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# Delaware Register of Regulations

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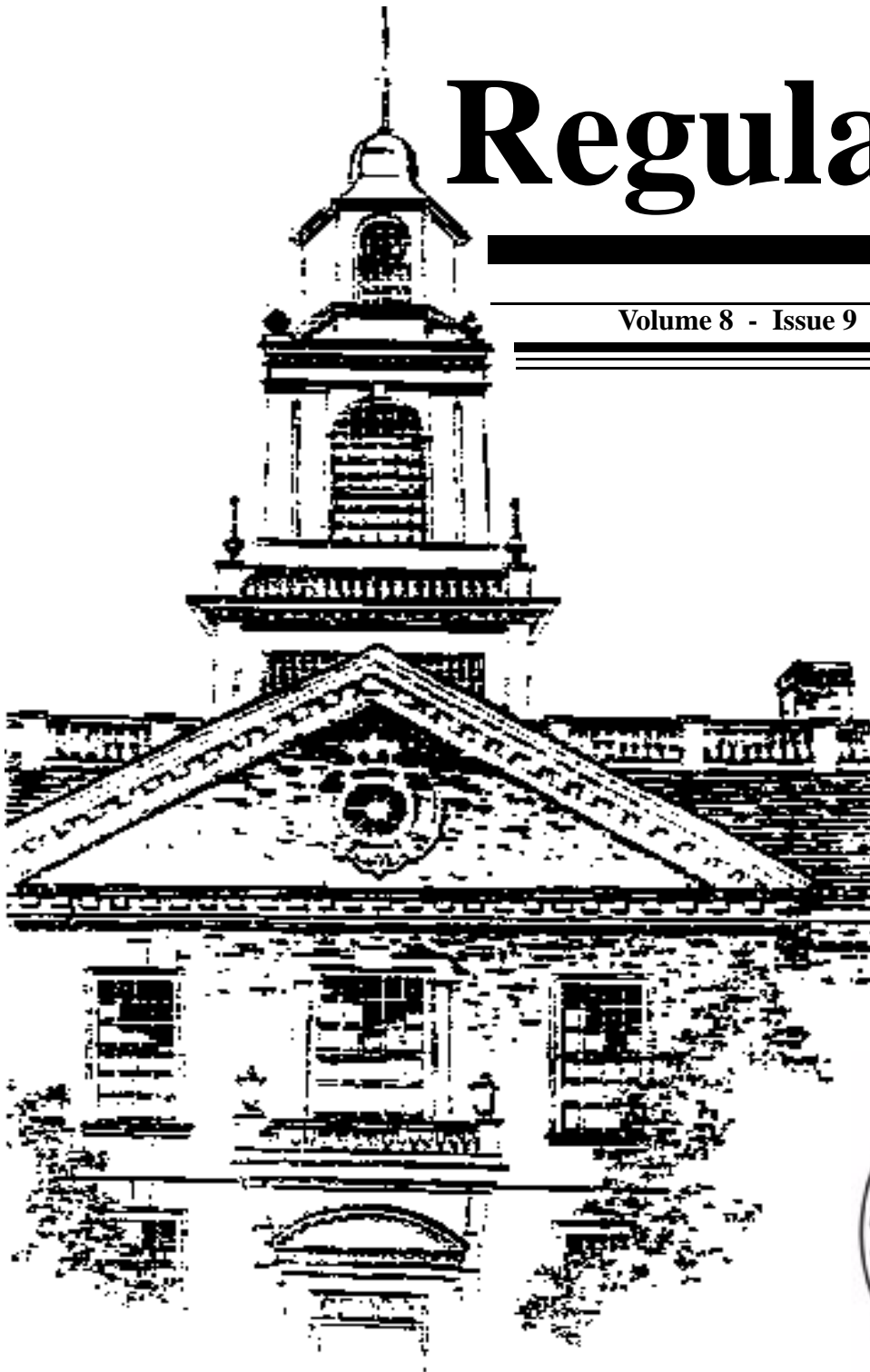
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Pages 1204 - 1338

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Final

Governor

Executive Orders

Appointments

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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, 2005.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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1205

## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

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

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

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### SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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ISSUE DATE	CLOSING DATE	CLOSING TIME
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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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.).

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**Symbol Key**

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

**Proposed Regulations**

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

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
100 BOARD OF ACCOUNTANCY**

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

**PUBLIC NOTICE**

The Delaware Board of Accountancy in accordance with 24 **Del.C.** §105(a)(1) has proposed changes to its rules and regulations. The proposal amends Board Regulation 10.8: *Composition of Continuing Professional Education*. The regulation as amended converts the stated requirements from percentages to credit hours and adds a provision that four (4) of the required credit hours shall be in a Delaware specific ethics course approved by the Board. The regulation does not change the total number of required continuing education credit hours.

A public hearing will be held on April 20, 2005 at 9:00 a.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulation may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed

regulation at its regularly scheduled meeting following the public hearing.

**100 Board of Accountancy****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~~ sixteen (16) credit hours in accounting and/or auditing and a minimum of ~~20 percent~~ sixteen (16) credit hours in taxation and four (4) credit hours in a Delaware specific ethics course approved by the Board. The remaining forty-four (44) credit 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

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

**<http://dpr.delaware.gov/boards/accountancy/index.shtml>**

## DIVISION OF PROFESSIONAL REGULATION

### 700 BOARD OF CHIROPRACTIC

Statutory Authority: 24 Delaware Code,  
Section 706(a)(1) (24 **Del.C.** §706(a)(1))  
24 **DE Admin. Code** 700

### PUBLIC NOTICE

The Delaware Board of Chiropractic in accordance with 24 **Del.C.** §706(a)(1) has proposed changes to its rules and regulations. The proposal amends rule 4.2.1 *Continuing Education for Licensees Other Than New Licensees* to provide that the maximum allowable online continuing education credits permissible in each reporting period is twelve (12) of the twenty-four (24) required hours.

A public hearing will be held on April 21, 2005 at 8:45 a.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Chiropractic, 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.

### 700 Board of Chiropractic

#### 4.0 Continuing Education

##### 4.1 Continuing Education for New Licensees:

4.1.1 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 During First Year:	Credit Hours Required:
July 1 - December 31	24 hours
January 1 - June 30	18 hours

License Granted During Second Year:	Credit Hours Required:
July 1 - December 31	12 hours
January 1 - June 30	0 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) credit hours of Board approved continuing education within the immediately preceding two (2) year period. Of the required twenty four (24) credit hours of Board approved continuing education, a maximum of twelve (12) credit hours may be fulfilled by participating in online courses.

4.2.2 Proof of continuing education shall be received at the Division of Professional Regulation, Dover, Delaware, no later than April 30<sup>th</sup> of the reporting year and shall be received every 2 years after such date. Continuing education completed before April 30<sup>th</sup> 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.

**4 DE Reg. 1940 (6/1/01)**

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

**<http://dpr.delaware.gov/boards/chiropractic/index.shtml>**

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## **DIVISION OF PROFESSIONAL REGULATION**

### **1900 BOARD OF NURSING**

Statutory Authority: 24 Delaware Code,  
Section 1906(1) (24 Del.C. §1906(1))  
**24 DE Admin. Code 1900**

#### **PUBLIC NOTICE**

PLEASE TAKE NOTICE pursuant to 29 Del.C. chapter 101 and 24 Del.C. §1906(1) the Delaware Board of Nursing proposes to revise its Rules and Regulations.

The subject matter of the proposed revisions relates to the insertion and removal of epidural catheters by Advanced Practice Nurses and also identifies specific health care acts to be excluded from delegation by competent individuals as specified in 24 Del.C. §1921(a)(19).

The proposed rule and regulation developed by the Board relating to the insertion and removal of epidural catheters provides that the insertion and removal of epidural catheters is an authorized practice for Certified Registered Nurse Anesthetists and provides that the removal of epidural catheters is authorized practice for Nurse Practitioners,

Clinical Nurse Specialists and Certified Nurse Midwives with specialized training.

Pursuant to 24 Del.C. §1906(1) and Senate Bill No. 261, as amended [74 Del. Laws C. 762], the Board of Nursing is also proposing Rules and Regulations which specifically identify health care acts to be excluded from delegation to unlicensed persons by competent individuals who do not reside in a medical facility or a facility regulated pursuant to Chapter 11 of Title 16. [See 24 Del.C. §1921(19)].

A public hearing concerning these proposed changes to the Board of Nursing Rules and Regulations will be held on Wednesday, April 13, 2005 at 9:30 a.m., in the auditorium of the Carter Partnership Building, Delaware Technical and Community College, Owens Campus, Georgetown, Delaware.

Anyone desiring a copy of the proposed Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4515 or (302) 744-4516. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be April 12, 2005. Persons wishing to make comments at the public hearing on April 13, 2005 should contact Iva Boardman at the above address or by calling (302) 744-4517.

#### **1900 Board of Nursing**

### **7.0 Standards of Nursing Practice**

#### **7.1 Authority**

“Standards of Nursing Practice” means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health care facilities and organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

#### **7.2 Purpose**

The purpose of standards is to establish minimal acceptable levels of safe practice for the Registered and Licensed Practical Nurse, and to serve as a guide for the Board to evaluate safe and effective nursing care.

#### **7.3 Standards of Practice for the Registered and Licensed Practical Nurse**

##### **7.3.1 Standards related to the Registered Nurse.**

7.3.1.1 The Registered Nurse shall conduct and document nursing assessments of the health status of individuals and groups by:



7.3.1.1.1 Collecting objective and subjective data from observations, examinations, interviews and written records in an accurate and timely manner. The data include but are not limited to:

7.3.1.1.1.1 Biophysical and emotional status and observed changes;

7.3.1.1.1.2 Growth and development;

7.3.1.1.1.3 Ethno-cultural, spiritual, socio-economic and ecological background;

7.3.1.1.1.4 Family health history;

7.3.1.1.1.5 Information collected by other health team members;

7.3.1.1.1.6 Ability to perform activities of daily living;

7.3.1.1.1.7 Consideration of client's health goals;

7.3.1.1.1.8 Client knowledge and perception about health status and potential, or maintaining health status;

7.3.1.1.1.9 Available and accessible human and material resources;

7.3.1.1.1.10 Patterns of coping and interaction.

7.3.1.1.2 Sorting, selecting, reporting, and recording the data.

7.3.1.1.3 Analyzing data.

7.3.1.1.4 Validating, refining and modifying the data by using available resources including interactions with the client, family, significant others, and health team members.

7.3.1.1.5 Evaluating data.

7.3.1.2 Registered Nurses shall establish and document nursing diagnoses that serve as the basis for the strategy of care.

7.3.1.3 Registered Nurses shall develop strategies of care based on assessment and nursing diagnoses. This includes, but is not limited to:

7.3.1.3.1 Prescribing nursing intervention(s) based on the nursing diagnosis.

7.3.1.3.2 Initiating nursing interventions through

7.3.1.3.2.1 Giving care.

7.3.1.3.2.2 Assisting with care.

7.3.1.3.2.3 Delegating care.

7.3.1.3.3 Identifying to the identification of priorities in the strategies of care.

7.3.1.3.4 Setting realistic and measurable goals for implementation.

7.3.1.3.5 Identifying measures to maintain comfort, to support human functions and responses, to maintain an environment conducive to well being, and to provide health teaching and counseling.

7.3.1.3.6 Supervising the caregiver to whom care is delegated.

7.3.1.4 Registered Nurses shall participate in the implementation of the strategy of care by:

7.3.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.3.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the direction and supervision of a recognized authority.

7.3.1.4.3 Providing an environment conducive to safety and health.

7.3.1.4.4 Documenting nursing interventions and client outcomes.

7.3.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.3.1.5 Registered Nurses shall evaluate outcomes, which shall include the client, family, significant others and health team members.

7.3.1.5.1 Evaluation data shall be appropriately documented; and

7.3.1.5.1.1 Be communicated to the client, family, significant others and appropriate members of the health care team; and

7.3.1.5.1.2 Used as a basis for modifying outcomes by reassessing client health status, modifying nursing diagnoses, revising strategies of care or prescribing changes in nursing interventions.

