three (3) years with the OEMS on forms prescribed and issued by the Office.

7.4.1.1 The OEMS shall be responsible for issuing applications for re-certification to the Early Defibrillation Services within 90 days of certification expiration date.

7.5 Responsibility of the Service.

7.5.1 The Service shall:

7.5.1.1 Appoint a Service Coordinator to act as a liaison between the Service and the State Coordinator;

7.5.1.2 Services must notify the OEMS of changes of any information contained in the original application within 14 days of the changes. This includes changes in the Service Coordinator or changes in equipment or operational procedure.

7.5.1.3 Ensure defibrillators used by the service are of the type specified by this regulation.

7.5.1.4 The Service shall supply appropriate resources to providers to assure the capability to comply with the reporting procedures required under this regulation.

7.6 Service De-certification

7.6.1 The State EMS Medical Director may decertify an Early Defibrillation Service if the Service:

7.6.1.1 Fails to comply with this regulation,
or;

7.6.1.2 Ceases to provide emergency response service.

7.7 Service Re-certification

7.7.1 The State EMS Medical Director may grant re-certification as an Early Defibrillation Service to an agency provided such agency re-applies for certification under the procedure for initial certification as outlined in this section.

8.0 State Coordinator Responsibilities

8.1 The OEMS Director will appoint the State Coordinator.

8.2 The State Coordinator shall:

8.2.1 Be responsible for administration and oversight of the Early Defibrillation Program.

8.2.2 Establish Early Defibrillation Program regulations and administrative policies and ensure their enforcement.

8.2.3 Review and evaluate written reports from Service Coordinators pertinent to data collection, statistical analysis and make recommendations for program improvement.

8.2.4 On a quarterly basis, submit summary reports to the OEMS Director which shall include:

8.2.4.1 Summary of data collected pertinent to patient age, sex, percentage of patients the SAED determined defibrillation was indicated and patient outcome;

8.2.4.2 Variances received pertinent to regulations/policies and/or protocols utilized by providers, services or administration;

8.2.4.3 Documented equipment malfunctions,
and;

8.2.4.4 Recommendations for modifications to the program and/or administrative regulations and policies.

8.2.5 On an annual basis, submit a program report to the OEMS Director, which shall include:

8.2.5.1 Information required in Section 8.2.4,
and;

8.2.5.2 Report of the programs medical director.

8.2.6 In cooperation with the State EMS Medical Director and Service Coordinators, the State Coordinator shall:

8.2.6.1 Ensure the Early Defibrillation Program is in compliance with this regulation;

8.2.6.2 Establish QA/QI evaluation policies for the program and ensure said policies are enforced;

8.2.6.3 Ensure compliance with the findings and recommendations of the QA/QI program;

8.2.6.4 Immediately notify the State EMS Medical Director and the Service Coordinator if the competency of a provider puts the safety and welfare of the public at risk.

8.2.7 Act as a liaison between the OEMS and the recognized training agencies, Training Centers, services, providers and medical facilities.

9.0 Service Coordinator

9.1 The Service Coordinator will be appointed by the Service Director and shall:

9.1.1 Successfully completed an SAED training course;

9.1.2 Ensure all patient data reports are forwarded

to the State Coordinator within 72 hours;

9.1.3 Assure that patient data reports are left at the receiving medical facility emergency department in a timely manner but no longer than 10 hours after the delivery of the patient to the facility;

9.1.4 Act as a liaison with the State Coordinator;

9.1.5 Assure that Early Defibrillation Providers receive appropriate training in:

9.1.5.1 The use and maintenance of the agency's SAED;

9.1.5.2 SAED program data collection, report writing and quality improvement.

9.1.6 Oversee training operations for the agency and maintain organizational training reports;

9.1.7 Annually submit training records with a list of all providers in the organization to the State Coordinator no later than January 30;

9.1.8 Ensure SAED equipment is maintained according to manufacturer and protocol specifications.

9.1.9 Ensure service compliance with this regulation;

9.1.10 Provide continuing education opportunities annually for Early Defibrillation Providers;

9.1.11 Verify credentials of personnel functioning as an early defibrillation provider within the agency represented;

9.1.12 Review each use of the AED;

9.1.13 Provide recommendations to the State Coordinator for improvements to the program.

10.0 Early Defibrillation Provider Requirements

10.1 Guidelines for the validation of credentials of Early Defibrillation Providers are established by the Board of Medical Practice.

10.2 Permission to participate as an Early Defibrillation Provider is approved by the Service Coordinator.

10.3 Individuals requesting validation as an Early Defibrillation Provider shall:

10.3.1 Be at least 16 years of age at time of application;

10.3.2 Apply for SAED training through an SAED training agency recognized by the OEMS;

10.3.3 Present evidence to the Service Coordinator of satisfactory completion of an approved SAED training program.

10.4 Each Early Defibrillation Provider is responsible for:

10.4.1 Maintaining employment or membership with an approved Early Defibrillation Service;

10.4.2 Complete an approved SAED renewal training program a minimum of every twenty-four (24) months;

10.4.3 Participate in continuing education programs as outlined in this regulation.

10.5 Each Early Defibrillation Provider shall meet the following performance responsibilities.

10.5.1 Ensure duties are performed in accordance with the protocols established by the State Emergency Medical Services Medical Director;

10.5.2 Collect all data pertinent to patient care;

10.5.3 Complete required documentation of provider intervention in all cases of SAED use.

10.5.4 Leave a completed data report of SAED use with the patient care report at the time of delivery to the receiving medical facility or within 10 hours thereof.

11.0 Early Defibrillation Provider Training Requirements

11.1 Program Supervision

11.1.1 Direction and supervision of an SAED training program will be managed by a training agency recognized by the OEMS and shall:

11.1.1.1 Ensure training programs comply with the requirements of this regulation;

11.1.1.2 Approve/disapprove program instructor qualification criteria;

11.1.1.3 Review criteria used to determine successful completion of the SAED training program;

11.1.1.4 Issue course completion cards to individuals who have successfully completed the training program.

11.2 Instructor Requirements.

11.2.1 Initial training and renewal courses shall be conducted by instructors who meet the following minimum standards for approval as SAED instructors and to maintain instructor status:

11.2.1.1 Are approved by a training agency recognized by the OEMS;

11.2.1.2 Are CPR Instructors as authorized by the training agency;

11.2.1.3 Have prior teaching experience in out-of-hospital emergency care;

11.2.1.4 Have successfully completed an SAED instructor training program approved by the State EMS Medical Director;

11.2.1.5 Have instructor participation in a minimum of two (2) SAED training courses per calendar year.

11.3 SAED Training Curriculum.

11.3.1 The SAED training curriculum shall include at a minimum, basic theory and practice in the following subject areas:

11.3.1.1 Introduction to early defibrillation;

11.3.1.2 Patient assessment and evaluation;

11.3.1.3 Cardiac anatomy and physiology;

11.3.1.4 Cardiac defibrillation and program

protocols;

11.3.1.5 CPR and its relationship to

defibrillation:

11.3.1.6 Skills practice;

11.3.1.7 Practical skills demonstration.

11.3.2 SAED training curricula must be submitted to the OEMS for approval by the State EMS Medical Director.

11.4 Instructor administrative requirements.

11.4.1 At the completion of each course the instructor shall:

11.4.1.1 Sign the class roster verifying student demonstration of skills;

11.4.1.2 Submit to the appropriate Service Coordinator for retention:

11.4.1.2.1 A record of the class roster;

11.4.1.2.2 A list of students successfully completing the course;

11.4.1.2.3 A record of student performance.

11.5 Training Sites

11.5.1 Early Defibrillation initial, renewal and continuing education courses will be scheduled by the Service at a site appropriate for training and coordinated with an approved training center.

11.6 Continuing Education

11.6.1 Each Early Defibrillation Service shall provide continuing education on an annual basis.

11.6.2 Continuing education may consist of, but is not limited to:

11.6.2.1 Case reviews;

11.6.2.2 CPR renewal as necessary;

11.6.2.3 Provider demonstration of competent performance in the protocols and equipment in a simulated cardiac arrest situation;

11.6.2.4 Review of documentation and SAED equipment features;

11.6.2.5 Additional training as required by the Service or State EMS Medical Director.

11.6.3 Continuing education shall be no less than 2 hours annually.

12.0 Provider Right to Practice

12.1 Early defibrillation providers trained under the provisions outlined in Section 11 and affiliated with a recognized Early Defibrillation Service per Section 7 receive the right to practice as an Early Defibrillation provider under the Medical Direction provisions of Section 6.

12.2 The State EMS Medical Director may propose to suspend or revoke the right to practice of an Early Defibrillation Provider with cause.

12.3 The State EMS Medical Director must provide the provider with prior written notice of the proposed action and the opportunity for a hearing if the Medical Director deems:

12.3.1 The provider did not meet the eligibility requirements as outlined in this regulation;

12.3.2 The right to practice was obtained through error or fraud;

12.3.3 Provisions of this regulation were violated;

12.3.4 The Early Defibrillation Provider has engaged in conduct detrimental to the health or safety of a patient or to members of the general public during a period of emergency care or transport.

12.4 Emergency Suspension of the Right to Practice

12.4.1 The State EMS Medical Director may summarily suspend a provider's right to practice when there is a risk of serious harm or death if a provider retains his right to practice.

12.4.2 The State Coordinator may recommend to the State EMS Medical Director to suspend a provider's right to practice for a period not to exceed sixty (60) days.

12.4.3 The OEMS shall:

12.4.3.1 Provide written notice to the provider of the suspension which will:

12.4.3.1.1 Outline proposed additional action or actions and;

12.4.3.1.2 Contain a written notice of the right to request a hearing.

12.4.3.2 Conduct an investigation coordinated with the Service Coordinator.

12.4.3.3 Provide the opportunity for a prompt hearing on the summary suspension.

12.5 Provider Right to a Hearing

12.5.1 In the event the State EMS Medical Director proposes to suspend or revoke a provider's right to practice, the applicant or provider may request a hearing, in writing, to the OEMS within ten (10) days after date of notice.

12.5.2 The OEMS shall:

12.5.2.1 Schedule a hearing no later than twenty (20) working days after receiving a request for hearing.

12.5.2.1.1 The hearing committee shall be comprised of the State Paramedic Administrator, a county EMS Medical Director from a county other than one in which the provider works, the State Coordinator and a Service Coordinator;

12.5.2.1.2 The State Paramedic Administrator will preside over the hearing;

12.5.2.1.3 The Service Coordinator will be from a service other than the provider's.

12.5.2.2 Issue a final decision, in writing to the provider, within ten (10) working days after the hearing.

13.0 Defibrillation Equipment

13.1 Defibrillator Model

13.1.1 Defibrillators acceptable for use in the State of Delaware will:

13.1.1.1 Be FDA approved;

13.1.1.2 Be of the semi-automatic type

requiring provider intervention to initiate a defibrillation shock;

13.1.1.3 Be capable of automatically collecting data;

13.1.1.4 Be capable of producing a printed summary report as approved by the State EMS Medical Director.

13.1.2 Defibrillators must be approved by the State EMS Medical Director prior to purchase.

13.1.3 SAED's utilizing alternate waveform technologies are approved for use provided that the treatment algorithm has been approved by the FDA.