7.4 Standards of Practice for the Licensed Practical Nurse

7.4.1 Standards related to the Licensed Practical Nurse's contributions to the nursing process.

7.4.1.1 The Licensed Practical Nurse shall contribute to and document nursing assessments of the health status of individuals and groups by:

7.4.1.1.1 Sorting, selecting, reporting, and recording the data.

7.4.1.1.2 Collecting objective and subjective data from observations, examinations, interview and written records in an accurate and timely manner. The data include but are not limited to:

7.4.1.1.2.1 Biophysical and emotional status and observed changes;

7.4.1.1.2.2 Growth and development;

7.4.1.1.2.3 Ethno-cultural, spiritual, socio-economic, and ecological background;

7.4.1.1.2.4 Family health history;

7.4.1.1.2.5 Information collected by other health team members;

7.4.1.1.2.6 Ability to perform activities of daily living;

7.4.1.1.2.7 Consideration of client's health goals;

7.4.1.2 Licensed Practical Nurses shall participate in establishing and documenting nursing diagnoses that serve as the basis for the strategy of care.

7.4.1.3 Licensed Practical Nurses shall participate in developing strategies of care based on assessment and nursing diagnoses.

7.4.1.3.1 Contributing to setting realistic and measurable goals for implementation.

7.4.1.3.2 Participating in identifying measures to maintain comfort, to support human functions and responses to maintain an environment conducive to well-being, and to provide health teaching and counseling.

7.4.1.3.3 Contributing to setting client priorities.

7.4.1.4 Licensed Practical Nurses shall participate in the implementation of the strategy of care by:

7.4.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.4.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the directions and supervision of a recognized licensed authority.

7.4.1.4.3 Providing an environment conducive to safety and health.

7.4.1.4.4 Documenting nursing interventions and client outcomes.

7.4.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.4.1.5 Licensed Practical Nurses shall contribute to evaluating outcomes by appropriately documenting and communicating to the client, family, significant others and the health care team members.

7.5 Standards Related to the Registered and Licensed Practical Nurse's Competencies and Responsibilities.

7.5.1 Registered and Licensed Practical Nurses shall:

7.5.1.1 Have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of professional and practical nursing practice.

7.5.1.2 Accept responsibility for competent nursing practice.

7.5.1.3 Function as a member of the health team:

7.5.1.3.1 By collaborating with other members of the health team to provide optimum care, or

7.5.1.3.2 As an LPN under the direction and supervision of a recognized licensed authority.

7.5.1.4 Consult with nurses, other health team members and community agencies for continuity of care and seek guidance as necessary.

7.5.1.5 Obtain instruction and supervision as necessary when implementing nursing techniques.

7.5.1.6 Contribute to the formulation, interpreting, implementing and evaluating of the objectives

and policies related to professional and practical nursing practice within the employment setting.

7.5.1.7 Participate in evaluating nurses through peer review.

7.5.1.8 Report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal authorities.

7.5.1.9 Practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

7.5.1.10 Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.

7.5.1.11 Respect the client's right to privacy by protecting confidentiality unless obligated by law to disclose the information.

7.5.1.12 Respect the property of clients, their families and significant others. In addition to the proceeding, the Registered Nurse shall:

7.5.1.13 Delegate to others only those nursing interventions that those persons are prepared or qualified to perform.

7.5.1.14 Supervise others to whom nursing interventions are delegated.

7.5.1.15 Retain professional accountability for care when delegating.

7.5.1.16 Teach safe practice to other health care workers as appropriate.

## 7.6 Dispensing

### 7.6.1 Definitions

7.6.1.1 **"Dispensing"** means providing medication according to an order of a practitioner duly licensed to prescribe medication. The term shall include both the repackaging and labeling of medication from bulk to individual doses.

7.6.1.2 **"Prescription Label"** - a label affixed to every prescription or drug order which contains the following information at a minimum.

7.6.1.2.1 A unique number for that specific drug order.

7.6.1.2.2 The date the drug was dispensed.

7.6.1.2.3 The patient's full name.

7.6.1.2.4 The brand or established name and manufacturer and the strength of the drug to the extent it can be measured.

7.6.1.2.5 The practitioner's directions as found on the prescription order.

7.6.1.2.6 The practitioner's name.

7.6.1.2.7 The initials of the dispensing nurse.

7.6.1.2.8 The name and address of the facility or practitioner from which the drug is dispensed.

7.6.1.2.9 Expiration date.

7.6.1.3 **“Standing order”** - An order written by the practitioner which authorizes a designated registered nurse or nurses to dispense prescription drugs to his/her patients(s) according to the standards listed below.

7.6.2 Authority to Dispense

7.6.2.1 Registered Nurses may assume the responsibility of dispensing as defined in the Nurse Practice Act.

7.6.2.2 Licensed Practice Nurses may assume the responsibility of dispensing as authorized by the Nurse Practice Act and defined in these Regulations, Section 7.6.2.2.1., 7.6.2.2.2., and 7.6.2.2.3

7.6.2.2.1 Licensed Practical Nurses may provide to a patient pre-packaged medications in accordance with the order of a practitioner duly licensed to prescribe medication where such medications have been pre-packaged by a person with lawful authority to dispense drugs.

7.6.2.2.2 Licensed Practical Nurses, per written order of a physician, dentist, podiatrist, advanced practice nurse, or other practitioner duly licensed to prescribe medication, may add the name of the client to a preprinted label on a pre-packaged medication.

7.6.2.2.3 Licensed Practical Nurses in a licensed methadone clinic may apply a preprinted label to a pre-packaged medication.

7.6.3 Standards for Dispensing

7.6.3.1 All licensed nurses engaged in dispensing shall adhere to these standards.

7.6.3.1.1 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.

7.6.3.1.2 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.

7.6.3.1.3 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.

7.6.3.1.4 Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.

7.6.3.1.5 The nurse may not delegate any part of the dispensing function to any other individual who is not licensed to dispense.

7.6.3.1.6 The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.

7.6.3.1.7 The nurse-dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.

7.6.3.1.8 A usage review process must be established for the medicines dispensed to assure proper patient usage.

7.6.3.1.9 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United States Pharmacopoeia for stability.

7.6.3.1.10 Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.

7.6.3.1.11 The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.

7.6.3.1.12 Conformance to paragraphs 6 through 11 are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.

7.7 Delegation

7.7.1 Definitions

7.7.1.1 **“Accountability”** - The state of being accountable, answerable, or legally liable for actions and decisions, including supervision.

7.7.1.2 **“Delegation”** - Entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties while retaining the accountability for such act.

7.7.1.3 **“Supervision”** - The guidance by a registered nurse (RN) for the accomplishment of a function or activity. The guidance consists of the activities included in monitoring as well as establishing the initial direction, delegating, setting expectations, directing activities and courses of action, critical watching, overseeing, evaluating, and changing a course of action.

7.7.1.4 **“Unlicensed Assistive Personnel”** - Individuals not licensed to perform nursing tasks that are employed to assist in the delivery of client care. The term unlicensed assistive personnel does not include members of the client’s immediate family, guardians, or friends; these individuals may perform incidental care of the sick in private homes without specific authority from a licensed nurse (as established in 24 Del.C. §1921(a)(4) of the Nurse Practice Act).

7.7.2 Conditions

7.7.2.1 The following conditions are relevant to delegation:

7.7.2.1.1 Only RNs may delegate.

7.7.2.1.2 The RN must be knowledgeable regarding the unlicensed assistive personnel’s education and training and have opportunity to periodically verify the individual’s ability to perform the specific tasks.

7.7.2.1.3 The RN maintains accountability for determining the appropriateness of all delegated nursing duties and responsibility for the delivery of safe and competent care. Unlicensed assistive personnel may not reassign a delegated act.

#### 7.7.3 Criteria

7.7.3.1 The RN may delegate only tasks that are within the scope of sound professional nursing judgment to delegate.

7.7.3.2 Determination of appropriate factors include, but are not limited to:

7.7.3.2.1 stability of the client's condition

7.7.3.2.2 educational background, skill level, or preparation of the individual

7.7.3.2.3 nature of the nursing act that meets the following:

7.7.3.2.3.1 task is performed frequently in the daily care of a client

7.7.3.2.3.2 task is performed according to an established sequence of steps

7.7.3.2.3.3 task may be performed with a predictable outcome

7.7.3.2.3.4 task does not involve ongoing assessment, interpretation or decision making that cannot be logically separated from the task itself.

7.7.3.3 The RN must be readily available in person or by telecommunication.

#### 7.7.4 Exclusions

7.7.4.1 The following activities require nursing knowledge, judgment, and skill and may not be delegated by the RN to an unlicensed assistive person. These exclusions do not apply to Advanced Practice Nurses.

7.7.4.2 Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

7.7.4.3 Development of nursing diagnosis and care goals;

7.7.4.4 Formulation of the plan of nursing care and evaluation of the effectiveness of the nursing care provided;

7.7.4.5 Specific tasks involved in the implementation of the plan of care which require nursing judgment, skill, or intervention, that include, but are not limited to: performance of sterile invasive procedures involving a wound or anatomical site; nasogastric, newly established gastrostomy and jejunostomy tube feeding; nasogastric, jejunostomy and gastrostomy tube insertion or removal; suprapubic catheter insertion and removal; (phlebotomy is not considered a sterile, invasive procedure);

7.7.4.6 Administration of medications, including prescription topical medications; and

7.7.4.7 Receiving or transmitting verbal orders.

**1 DE Reg. 1888 (6/1/98)**

**6 DE Reg. 1195 (3/1/03)**

## 7.8 Intravascular Therapy By Licensed Nurses

Intravascular therapy encompasses several components, some of which require primarily skill proficiency with a minimum of critical judgement. Other aspects of intravascular therapy require skill proficiency and more importantly a high degree of knowledge, critical judgement and decision making to perform the function safely.

### 7.8.1 Definition Of Terms

7.8.1.1 **Vascular system** - is composed of all peripheral and central veins and arteries.

7.8.1.2 **Intravascular therapy (IV)** - is the broad term including the administration of fluids and medications, blood and blood derivatives into an individual's vascular system.

7.8.1.3 **Intravenous fluids** - include solutions, vitamins, nutrient preparations, and commercial blood fractions designed to be administered into an individual's vascular system. Whole blood and blood components, which are administered in the same manner, are considered intravenous fluids in this definition.

7.8.1.4 **Intravenous and intra-arterial medications** - are drugs administered into an individual's vascular system by any one of the following methods:

7.8.1.4.1 By way of infusion diluted in solution or suspended in fluid and administered over a specified time at a specified rate.

7.8.1.4.2 Through an established intravascular needle or catheter (referred to as "IV push").

7.8.1.4.3 By venipuncture carried out for the sole purpose of administering the medication. This method is referred to as direct medication injection (direct IV push).

7.8.1.5 Vascular access - Utilization of an established device or the introduction of a needle or catheter into an individual's vascular system.

7.8.1.6 Venipuncture - Introduction of a needle or catheter into an individual's peripheral vein for the purpose(s) of withdrawing blood or establishing an infusion or administering medications.

7.8.1.7 Intravascular therapy maintenance - Monitoring of the therapy for changes in patient's condition, appropriate flow rate, equipment function, the hanging of additional fluid containers and the implementation of site care.

7.8.1.8 Termination of intravascular therapy - Cessation of the therapy either by withdrawing a needle or catheter from an individual's vascular system or by discontinuing the infusion and maintaining the device as a reservoir.

7.8.1.9 Supervision - a registered nurse, licensed physician or dentist is physically present in the unit where the patient is being provided care, or within immediate electronic/telephone contact.

7.8.2 Conditions Of Performing Intravascular Therapy Procedures By Licensed Nurses

7.8.2.1 Intravascular therapy must be authorized by a written order from a state licensed and authorized prescriber.

7.8.2.2 The performance of any procedures of intravascular therapy by a licensed practical nurse will be done under the supervision of a registered nurse, APN, or person licensed to practice medicine, surgery, or podiatry.