13.2 Defibrillator Modifications

13.2.1 No modifications are to be made to defibrillation equipment, by a provider or the service, which results in:

13.2.1.1 Deviation from the original manufacturer's specifications;

13.2.1.2 Deviation from Early Defibrillation Program protocols.

13.2.2 Protocol changes may only be authorized by the State EMS Medical Director.

13.2.3 Necessary defibrillator modifications shall be coordinated by the Service Coordinator.

13.3 Defibrillator Preventative Maintenance/Repairs

13.3.1 All components of the defibrillator and integrated data recording system shall be inspected by a qualified service technician at least one (1) time per calendar year or as recommended by the manufacturer to ensure:

13.3.1.1 The equipment meets original manufacturer's specifications, and;

13.3.1.2 The equipment maintains the currently approved program protocols.

13.3.2 The battery and data recording systems of the SAED shall be maintained and replaced in accordance with manufacturer's specifications.

13.3.3 All maintenance and repairs shall be performed by a qualified service technician recognized by the manufacturer.

13.3.4 Early Defibrillation Services shall maintain written records of all maintenance, repairs and inspections performed on defibrillation equipment.

13.4 Defibrillator Pre-hospital Use

13.4.1 In the event any non-EMS/Fire or police service provider agency employs a SAED, the local 911/emergency response system must be immediately activated.

13.4.2 During pre-hospital use of SAED equipment, the following guidelines will be used:

13.4.2.1 Providers may use only self-adhering electrodes or pads with the SAED;

13.4.2.2 Monitoring electrodes or pads shall be attached to the patient, and;

13.4.2.3 The integrated data recording system shall be in operation;

13.4.2.4 Data recording will begin upon initial application of the SAED and may not be terminated until:

13.4.2.4.1 The patient is disconnected from the SAED either by service providers upon spontaneous return of patient cardiac function, or;

13.4.2.4.2 The patient is disconnected by paramedics or hospital personnel during transfer to a cardiac monitor.

13.5 Financial Responsibility

13.5.1 Purchase of SAED units, electrodes or pads, data collection hardware/software, and any required inspections, repairs or replacement parts shall be the sole responsibility of the service.

Appendix

The Delaware Early Defibrillation Program Regulations Early Defibrillation Program Protocols

1.0 The protocols are designed under which the early defibrillation provider may administer defibrillation as a component of their emergency care to the cardiac arrest victim. Voice contact with an on-line medical control physician is not required for certified personnel to implement this protocol.

2.0 This protocol is specific to the type of defibrillator used in the program.

3.0 The provider standing orders are as follows:

3.1 The indication for the application and/or use of the SAED is cardiac arrest.

3.2 Assess the scene for safety. Also assess the surroundings for a possible cause of the arrest.

3.3 Establish that cardiac arrest has occurred. Before the SAED can be attached, the patient must be:

3.3.1 Unresponsive;

3.3.2 Pulseless; and

3.3.3 Apneic

3.4 Begin resuscitation efforts, including Cardiopulmonary Resuscitation (CPR). Make certain that 911 has been called.

3.5 Connect the patient to the SAED. Do not delay for the purpose of placing adjunct airway devices or mechanical CPR devices.

3.6 Stop CPR, clear away from the patient, and initiate analysis of the patient's cardiac rhythm. If the SAED determines that defibrillation is indicated, the unit shall automatically charge to 200 joules and prompt the provider to deliver the shock. It is the provider's responsibility to assure that all individuals are clear from the patient prior to delivery of the counter-shock.

NOTE: Different energy levels are acceptable in AED's using alternate waveform technology providing the AED and treatment algorithm have been approved by the FDA.

3.7 Immediately re-analyze the RHYTHM, and if

indicated, deliver a second counter-shock at 300 joules.

3.8 Again, re-analyze the RHYTHM, and if indicated, deliver a third counter-shock at 360 joules.

3.9 If no pulse is present, perform CPR for one (1) minute. At the end of one minute check for a pulse, and if no pulse, re-analyze the RHYTHM and, if indicated, defibrillate at 360 joules.

3.10 Immediately re-analyze the RHYTHM, and if indicated, deliver a second counter-shock at 360 joules.

3.11 Immediately re-analyze the RHYTHM, and if indicated, deliver a third counter-shock at 360 joules.

3.12 If no pulse is present, continue CPR.

3.13 If a paramedic unit has not yet arrived on the scene, transport to the closest appropriate medical receiving facility should commence without delay. Contact medical control while en route for additional orders, such as additional countershocks.

3.14 For non-EMS SAED providers, continue CPR and repeat rhythm analysis and shock sequence until EMS arrives. Re-contact the 911 center to assure that help is on the way.

3.15 Complete the data management form.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 Del.C. §505)

**Revision Of The Regulations
Of Delaware's Division Of
Social Services Manual
Section 14300, 14320.1, 14330.2,
17800 - 17805**

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid Program initiated proceedings to amend policies related to the Division of Social Services Manual Sections 14300, 14320.1, 14330.2 and 17800 - 17805. The first change clarifies that nonqualified aliens are not eligible for State-funded benefits in the adult expansion population. The second change permits a new optional categorically needy Medicaid population. This group will be limited to individuals who lose Supplemental Security Income (SSI) due to receipt of Social Security Disability and are not yet eligible for Medicare. 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 December, 2000 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2000 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December, 2000 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid Program are adopted and shall be final effective March 10, 2001.

Vincent P. Meconi, Secretary
2/15/01

14300 Citizenship and Alienage

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the United States. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. The term qualified refers to groups of aliens whose members may establish Medicaid eligibility under certain circumstances and subject to certain limitations. For specific groups of aliens identified as nonqualified, eligibility is limited to the treatment of an emergency medical condition as defined in this section.

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated STATE ONLY FUNDS to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Aliens who may be found eligible for full Medicaid coverage using the state funds include legally residing nonqualified aliens and qualified aliens subject to the 5 year bar. Illegally residing aliens and ineligible aliens ARE NOT ELIGIBLE for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.

All applicants, whether aliens or citizens, must meet the technical and financial eligibility criteria of a specific

eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid or the state funded benefits. ~~For example, enrollment in a managed care organization is a technical eligibility requirement for adults in the expanded population under the Diamond State Health Plan demonstration waiver. A nonqualified alien or a qualified alien who is subject to the 5 year PRWORA bar cannot be found eligible in the expanded population. This is because the state funded benefits are provided on a FEE FOR SERVICE basis. An individual cannot be found eligible under the expanded population for emergency services only because those benefits are provided on a fee for service basis. Adults in the expanded population are required to enroll in MANAGED CARE to receive benefits.~~

14320.1 Medicaid Eligibility for Qualified Aliens (PRWORA and/or State Funds)

Effective January 1, 1998, all qualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does NOT include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years. Certain qualified aliens will be Medicaid eligible. Other qualified aliens will receive state funded benefits. The adult expansion population, under the 1115 demonstration waiver entitled Diamond State Health Plan, is not eligible for state funded benefits.

The Delaware legislature appropriated state only funds to provide full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid because of PRWORA. Under PRWORA, certain qualified aliens entering the U.S. on or after 8/22/96 were subject to a 5 year bar on eligibility. Coverage for full Medicaid benefits for the qualified aliens who are under the 5 year PRWORA bar, is subject to the availability of state funds.

The PRWORA policy (as amended by the Balanced Budget Act) which follows describes the eligibility for qualified aliens prior to the appropriation of state funds. In the event such state funding is exhausted, eligibility for qualified aliens will be determined using the PRWORA policy described below.

14330.2 Eligibility For State Funded Benefits (Nonqualified Aliens)

Effective January 1, 1998, legally residing nonqualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does NOT include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years. The adult expansion population, under the 1115 demonstration waiver entitled Diamond State Health Plan, is

not eligible for state funded benefits.

The Delaware legislature appropriated state only funds to provide full coverage of Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for full Medicaid benefits for these legally residing nonqualified aliens is subject to the availability of state funds.

In the event such state funding is exhausted, eligibility for legally residing nonqualified aliens will be determined using the PRWORA policy described in Section 14330.1.

17800 Medical Assistance during Transition to Medicare

Under 42 CFR 435.232 Medicaid may be provided to individuals who receive only an optional State supplement and who would be eligible for SSI except for the level of their income.

The rules in this section set forth the eligibility requirements for coverage under this state-administered Optional State Supplementation group - Medical Assistance during Transition to Medicare (MAT). The MAT group is implemented with the earliest effective date of February 1, 2001. Eligibility under this group is not retroactive.

17801 Status Eligibility

In addition to the general Medicaid eligibility requirements listed in DSSM 14000 - 14950.7, the individual meets all the conditions listed below:

- a) received SSI, and
- b) lost eligibility for SSI because of Social Security Disability, and
- c) does not have Medicare coverage, and
- d) is not an inmate in a public institution. An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jail, detention facilities, or other penal facilities. An individual awaiting trial in a detention center is considered an inmate of a public institution
- e) an annual redetermination is completed. A redetermination is a re-evaluation of a recipient's continued eligibility for medical assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet categorical eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.

17802 Financial/Resource Eligibility

All income and resources are excluded.

17803 Eligibility Determination

DSS will receive the names of individuals who lose SSI via the monthly State Data Exchange (SDX). When an

individual loses Medicaid eligibility because of the loss of SSI. Federal regulations require a redetermination of Medicaid eligibility based upon information obtained through the SDX file. A new application is not required. The SSI Unit will use the information obtained from the SDX to redetermine Medicaid eligibility.

17804 Income Standard

The income standard is \$5.00.

17805 Payment Level

Countable income is deducted from the income standard.

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

Statutory Authority:

7 Delaware Code, Sections 1902(a)(2), 1902(a)(3)
(7 Del.C. §§1902(a)(2), 1902(a)(3))

**Adoption of Amendments to Tidal Finfish Regulations
Nos. 4, 7, 8, 9, 10 and 14.**

Order No. 2001-F-0007

ORDER

SUMMARY OF EVIDENCE AND INFORMATION

Pursuant to due notice 4 **DE Reg**1106–1110 (01/01/10), The Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation Nos. 4,7,8,9,10 and 14 pertaining to adjustments to the recreational summer flounder fishing season, size and creel limits; the commercial striped bass maximum size limit and the transfer of commercial striped bass tags; the creel limit on bluefish, the dates for closing weakfish fishing to all gear except hook and line and the creel limit on Spanish mackerel. Some of these adjustments are required to remain in compliance with the specific interstate fishery management plans, as amended and adopted by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid Atlantic Fishery Management Council and the U.S. Department of Commerce. The Atlantic Coastal Fisheries Cooperative Management Act (1993) requires Atlantic coastal states to comply with interstate fishery management plans adopted by the ASMFC. Other adjustments were offered as optional pending public support.

A public workshop was conducted on Striped bass options on November 13, 2000. Comments were taken on various options to maintain the status quo on striped bass fishing mortality in 2001. A public hearing was conducted on January 25, 2001. Final requirements for the recreational summer flounder fishery were finalized by the ASMFC on January 29, 2001.