7.8.2.3 Admixed intravascular solutions documented and instituted by one licensed nurse and subsequently interrupted may be re-instituted by another licensed nurse after confirmation with the state licensed and authorized prescriber's order.

7.8.2.4 Admixed intravascular solutions documented and prepared by one licensed nurse may be initiated or continued by another licensed nurse after confirmation with the state licensed and authorized prescriber's order.

7.8.2.5 Intradermal or topical anesthetics may be used by the RN or LPN when initiating vascular access therapy in various situations or settings, provided there is an authorized prescriber's order and organizational policy/procedure to support use of these medications. All RNs and LPNs must have documented educational preparation according to the employing agency's policies and procedures. Documented evidence must include both theoretical instruction including anatomy and physiology, pharmacology, nursing management and education of patients and demonstration of clinical proficiency in performance of the task.

7.8.3 Functional Scope Of Responsibility For Intravascular Therapy Procedures

7.8.3.1 Registered Nurses bear the responsibility and accountability for their nursing practice under the license granted by the Board of Nursing and are permitted to perform the following:

7.8.3.1.1 Assessment of the patient and the prescribed intravascular therapy before, during and after the therapy is carried out.

7.8.3.1.2 Acceptance and confirmation of intravascular therapy order(s).

7.8.3.1.3 Calculation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.1.4 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.1.5 Addition of prescribed medications in intravascular solution, labeling and documenting appropriately.

7.8.3.1.6 Start initial solution or add replacement fluids to an existing infusion as prescribed.

7.8.3.1.7 Vascular access for establishing an infusion or administering medications.

7.8.3.1.8 Administration of medications by "IV push".

7.8.3.1.9 Intravascular therapy maintenance.

7.8.3.1.10 Termination of intravascular therapy, including the removal of subclavian and PICC lines.

7.8.3.1.11 Access the vascular system for the purpose of the withdrawal of blood and to monitor the patient's condition before, during, and after the withdrawal of blood.

7.8.3.2 Licensed Practical Nurses bear the responsibility and accountability for their nursing practice under the license granted by the Board of Nursing and are permitted to perform the following for peripheral lines:

7.8.3.2.1 Acceptance of intravascular therapy order(s).

7.8.3.2.2 Calculation of medication dosage and infusion rate of intravascular medications prescribed. This does not include titration.

7.8.3.2.3 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.2.4 Addition of medications in intravascular solutions, label and document appropriately.

7.8.3.2.5 Venipuncture with needle device to establish access to the peripheral vascular system.

7.8.3.2.6 Start initial solution or add replacement fluids to an existing infusion as prescribed.

7.8.3.2.7 Intravascular therapy maintenance including the flushing of peripheral lines with Heparin and/or saline solution.

7.8.3.2.8 Termination of peripheral intravascular therapy.

7.8.3.2.9 Performance of venipuncture for the purpose of the withdrawal of blood and to monitor the patient's condition before, during and after the withdrawal of blood.

7.8.3.3 The Licensed Practical Nurse is permitted to perform the following procedures for central lines:

7.8.3.3.1 Acceptance of intravascular therapy order(s).

7.8.3.3.2 Calculation of medication dosage and infusion rate of intravascular medications prescribed. This does not include titration.

7.8.3.3.3 Confirmation of medication dosage and infusion rate for intravascular therapy administration.

7.8.3.3.4 Addition of medications in intravascular solutions, label and document appropriately.

7.8.3.3.5 Intravascular therapy maintenance, including the flushing of central lines with Heparin and/or saline solution.

7.8.3.3.6 Dressing and tubing changes, including PICC lines.

7.8.3.3.7 Addition of replacement fluids to an existing infusion as prescribed.

#### 7.8.4 Special Intravascular Procedures By Registered Nurses

7.8.4.1 Chemotherapy - Only intravascular routes are addressed in these rules. Review of the Oncology Nursing Society's current guidelines is recommended before the administration of anti-neoplastic agents.

##### 7.8.4.1.1 Definition of Terms

7.8.4.1.1.1 **Cancer Chemotherapy** - is the broad term including the administration of anti-neoplastic agents into an individual's vascular system.

7.8.4.1.1.2 **Anti-neoplastic agents** - are those drugs which are administered with the intent to control neoplastic cell growth.

7.8.4.1.2 The Registered Nurse who administers cancer chemotherapy by the intravascular route must have documented educational preparation according to the employing agency's policies and procedures.

7.8.4.1.3 The Registered Nurse must have documented evidence of knowledge and skill in the following:

Pharmacology of anti-neoplastic agents  
Principles of drug handling and preparation

Principles of administration  
Vascular access  
Side effects of chemotherapy on the nurse, patient, and family

#### 7.8.4.2 Central Venous Access Via Peripheral Veins

##### 7.8.4.2.1 Definition of Terms

7.8.4.2.1.1 **Central venous access** - is that entry into an individual's vascular system via the insertion of a catheter into a peripheral vein threaded through to the superior vena cava with placement confirmed by x-ray.

7.8.4.2.2 The Registered Nurse who performs central venous access via peripheral veins must have documented educational preparation according to the employing agency's policies and procedures.

7.8.4.2.3 Documented evidence must include, but is not limited to, evidence of both theoretical

instruction and clinical proficiency in performance of the task.

7.8.4.2.3.1 Theoretical instruction must include, but is not limited to, anatomy and physiology, pharmacology, nursing management, and education of patients as they relate to central venous access via peripheral veins.

7.8.4.2.3.2 A preceptor must supervise the learning experience and must document the Registered Nurse's competency in the performance of the procedure.

#### 7.8.4.3 Pain Management Via Epidural Catheter

7.8.4.3.1 It is within the scope of practice of a Registered Nurse to instill analgesics (opiates)/low dose anesthetics at analgesic levels into an existing catheter under the following conditions/exceptions:

7.8.4.3.1.1 The epidural catheter is in place.

7.8.4.3.1.2 The position of the epidural catheter was verified as correct by a physician at the time of insertion.

7.8.4.3.1.3 Bolus doses and/or continuous infusions, as pre-mixed by anesthesiologists, C.R.N.A.s, or pharmacists, of epidural analgesics/low dose anesthetics at analgesic levels can be administered by the Registered Nurse only after the initial dose has been administered. Changes in medication and/or dosage of the same medication are not defined as the initial dose.

7.8.4.3.1.4 Only analgesics (opiates)/low dose anesthetics at analgesic levels will be administered via this route for acute and chronic pain management.

7.8.4.3.1.5 The Registered Nurse must complete a course that includes, but is not limited to, a) anatomy, physiology, pharmacology, nursing management, assessment, and education of patients as they relate to epidural administration of opiates/low dose anesthetics at analgesic levels; b) a credentialed preceptor must supervise the learning experience and must document the Registered Nurse's clinical competency in the performance of the procedure.

7.8.4.3.1.6 The Registered Nurse may not insert or remove epidural catheters.

### **7.9 Exclusions of Health Care Acts pursuant to 24 Del.C. 1921(a) (19)**

7.9.1 Health care acts that shall not be delegated by a competent individual who does not reside in a medical facility or a facility regulated pursuant to Chapter 11 of Title 16 include the following:

7.9.1.1 original intravenous insertion

7.9.1.2 original suprapubic catheter insertion or removal

7.9.1.3 newly established gastrostomy or jejunostomy tube feeding

7.9.1.4 original nasogastric and gastrostomy tube insertion or removal

7.9.1.5 any jejunostomy tube insertion or removal

7.9.1.6 sterile invasive procedures not normally taught to patients and caregivers by licensed health care professionals

### 8 DE Reg. 864 (12/01/04)

## 8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware

### 8.1 Authority

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 **Del.C.** §§1902(d), 1906(1), 1906(7).

### 8.2 Purpose

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

### 8.3 Scope

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 **Del.C.** §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

### 8.4 Definitions

**“Advanced Practice Nurse”** as defined in 24 **Del.C.** §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

**“Audit”** The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

**“Board”** The Delaware Board of Nursing

**“Certified Nurse Midwife (C.N.M.)”** A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification

Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

**“Certified Registered Nurse Anesthetist (C.R.N.A.)”** A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists’ Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists’ Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

**“Clinical Nurse Specialist (C.N.S.)”** A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master’s degree program in a clinical nurse specialty or post Master’s certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

**“Clinical Nursing Specialty”** a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/ pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

### 3 DE Reg. 1373 (4/1/00)

**“Collaborative Agreement”** Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

**“Guidelines/ Protocols”** Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/ protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

**“National Certification”** That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

- American Academy of Nurse Practitioners
- American Nurses Credentialing Center
- American Association of Nurse Anesthetists
- Council on Certification of Nurse Anesthetists
- American Association of Nurse Anesthetists
- Council on Recertification of Nurse Anesthetists

National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties  
National Certification Board of Pediatric Nurse Practitioners and Nurses.

ACNM Certification Council, Inc.

**“Nurse Practitioner (N.P.)”** A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master’s program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women’s health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

**“Post Basic Program”**

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

**“Scope of Specialized Practice”** That area of practice in which an Advanced Practice Nurse has a Master’s degree or a post-basic program certificate in a clinical nursing specialty with national certification.

**“Supervision”** Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

**8.5 Grandfathering Period**

8.5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

**8.6 Standards for the Advanced Practice Nurse**

8.6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

8.6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/ or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/ protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse Within the Specialized Scope of Practice include but are not limited to:

8.7.1 Eliciting detailed health history(s)



- 8.7.2 Defining nursing problem(s)
- 8.7.3 Performing physical examination(s)
- 8.7.4 Collecting and performing laboratory tests
- 8.7.5 Interpreting laboratory data
- 8.7.6 Initiating requests for essential laboratory procedures
- 8.7.7 Initiating requests for essential x-rays
- 8.7.8 Screening patients to identify abnormal problems
- 8.7.9 Initiating referrals to appropriate resources and services as necessary
- 8.7.10 Initiating or modifying treatment and medications within established guidelines
- 8.7.11 Assessing and reporting changes in the health of individuals, families and communities
- 8.7.12 Providing health education through teaching and counseling
- 8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public
- 8.7.14 Delegating tasks appropriately
- 8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 **Del.C.** §1906(20).

8.7.16 Inserting and removing epidural catheters by Certified Registered Nurse Anesthetists

8.7.17 Removing epidural catheters by Nurse Practitioners, Clinical Nurse Specialists and Certified Nurse Midwives after specialized training in collaboration with the facility department of anesthesiology, including population specific advanced life support.

#### 8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 **Del.C.** §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an Advanced Practice Nurse

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally

certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 **Del.C.** Ch. 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 **Del.C.** §1906(20) - (22).

8.10 Temporary Permit for Advanced Practice Nurse Licensure

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of

at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and 8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1.1 current employer reference,

8.10.5.1.1.2 supervision available,

8.10.5.1.1.3 job description,

8.10.5.1.1.4 letter outlining any extenuating circumstances,

8.10.5.1.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

**3 DE Reg. 1373 (4/1/00)**

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 Del.C. Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

8.11 Maintenance of Licensure Status: Reinstatement

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

8.12 Audit of Licensees

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

8.13 Exceptions to the Requirements to Practice

8.13.1 The requirements set forth in 8.9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

8.14 Definitions

8.14.1 Collaborative Agreement - Includes

8.14.1.1 A true collegial agreement between two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 A written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a duly licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical privileges or a health care facility approved job description of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 National Certification - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

8.14.3 Pharmacology/Pharmacotherapeutics - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement

skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 Prescription Order - includes the prescription date, the name of the patient, the name, address, area of specialization and business telephone number of the advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 Requirements for Initial Independent Practice/prescriptive Authority

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article 7 of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/ pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or correspondence from school officials. If the applicant cannot produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education within the two years prior to application for independent practice and/or independent prescriptive authority. This may be

continuing education programs or a three credit, semester long graduate level course. The thirty hours may also occur during the generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings, the applicant must have available program descriptions, and/ or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 Requirements for Independent Practice/prescriptive Authority by Endorsement

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 8.15.1 and 8.15.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/ pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two years.