FINDINGS OF FACT

I find the following facts from the testimony and evidence presented:

- The option of increasing the creel limits from 10 to 15 fish per person for spanish mackerel and bluefish is not supported by the public. Public comment favored the more conservative creel limit of 10.
- The Weakfish fishery must maintain a target fishing mortality of 0.50 to allow stocks to rebuild pending the adoption of a new amendment. No changes in fishing effort are required. The same 34 days when harvesting weakfish was only lawful with a hook and line in 2000 must be implemented in 2001.
- The striped bass fishery for 2001 is to remain at status quo.
- Delaware has the option of returning to fishing restrictions in place in 1998-1999 or in 2000 for the striped bass fishery.
- Public comments favor retaining the current recreational size and creel limits and eliminating the 32 inch maximum size limit for commercial fishermen.
- Public comments favor the transfer of commercial striped bass tags among commercial fishermen.
- The recreational summer flounder fishery in Delaware must be reduced 40% relative to the base year 1998 recreational landings by adjusting the minimum size limit, creel limit and seasonal closure. Delaware's recreational fishermen landed an average of 240,000 summer flounder in 1998 – 2000. Delaware's target for 2000 is 145,000 summer flounder.

CONCLUSIONS

I have reached the following conclusions:

- The recreational creel limits for Spanish mackerel and bluefish should not be changed from the current 10 fish per person.
- The 2000 dates in May and June when the harvest of weakfish was limited to hook and line should be adjusted to the 2001 calendar to align with weekends.

- The recreational size and creel limits for striped bass should not be changed from the current one/day @ 24 – 28 inches and one/day @ 28 inches or greater.
- The commercial maximum size limit of 32 inches should be dropped.
- The transfer of striped bass tags among commercial fishermen should be allowed prior to the start of the commercial fishing season.
- The recreational summer flounder minimum size limit should be increased from 15.5 inches to 16 inches.
- The recreational summer flounder creel limit should be decreased from 8 per person to 7 per person.
- Recreational summer flounder fishing should be closed on each Monday and Tuesday between January 1, 2001 and June 30, 2001, on each Monday between July 1, 2001 and August 25, 2001 and on each Monday and Tuesday between August 26, 2001 and December 31, 2001.

ORDER

It is hereby ordered this 8th day of February in the year 2001 that amendments to Tidal Finfish Regulations Nos. 4,7,8 and 10, copies of which are attached hereto, are adopted pursuant to 7 Del.C. § 903 and are supported by the Departments’ findings of evidence and testimony received. This Order shall become effective on March 10, 2001.

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

Tidal Finfish Regulation No. 4. Summer Flounder Size 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 during the period beginning at 12:01AM ~~on January 1 and ending at midnight on May 9 and during the period beginning at 12:01AM on October 3 and ending at midnight on December 31.~~ (Note – A closed fishing period(s) will be required to meet the mandatory compliance measures in the Summer Flounder Fishery Management Plan. These dates will be decided after a public hearing).

See 3 DE Reg 1088 (2/1/00)

b) It shall be unlawful for any recreational fisherman to have in possession more than ~~eight (8)~~ (Note: the creel limit may change depending on the season closure) 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 fifteen and one-half (15.5) inches~~ (Note-the size may change depending on the season closure).

See 3 DE Reg 1088 (2/1/00)

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 fifteen and one-half (15.5) inches~~ (Note-the size may change depending on the season closure) 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.

See 3 DE Reg 1088 (2/1/00)

e) Open **See 2 DE Reg 1900 (4/1/99)**

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) Open **See 2 DE Reg 1900 (4/1/99)**

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 ~~eight (8)~~ (Note-the creel limit may change depending on the season closure.) summer flounder at or between the place where said summer flounder where caught and said persons personal abode or temporary or transient place of lodging.

See 1 DE Reg 1769 (5/1/98)

See 2 DE Reg 1900 (4/1/99)**Tidal Finfish Regulation 7. Striped Bass Possession Size Limit; Exceptions.**

a) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass from the tidal waters of this State in one day provided one measures no less than twenty-four (24) inches in total length or more than twenty-eight (28) inches in total length and one measures no less than twenty-eight (28) inches in total length.

See 4 DE Reg. 230 (7/1/00)

b) Notwithstanding, the provisions of § 929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less than twenty (20) inches in total length ~~or more than 32 inches in total length.~~ (Note-The thirty-two (32) inches maximum commercial size limit may be dropped if approved by the Striped Bass Fishery Management Board).

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than 28 inches, total length, unless said striped bass is in one or more of the following categories:

- 1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or
- 2) It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
- 3) It is packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
- 4) It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
- 5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

d) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

e) The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any

striped bass that measures less than twenty four (24) inches in total length.

See 4 DE Reg. 230 (7/1/00)

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length ~~or more than 32 inches in total length.~~ (Note-The 32 inches maximum commercial size limit may be dropped if approved by the Striped Bass Fishery Management Board.)

See 3 DE Reg 1088 (2/1/00)**Tidal Finfish Regulation No. 8, Striped Bass Commercial Fishing Seasons; Quotas; Tagging And Reporting Requirements.**

a) It shall be unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 a.m. on March 1 and ending at 4:00 p.m. on April 30 next ensuing. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 a.m. on November 15 and ending at 4:00 p.m. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the March - April gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 15 for the March - April gill net fishery and by November 1 for the December gill net fishery.

b) It shall be unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 a.m. on September 1 and ending at 4:00 p.m. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by August 15.

c) It shall be unlawful for any commercial food fisherman using a hook and line, during the striped bass

hook and line fishery established for subsection (b) herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.

d) The striped bass gill net fishery in March - April, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in September - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of striped bass allotted to each fishery by the Department shall be as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the March - April gill net fishery, 10% of the State's commercial quota for the September - December hook and line fishery and, provided that in excess of two (2) % of the March - April gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

e) It shall be unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

f) It shall be unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill a tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass.

g) The Department shall issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of tags that is to be determined by the Department by dividing said participants assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

h) It shall be unlawful for a commercial food fisherman who ~~has been~~ is authorized to be issued striped bass tags by the Department to transfer said tags to another ~~person~~ commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.

i) It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food

fisherman by the Department.

j) It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass if said tag had previously been applied to another striped bass.

k) It shall be unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.

l) The Department shall appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

m) Each commercial food fisherman participating in a striped bass fishery shall file an acceptable report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file an acceptable report or failure to return all unused tags may disqualify the commercial food fisherman from future striped bass fisheries.

See 1 DE Reg 270 (9/1/97)

Tidal Finfish Regulation 9. Bluefish Possession Limits.

a) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than ~~ten (10)~~ fifteen (15) bluefish (*Pomatomus saltatrix*) at or between the lace caught and his/her personal abode or temporary or transient place of lodging).

Tidal Finfish Regulation 10. Weakfish Size Limits; Possession Limits; Seasons.

a) It shall be unlawful for any person to possess weakfish *Cynoscion regalis* taken with a hook and line, that measure less than thirteen (13) inches, total length.

b) It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than six (6) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than six (6) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of six (6) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Beginning at 12:01 AM on May 1, ~~2000~~ 2001 and ending at midnight on May 9, ~~2000~~ 2001;

beginning at 12:01 AM on May ~~12, 2000~~ 11, 2001 and ending at midnight on May ~~14, 2000~~ 13, 2001;

beginning at 12:01 AM on May ~~19, 2000~~ 18, 2001 and ending at midnight on May ~~21, 2000~~ 20, 2001;

beginning at 12:01 AM on May ~~26, 2000~~ 25, 2001 and ending at midnight on May ~~28, 2000~~ 27, 2001;

beginning at 12:01 AM on June ~~2, 2000~~ 1, 2001 and ending at midnight on June ~~4, 2000~~ 3, 2001;

beginning at 12:01 AM on June ~~9, 2000~~ 8, 2001 and ending at midnight on June ~~11, 2000~~ 10, 2001;

beginning at 12:01 AM on June ~~16, 2000~~ 15, 2001 and ending at midnight on June ~~18, 2000~~ 17, 2001;

and beginning 12:01 AM on June 24, ~~2000~~ 2001 and ending at midnight on June 30, ~~2000~~ 2001."

See 1 DE Reg 1770 (5/1/98)

See 2 DE Reg 1904 (4/1/99)

See 3 DE Reg 1088 (2/1/00)

f) The Department shall indicate on a persons food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of six (6) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more

than fourteen (14) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of six (6) weakfish.

See 1 DE Reg 1770 (5/1/98)

See 2 DE Reg 1904 (4/1/99)

Tidal Finfish Regulation No. 14. Spanish Mackerel Size Limit And Creel Limit.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any Spanish mackerel, (*Scomberomorus maculatus*), that measure less than fourteen (14) inches total length.

b) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than ~~ten (10)~~ fifteen (15) Spanish mackerel at or between the place caught and his/her personal abode or temporary or transient place of lodging.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

Statutory Authority: 16 Delaware Code, Chapter 9 (16 Del.C. Ch. 9) and 10 Delaware Code, Chapter 9 (10 Del.C. Ch.9)

Final Regulations on Establishment of Central Child Abuse Registry 16 Del.C. §902 and 10 Del.C. §925

NATURE OF THE PROCEEDINGS:

The Department of Services for Children, Youth and Their Families (DSCYF) initiated proceedings to promulgate Regulations regarding the Central Child Abuse Registry. Legislation regarding the Central Child Abuse Registry was signed into law by Governor Thomas R. Carper on July 18, 2000. The registry is a database of information about persons the Division of Family Services has substantiated to have committed child abuse or neglect. The statute gives an individual the opportunity for an appeal hearing prior to entry on the Central Child Abuse Registry and also provides an opportunity to be expunged from the registry. A person who is expunged from the registry will not be reported to an employer as having committed child abuse or neglect.

Public hearings were held January 22, 2001 from 5:30 p.m. to 7:30 p.m. in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware; January 25, 2001 from 5:30

p.m. to 7:30 p.m. at the Alexis I. duPont Middle School Auditorium, 3130 Kennett Pike, Greenville, Delaware; and February 6, 2001 from 5:30 p.m. to approximately 7:50 p.m. in the Sussex Central High School Auditorium, 301 W. Market Street, Georgetown, Delaware. Written comments were received via electronic mail, regular mail, and fax to Linda M. Shannon, Program Manager, Intake and Investigation, Division of Family Services. Although the deadline for written comments was January 30, written comments submitted at the Public Hearing on February 6 were accepted. In addition, the Governor's Advisory Council for Exceptional Citizens submitted comments after the January 30 deadline, nevertheless, their comments were considered for this report.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Twenty individuals made oral comments at the Public Hearings: 1 in Kent County, 2 in New Castle County, and 17 in Sussex County. Eighteen written comment documents were also received. Several individuals provided both oral and written comments. In addition to comments by Delaware citizenry, written comments were also provided by the Office of the Child Advocate, Delaware State Police, Office of Child Care Licensing, Child Protection Reform, State Council for Persons with Disabilities, Governor's Advisory Council for Exceptional Citizens, and Community Legal Aide Society, Inc. (CLASI). The Department of Justice provided "technical advice rather than substantive commentary on the content of the proposed regulations."

Fifteen individuals who had direct involvement with the Division provided oral testimony. Twelve of the individuals described their personal experiences during an investigation. Three of the twelve indicated they also had criminal investigations for the same incidents and two acknowledged criminal findings. Overall, their testimony was very critical about the Division staff who conducted the investigations and the way the Division handled their cases. Testimony was also provided by a married couple who had previously been foster parents for the Division. The wife discussed an incident in which she got into a physical altercation with a foster child using a baton. She stated the incident was not investigated and she was not put on the registry. This woman felt the Division should offer more services to foster parents. Her husband advocated that the registry should be restricted to extreme (felony) level cases. Finally, other testimony was provided by a woman who discussed why a central registry is beneficial. She said her ex-husband molested her children and was a pedophile who is a danger to other children, but he was not convicted in a criminal court.

Many of the comments recommended changes to the regulations that were specifically guided by the exact language in the central registry statute signed by Governor

Carper or were related to other sections of the Delaware Code. These comments fell into five categories: (1) time frames, (2) standard of proof, (3) confidentiality, (4) notification to health care and child care employers, and (5) miscellaneous legal issues.

(1) Time frames: The Governor's Advisory Council for Exceptional Citizens, State Council for Persons with Disabilities, Child Protection Reform, and CLASI all had concerns about the specified time frames and particularly the requirement that a request for a substantiation hearing must be received by the Division within twenty calendar days of the date the notice of was mailed by the Division. Reference was made to Superior Court Civil Rules 6(a) and 6(e).

(2) Standard of proof: By law, the burden of proof shall be upon the Division to show by a preponderance of evidence that abuse or neglect has occurred. Four recommendations were made to raise the standard of proof to clear and convincing evidence, beyond a shadow of a doubt, and court conviction.

(3) Confidentiality: The statute states that hearings, decisions, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Under 16 Del.C. § 906 (b)(18), the Division has the discretion to release records when there is a legitimate public safety need. Two individuals testified against "secret lists" and the third stated appeal proceedings should be public and it should be "within the discretion of the abuser whether confidentiality should be waived."

(4) Notification to health care and child care employers: The substantiation appeal process described in the statute and regulations will prohibit the Division's Office of Child Care Licensing from reporting out individuals whom the Division has substantiated for child abuse or neglect until that process or criminal adjudication is complete. Written comments were received from five sources, including the Office of Child Care Licensing, expressing concern about the appeal process because persons who have been substantiated for child abuse or neglect will not be reported to potential employers during the appeal process. This will allow individuals who are potentially harmful to the safety of children and vulnerable adults to obtain or continue employment in child care or health care facilities for a significant amount of time without being reported.

(5) Miscellaneous legal issues: Oral comments from legal sources recommended numerous changes including, but not limited to, waiving fees for transcripts, disallowing the Division the opportunity to appeal, excluding juveniles from the central registry, excluding hearsay evidence, requiring personal service of all substantiation notices by the Division, and providing redacted copies of the Division file to all appellants.

The remainder of the comments focused on the expungement process. Expungement means that a person listed on the Central Child Abuse Registry would no longer

be reported to a health care or child care employer as having a substantiated case of child abuse or neglect. First, there were concerns about expungement based on good cause and at the discretion of the Division. Second, there were questions about what would constitute acceptable sources of information regarding the expungement criteria, particularly for cases that had been on the registry throughout the past twenty-five years. Third, individuals will be expunged in the broadest sense. That is, their current employment may not make them to be a risk to children and vulnerable adults, but once expunged, the individual will be free to obtain any health care or child care job. Fourth, an individual with criminal charges may be encouraged to plea to lesser charges which may still result in being entered on the registry. Will attorneys, public defenders, and judges advise about the consequence of taking such a plea? Fifth, the expungement process enables a person to not be reported out to health care and child care employers by the Division's Criminal History Unit, as well as for foster care, adoption, and DSCYF employees.

Two additional written recommendations about expungement were received from individuals who had family members on the registry for criminal findings. Both advocated for a "first offenders" opportunity for expungement.

SUMMARY OF FINDINGS OF FACT WITH AGENCY RESPONSE

Many of the suggested public comment revisions regarding time frames, standard of proof, confidentiality, notice to health care and child care employers, and miscellaneous legal issues are prohibited by the language in the code or decided on a case by case basis during substantiation or expungement hearing proceedings. Therefore, the final version of the regulations do not incorporate these recommendations. Regarding time frames, it should be noted that the statute and regulations are more restrictive than current Division policy that was implemented in 1995.

The Delaware Code relating to the Central Child Abuse Registry is clear that an individual be given the opportunity for expungement, but it is not prescriptive about the criteria for expungement.

One of the legal recommendations was to provide each person the Division intends to substantiate with a complete copy of the regulations. The Division is agreeable, as a matter of practice, to preparing and enclosing an information sheet regarding the appeal and expungement process with each substantiation notice.

DECISION/ORDER

The Department finds that the changes made in response

to the comments received during the public comment periods do not substantially change the nature of the regulations. Most of the changes were technical and needed to conform with the language and intent of the statute. Thus, the regulations, as set forth in the attached version, should be issued, in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the Regulations governing the Central Child Abuse Registry are adopted, as herein revised, and shall become effective April 1, 2001, provided that date occurs no less than ten days after publication of the final regulations in the Delaware Register of Regulations.

Cari DeSantis, Secretary
February 15, 2001

REGULATIONS FOR ENTRY ON TO AND EXPUNGEMENT FROM THE CENTRAL CHILD ABUSE REGISTRY UNDER 16 Del.C., CHAPTER 9 AND 10 Del.C., CHAPTER 9

1.0 LEGAL AUTHORIZATION

1.1 The legal authority for these regulations is found in the Delaware Code: Title 10, Chapters 9 and 10; Title 11, Chapters 5 and 85; Title 16, Chapter 9; and Title 31, Chapter 3.

2.0 PURPOSE

2.1 The purpose of these regulations is to provide ~~due process to persons to be entered~~ a process for notice and opportunity for hearing prior to a person's entry] on the Central Child Abuse Registry.

3.0 DATE OF IMPLEMENTATION

3.1 These regulations become effective ten days after publication in final form in the Delaware Register of Regulations.

4.0 INDIVIDUALS SUBJECT TO THE LAW

4.1 Persons, adults or children, substantiated on or after April 1, 2001 to have committed child abuse or neglect, except that the opportunity for administrative expungement shall be provided for substantiated cases before or after April 1, 2001 unless a disqualifying factor applies.

5.0 DEFINITIONS

"Abuse" as defined in 16 Del.C., § 902 (1) means any physical injury to a child by those responsible for the care, custody, and control of the child, through unjustified force as defined in 11 Del.C., § 468, emotional abuse, torture, criminally negligent treatment, sexual abuse, exploitation, or mistreatment.

"Administrative Expungement" as defined in 16 Del.C.,

§ 902A (g) means that the individual's name shall no longer be reported to employers pursuant to 11 Del.C. § 8563(b) in a Central Child Abuse Registry check as a substantiated case from the central registry. Notwithstanding the granting of a request for administrative expungement under this section, the individual's name and other case information shall remain on the central registry as substantiated for all other purposes, including, but not limited to, the Division's use of such information for historical, treatment and investigative purposes, child care licensing decisions, reporting pursuant to 31 Del.C. § 309, reporting to law enforcement authorities, or any other purpose set forth in 16 Del.C. § 906(b).

"Central Registry" as defined in 16 Del.C. § 902 (2) means a registry of information about persons the Division of Family Services has substantiated to have committed child abuse and neglect. **[Substantiation may be made through civil or criminal proceedings or through civil administrative decision or proceedings where the burden of proof is at a minimum a preponderance of the evidence.]** The persons shall have been responsible for the care, custody, and control of the child as defined in 16 Del.C. § 902 [(13)]. ~~Substantiation may be made through civil or criminal judicial proceedings or through civil administrative decision or proceedings where the burden of proof is at a minimum a preponderance of the evidence.]~~

"Department" means the Department of Services for Children, Youth and Their Families.

"Disqualifying Factors" means items that disqualify an individual from the opportunity for notice and a substantiation hearing or the opportunity for administrative expungement.

"Division" means the Division of Family Services.

"Good Cause" means discretionary factors that justify not reporting a substantiated case of child abuse or neglect to an employer. It depends upon the circumstances of the individual case and the finding of it lies in the discretion of the decision-maker to which the decision is committed.

"Neglect" as defined in 16 Del.C. § 902 means the failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary: education as required by law; nutrition; or medical, surgical, or any other care necessary for the child's well-being.

"Intent to Substantiate" means a person for whom the Division of Family Services intends to substantiate for child abuse or neglect, but whose name has not been entered on the registry.

"Preponderance of the Evidence" is a standard of proof that is met when a party's evidence indicates that the fact "is more likely than not" what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not.

"Substantiated" means that the Division of Family Services after an investigation has concluded by a

preponderance of the evidence that child abuse or neglect occurred. In addition, substantiation may occur through civil or criminal judicial proceedings, failure to request a Substantiation Hearing within the specified time frame, or by decision of a hearing officer.

"Substantiation Hearing" means a hearing held by a hearing officer to determine whether or not an individual committed child abuse or neglect.

"Substantiated Person" means a person who has been substantiated by the Division of Family Services as having committed child abuse or neglect and has been entered on the Central Child Abuse Registry.

6.0 SUBSTANTIATION HEARING

6.1 NOTICE TO SUBSTANTIATED PERSONS PENDING ENTRY ON THE CENTRAL CHILD ABUSE REGISTRY

6.2 At the conclusion of an investigation the Division shall send written notice, by certified mail, return receipt requested to the person's last known address, of its intent to place a person on the Central Registry for having committed child abuse or neglect, and shall advise the individual of the opportunity to request a Substantiation Hearing. The person can also be notified by personal delivery and accepting service of the notice in writing.

6.3 A person substantiated for child abuse or neglect, or an attorney acting on his or her behalf, shall have twenty (20) calendar days from the date the notice was mailed to request a Substantiation Hearing. The request for a Substantiation Hearing shall be in writing and shall be received by the Division Director, **[or designee,]** within 20 days of the date the notice was mailed.

6.4 Though the Division shall still issue its notice and the individual ~~shall~~ **may** request a Substantiation Hearing within twenty (20) days, when such Substantiation Hearing is **[timely]** requested, such hearing shall be stayed if civil or criminal proceedings regarding the same allegations of **[child]** abuse or neglect are pending. ~~[A person substantiated for child abuse and neglect awaiting adjudication of criminal or delinquency charges or awaiting civil court adjudication of abuse or neglect which were the result of the same child abuse or neglect incident investigated by the Division shall be offered a postponement of the hearing by the hearing officer.]~~ He or she shall be eligible to reschedule a Substantiation Hearing following the resolution of the criminal or delinquency charges or other civil court proceeding, unless ~~they pled or were convicted or were adjudicated~~ **the same conditions in Regulation 10.0 apply** for the same **[child abuse or neglect]** incident investigated by the Division.

6.5 A person substantiated for child abuse or neglect may waive in writing his or her right to a Substantiation Hearing and request an Administrative Expungement in

writing to the Division Director[, or designee.]

7.0 DISQUALIFYING FACTORS

7.1 See circumstances identified in Regulation ~~10.0~~ **[#32 10.0.]**

8.0 PROCEDURES

8.1 Unless postponed or stayed, within twenty (20) calendar days of receiving a request for a hearing by the person found to have committed child abuse or neglect (appellant), a Substantiation Hearing date shall be set, and such hearing shall be held by the hearing officer within sixty (60) calendar days of the receipt of such request.

8.2 The burden of proof at the hearing shall be upon the Division, which shall be required to prove by a preponderance of the evidence that abuse or neglect occurred.

8.3 The appellant and the Division may have legal representation during the hearing. The parties may also present witnesses and other evidence on their behalf.