8.17 Application

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 Prescriptive Authority

8.18.1 APNs may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 Del.C. §2536(C), parenteral medications, medical therapeutics, devices and diagnostics.

8.18.2 APNs will be assigned a provider identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APNs must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APNs must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 Del.C. §4732(a).

8.18.4 APNs may request and issue professional samples of legend, including schedule II-V controlled

substances, and over-the-counter medications that must be labeled in compliance with 24 **Del.C.** §2536(C).

8.18.5 APNs may give verbal prescription orders.

8.19 Prescriptive Writing

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

8.20 Renewal

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/pharmacotherapeutics content may be a separate course or integrated within other offerings.

8.21 Disciplinary Proceedings

8.21.1 Pursuant to 24 **Del.C.** §1906(19)(c), the Joint Practice Committee is statutorily empowered, with the approval of the Board of Medical Practice, to grant independent practice and/or prescriptive authority to nurses who qualify for such authority. The Joint Practice Committee is also empowered to restrict, suspend or revoke such authority also with the approval of the Board of Medical Practice.

8.21.2 Independent practice or prescriptive authority may be restricted, suspended or revoked where the nurse has been found to have committed unprofessional conduct in his or her independent practice or prescriptive authority or if his or her mental or physical faculties have changed or deteriorated in such a manner as to create an inability to practice or prescribe with reasonable skill or safety to patients.

8.21.3 Unprofessional conduct, for purposes of restriction, suspension or revocation of independent practice or prescriptive authority shall include but not be limited to:

8.21.3.1 The use or attempted use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or immoral practice in connection with any acquisition or use of independent practice or prescriptive authority;

8.21.3.2 Conviction of a felony;

8.21.3.3 Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

8.21.3.4 Use, distribution or prescription of any drugs or medical devices other than for therapeutic or diagnostic purposes;

8.21.3.5 Misconduct, incompetence, or gross negligence in connection with independent or prescriptive practice;

8.21.3.6 Unjustified failure upon request to divulge information relevant to authorization or competence to independently practice or exercise prescriptive authority to the Executive Director of the Board

of Nursing or to anyone designated by him or her to request such information.

8.21.3.7 The violation of the Nurse Practice Act or of an Order or Regulation of the Board of Nursing or the Board of Medical Practice related to independent practice or prescriptive authority.

8.21.3.8 Restriction, suspension, or revocation of independent practice or prescriptive authority granted by another licensing authority in any state, territory or federal agency.

8.21.4 Complaints concerning the use or misuse of independent practice or prescriptive authority received by the Division of Professional Regulation or the Board of Nursing shall be investigated in accordance with the provisions of Title 29, Section 8807 governing investigations by the Division of Professional Regulation. As soon as convenience permits, the Board of Nursing shall assign an Investigating Board Member to assist with the investigation of the complaint. The Investigating Board Member shall, whenever practical, be a member of the Joint Practice Committee.

8.21.5 Upon receipt of a formal complaint from the Office of the Attorney General seeking the revocation, suspension or restriction of independent practice or prescriptive authority, the Committee Chairperson shall promptly arrange for not less than a quorum of the Committee to convene for an evidentiary hearing concerning such complaint upon due notice to the licensee against whom the complaint has been filed. Such notice shall comply with the provisions of the Administrative Procedures Act (29 **Del.C.** Ch. 101).

8.21.6 The hearing shall be conducted in accordance with the Administrative Procedures Act (29 **Del.C.** §101), and after the conclusion thereof, the Joint Practice Committee will promptly issue a written Decision and Order which shall be based upon the affirmative vote of a majority of the quorum hearing the case.

8.21.7 Any written Decision and Order of the Joint Practice Committee which imposes a restriction, suspension or revocation of independent practice or prescriptive authority shall not be effective prior to the approval of the Board of Medical Practice.

**4 DE Reg. 296 (8/1/00)**

**5 DE Reg. 1606 (2/1/02)**

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

**<http://dpr.delaware.gov/boards/nursing/index.shtml>**

**DIVISION OF PROFESSIONAL REGULATION  
2600 BOARD OF PHYSICAL THERAPISTS AND  
ATHLETIC TRAINERS**

Statutory Authority: 24 Delaware Code,  
Section 2604(1) (24 Del.C. §2604(1))  
24 DE Admin. Code 2600

**PUBLIC NOTICE**

The Delaware Examining Board of Physical Therapists and Athletic Trainers in accordance with 24 Del.C. §2604(1) has proposed changes to its rules and regulations as the result of statutory amendments due to the enactment of SB 292. The proposal amends the rules to reflect the current practice of athletic training.

A public hearing will be held on April 19, 2005 at 6:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 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 adopting the proposed amendments to its regulations at its regularly scheduled meeting following the public hearing.

The proposed amendments are set forth below:

**1.0 Definitions****1.1 Consultation (24 Del.C. §2612)**

1.1.1 Consultation in direct access. A licensed health practitioner who has been granted prescriptive authority must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal licensed health practitioner. If the patient does not have a personal licensed health practitioner, the Physical Therapist is to offer the patient at least three licensed health practitioner from which to choose. The referral to a licensed health practitioner after the initial thirty day period must not be in conflict with 24 Del.C. §2616(a)(8) which deals with referral for profit. If no licensed health practitioner consult has been made in this

initial thirty day period, treatment must be terminated and no treatment may be resumed without a licensed health practitioner consult.

1.1.2 Consultation with written prescription from a licensed health practitioner. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

**1.2 Direct Supervision (24 Del.C. §2611(a))**

1.2.1 Direct supervision in connection with a Physical Therapist or Athletic Trainer practicing under a temporary license means:

1.2.1.1 a licensed Physical Therapist or Athletic Trainer supervisor shall be on the premises when the individual with a temporary license is practicing and

1.2.1.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed Physical Therapist supervisor.

1.2.2 Direct supervision in relation to a Physical Therapist Assistant with less than one (1) year experience means a Physical Therapist shall be on the premises at all times and see each patient.

1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that a Physical Therapist Assistant must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.

1.2.4 The Physical Therapist is responsible for the actions of the Physical Therapist Assistant or the Athletic Trainer when under his/ her supervision. All supervision must be documented.

1.2.5 ~~Direct supervision in connection with an athletic trainer in a non-clinical setting means that the supervising athletic trainer should be personally present and immediately available to the treatment area.~~ Direct supervision in connection with an Athletic Trainer treating an injury not defined as an 'athletic injury', which must be a musculoskeletal disorder if seen for physical therapy when the athletic trainer has one (1) year or more of continuous experience means that an Athletic Trainer must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be accessible by telecommunications to the Athletic Trainer during all work hours of the Athletic Trainer.

Direct supervision in connection with an Athletic Trainer treating an injury not defined as an 'athletic

injury' which must be a musculoskeletal disorder if seen for physical therapy, when the Athletic Trainer has less than one (1) year of continuous experience means a Physical Therapist shall be on the premises at all times and see each patient.

1.2.6 Direct supervision in connection with an Athletic Trainer with a temporary license treating an 'athletic injury' is that the licensed Athletic Trainer supervisor shall be on the premises when the individual with a temporary license is practicing and all evaluations and progress notes shall be co-signed by the Athletic Trainer supervisor.

1.2.67 Direct supervision in connection with an Athletic Trainer means a Physical Therapist shall be on the premises at all times in a clinical setting and see every patient. in relation to an Athletic Trainer with one (1) year or more experience means that an Athletic Trainer must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The Supervising Athletic Trainer must have at least one (1) year experience. The Supervising Athletic Trainer must be available and accessible by telecommunications to the Athletic Trainer during all working hours.

1.2.78 At no time may a Physical Therapist supervise more than 2 Physical Therapist Assistants, 2 Athletic Trainers or 1 Physical Therapist Assistant and 1 Athletic Trainer. A Physical Therapist may only supervise 1 Physical Therapist Assistant off site. Athletic Trainers must be supervised on site.

1.2.89 Direct supervision in connection with support personnel means a licensed Physical Therapist, or Physical Therapist Assistant or Athletic Trainer shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed. On site or on premises (24 Del.C. §2602(5)), in connection with supervision of a Physical Therapist Assistant or Athletic Trainer, means that the Physical Therapist Assistant or Athletic Trainer supervising professional must be in the same physical building as the supervising Physical Therapist. On site or on premises does not refer to attached buildings is located on the same physical property where the supervision is occurring.

1.3 On site or on premises (24 Del.C. §2602(5)), in connection with supervision of a Physical Therapist Assistant or Athletic Trainer, means that the Physical Therapist Assistant or Athletic Trainer must be in the same physical building as the supervising Physical Therapist. On site or on premises does not refer to attached buildings.

1.43 Support personnel (24 Del.C. §2615) means a person(s) who performs certain routine, designated physical therapy tasks, or athletic training tasks, under the direct supervision of a licensed Physical Therapist or Physical Therapist Assistant, or Athletic Trainer. There shall be documented evidence of sufficient in-service training to

assure safe performance of the duties assigned to the support personnel.

1.54 Unprofessional Conduct (24 Del.C. §2616(7)). Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which proceeding actual injury to a patient need not be established 24 Del.C. §2616(7). Such unprofessional conduct shall include, but not be limited to, the following:

1.54.1 Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.

1.54.2 The Physical Therapist or Athletic Trainer who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.

1.54.3 The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs prohibited activities is guilty of unprofessional conduct.

1.54.4 The Physical Therapist, Athletic Trainer, or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.

1.54.5 Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

1.54.6 Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

1.54.7 Inaccurately recording, falsifying, or altering a patient or facility record.

1.54.8 Committing any act of verbal, physical, mental or sexual abuse of patients.

1.54.9 Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.

1.54.10 Failing to supervise individuals to whom physical therapy or athletic training tasks have been delegated.

1.54.11 Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

1.54.12 Violating the confidentiality of information concerning the patient.

1.54.13 Failing to take appropriate action in safeguarding the patient from incompetent health care practice.

1.54.14 Practicing physical therapy as a Physical Therapist or Physical Therapist Assistant or athletic training as an Athletic Trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.

1.54.15 Practicing as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer when physical or mental ability to practice is impaired by alcohol or drugs.

1.54.16 Diverting drugs, supplies or property of a patient or a facility.

1.54.17 Allowing another person to use his/her license.

1.54.18 Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer.

1.54.19 Impersonating any applicant or acting as proxy for the applicant in a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer licensing examination.

1.54.20 A Physical Therapist, who initiated a physical therapy plan of care without a referral, continuing to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a licensed health practitioner consult. An Athletic Trainer continuing to treat a patient, who initiated treatment for a minor strain, sprain, or contusion for longer than thirty days without a licensed health practitioner consult; preventative taping, padding, bandaging, icing and conditioning excluded.

1.54.21 Substantially modifying a treatment prescription without consulting the referring licensed health practitioner.

1.54.22 Failing to comply with the mandatory continuing education requirements of 24 Del.C. §2607(a) and Section 7 of these rules and regulations.

**4 DE Reg. 1114 (1/1/01)**

**5 DE Reg. 2101 (5/1/02)**

## **2.0 Board**

2.1 Specific duties of the officers:

2.1.1 The Chairperson:

2.1.1.1 Shall call meetings of the Board at least twice a year.

2.1.1.2 Shall represent the Board in all official functions and act as Board spokesperson.

2.1.2 The Vice-Chairperson:

2.1.2.1 Shall substitute for the Chairperson during the officer's absence.

2.1.3 The Secretary:

2.1.3.1 Shall preside when the Chairperson and Vice-Chairperson are absent.

## **3.0 Physical Therapist Assistants (24 Del.C. §2602(3))**

The Physical Therapist Assistant may treat patients only under the direction of a Physical Therapist as defined in Sections 1.2.2 and 1.2.3. The Physical Therapist Assistant may perform physical therapy procedures and related tasks that have been selected and delegated by the supervising

Physical Therapist. The Physical Therapist Assistant may administer treatment with therapeutic exercise, massage, mechanical devices, and therapeutic agents that use the properties of air, water, electricity, sound or light. The Physical Therapist Assistant may make minor modifications to treatment plans within the predetermined plan of care, assist the Physical Therapist with evaluations, and document treatment progress. The ability of the Physical Therapist Assistant to perform the selected and delegated tasks shall be assessed by the supervising Physical Therapist. The Physical Therapist Assistant shall not perform interpretation of referrals, physical therapy evaluation and reevaluation, major modification of the treatment plan, final discharge of the patient, or therapeutic techniques beyond the skill and knowledge of the Physical Therapist Assistant or without proper supervision.