8.4 The hearing officer shall have the authority to:

8.4.1 issue subpoenas for witnesses and other sources of evidence, either at the request of the Division or at the request of the appellant;

8.4.2 administer oaths to witnesses;

8.4.3 exclude irrelevant, immaterial, insubstantial, cumulative and privileged evidence;

8.4.4 limit proof, rebuttal and cross-examination if they are repetitive; and

8.4.5 hold pre-hearing conferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.

8.5 An audio tape recording shall be made of the hearing. Copies of the tape or request for a transcript of same may be made at the request of and expense of the appellant.

8.6 Following the Substantiation Hearing, the hearing officer shall issue a written decision to the appellant by certified mail, return receipt requested and by regular mail to the Division no later than sixty (60) calendar days ~~for~~ **from** the last day of the conclusion of the hearing and arguments.

8.7 The decision shall include a brief summary of evidence and findings of fact based upon the evidence and conclusions of law. The appellant ~~shall~~ **should** be advised of the right to request an appeal of the decision to Family Court.

9.0 APPEAL TO FAMILY COURT FOLLOWING SUBSTANTIATION HEARING DECISION

9.1 The appellant or the Division may request a review by Family Court within thirty (30) days of the date of the hearing officer's decision.

9.2 The Family Court review shall be limited in scope to whether there is substantial evidence to support the findings

of fact or whether any error of law was made.

9.3 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 Del.C., Ch.101 nor the Freedom of Information Act shall apply to such hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 Del.C. § 906 (b)(18).

10.0 ENTRY ON TO THE CENTRAL CHILD ABUSE REGISTRY

10.1 A person found to have committed child abuse or neglect shall be entered on the Central Registry when he or she:

10.1.1 fails to make timely request in writing for a Substantiation Hearing in response to a notice as specified in law and regulation or failed to make a timely written request to appeal a similar notice issued prior to the enactment of this law;

10.1.2 fails to appear at a scheduled Substantiation Hearing without prior approval of the hearing officer or fails to show that good cause existed to postpone the hearing within ten (10) calendar days after the scheduled hearing date of the reason for his or her absence from the hearing;

~~10.1.3 fails to request a Family Court review of the substantiation hearing officer's decision;~~

~~10.1.4 10.1.3] has been afforded [the due process provisions covered under these regulations or law a hearing] and the substantiation was upheld;~~

~~10.1.5 10.1.4] has been convicted or pled guilty to a criminal offense contained in Subchapters II or V of Chapter 5 of Title 11 including those taken nolo contendere or subsequently discharged or dismissed under a First Offenders program pursuant to 10 Del.C. § 1024 and the plea or conviction is for the same incident substantiated by the Division;~~

~~10.1.6 10.1.5] has been adjudicated delinquent as a juvenile for any of the comparable criminal offenses listed for adults for the same incident investigated by the Division; and~~

~~10.1.7 10.1.6] has been substantiated for abuse or neglect at a civil court hearing or administrative hearing at which the minimum standard of proof was preponderance of the evidence for the same incident investigated by the Division.~~

~~10.1.7 has been substantiated as provided in 16 Del.C. § 902A(f)(1).]~~

11.0 ADMINISTRATIVE EXPUNGEMENT OF SUBSTANTIATED CASES

11.1 An application for administrative expungement of a substantiated case may be made by any individual whose name is entered on the Central Child Abuse Registry unless

there is one or more disqualifying factors. Expungement ~~shall~~ **may**] be granted only for good cause, and at the discretion of the Division considering[, **but not limited to,**] the factors below:

11.1.1 the nature of the substantiation with respect to safety of the children who may come into the individual's direct care;

11.1.2 compliance with a DFS recommended or court-ordered treatment plan;

11.1.3 history of substantiated or unsubstantiated reports of child abuse and neglect;

11.1.4 any evidence of acts involving weapons, explosive devices, or threats of harm;

11.1.5 any evidence of domestic violence involving assaults, stalking, or cruelty to animals;

11.1.6 any evidence of addiction to drugs or alcohol **[that presents a significant and current threat of harm to children];**

11.1.7 untreated or treated medical conditions that present a **[significant and current]** threat of harm to children;

11.1.8 length of time since the **[child abuse or neglect]** incident;

11.1.9 seriousness of the **[child abuse or neglect]** incident;

11.1.10 number of **[child abuse or neglect]** incidents;

11.1.11 indication of remorse; and changed behavior.

[11.1.12 The Division may consider any other factors relevant to the substantiated individual's application for expungement.]

12.0 DISQUALIFYING FACTORS

12.1 The entire criminal history of a person, including all convictions, is required to be reported for any person seeking employment with a licensed child care provider (11 Del.C. § 8561) and for a person seeking employment in a nursing home, hospital, or other entity licensed pursuant to Chapter 11 of Title 16 of the **Delaware Code** (16 Del.C. § 1141), thus ~~is~~ **an** individual shall not be eligible for Administrative Expungement when he or she has been convicted, pled guilty, or has been adjudicated delinquent via plea or adjudication of any criminal offense contained in Subchapters II or V of Chapter 5 of Title 11, or of the same offenses if charged or delinquent in which the person was responsible for the care, custody, and control of the child at the time of the offense.

13.0 PROCEDURES

13.1 A person placed on the Central Child Abuse Registry may submit a written request for Administrative Expungement to the Division Director[, **or designee,**] with the reasons ~~therefore~~ **therefor**].

13.2 Within sixty (60) days of receiving the written request for Administrative Expungement, the Division shall send its decision by certified mail, return receipt requested to the person requesting expungement. The decision shall include notice of the right to appeal to a hearing officer for a hearing on the issue of administrative expungement.

13.3 A person placed on the Central Child Abuse Registry, or an attorney acting on his or her behalf, shall have ~~twenty (20)~~ **thirty (30)** calendar days ~~[from the posted date of the notice of the Division's decision]~~ to request an Administrative Expungement hearing before a hearing officer. The request shall be made in writing to the ~~Division Director~~ **hearing officer**].

13.4 The procedures for an Administrative Expungement hearing shall be the same as for the Substantiation Hearing before a hearing officer. (See Regulations ~~24-28~~ **8.3-8.7**).

~~13.5 The Division and the individual may also consent to administrative expungement outside the procedures specified above.]~~

14.0 APPEAL TO FAMILY COURT FOLLOWING ADMINISTRATIVE EXPUNGEMENT DECISION

14.1 ~~Upon receipt of the hearing officer's decision~~ **Within thirty (30) days of the date of the hearing officer's decision**], either the Division or the person requesting expungement, or an attorney acting on his or her behalf, may file a written appeal to Family Court~~], within thirty (30) calendar days of receipt of the decision.]~~

14.2 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 Del.C., Ch.101 nor the Freedom of Information Act shall apply to such hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 Del.C. § 906 (b)(18).

15.0 CASES SUBSTANTIATED PRIOR TO APRIL 1, 2001

15.1 A substantiated person can request a Substantiation Hearing unless they have already been notified by the Division of the right to appeal and failed to appeal, have already been given a hearing regarding the substantiation, or he or she have the circumstances described in Regulation ~~10.1.5, 10.1.6 and 10.1.7~~, **10.0** or in 16 Del.C. § 902A(f)(1).]

15.2 A substantiated person can request an Administrative Expungement unless a disqualifying factor applies.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER 10

WHEREAS, Delaware law and/or executive order prohibit discrimination in state employment based on gender, race, color, religion, national origin, marital status, disability, sexual orientation, or Vietnam Era veterans status; and

WHEREAS, the State of Delaware is committed to providing equal employment opportunities to all Delawareans; and

WHEREAS, the State of Delaware is committed to maintaining a high quality workforce that draws upon the talents of our diverse citizenry to operate our government effectively for the benefit of the State's citizens; and

WHEREAS the State of Delaware has succeeded over the past several years in diversifying its workforce; and

WHEREAS despite these efforts, the State of Delaware should continue to strive for a workforce that reflects the diversity of the State's population and labor market; and

WHEREAS the State of Delaware can only achieve the diversity it seeks by continuing and improving an equal employment opportunity program that enforces sound recruitment and promotion practices throughout state government;

I, Ruth Ann Minner, Governor of the State of Delaware, hereby ORDER on this 30th day of January, 2001:

1. The State of Delaware's commitment to equal employment opportunity is hereby affirmed and heads of each Department and Agency within the Executive Branch (collectively "Executive Branch Agencies") are directed to pursue diligently the recruitment and promotion of qualified women and minorities and to be vigilant in complying with the laws prohibiting discrimination in employment.

2. The work atmosphere in executive branch agencies shall be one that fosters mutual respect and understanding among persons of different races, sexes, and faiths.

3. Paragraphs 1 and 2 of this Executive Order are directives from the Governor to Executive Branch Agencies. They will be vigorously enforced by the Governor. However, they are not intended to and shall not create independent causes of action for or on behalf of persons who allege a lack of compliance with those paragraphs.

4. The Governor's Council on Equal Employment Opportunity (hereinafter "Council") is continued. The function of the Council shall be to assist in the monitoring and evaluation of the Executive Branch Agencies' implementation of and compliance with this Executive Order, and to provide advice and recommendations to the Director of State Personnel and the Governor.

a. The Council shall consist of eight members. One half of the Council's members shall be members of the Delaware Human Relations Commission who shall be nominated by the Chairperson of the Human Relations Commission and appointed by the Governor. One half of the Council's members shall be appointed by the Governor. All members of the Council shall serve at the pleasure of the Governor. The Chairperson of the Council shall be appointed by the Governor from among the Council's members, and shall serve as Chairperson at the pleasure of the Governor. b. The Council shall receive staff support from the State Personnel Office and the Office of Human Relations. The Division of Vocational Rehabilitation shall advise the Council on matters regarding persons with disabilities. c. The Council shall furnish on October 30 of each year a written annual report to the Governor and State Personnel Director on the progress being made in improving the diversity of the State's workforce and recommend any additional action which, in the Council's judgment, should be undertaken. Such report shall be available to the public.

5. The State Personnel Office shall maintain the central managerial role over all diversity and equal employment matters in the Executive Branch and shall bear overall responsibility for the implementation and management of the policies and procedures set forth in this Order. The Director of the State Personnel Office shall:

a. establish the duties and responsibilities of the Equal Employment Opportunity/Affirmative Action Administrator and of Agency equal employment officers ("EEO officers");

b. prepare and submit an annual Executive Department Affirmative Action plan, to include short and long term strategies;

c. hold agencies accountable for their implementation of this Order;

d. act as the State of Delaware's liaison with the EEOC for federal reporting requirements; and

e. communicate and coordinate diversity and equal opportunity initiatives across agencies.

AFFIRMATIVE ACTION PLANS

6. The head of each Executive Branch Agency shall maintain an Affirmative Action Plan which shall be filed annually with the State Personnel Office and the Council on or before September 15.

7. Each Affirmative Action Plan referred to in paragraph 6 shall be in a form prescribed by the State Personnel Office to ensure compliance with federal laws, state laws, and this Order. Each plan shall include, but shall not be limited to, the following provisions:

a. A specific statement of goals and objectives designed to assure equal employment opportunities in hiring and promotion and to eliminate any unlawful discrimination

in Agency employment;

b. A specific statement of action steps designed to maximize the degree to which qualified minorities and women are represented in the Agency as compared to Delaware's labor pool. Such action steps shall include:

(i.) Specific proposals for recruiting minorities and women for employment in the Agency to the extent that they are underrepresented in the Agency when compared to the relevant statewide labor market.

(ii.) Specific proposals for assuring that hiring practices are conducted consistently with the objectives of this Order.

(iii.) Specific proposals for assuring that all promotional opportunities are offered in a manner consistent with this Order.

(iv.) Specific proposals for staff participation in training programs on interview techniques and acceptable hiring practices.

(v.) Specific proposals for employee participation in career enhancement programs and seminars.

(vi.) Specific statements regarding the applicability of the following outreach, training, and accountability measures to the Agency's recruitment and retention efforts:

- A. Job fairs
- B. College and university outreach
- C. Professional group outreach
- D. Advertising
- E. Employee recognition programs
- F. Formal and informal mentoring
- G. Internal leadership programs
- H. Participation in statewide programs
- I. Professional development for existing

staff, including tuition reimbursement programs, attendance at conferences and seminars, and internal training opportunities.

J. Inclusion of recruitment and retention of women and minorities in Agency's strategic and staff plans.

- K. Statements of Agency policy
- L. Creation or continuation of Agency

committees.

M. Specific efforts of top leadership within the Agency

N. Internal communications efforts within the Agency

c. A designation of the EEO officer within the Agency to carry out diversity and equal employment opportunity functions for the Executive Branch Agency.

8. Each Executive Branch Agency shall make available a summary or full copy of its Affirmative Action Plan to any employee upon request.

RECRUITMENT AND PROMOTION OF A DIVERSE WORKFORCE

9. To support the recruitment of a diverse workforce, the Director of the State Personnel Office or her designee shall:

a. Assist Executive Branch Agencies in updating their Affirmative Action Plans in accordance with federal guidelines.

b. Develop, coordinate, and implement professional recruiting efforts throughout State government designed to increase the number of qualified women and minority candidates for state employment. The State Personnel Office shall develop a statewide directory of organizations that can serve as resources for the identification of qualified women and minority candidates in particular fields, so that these organizations can be notified regarding specific vacant positions.

c. Review and revise employment hiring procedures and Merit Rules to ensure a selection process that is fair, non-discriminatory and equitable.

d. Require agencies filling merit positions at paygrade 15 and above to use an interview team of at least three members. When feasible, such a team should be diverse in its composition.

e. Work with the State Manager of Training and Development to facilitate statewide training and technical assistance programs to ensure compliance with state and federal equal opportunity laws and this Order, and to inculcate effective recruitment and career development procedures.

f. Work with the EEO officers and personnel officers of the various Executive Branch Agencies to review job classifications within those agencies, and the qualifications of the employees of such Agencies, with a view toward eliminating any artificial barriers to hiring and promotion, and targeting appropriate employee career development seminars.

REPORTING REQUIREMENTS

10. Each Executive Branch Agency shall:

a. Be held accountable for compliance with this Order by including the measures and statements required in this Order in each manager's performance plan and each relevant Agency strategic plan;

b. Retain a record of all applicants who voluntarily divulge protected class information. The information required shall be prescribed by the State Personnel Office and, to the extent practicable, shall be in a format consistent with the terminology and categories used in federal EEO standard forms;

c. Ask each terminating employee to participate in an exit interview to determine the reasons for that

employee's termination and retain records of such interviews;

d. Report to the State Personnel Office information requested by the State Personnel Office concerning the Agency's Affirmative Action Plan.

11. The State Personnel Office shall:

a. Maintain a comprehensive, statewide, on-line, user-friendly system that allows continuous monitoring of the diversity of the State's workforce across all paygrades;

b. Work with the Council to ensure the publication of clear information regarding the composition of the State's workforce;

c. Submit a quarterly report to the Council; and

d. Assist the Council in preparing its annual report.

PUBLIC ACCOUNTABILITY

12. The Council, with the assistance of the State Personnel Office and the Human Relations Commission staff, shall:

a. Establish a schedule for conducting an intensive review of each Executive Branch Agency every three years to assess compliance with the terms of this Executive Order, the Agency's Affirmative Action Plan, and equal opportunity laws. The review shall involve an in-depth consideration of Agency promotion, hiring and recruiting practices. Each reviewed Agency shall receive a detailed report identifying those practices and policies of the Agency that are constructive and those practices and policies which need improvement or elimination, with specific recommendations for the Agency to consider. The Council shall incorporate a summary of the results of these reviews in its annual report, as required by paragraph 4 of this Order. From these annual reviews, the State Personnel Office shall submit to each Executive Branch Agency a guidance memorandum identifying successful practices used by the reviewed agencies to increase the diversity of their workforce and examples of policies and practices that hindered the State's attempt to create a more diverse workforce.

b. Publish, as a part of its annual report, an overall report on the composition of the State's workforce and the State's effectiveness in complying with equal employment laws and this Order.

COMPLAINTS

13. Each Agency shall include in its Affirmative Action Plan a description of a mechanism or complaint procedure to permit and encourage employees to discuss any problems resulting from alleged bias, discrimination, lack of equal employment opportunity or any similar matters with appropriate division or Agency supervisory personnel. The

procedure shall provide for the lodging of employee complaints and for a response to be made within a specified reasonable period of time. The employee shall be advised of his right to file a formal complaint with the Labor Law Enforcement Section of the Department of Labor and shall receive such assistance as may be requested from his Agency EEO officer.

14. The Office of State Personnel shall:

a. Post a public notice, in conspicuous locations or bulletin boards, of all cabinet Departments, major offices, divisions or agencies which shall affirm the State's commitment to equal opportunity and advise all State employees and applicants for State employment that any complaints of discrimination should be promptly reported to the State Equal Employment Opportunity/Affirmative Action Program Administrator and the Labor Law Enforcement Section of the Department of Labor;

b. Provide on the application form for state employment a statement of the state's commitment to equal employment opportunity and instructions as to how complaints of discrimination may be reported.

15. The complaint process for employment discrimination cases shall fall into two categories: informal and formal.

a. An informal complaint is filed with the State Personnel Office by written or oral communication with the State Equal Employment Opportunity/Affirmative Action Program Administrator requesting the State Equal Employment Opportunity/Affirmative Action Program Administrator to attempt to facilitate resolution of the complaint. The State Personnel Office shall determine whether or not the complaint appears to fall within the jurisdiction of the Labor Law Enforcement Section of the Department of Labor and may require a formal charge of discrimination within the time limits prescribed by statute.

b. The State Equal Employment Opportunity/Affirmative Action Program Administrator will inquire into such cases by working through the designated Agency EEO officer and appropriate management staff, as deemed appropriate by the Cabinet Secretary. Based on the determination, the State Equal Employment Opportunity/Affirmative Action Program Administrator will respond in writing to the complainant. If there is an apparent violation of Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act of 1967 as amended, Vietnam Era Veterans Readjustment Assistance Act of 1979, the Americans with Disabilities Act of 1990, or Title 19 of the Delaware Code relating to discrimination in employment, the complainant shall be referred to the Labor Law Enforcement Section of the Department of Labor to file a formal complaint. Cases which appear to violate discrimination laws shall be referred to the Labor Law Enforcement Section of the Department of Labor, even if resolution is reached by the State Personnel Office. Nothing

in this Order shall be construed to bar mediation of a complaint by the State Human Relations Commission; however, such mediation shall not affect or in any way toll relevant time limitations.

REPEAL OF PREVIOUS EXECUTIVE ORDERS

16. Executive Order No. 28, dated March 10, 1995, is hereby repealed.

APPLICABILITY OF EXECUTIVE ORDER

17. This Order shall apply to all Cabinet Departments and Executive Agencies of the State. The members of the General Assembly and the Judiciary are also encouraged to adopt this Order.

18. No provision of this Order is intended to create any individual right or legal cause of action which does not already exist under state or federal law.

RUTH ANN MINNER, Governor

Attest:

Harriet N. Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER 11**

WHEREAS, the Violence Against Women Act Implementation Committee was created in February, 1995 by Executive Order for the purpose of ensuring the appropriate use of federal funds received under the Violence Against Women Act; and

WHEREAS, the Committee's procedures were changed in December, 1999; and

WHEREAS, the Committee has proven to be an effective means of administering federal Violence Against Women Act funds,

I, Ruth Ann Minner, Governor of the State of Delaware, hereby ORDER on this First Day of February, 2001:

1. Delaware shall continue to have a Violence Against Women Act Implementation Committee.

2. The Committee is charged with the following responsibilities:

a. Identifying needs and gaps in services for female victims of crime

based on public input and input solicited from the Domestic Violence Coordinating Council and the Victim Advisory

Committee of the Criminal Justice Council.

b. Soliciting input from interested individuals, state and federal agencies, and private organizations, including non-profit, non-governmental victim services programs, about needs and gaps in Delaware services for female victims of violent crime.

c. Preparing a comprehensive Plan to obtain and use federal funds available under the Violence Against Women Act and for compliance with the legislation and related regulations.

d. Holding training sessions for individuals and groups interested in submitting funding applications, designed to assist potential applicants with the funding selection process.

e. Soliciting and reviewing concept papers submitted by grant applicants.

f. Consistent with the Plan, making recommendations on Violence Against Women Act grant recipients to the Criminal Justice Council and the Domestic Violence Coordinating Council. If either the Criminal Justice Council or the Domestic Violence Coordinating Council approve the recommendations by a majority vote, the recommendations shall be forwarded to the Governor for her consideration. If neither the Criminal Justice Council nor the Domestic Violence Coordinating Council approve the Committee's recommendations, they shall be returned to the Committee for modification.

3. The Committee shall be comprised of five individuals, who shall be appointed by the Governor and serve at the pleasure of the Governor.

4. The Committee shall be staffed by staff from the Domestic Violence Coordinating Council and the Criminal Justice Council, as the Committee finds necessary.

5. Federal grants obtained by Delaware as a result of the Violence Against Women Act shall be allocated by the Criminal Justice Council in accordance with the recommendations made pursuant to paragraph 2 of this Order. The Criminal Justice Council shall administer and monitor such grants and shall provide the Committee with regular reports regarding their status.

6. Executive Orders No. 29 (1995), 56 (1998), 69 (1999), and 70 (1999) issued by Governor Thomas R. Carper are repealed.

RUTH ANN MINNER, Governor

Attest:

Harriet N. Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER 12**

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER on this Fourteenth Day of February, 2001 that paragraph 2(q) of Executive Order No. 3, issued on January 5, 2001, is amended to read as follows:

"Three at-large members to be appointed by the Governor."

RUTH ANN MINNER, Governor

Attest:

Harriet N. Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER 13**

WHEREAS, it is illegal in the state of Delaware for a person convicted of a felony to possess a firearm, and

WHEREAS, Delaware currently has no legal mechanism to ensure that persons who have committed felonies surrender their firearms, and

WHEREAS, the only whole or partial records that exist in Delaware of persons who own firearms are the concealed weapon permit files kept at the Delaware Superior Court, and

WHEREAS, said concealed weapon permit files are available under the Freedom of Information Act to bona fide law enforcement personnel, and

WHEREAS, it is important that Delaware prevent incidents such as the recent tragedy in Melrose Park, Illinois, where a convicted felon killed four persons using legally licensed firearms which he had purchased before he committed his felony and which were not confiscated after he committed his felony,

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER on this Fourteenth day of February, 2001:

1. The Secretary of Public Safety ("the Secretary") is directed to ensure that a bona fide law enforcement agent under his supervision obtain copies of all concealed deadly

weapon files held at the Prothonotary's office in each of Delaware's three counties within 60 days.