## **4.0 Athletic Trainers (24 Del.C. §2602)**

~~The Athletic Trainer in a clinical setting — 24 Del.C. §2602(5)).~~

~~The Athletic Trainer in a nonclinical setting — 24 Del.C. §2602(5)).~~

### 4.1 Athletic injuries:

#### 4.1.1 Athletic trainers may treat athletic injuries.

Athletic injuries shall be considered musculoskeletal injuries to athletes that occur while currently participating in, or currently training for, scholastic, professional, or sanctioned amateur athletics, where such injury limits the athlete's ability to participate or train for their sport. Athletic Trainers may also treat musculoskeletal injuries received by athletes that occur while currently participating in recreational activities, where such recreational activities are recognized by the Amateur Athletic Union (see website for list of activities within the AAU). All Athletic injuries must be documented by the Athletic Trainer as interfering with participation in or training for such athletic activities. Nothing prohibits the Athletic Trainer from treating minor sprains, strains, and contusions to athletes currently participating in professional, scholastic, recreational, or sanctioned amateur athletic activities.

### 4.2 Non-athletic injuries:

#### 4.2.1 Athletic Trainers may treat

musculoskeletal injuries as part of a physical therapy plan of care only under the direction and supervision of a Physical Therapist as defined in sections 1.2.5 and 1.2.6. The Athletic Trainer may perform physical therapy and athletic training procedures and related tasks that have been selected and delegated by the supervising physical therapist. The Athletic Trainer may administer treatment with therapeutic exercises and modalities such as heat, cold, light air water, sound, electricity, massage and non-thrust mobilization. The Athletic Trainer may document treatment progress. The ability of the Athletic Trainer to perform selected and delegated tasks shall be assessed by the supervising



Physical Therapist. The Athletic Trainer shall not perform interpretation of referrals, physical therapy evaluation and reevaluation, modification of the treatment plan, final discharge of the patient, or therapeutic techniques beyond the skill and knowledge of the athletic trainer without proper supervision. The supervising Physical Therapist must be contacted for approval to make any modification of the treatment plan within the physical therapy plan of care.

**4.3 Exceptions:**

4.3.1 Nothing in this regulation shall limit an Athletic Trainer's ability to provide preventative care procedures of conditioning, taping, protective bandaging, padding and icing. Nothing in this regulation shall limit an Athletic Trainer's ability to provide emergency treatment to injuries, or to provide immediate care to athletes who are currently participating in scholastic, professional, or sanctioned amateur athletics, within the scope of their training, so long as the immediate care does not last longer than 5 days.

**5.0 Support Personnel (24 Del.C. §2615)**

5.1 Treatments which may be performed by support personnel under direct supervision are:

- 5.1.1 ambulation
- 5.1.2 functional activities
- 5.1.3 transfers
- 5.1.4 routine follow-up of specific exercises
- 5.1.5 hot or cold packs
- 5.1.6 whirlpool/Hubbard tank
- 5.1.7 contrast bath
- 5.1.8 infrared
- 5.1.9 paraffin bath
- 5.1.10 ultra sound

5.2 Exceptions - A support person may perform:

5.2.1 patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and

5.2.2 set up and preparation of patients requiring treatment using ~~Physical Therapist~~ modalities.

5.3 Prohibited Activities - support personnel may not perform:

- 5.3.1 evaluation, or
- 5.3.2 treatments other than those listed in Section 5.1.

**4 DE Reg. 1114 (1/1/01)**

**6.0 Qualifications of Applicant (24 Del.C. § 2606)**

6.1 Applications, copies of the rules and regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

6.2 Applicants for Physical Therapist or Physical Therapist Assistant licensure shall not be admitted to the

examination without the submission of the following documents:

6.2.1 Professional Qualifications - proof of graduation (official transcript) from an educational program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.

6.2.2 A fee in check or money order payable to the State of Delaware.

6.2.3 A completed application form.

6.3 The Board may use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy and the APTA, respectively.

6.4 All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in Section 6.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

6.5 Applicants for licensure as an Athletic Trainer must submit to the Board the following:

6.5.1 Professional Qualifications - proof of graduation (official transcript) from an educational program described in 24 Del.C. §2606(a)(1), whether an accredited program or National Athletic Trainers Association Board of Certification (NATA BOC) internship.

6.5.2 Official letter of Athletic Trainer certification from NATABOC.

6.5.3 A check or money order made payable to the State of Delaware.

6.5.4 The completed application form.

6.6 Licenses shall expire biennially on every odd numbered year. The following items shall be submitted upon application for renewal:

6.6.1 completed renewal application form,

6.6.2 applicable fee, and

6.6.3 for individuals seeking renewal, evidence of continuing education courses as provided by Section 7.

**7.0 Mandatory Continuing Education Units (CEU's) (24 Del.C. §2607 (a))**

7.1 Three CEU's are required for every biennial license renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. The Continuing Education Unit Activity Record (CEUAR) credits shall be received at the Division of Professional Regulation, Dover, Delaware, no later than November 30<sup>th</sup> of every even numbered year and shall be received every 2 years after such date.

7.2 Individuals shall maintain the following items in order to receive credit for CEU's:

7.2.1 name of applicant seeking renewal

7.2.2 license classification (Physical Therapist, Physical Therapist Assistant, Athletic Trainer)

- 7.2.3 license number of applicant
- 7.2.4 proof of attendance at CEU course
- 7.2.5 date of CEU course
- 7.2.6 instructor(s) of CEU course
- 7.2.7 sponsor of CEU course
- 7.2.8 title of CEU course
- 7.2.9 number of hours of CEU course

7.3 Continuing Education Regulations, (24 Del.C. §2607(a)). Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The purpose of this is to help Physical Therapists, Physical Therapist Assistants, and Athletic Trainers become more efficient in achieving their objectives.

7.3.1 For a licensee to renew a license, the licensee must complete three continuing education units over the two year period immediately preceding November 30<sup>th</sup> of each even year. CEU's completed before November 30<sup>th</sup> of the even year shall not be carried over to the next renewal period. Any continuing education completed in the December or January preceding renewal will apply to the next renewal period. CEU requirements shall be prorated for new licensees. If the license is granted during the six month period shown below, the following will be required for renewal:

Odd Numbered Year	Even Numbered Year
1/1- 6/30 2.5 CEUs	1/1- 6/30 1.5 CEUs
7/1-12/31 2.0 CEUs	7/1-12/31 .5 CEUs

7.3.2 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU). Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists. Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's. Any sponsors or licensees wishing to receive prior written approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU's may not be carried over from one biennial period to the next one.

7.3.3 At the time of license renewal, the appropriate forms will be supplied by the Board. Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation

of the CEU's. The CEUAR is due November 30<sup>th</sup> of the even year. All questionable CEUAR's will be re-evaluated.

7.3.4 In the event a licensee shall fail to complete the required credits by November 30, 2000, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 7.3.3 is accompanied by a specific plan for making up the deficiency of necessary credits by March 31, 2001. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full completion of the licensee's plan shall be reported by CEUAR not later April 15, 2001. Failure to complete the specific plan may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 1.5.22. This provision no longer applies effective with the 2003 renewal.

7.3.5 The Board has the power to waive any part of the entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than November 30<sup>th</sup> of the end of the respective CEU term.

7.3.6 CEU's may be earned through Board approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars, conferences, lectures, videotapes, professional presentations and publications, and in-services oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable direction and qualified instruction. The program may include staff development activities of agencies and cross-disciplinary offerings.

7.3.7 The following are examples of acceptable continuing education which the Board may approve. The Board will determine the appropriate number of contact hours for these categories of continuing education, subject to any limitation shown below.

7.3.7.1 professional meetings including national, state, chapter, and state board meetings

7.3.7.2 seminars/workshops

7.3.7.3 staff/faculty in-services

7.3.7.4 first time presentation of professionally oriented course/lecture (0.3 CEU/hour per presentation)

7.3.7.5 approved self studies including:

- videotapes, if:

- there is a sponsoring agency

- there is a facilitator or program official

present

- the program official is not the only

attendee

- correspondence course, if a sponsoring agency provides a certificate of completion

7.3.8 The following are also examples of acceptable continuing education in the amount of CEU's shown.

7.3.8.1 university/college courses:

1.0 CEU for semester

0.8 CEU for trimester

0.7 CEU for quarter

7.3.8.2 passing of licensing examination (1.5 CEU's)

7.3.8.3 original publication in peer reviewed publication (0.3 CEU)

7.3.8.4 original publication in non-peer reviewed publication (0.1 CEU)

7.3.8.5 holding of an office (0.3 CEU), to include:

- executive officer's position for the national or state professional associations (President, Vice-President, Secretary, Treasurer)

- member, Examining Board of Physical Therapists

7.3.8.6 acting as the direct clinical instructor providing supervision to a Physical Therapist, Physical Therapist Assistant or Athletic Trainer student officially enrolled in an accredited institution program during an internship (40 contact hours = 0.1 CEU).

7.3.8.7 acting as the direct clinical instructor providing supervision to an Athletic Training student officially enrolled in an accredited Athletic Training Education Program (40 contact hours = 0.1 CEU).

## 8.0 Admission to Practice, Licensure by Reciprocity (24 Del.C. §2610)

Definition - The granting of a license to an applicant who meets all the requirements set forth in this section and 24 Del.C. §2610.

8.1 The reciprocity applicant shall submit the documentation listed in rules 6.2 or 6.5.

8.2 An applicant shall be deemed to have satisfied this section upon evidence satisfactory to the Board that he/she has complied with the standards set forth below:

8.2.1 The Physical Therapist or Physical Therapist Assistant applicant has passed the examination in the state, territory, or the District of Columbia in which he/she was originally licensed/registered. The passing score shall be 1.5 standard deviation below the national norm for those Physical Therapists and Physical Therapist Assistants having taken the examination prior to 1990.

8.2.2 All Physical Therapist/Physical Therapy Assistant reciprocity applicants shall supply his/her examination scores to the Board. The applicant may obtain his/her scores from the regulatory body of the state, territory, or the District of Columbia in which he/she was originally

licensed/registered or from the FSBPT Score Transfer Service. From Physical Therapist applicants who were licensed/registered by a state, territory, or the District of Columbia only prior to 1963, the Board shall accept the following:

8.2.2.1 Professional Examination Service-American Physical Therapy Association (PES-APTA) examination scores with a passing grade of 1.5 standard deviation below the national norm on all sections, or

8.2.2.2 other examining mechanisms which in the judgment of the Board were substantially equal to the mechanisms of the State of Delaware at the time of examination.

8.2.3 For the Athletic Trainer candidate, the passing score shall be that which was established at time of examination. All sections of the examination shall be passed. The reciprocity applicant shall ~~supply his/her examination scores to the Board.~~ have their National Athletic Trainer Association Board of Certification (NATABOC) [verification of certification] forwarded directly to the Board office.