2. The Secretary is directed to check the names of all persons derived from the files obtained pursuant to paragraph one of this Order in the Delaware Criminal Justice Information System within 90 days, for the purpose of determining whether any person holding a concealed deadly weapon permit in this State has committed a felony offense.

3. If the Secretary finds after the investigation directed by paragraph 2 of this Order that any persons holding concealed deadly weapon permits in this state have committed any felonies, he shall notify my office and the office of the Attorney General within 48 hours for purposes of investigation and prosecution.

4. Until such time that legislation is enacted by this state mooting the procedure described in this Order, the Secretary is directed to repeat the process described in paragraphs one through three of this Order every six months, except that he shall retain copies of concealed deadly weapon files and seek copies from the Prothonotary only of those files created in the time interval since he last repeated this process.

5. The Secretary and his designees shall treat all concealed deadly weapon files copied pursuant to this Order as confidential, shall use them only for the purpose of executing this Order, and shall not disclose them to any person outside the Department of Public Safety, the Office of the Attorney General, the Court when necessary, and the Delaware Criminal Justice Information System, or to any person who does not need them for purposes of executing this Order.

RUTH ANN MINNER, Governor

Attest:

Harriet N. Smith Windsor, Secretary of State

**DELAWARE RIVER BASIN
COMMISSION**

Statutory Authority: 7 Delaware Code,
Section 6501 (7 Del.C. §6501)

**NOTICE OF PROPOSED RULEMAKING
AND PUBLIC HEARING**

The Delaware River Basin Commission is a federal-state regional agency with representatives from the states of Delaware, New Jersey, New York, and Pennsylvania and a federal representative appointed by the President of the United States. As such, the Commission is exempt from the requirements of 29 Delaware Code Chapter 101. The following notice, however, is published by the Delaware River Basin Commission for informational purposes.

Revised Proposed Amendment to the Delaware River Basin Commission's Water Code and Comprehensive Plan to Establish Water Usage Reporting Requirements and Proposed Amendment to the Commission's Water Metering Requirements

Summary

The Delaware River Basin Commission ("Commission") will hold a public hearing to receive comments on revised proposed amendments to its Water Code and Comprehensive Plan to establish water usage reporting requirements for source water withdrawals and water service and to receive comments on proposed amendments to its water metering requirements. On October 23, 2000 the Commission published on its web site a Notice of Proposed Rulemaking to establish water usage reporting requirements to ensure that the Commission has the source and service information needed to evaluate how and where water is being used in the basin. Notice also was published in the Delaware Register on December 1, 2000 and in the Federal Register on November 29, 2000 (65 FR 71094). The Commission held a public hearing on the proposed rulemaking on January 9, 2001. Today, in response to written and oral testimony, including recommendations of the Commission's Water Management Advisory Committee, substantive changes are proposed to the previously noticed amendments to the Water Code and Comprehensive Plan. The Commission deems the changes significant enough to warrant this revised notice, a new opportunity for comment, and a second hearing before it adopts the proposed amendments. The proposal that is the subject of today's notice differs significantly from the original in that it extends the water usage reporting obligation set forth in proposed Section 2.50.3 of the Water Code to users subject to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania, including the owner(s) of each water supply system serving

the public and each person, firm, corporation, or other entity, other than water supply systems serving the public, subject to the Ground Water Protected Area Regulations for Southeastern Pennsylvania. Minor changes to the proposed water usage reporting requirements include additional requests for data on acres irrigated (for irrigated uses only), whether water is recycled or reclaimed, and the percentages recycled or reclaimed. These data are requested only if available and only in an initial report and thereafter when changes occur. The revised proposed water usage reporting requirements differ from the original proposed requirements in one further respect. They provide that in the absence of an administrative agreement between the Commission and the state agency serving as the designated agency, the Commission shall administer and enforce the regulations. To ensure consistency, a similar revision as to administration and enforcement is proposed in Sections 2.50.1 and 2.50.2, concerning water metering requirements.

Dates

The public hearing will be held on Thursday, April 19, 2001 during the Commission's regular business meeting. The meeting will begin at 1:00 p.m. and continue until all those present who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary.

The deadline for submission of written comments will be April 6, 2001.

Addresses

The public hearing will be held in New York City at a location to be posted on the Commission's web site, www.drbc.net, by mid-March. Directions to the meeting location will be posted on the web site as well. Written comments should be submitted to Pamela M. Bush, Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628-0360.

Further Information and Contacts

Supplemental information, including an explanation of the need for water usage reporting requirements and an account of the process by which the amendments originally were proposed, is contained in the original Notice of Proposed Rulemaking. The existing regulations, original Notice of Proposed Rulemaking and this Notice of Revised Proposed Rulemaking all are posted on the Delaware River Basin Commission web site at www.drbc.net. Please contact Esther Siskind at 609-883-9500 ext. 202 with questions about the proposed amendments and Pamela M. Bush, ext. 203 with questions about the rulemaking process.

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

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 105(1) and (5), the Delaware Board of Accountancy proposes to revise its Rules and Regulations. The proposed revisions are made to Section 6.0 of the existing Rules and Regulations in order to comply with and implement and clarify the Board's authorizing law, 24 **Del. C.** Chapter 1, as revised effective July 16, 2000. Substantive changes to the regulations include changes in and clarification of the requirements for a permit to practice certified public accountancy, including modification and clarification of the standards and requirements for qualifying experience. The proposed rules and regulations are reorganized to correspond with the Board's authorizing law, 24 **Del. C.**, Chapter 1.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, April 18, 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 Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey 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 Mary Paskey at the above address or by calling (302) 739-4522, extension 207.

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

**BOARD OF CHIROPRACTIC
NOTICE - PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 706(a)(1), the Delaware Board of Chiropractic proposes to revise its rules and regulations. The proposed revisions would represent a comprehensive change of the rules and regulations implementing or clarifying specific sections of 24 **Del.C.** Chapter 7.

A public hearing will be held on the proposed Rules and Regulations on Thursday, 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, 19904. The

Board will receive and consider oral and written input on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Ms. Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations should notify Ms. Letterman at the above address or by calling (302) 739-4522.

**BOARD OF PROFESSIONAL COUNSELORS OF
MENTAL HEALTH**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 3006(a)(1) and 3006(a)(5), the Delaware Board of Professional Counselors of Mental Health proposes to revise its Rules and Regulations. The proposed revisions establish a hardship exception to the continuing education requirement.

A public hearing will be held on the proposed Rules and Regulations on Friday, April 6, 2001 at 3:30 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino 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 Gayle Franzolino at the above address by calling (302) 739-4522, extension 220.

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

**BOARD OF SPEECH/LANGUAGE PATHOLOGISTS,
AUDIOLGISTS & HEARING AID DISPENSERS**

The Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, in accordance with 24 **Del.C.** §3706(a)(1) has proposed comprehensive changes to its rules and regulations. The changes clarify application procedures, provide for extending a temporary license, describe the inactive status process, provide for calibration of electronic equipment, clarify continuing education credits, and replace the current Code of Ethics.

A public hearing will be held at 2:00 p.m. on April 11, 2001 in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware

where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, 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 MASSAGE & BODYWORK

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Sections 5306(1) and (7), the Delaware Board of Massage and Bodywork proposes to revise its Rules and Regulations. The proposed revisions clarify the continuing education requirement for those licensees that are certified as massage technicians and subsequently are licensed as massage and bodywork therapists.

A public hearing will be held on the proposed Rules and Regulations on Thursday, April 5, 2001 at 1:00 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio 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 Susan Miccio at the above address by calling (302) 739-4522, extension 206.

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

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

The Thoroughbred Racing Commission proposes to amend their rules pursuant to 3 **Del.C.** 10103(c) and 29 **Del.C.** 10115. The proposed amendment to Rule 15.02 would provide for deletion of the reference to a "detention area" in the existing Rule 15.02(d). The proposed amendment would also propose new subsections

15.02(g)(h)(i) providing for the quantification of lasix and the penalties for violations.

The Commission will accept written comments on the proposed rule amendment form March 1, 2001 until April 3, 2001. Written comments should be sent to the Delaware Thoroughbred Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rule can be obtained by contacting the Commission office at 302-698-4600.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, March 15, 2001 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH STATE OF DELAWARE RULES AND REGULATIONS PERTAINING TO THE APPLICATION AND OPERATION OF MANAGED CARE ORGANIZATIONS (MCO).

The Office of Health Facilities Licensing and Certification, Division of Public Health, Delaware Health and Social Services will hold public hearings to discuss proposed revisions to Delaware Regulations for Managed Care Organizations (MCOs).

The regulations establish and define conditions of the Independent Health Care Appeals Program. This program revises the previous grievance procedure for quality of care complaints against MCOs in Delaware. This revision outlines the process that places this third/final stage of appeal beyond the influence of the MCO. The Independent Health Care Appeals Program requires appropriately qualified Independent Utilization Review Organizations to contract with the State. DHSS (Office of Health Facilities Licensing and Certification) then coordinates the assignment of any third/final stage appeal to an Independent Utilization Review Organization for review and determination.

The public hearings will be held March 27, 2001 at 11:00 AM in the Library Conference Room, Townsend Building, 401 Federal Street, Dover, Delaware 19903 and 9:00 AM on March 28, 2001 in the first (1st) floor

conference room, Delaware Fire Service Center, 2307 MacArthur Road, New Castle, DE 19720.

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

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

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Vanette Seals at (302) 995-8521 by March 16, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by April 2, 2001 to:

Susan H. Kirk-Ryan, Hearing Officer
2055 Limestone Road, Suite 200
Wilmington, DE 19808

Environmental Health Field Services
2055 Limestone Road, Suite 100
Wilmington, DE 19808
Phone: 302-995-8650

Environmental Health Field Services
Georgetown State Service Center, Rm. 1000
546 S. Bedford Street
Georgetown, Delaware 19947
Phone: 302-856-5496

Anyone wishing to present his or her oral comments at the public hearing should contact Dave Walton at 302-739-4700 by March 19, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments on or before April 1, 2001 to:

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

**DIVISION OF PUBLIC HEALTH
NOTICE OF PUBLIC HEARING**

These regulations, "The State of Delaware Regulations Governing a Detailed Plumbing Code," replace by recision the current "State of Delaware Regulations Governing a Detailed Plumbing Code" previously adopted April 17, 1978, and most recently amended January 11, 1998. They are to be adopted in accordance with Chapter 1, Section 122 (3)(e), Title 16, **Delaware Code** and Chapter 79, Section 7906, Title 16, **Delaware Code** and will supersede all previous regulations concerning plumbing adopted by the former Delaware State Board of Health.

This comprehensive plumbing code establishes minimum regulations for plumbing systems using prescriptive and performance-related provisions. It is founded on broad-based principles that make possible the use of new materials and plumbing designs. The intent of this code is to provide a comprehensive set of regulations for plumbing systems consistent with and inclusive of the scope and content of a model plumbing code, the International Plumbing Code 2000.

A public hearing will be held on Friday, March 23, 2001 at 9:30 a.m., at the Jesse Cooper Building, third floor Room 309, located at the corner of Federal and Water Streets, Dover.