## 9.0 Temporary Licensure (24 Del.C. §2611)

9.1 The Board may issue a temporary license to all applicants who have submitted to the Board the documents listed in Rule 6.2 and Rule 6.5, respectively, and who have been determined to be eligible to take the examination. The Board shall accept a letter signed by the Physical Therapist or Physical Therapist Assistant applicant's school official stating that the applicant has completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. The Board will determine the Physical Therapist or Physical Therapist Assistant applicant's eligibility to take the examination. In the case of Athletic Trainer applicants for temporary license, a letter from NATA stating the applicant's eligibility to take the NATA examination will be required. Physical Therapist and Physical Therapist Assistant applicants may practice only under the direct supervision of a licensed Physical Therapist. Athletic Trainer applicants may practice only under the direct supervision of a licensed Athletic Trainer ~~in a non-clinical setting. In a clinical setting, Athletic Trainer applicants may practice only under the direct supervision of a licensed or Physical Therapist.~~ as that supervision is defined in regulation 1.2 above. A temporary license shall expire upon notice to the applicant of his/her failure to pass the license examination and may not be renewed. In all other cases, a temporary license may be renewed only once.

9.2 Applicants requesting reciprocity as a Physical Therapist, Physical Therapist Assistant, and Athletic Trainer. The Board may issue a temporary license to an applicant upon the applicant's submission of letters of good standing from all jurisdictions in which the applicant is or has ever

been licensed. The temporary licensee may practice only under the direct supervision of an applicable licensed professional.

9.3 Applicants engaged in a special project, teaching assignment, or medical emergency as described in 24 Del.C. §2611(b) must submit letters of good standing from all jurisdictions in which the applicant is or has ever been licensed.

**5 DE Reg. 2101 (5/1/02)**

**10.0 Foreign Trained Applicant for Licensure (24 Del.C. §2606 (b))**

10.1 Applicants for licensure who are graduates of a Physical Therapist, Physical Therapist Assistant school or Athletic Trainer program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

10.1.1 The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards in the Course Work Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States. The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by one of four independent agencies:

International Educational Research Foundation, Inc.  
P.O. Box 3665  
Culver City, CA 90231  
(Address change 2/1/01)

International Consultants of Delaware, Inc.  
109 Barksdale Professional Center  
Newark, DE 19711

Educational Credential Evaluators, Inc.  
P.O. Box 92970  
Milwaukee, WI 53202-0970

Foreign Credentialing Commission for Physical  
Therapists  
P.O. Box 25827  
Alexandria VA 22313-9998

10.1.2 The applicant shall complete the requirements of rules 6.2 or 6.5.

10.1.3 The applicant shall pass the examination described in rules 6.3 and 6.4.

**11.0 Reactivation and Reinstatement (24 Del.C. §2607)**

11.1 Any person who has been registered in the State and is not actively engaged in the practice of physical therapy or athletic training in the State may, upon request, be placed on the inactive register for the remainder of the biennial licensure period. Subsequent requests for extensions of inactive status should be submitted biennially. The Board may reactivate an inactive license if the Physical Therapist, Physical Therapist Assistant or Athletic Trainer:

11.1.1 files a written request for reactivation;

11.1.2 has been actively engaged in the practice for the past five years. If the licensee has not met this condition, the following requirements shall be completed:

11.1.2.1 The Physical Therapist, ~~or Physical Therapist Assistant, or Athletic Trainer~~ or Physical Therapist Assistant working in a clinical setting shall work under the direct supervision of a Physical Therapist/Athletic Trainer in Delaware for a minimum of six months.

11.1.2.2 The Athletic Trainer ~~working in a nonclinical setting~~ shall work under the direct supervision of an Athletic Trainer in Delaware for a minimum of six months.

11.1.2.3 At the end of the period, the supervising Physical Therapist/Athletic Trainer shall certify to the applicant's clinical competence on forms supplied by the Board;

11.1.3 submits proof of completion of 1.5 CEU's during the previous 12 months.

11.2 Provided reinstatement is requested within 5 years of the expiration date, the Board may reinstate the license of a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who allowed their license to lapse without requesting placement on the inactive register if the Physical Therapist, Physical Therapist Assistant, or Athletic Trainer:

11.2.1 completes a form supplied by the Board

11.2.2 provides proof of completion of 3.0 CEU's during the previous 24 months

11.3 If the license has been expired over five years, the Physical Therapist/Physical Therapist Assistant/Athletic Trainer must file a new application and provide proof of completion of 3.0 DEU's when reapplying under the provisions which govern reciprocity.

**5 DE Reg. 2101 (5/1/02)**

**6 DE Reg. 189 (8/1/02)**

**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, 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.

12.2 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.

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 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 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.

12.5 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.

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. 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.

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 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.

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, 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.

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 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 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 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 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 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.

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## **DIVISION OF PROFESSIONAL REGULATION**

### **3100 BOARD OF FUNERAL SERVICES**

Statutory Authority: 24 Delaware Code,  
Section 3105(a)(10) (24 Del.C. §3105(a)(10))  
24 DE Admin. Code 3100

#### **PUBLIC NOTICE**

The Delaware Board of Funeral Services in accordance with 24 Del.C. §3105(a)(1) has proposed changes to its rules and regulations relating to continuing education. The proposal authorizes the automatic approval of courses offered by the Academy of Funeral Services Practitioners (AFSP) or state boards that license funeral directors.

A public hearing will be held at 10:30 a.m. on April 6, 2005, in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rule may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may

forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

### **3100 Board of Funeral Services**

#### **9.0 Continuing Education Regulations**

##### **9.1 Board Authority**

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

##### **9.2 Requirements**

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

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

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

##### **9.3 Waiver of the CE Requirement**

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

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

##### **9.4 Continuing Education Program Approval**

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

9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions,

government agencies, professional or trade associations and foundations and private firms. Programs offered by the Academy of Funeral Service Practitioners (AFSP) or state boards that license funeral directors are automatically approved. Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.

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

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

• College courses.

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

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

9.4.5 Application for CE program approval shall include the following:

9.4.5.1 Date and location.

9.4.5.2 Description of program subject, material and content.

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

9.4.5.4 Name of instructor(s), background, expertise.

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

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

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

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

## 9.5 Continuing Education Committee

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

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

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

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

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

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

## 9.6 Certification of Continuing Education - Verification and Reporting

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

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

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

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

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

9.6.6 Programs approved for continuing education credit by another state funeral board other than Delaware shall be automatically approved for all Delaware

licensees upon written application and verification of CE credits by the applicable state board.

**5 DE Reg. 606 (9/1/01)**

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

**<http://dpr.delaware.gov/boards/funeralservices/index.shtml>**

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## **DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 525

**Education Impact Analysis Pursuant To  
14 Del.C. §122(d)**

### **PUBLIC NOTICE**

#### **525 Requirements for Career Technical Education Programs**

##### **A. Type Of Regulatory Action Required**

Amendment to Existing Regulation

##### **B. Synopsis Of Subject Matter Of The Regulation**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 525 Requirements for Career-Technical Education Programs in order to add the JDG student organization to 2.9 and to correct a number of punctuation errors in sections 3.0 and 4.0.

##### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation clarifies how Jobs for Delaware Graduates Programs may qualify for State occupational-vocational units but does not specifically address student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses how Jobs for Delaware Graduates Programs may qualify for State occupational-vocational units not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses how Jobs for Delaware

Graduates Programs may qualify for State occupational-vocational units not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses how Jobs for Delaware Graduates Programs may qualify for State occupational-vocational units not issues of students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the State and to the local school boards of compliance with the regulation.

#### **525 Requirements for Career Technical Education Programs**

**1.0 All Career-Technical Education Programs shall meet the provisions of Delaware's State Plan for Career and Technical Education and meet the provisions of the content standards approved by the Department of Education or, if there are no approved state content standards, meet local program standards approved by the Department of Education.**



**2.0 All local school districts and charter schools that offer state approved Career-Technical Education Programs shall:**

2.1 Have the approval of the Department of Education before implementing new programs.

2.2 Have adequate funding to support and sustain the instructional program.

2.3 Employ teachers certified in Career-Technical Education Program areas.

2.4 Make provisions for meeting the unique needs of all students.

2.5 Establish and maintain an active advisory committee which includes labor and management personnel to assist in the development and operation of the program.

2.6 Use present and projected labor market information, available from the Delaware Occupational Information Coordinating Committee, to determine the need for new and continuing Career-Technical Education Programs.

2.7 Survey local business and industry to determine their occupational needs and the availability of placement and employment opportunities for program completers.

2.8 Survey the student population to determine their occupational interests and needs.

2.9 Organize and financially support career-technical student organizations as integral components of Career-Technical Education Programs in public schools that complement and enrich instruction. The following career-technical student organizations are affiliated in Delaware:

2.9.1 Business Professionals of America (BPA)

2.9.2 Technology Student Association (TSA)

2.9.3 Distributive Education Clubs of America (DECA), an association of marketing students

2.9.4 Family, Career and Community Leaders of America (FCCLA)

2.9.5 The National FFA Organization

2.9.6 Skills USA/VICA

2.9.7 The Delaware Career Association (DCA)

2.10 Integrate related academic content into individual career-technical education courses, and guide students through a course selection process that supports the necessary academic preparation required by the student's career path and educational goals.

2.11 Schedule trade and industrial education programs, when offered, for a minimum of two consecutive periods a day or the equivalent, five days a week for two or more years.

2.12 Establish no rules practices or regulations that interfere with, prohibit or otherwise prevent students from having the opportunity to learn about, enroll in and complete a Career-Technical Education Program in a career-technical school district.

2.13 Use equipment and facilities comparable to that used by local business and industry for which the Career-Technical Education Program is preparing students.

2.14 Schedule Department of Education and Delaware Advisory Council on Career Education program review and monitoring visits upon request.

**3.0 Cooperative Education Programs:** Cooperative Education Programs provide senior Career-Technical Education Program students with coordinated on-the-job training not ordinarily available in the classroom. During the student's senior year, employers may provide this on-the-job training in occupations directly related to the Career-Technical-Education Program in which the student is enrolled. For the purpose of granting credit during the school year two hours of Cooperative Education Work Experience shall equal one hour of instructional time. In a summer Cooperative Education Work Experience Program one-half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.

3.1 In order to qualify for Career-Technical Education funding units the Career-Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Cooperative Education Work Experience Program in order to make quarterly visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

3.2 In order to qualify for Career-Technical Education funding units the students shall; possess minimum occupational competencies specified by the Career-Technical Education Teacher Coordinator before being placed in cooperative employment, be in their senior year and be in a Cooperative Education Work Experience Program that relates directly to the student's current or completed career-technical education pathway and be supervised through on-site visits by an assigned Career-Technical Education Program Teacher Coordinator or Career Guidance Counselor.

3.3 In order to qualify for Career-Technical Education funding units the school shall have on file; for each student; a training agreement that includes training objectives and is signed by a parent or guardian, the employer, the student and a representative of the district. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file.

3.4 For an IDEA eligible student; the student's IEP team; in consultation with the Career Technical Education Teacher Coordinator; may authorize the student's participation in this program irrespective of lack of senior year status, if necessary, to provide the student a free, appropriate public education.

**4.0 Diversified Occupations Programs:** Diversified Occupations Programs provide students with coordinated

on-the-job training not ordinarily available in the classroom. During the student's junior and senior year, employers provide this on-the-job training. For the purpose of granting credit during the school year, two hours of work experience in a Diversified Occupations Work Experience Program shall equal one hour of instructional time. In a summer Diversified Occupations Work Experience Program one-half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

4.1 In order to qualify for Career-Technical Education funding units a Career-Technical Education Program Teacher or Career Guidance Counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the Diversified Occupations Work Experience Program in order to make on-site visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

4.2 In order to qualify for Career-Technical Education funding units the students shall; possess minimum readiness competencies as specified by the Career-Technical Education Program Teacher Coordinator before being placed in a Diversified Occupations Work Experience Program employment situation, be in their junior or senior year and be actively enrolled in a Diversified Occupations Work Experience Program that meets for at least one class period per week.-

4.3 In order to qualify for Career-Technical Education funding units the school shall have on file; for each student; a training agreement that includes training objectives and is signed by a parent or guardian, the employer, the student and a representative of the district. A State Work Permit for Minors in accordance with State Department of Labor regulations shall also be on file-

4.4 For an IDEA eligible student, the student's IEP team, in consultation with the Career Technical Education Teacher Coordinator, may authorize the student's participation in this program irrespective of lack of junior or senior year status, if necessary, to provide the student a free, appropriate public education.

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**DEPARTMENT OF EDUCATION**  
Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 545

**Education Impact Analysis Pursuant To  
14 Del.C. §122(d)**

**PUBLIC NOTICE**

**545 K-12 School Counseling Program**

**A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 545 K-12 School Counseling Program. The amendments add "K-12" before the word "plan" in Section 1.0 and add the phrase "and implemented by a State certified school counselor" at the end of Section 1.4.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation can help improve student achievement as measured against state achievement standards through the support of a counseling plan.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation may help to ensure that all students receive an equitable education through the support of the counseling plan.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation may add to the protection of students' health and safety through the support of the counseling plan.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation may help in the protection of students' legal rights through the support of the counseling plan.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the State and to the local school boards of compliance with the regulation.

### 545 K-12 School Counseling Programs

**1.0 Each local school district shall have a written K-12 plan for the district's school counseling program.** The Plan shall:

1.1 Include the American School Counselors Association's National Standards for School Counseling Programs in the areas of Academic Development, Career Development and Personal/Social Development.

1.2 Be on file in the district office.

1.3 Be reviewed and updated by the local school district every three (3) years.

1.4 Be incorporated in the individual school improvement plans that are reviewed as part of the Quality Review process and be implemented by a State certified school counselor.

**DEPARTMENT OF EDUCATION**  
Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 727

**Education Impact Analysis Pursuant To  
14 Del.C. §122(d)**

**PUBLIC NOTICE**

**727 Credit for Experience for Administrators, Teachers  
and Specialists**

**Education Impact Analysis Pursuant To  
14 Del.C. Section 122(d)**

**A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to amend 14 **DE Admin Code** 727 Credit for Experience for Administrators, Teachers and Specialists. The amended regulation has been renamed as Credit for Experience for Educators and for Secretarial Staff. As amended it includes the experience credit of one year granted to a graduate of a five year preservice program or a graduate of a four year preservice program who graduates with a GPA of 3.75 or higher on a 4.0 scale pursuant to 14 **Del. C.** §1312(a).

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses credit for experience for educators and secretarial staff not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses credit for experience for educators and secretarial staff not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses credit for experience for educators and secretarial staff not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses credit for experience for educators and secretarial staff not students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

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

### **727 Credit for Experience for Administrators, Teachers and Specialists**

~~1.0 Administrators: No credit shall be given for part time employment in Administrative and Supervisory positions.~~

~~2.0 Teachers: Days taught as a substitute or as a teacher's aide may not be used toward credit for experience; however, employment as a teacher on a regular part time basis may be used toward credit for experience.~~

~~2.1 As used in this instance, a "regular part time" employee is one who is employed in a position which requires at least 50 hours per month for at least 9 months during a period of 12 consecutive months.~~

~~3.0 Secretaries: Secretaries may be granted one (1) year's experience for each creditable year of experience as a secretary in private business, public school, or other governmental agency.~~

~~4.0 Creditable experience includes experience obtained while working outside of Delaware. 4.1 This regulation applies to the determination of creditable experience for salary purposes only, and does not apply to the determination~~

~~of creditable experience for pension purposes which is specified in 29 Del.C. Ch. 55. Laws on employment and salary for administrators, teachers, and secretaries are found in 14 Del.C. Ch. 13.~~

### ~~3-DE Reg. 1542 (5/1/00)~~

### **1.0 Educators Graduating from a 5-Year or 4-Year Preservice Program**

#### **1.1 Definitions**

1.1.1 The following words and terms when used in this subsection shall have the following meaning unless the context clearly indicates otherwise:

"Four Year Preservice Program" means a regionally accredited college or university four year preservice undergraduate bachelor degree program.

"Five Year Preservice Program" means a regionally accredited college or university five year planned degree program which includes an extensive clinical component or internship in the fifth year.

"Grade Point Average (GPA)" means the grade point average (GPA) stated on the official transcript of the regionally accredited college or university granting the bachelor's degree in the Four Year Preservice Program.

1.2 Pursuant to 14 Del.C. §1312(a), a graduate of a five year preservice program, or a graduate of a four year preservice program who graduates with a GPA of 3.75 or higher on a 4.0 scale or the equivalent, shall be granted one year of experience on the applicable state salary schedule.

1.3 Eligible employees for the one year credit of experience shall include any employee paid in accordance with 14 Del.C. §1305, who meets the requirements in 1.2 and was hired after July 1, 2001. Eligible employees include, but are not limited to, teachers, nurses, librarians, psychologists, therapists, counselors, and school and district level administrators.

### **2.0 Administrators**

2.1 No credit for experience shall be given for part time employment in administrative or supervisory positions.

### **3.0 Teachers**

3.1 Days taught as a substitute or as a paraeducator may not be used toward credit for experience; however, employment as a teacher on a regular part time basis may be used toward credit for experience.

3.1.1 A "regular part time" employee is one who is employed in a position which requires at least 50 hours per month for at least 9 months during any 12 consecutive month period.

### **4.0 Secretarial Staff**

4.1 Secretaries may be granted one (1) year's experience for each creditable year of experience as a

secretary in private business, public or private school, or other governmental agency.

**5.0 Creditable experience includes experience obtained while working outside of Delaware.**

**6.0 This regulation applies to the determination of creditable experience for salary purposes only, and does not apply to the determination of creditable experience for pension purposes which is specified in 29 Del.C. Ch. 55. Laws on employment and salary for administrators, teachers, and secretaries are found in 14 Del.C. Ch. 13.**

**3 DE Reg. 1542 (5/1/00)**

**DEPARTMENT OF EDUCATION**  
Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 731

**Education Impact Analysis Pursuant To  
14 Del.C. §122(d)**

**PUBLIC NOTICE**

**731 School Food Service Employees**

**A. Type Of Regulatory Action Required**  
Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**  
The Secretary of Education intends to amend 14 DE Admin. Code 731 School Food Service Employees. The amendments are for the purpose of clarity and include moving the words “state funded” in front of the word “positions”, changing “will” to “shall” in 3.1.3.1 and 3.3 and changing the word “employees” to “managers” in the second line of 3.0.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses school food service employees’ experience, salaries and staffing formulas not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses school food service employees’ experience, salaries and staffing formulas not equitable education issues.

3. Will the amended regulation help to ensure that all students’ health and safety are adequately protected? The

amended regulation addresses food service employees’ experience, salaries and staffing formulas not students’ health and safety.

4. Will the amended regulation help to ensure that all students’ legal rights are respected? The amended regulation addresses food service employees’ experience, salaries and staffing formulas not students’ legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the State and to the local school boards of compliance with the regulation.

**731 School Food Service Employees**

**1.0 Experience:** School food service employees may be granted one (1) year's experience for each creditable year of experience in similar employment.

**2.0 Determination of Employee Staffing and Formula**

2.1 School districts shall determine the salaries paid to cafeteria workers as follows:

2.1.1 Of the total number of full time workers assigned to a food-preparing cafeteria, a maximum of two may be paid as a cook/baker. Satellite schools are eligible for

state funded positions as set forth in 14 Del.C. §1322 (c), state funded.

**3.0 The salaries prescribed in 14 Del.C. §1322(e) for general workers, and cooks/bakers shall be paid by the State from funds not derived from local food service operations as determined by the formula:**

3.1 Seven (7) hours of labor per 100 meals determined as follows:

3.1.1 Total number of reimbursable lunches served in the base month; plus

3.1.2 Total number of reimbursable breakfasts served in the base month; plus

3.1.3 Total of all other meals served in the base month determined by aggregating all income.

3.1.3.1 The number of meals prepared and served ~~will~~ shall be based on the average reported for the month of October on the monthly reimbursement claim.

3.2 Each school district will submit to the Department of Education a computation sheet for cafeteria workers with data showing hourly rate and hours worked not to exceed the maximum allowed under state formula.

3.3 Each school district ~~will~~ shall submit a roster of cafeteria managers to the Department of Education showing names of the employees managers and the salaries prescribed in 14 Del.C. §1322(a). Each district shall also submit a computation sheet as prescribed by the Department to determine the number of meals served according to the state formula.

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## **DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 733

**Education Impact Analysis Pursuant To  
14 Del.C. §122(d)**

### **PUBLIC NOTICE**

#### **733 Substitutes**

#### **A. Type of Regulatory Action Required**

Amendment to Existing Regulation

#### **B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to amend 14 DE Admin. Code 733 Substitutes by inserting the word "shall" in lieu of "are to" in 1.4, 1.5, 1.6, and 1.7. The language in 1.1, 1.2.1, 1.3, 1.6 and 1.7 has been clarified and the title has been changed to "Payment of Substitutes for Teachers" to

reflect that the content of the regulation only refers to teachers.

#### **C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the payment of substitutes for teachers not achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the payment of substitutes for teachers not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the payment of substitutes for teachers not student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the payment of substitutes for teachers not students' legal rights.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no cost to the State and to the local school boards of compliance with the regulation.

**733 Substitutes****~~1.0 Payment of Teacher and Other School Employee Substitutes~~**

~~1.1 Substitutes for State funded teachers may be paid from State substitute teacher funds under the provisions of 14 **Del.C.** §1318, Sick leave and absences for other reasons (only specified reasons allowable), 29 **Del.C.** §5524, Eligibility for disability pension and 29 **Del.C.** §5933, Leaves (sick leave not counted for absence for work-related disease or accident).~~

~~1.2 Substitutes for state funded teachers may also be paid from State substitute teacher funds for:~~

~~1.2.1 Military leave (training or duty not in excess of 15 days).~~

~~1.2.2 Kindergarten Teachers on Abbreviated Days. In order to allow kindergarten teachers additional time for parent conferences, substitute teachers may be hired using state substitute teacher funding for ½ day on abbreviated days when kindergarten is scheduled.~~

~~1.2.3 Teachers participating in Department of Education initiated committee work and project assignments.~~

~~1.3 Substitutes for teachers absent under the provisions of 14 **Del.C.** §1320, Deduction for Unexcused Absence (or on approved leave without pay) may be charged to the Division I teacher salary line.~~

~~1.4 Substitutes for teachers who are paid from federal funds are to be paid from federal funds from the federal program involved or local funds.~~

~~1.5 Substitutes for teachers who are paid from local funds are to be paid from local funds.~~

~~1.6 Substitutes for teachers who are paid from State funds for a fractional part of a State teacher unit and a fractional part from other funds are to be paid on the same proportional basis from State substitute teacher funds.~~

~~1.7 Substitutes are to be paid from State substitute teacher funds the amounts authorized for the various classes of substitutes as provided for in 14 **Del.C.** §1326. School districts paying more for teacher substitutes than prescribed in 14 **Del.C.** §1326 shall do so from local or federal funds.~~

~~3 DE Reg. 1542 (5/1/00)~~

**1.0 Payment of Substitutes for Teachers**

1.1 State substitute teacher funds may be used to pay substitutes for State funded teachers when the state funded teachers are unavailable for duty under the provisions of 14 **Del.C.** §1318, 29 **Del.C.** §5524 and 29 **Del.C.** §5933 (for sick leave calculations for teachers qualifying for workers' compensation).

1.2 Substitutes for state funded teachers may also be paid from State substitute teacher funds for:

1.2.1 Military leave for training or duty not in excess of 15 working days per year.

1.2.2 Kindergarten Teachers on Abbreviated Days. In order to allow kindergarten teachers additional time for parent conferences, substitute teachers may be hired using state substitute teacher funding for ½ day on abbreviated days when kindergarten is scheduled.

1.2.3 Teachers participating in Department of Education initiated committee work and project assignments.

1.3 Substitutes for teachers who are absent without pay may be charged to the Division I teacher salary line.

1.4 Substitutes for teachers who are paid from federal funds shall be paid from federal funds from the federal program involved or local funds.