Copies of the proposed Code are available for review by appointment at the following locations:

Environmental Health Field Services
Williams State Service Center, 3rd floor
805 River Road
Dover, Delaware 19901
Phone: 302-739-5305

**DIVISION OF PUBLIC HEALTH
STATE OF DELAWARE RULES AND
REGULATIONS PERTAINING TO THE CONTROL
OF COMMUNICABLE AND OTHER DISEASE
CONDITIONS**

NOTICE OF PUBLIC HEARING

The Health Monitoring and Program Consultation Section, Division of Public Health of Delaware Health and Social Services, will hold a public hearing to discuss proposed Regulations for the Control of Communicable and Other Disease Conditions. These proposed regulations describe the reporting of HIV and other communicable diseases in the State of Delaware. The regulations apply to any health care provider, facility or laboratory diagnosing or treating individuals with a reportable disease condition.

This public hearing will be held April 9, 2001 in the Division of Natural Resources and Environmental Control (DNREC) Auditorium, 89 Kings Highway, Dover, DE from 4:00pm to 6:00pm.

Copies of the proposed regulation are available for review by calling:

Health Monitoring and Program Consultation
Division of Public Health
P.O. Box 637
Dover, DE 19901
Telephone: (302) 739-3033

Anyone wishing to present his or her oral comments at

this hearing should contact Pat Zielen at (302) 739-3033 by April 6, 2001. Anyone wishing to submit written comments as a supplement to, on in lieu of oral testimony should submit such comments by April 10, 2001 to:

Paul Silverman, Ph.D., Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19901

DIVISION OF PUBLIC HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES
STATE OF DELAWARE RULES AND
REGULATIONS PERTAINING TO AIR MEDICAL
AMBULANCE SERVICES

NOTICE OF PUBLIC HEARING

The Office of Emergency Medical Services, Division of Public Health, Delaware Health and Social Services, will hold a public hearing to discuss proposed changes to the Air Medical Ambulance Services Regulations. The proposed changes will permit the establishment of commercial air medical ambulance operations in the State of Delaware and permit them to function under the same parameters afforded to out of state air medical ambulance operations.

This public hearing will be held March 21, 2001, at 10:00 AM in the Conference Room at the Delaware Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4-H, 655 S. Bay Road, Dover, Delaware

Copies of the proposed regulation are available for review by calling:

Office of Emergency Medical Services
Blue Hen Corporate Center, Suite 4-H
655 Bay Road,
Dover, Delaware 19901
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Debbie Vincent at (302) 739-4710 by March 20, 2001. Anyone wishing to submit written comments as a supplement to, on in lieu of oral testimony should submit such comments by March 31, 2001 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19901

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE

Food Stamp Program

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 / Food Stamp Program is proposing to implement policy changes to the following sections of the Division of Social Services Manual: 1) DSSM 9042: Households applying for food stamps whose gross income is at or below 200% of the Federal Poverty Level are categorically eligible; 2) DSSM 9028.1: Moved joint application processing language to a new section, from DSSM 9042 to DSSM 9028.1; and, 3) DSSM 2012: Clarifies the rule on deceased recipients that eligible individuals may receive benefits up to and including the date of his/her death to include the Food Stamp Program and the Medicaid Program.

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 Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by March 31, 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.

DIVISION OF SOCIAL SERVICES
PUBLIC NOTICE

Medicaid/Medical Assistance Program

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 Program is proposing to implement new policy to the Division of Social Services Manual, Sections 17170 through 17170.6 titled, Section 4913 Disabled Children. These are proposed eligibility rules for a mandatory categorically needy eligibility group enacted under the Balanced Budget Act of 1997.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulation must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by March 31, 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 AIR & WASTE MANAGEMENT**

REGISTER NOTICE

TITLE OF THE REGULATIONS:

Delaware Regulations Governing Hazardous Waste (DRGHW).

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing miscellaneous changes to the DRGHW that correct existing errors, adds clarification or enhances the current program.

POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday April 10, 2001 beginning at 7:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. In addition, those affected by the proposed amendments are invited to attend workshop conducted on March 29, 2001.

PREPARED BY:

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

DIVISION OF FISH & WILDLIFE

REGISTER NOTICE

SAN # 2000-17

TITLE OF THE REGULATION:

Shellfish Regulations

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

A new shellfish regulation is proposed to require recreational crabbers using a crab pot to use a Bycatch Reduction Device in each entrance in order to reduce the capture of diamond back terrapins commonly found in shallow water areas where recreational crabbers tend to set their pots, i.e., Indian River and Bay, Rehoboth Bay, Little Assawoman Bay, Big Assawoman Bay and tributaries to the Delaware River and Bay.

POSSIBLE TERMS OF THE AGENCY ACTION:

None

NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover Delaware 19901, (302)739-3441. A public hearing on these proposed amendments will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover DE at 7:30 PM on Tuesday, March 20, 2001. The record will remain open for written comments until 4:30 PM on March 30, 2001.

PREPARED BY:

Charles A. Lesser (302)-739-3441, February 6, 2001

DIVISION OF FISH & WILDLIFE

REGISTER NOTICE

SAN # 2001-05, 06 and 07

TITLE OF THE REGULATION:

To amend Tidal Finfish Regulations in order to remain in compliance with fishery management plans adopted by the Atlantic States Marine Fisheries Commission.

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Tidal Finfish Regulation No. 21, SCUP SIZE LIMIT is proposed to be amended to adjust the recreational size limit

from 7 inches to 8 inches and add a daily creel limit of 50 scup in order to reduce fishing mortality by 33% relative to the 2000 coast wide landings.

Tidal Finfish Regulation No. 23, BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS, is proposed to be amended to authorize the Division of Fish and Wildlife to adjust commercial quarterly trip (possession) limits during each of the four quarters on an as needed basis for black sea bass according to limits established by the Atlantic States Marine Fisheries commission and authorize the closure of the commercial black sea bass fishery in any quarter when the Atlantic States Marine Fisheries Commission determines a quarterly quota is filled rather than the National Marine Fisheries Service.

Tidal Finfish Regulation No. 27, SPINY DOGFISH; CLOSURE OF FISHERY, is proposed to be adopted to permanently close the commercial fishery for spiny dogfish in order to eliminate fishing mortality until this stock is recovered.

POSSIBLE TERMS OF THE AGENCY ACTION:

These regulations are required for Delaware to be in compliance with amended fishery management plans. If Delaware does not comply, that particular fishery may be closed by the Secretary of the U.S. Department of Commerce.

NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions and evidence and/or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover Delaware 19901, (302)739-3441. A public hearing on these proposed amendments will be held at the Department of Natural Resources and Environmental Control Auditorium, 89 Kings Highway, Dover DE at 7:30 PM on Tuesday, March 20, 2001. The record will remain open for written comments until 4:30 PM on March 30, 2001.

PREPARED BY:

Charles A. Lesser, (302)-739-3441, February 6, 2001

**DELAWARE RIVER BASIN
COMMISSION**

**NOTICE OF PROPOSED RULEMAKING
AND PUBLIC HEARING**

The Delaware River Basin Commission is a federal-state regional agency with representatives from the states of Delaware, New Jersey, New York, and Pennsylvania and a federal representative appointed by the President of the

United States. As such, the Commission is exempt from the requirements of 29 Delaware Code Chapter 101. The following notice, however, is published by the Delaware River Basin Commission for informational purposes.

Revised Proposed Amendment to the Delaware River Basin Commission's Water Code and Comprehensive Plan to Establish Water Usage Reporting Requirements and Proposed Amendment to the Commission's Water Metering Requirements

The public hearing will be held on Thursday, April 19, 2001 during the Commission's regular business meeting. The meeting will begin at 1:00 p.m. and continue until all those present who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary.

The deadline for submission of written comments will be April 6, 2001.

The public hearing will be held in New York City at a location to be posted on the Commission's web site, www.drbc.net, by mid-March. Directions to the meeting location will be posted on the web site as well. Written comments should be submitted to Pamela M. Bush, Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628-0360.

Supplemental information, including an explanation of the need for water usage reporting requirements and an account of the process by which the amendments originally were proposed, is contained in the original Notice of Proposed Rulemaking. The existing regulations, original Notice of Proposed Rulemaking and this Notice of Revised Proposed Rulemaking all are posted on the Delaware River Basin Commission web site at www.drbc.net. Please contact Esther Siskind at 609-883-9500 ext. 202 with questions about the proposed amendments and Pamela M. Bush, ext. 203 with questions about the rulemaking process.

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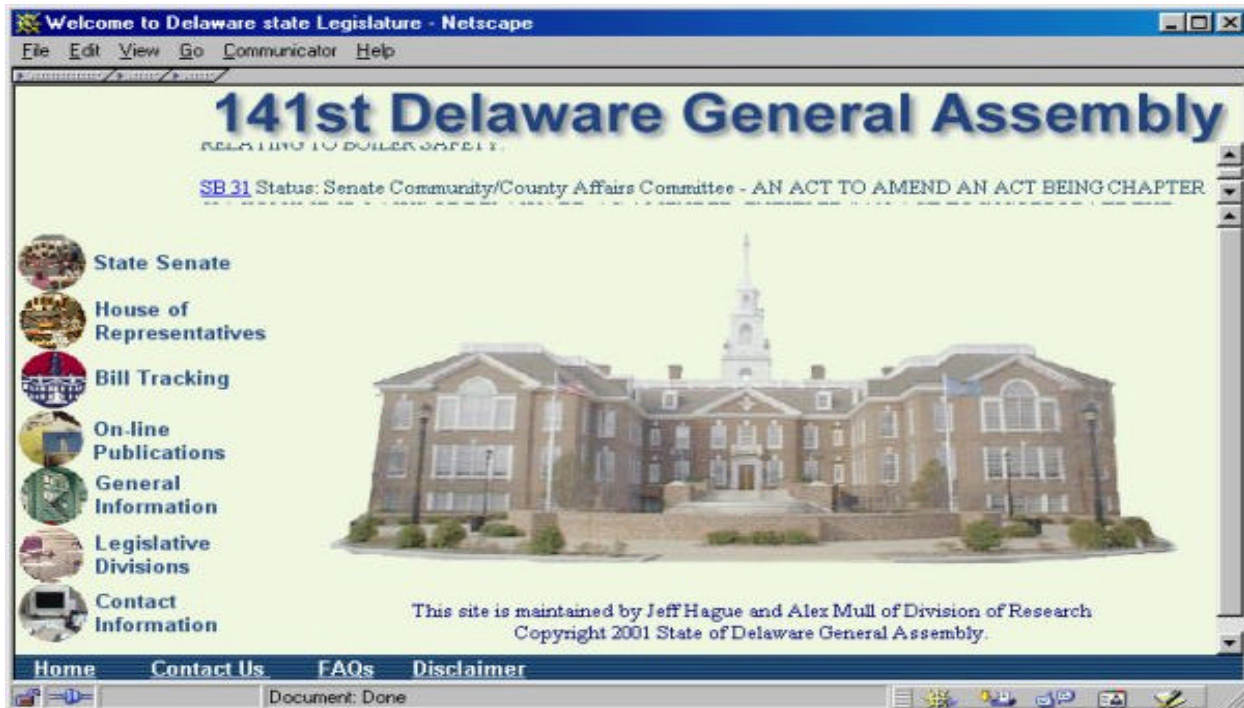
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