1.5 Substitutes for teachers who are paid from local funds shall be paid from local funds.

1.6 Substitutes for teachers who are paid from State funds for a fractional part of a State teacher unit and a fractional part from other funds shall be paid on the same proportional basis.

1.7 Substitutes shall be paid from State substitute teacher funds the amounts authorized for the various classes of substitutes as provided for in 14 **Del.C.** §1326. School districts paying more for teacher substitutes than prescribed in 14 **Del.C.** §1326 shall do so from local or federal funds. Federal funds may be used only if the federal program permits that use.

**3 DE Reg. 1542 (5/1/00)**

**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 334

**Education Impact Analysis Pursuant To  
14 **Del.C.** §122(d)**

**PUBLIC NOTICE****334 Standard Certificate Marketing Education Teacher**

**A. Type of Regulatory Action Requested**  
Amendment to Existing Regulation

**B. Synopsis of Subject Matter of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 334 Standard Certificate Marketing Education Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it

with changes in statute regarding the licensure and certification of educators. In addition, the course work required has been amended to reflect modifications in the marketing education curriculum. The requirement for work experience by marketing education teachers has been eliminated. The regulation will be renumbered 1560 to reflect its movement to the Professional Standards Board section of the Department of Education regulations.

### C. Impact Criteria

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

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

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

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

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

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

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

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational

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

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

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

### **1560 ~~334~~ Standard Certificate in Marketing Education Teacher Effective July 1, 1993**

~~1.0 The following shall be required for the Standard License.~~

~~1.1 Bachelor's degree from an accredited college and;~~

~~1.2 Professional Education~~

~~1.2.1 Completion of an approved teacher preparation program in the area of Marketing Education or;~~

~~1.2.2 A minimum of 27 semester hours to include Human Development, Organization/Administration of Marketing Education, Methods of Teaching Marketing Education, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the secondary (7-12) level and;~~

~~1.3 Technical Education~~

~~1.3.1 Major in Marketing or;~~

~~1.3.2 A minimum of 18 semester hours selected from the following areas: Visual Merchandising, Textiles, Advertising, Basic Economics (3 semester hours maximum), Color, Line and Design, Display, Store Organization, Management, Retailing, Business Law, Real Estate, Wholesaling, Fashion and Design, Visual Aids, Salesmanship, Marketing, Insurance, Investments, Supermarket Operation, Service Station Operation and;~~

~~1.4 Work Experience in Marketing Occupations~~

~~1.4.1 A minimum of 2,000 hours of work experience is required in organizations which market goods or services. The work experience may consist of prior full-time and/or part-time work in different organizations.~~

~~2.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

~~2.1 The Limited Standard license may be issued upon the request of a Delaware public school district for a teacher employed for this position who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.~~



**1.0 Content**

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Marketing Education Teacher.

**2.0 Definitions**

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

**“Department”** means the Delaware Department of Education

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

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

**3.0** In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Marketing Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A bachelor’s degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university with a major in marketing education; or

3.2 A bachelor’s degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in marketing education, where the state approval body employed the appropriate NASDTEC standards or NCATE specialty organization standards; or

3.3 A bachelor’s degree from a regionally accredited college or university with a major in marketing; and

3.3.1 A minimum of ~~twenty-seven~~ four (274) semester hours of pedagogy courses from a regionally accredited college or university to include at least three (3) credits in each of the following:

3.3.1.1 Human Development;:

3.3.1.2 Methods of Teaching Marketing/  
Business Education;

3.3.1.3 Identifying/Treating Exceptionalities;:

3.3.1.4 Effective Teaching Strategies; and

3.3.1.5 Multicultural Education; or

3.4 A bachelor’s degree in any field and completion of the semester hours indicated below from a regionally accredited college or university, taken either as part of a degree program or in addition to it, and completion of the course work set forth in 3.3.1:

3.4.1 A minimum of eighteen (18) semester hours in marketing, selected from the following areas:

3.4.1.1 Visual Merchandising and Display;

3.4.1.2 Advertising/Promotional Strategies;

3.4.1.3 Economics

3.4.1.4 Management;

3.4.1.5 Retailing;

3.4.1.6 Business Law;

3.4.1.7 Fashion and Design;

3.4.1.8 Salesmanship;

3.4.1.9 Marketing;

3.4.1.10 E-marketing/Website Design;

3.4.1.11 Business Ethics;

3.4.1.12 Human Resource Management; or

3.4.1.13 Entrepreneurship.

**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1555

Education Impact Analysis Pursuant To  
14 **Del.C.** §122(d)

**PUBLIC NOTICE****1555 Standard Certificate Early Care And Education  
(Ages 0 - K) Teacher****A. Type Of Regulatory Action Requested**

Amendment to Existing Regulation

**B. Synopsis Of Subject Matter Of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1555 Standard Certificate Early Care and Education (Ages 0 - K) Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it with changes in the grade configuration of the standard certificate for elementary teacher. The amended regulation extends the age and grade span of the regulation from ages 0 - K to birth – grade 2. Course work requirements have been modified to expand the content knowledge required for this standard certificate.

**C. Impact Criteria**

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

achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

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

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

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

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

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

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

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

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

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

no additional cost to local school boards for compliance with the regulation.

~~**1555 Standard Certificate Early Care And Education Teacher (Ages 0 - K)**~~

~~**1.0 Content:**~~ This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. '1220(a), for Early Care and Education Teacher (ages 0-K).

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

~~**"Department"**~~ means the Delaware Department of Education.

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

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

~~**3.0 In accordance with 14 Del.C. '1220(a), the Department shall issue a Standard Certificate as an Early Care and Education Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:**~~

~~**3.1 Degree Requirement**~~

~~**3.1.1 Bachelor's degree from a regionally accredited college or university in any field and 45 semester hours of general content courses. These courses may be part of the Bachelor's degree, but if not, then the courses shall be taken in addition to the degree.**~~

~~**3.1.1.1 Nine semester hours of English including an upper level composition course and a literature course**~~

~~**3.1.1.2 Twelve semester hours of science including one course each in Life/Environmental, Earth/Space and Physical Sciences**~~

~~**3.1.1.3 Nine semester hours of social sciences including World History, American History and Geography.**~~

~~**3.1.1.4 Nine semester hours of Mathematics**~~

~~**3.1.1.6 Six semester hours of Fine Arts, or**~~

~~**3.1.2 A Bachelor's degree from a regionally accredited college in the field of Education and;**~~

~~**3.2 Professional Education**~~

~~**3.2.1 An approved program in Early Care and Education, Birth to Kindergarten or;**~~

~~**3.2.2 An approved program in Primary Education which includes 15 semester hours of coursework, or the**~~

equivalent thereof, specific to the birth to kindergarten child and including instruction in each of the following areas:

3.2.2.1 Children's Growth, Development and Learning (ages 0-3 years);

3.2.2.2 Assessment of Young Children;

3.2.2.3 Language Development and Early Literacy in Young children;

3.2.2.4 Family Development and Service Systems for Children and Families;

3.2.2.5 Three additional semester hours taken in one of the four areas above or in another area specifically related to care giving for children ages 0-3 or;

3.2.3 A minimum of 60 semester hours of coursework to include a total of 45 semester hours of specific courses to be taken in addition to the degree if not a part of the degree program and to include the following courses as specified:

3.2.3.1 Children's Growth, Development, and Learning (6 semester hours);

3.2.3.2 Identifying and Teaching Children with Exceptional Needs (6 semester hours);

3.2.3.3 Parent, Family Community Interactions (3 semester hours);

3.2.3.4 Early Childhood Curriculum Development, Content, and Implementation (15 semester hours);

3.2.3.5 Professional Issues in Early Childhood Education (3 semester hours);

3.2.3.6 Fifteen semester hours to include 3 semester hours in each of the following areas dealing with children from birth to kindergarten: Children's Growth, Development and learning (ages 0-3 years), Assessment of Young Children, Language Development and Early Literacy in Young Children, and Family Development and Service Systems for Children and Families. Three additional semester hours taken in one of the four areas above or in another area specifically related to care giving for children ages 0-3.

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an early care and education teacher after that date must comply with the requirements set forth in 14 ~~DE Admin. Code~~ 1516.

## 1555 Standard Certificate Early Childhood Teacher (Birth - Grade 2)

### 1.0 Content:

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 ~~Del.C.~~ '1220(a), for Early Childhood Teacher (Birth - Grade 2).

### 2.0 Definitions

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

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

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

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

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

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

3.0 In accordance with 14 ~~Del.C.~~ 1220(a), the Department shall issue a Standard Certificate as an Early Childhood Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A bachelor's degree from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in Early Childhood Education; or

3.2 A bachelor's degree from a state approved educator preparation program offered by a regionally accredited college or university, with a major in Early Childhood Education, where the state approval body employed the appropriate NCATE specialty organization standards for early childhood teacher education; or

3.3 Passage of the appropriate PRAXIS™II test approved by the Standards Board and the State Board; or

3.4 A bachelor's degree from an NCATE or state approved program, where the state approval body employed the appropriate NCATE specialty organization standards, offered by a regionally accredited college or university, with a major in Primary or Elementary Education; and

3.4.1 At least eighteen (18) semester hours of course work, specific to This now totals 21 credits. Do you want to change the requirement to 18 or allow some flexibility for folks to choose from among the stated courses? the birth to age five (5) child, taken either as part of the degree program or in addition to it, as follows:

3.4.1.1 Children's Growth, Development and Learning (birth – age five (5)) (3 credits);

3.4.1.2 Early Childhood Curriculum Development, Assessment, Content, and Implementation (6 credits);

3.4.1.3 Language Development and Early Literacy in Young Children (3 credits);

3.4.1.4 Family Development and Service Systems for Children and Families (3 credits); and

3.4.1.5 Development and Programming for Young Children with Special Needs (3 credits); or

3.5 A bachelor's degree from a regionally accredited college or university in any field, and

3.5.1 A minimum of forty-five (45) semester hours of general content course work, taken either as part of the degree program or in addition to it, as follows:

3.5.1.1 English, including an upper level composition course and a literature course (9 semester hours);

3.5.1.2 A total of twelve (12) semester hours of science, including one course each in Life/Environmental, Earth/Space and Physical Sciences;

3.5.1.3 Social sciences, including world history, American history, political science, economics and geography (9 semester hours);

3.5.1.4 Mathematics (9 semester hours); and

3.5.1.5 Fine Arts or Humanities (6 semester hours); and

3.5.2 A minimum of thirty-nine (39) semester hours of course work, taken either as part of the degree program or in addition to it, as follows:

3.5.2.1 Children's Growth, Development, and Learning (Birth – age 8) (6 semester hours);

3.5.2.2 Identifying and Teaching Children with Exceptional Needs (6 semester hours);

3.5.2.3 Early Childhood Curriculum Development, Assessment, Content, and Implementation, including a practicum of no less than 50 hours (Birth – age 8) (9 semester hours);

3.5.2.4 Professional Issues in Early Childhood Education (3 semester hours);

3.5.2.5 Language Development, Early Literacy and Reading in Young Children (9 semester hours);

3.5.2.6 Parent, Family Community Interactions (3 semester hours); and

3.5.2.7 Family Development and Service Systems for Children and Families (3 semester hours).

Will it be necessary to retain the course count option after 2006?

**4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as an Early Childhood Teacher after that date must comply with the requirements set forth in 14 DE Admin. Code 1516.**

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

Statutory Authority: 16 Delaware Code,  
Section 122(1) and (3) a, f and j  
(16 Del.C. §122 (1) & (3) a, f & j)

### **PUBLIC NOTICE**

#### **461 Regulations Governing the Production and Sale of Milk and Milk Products**

##### **Nature of the Proceedings**

These regulations, *State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products*, replace by recision the current *State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products* adopted on March 10, 2003.

Pursuant to Title 16 **Delaware Code**, Chapter 1, §122 (1) and (3) a, f and j, the Department of Health and Social Services intends to adopt by reference the newest version of the U.S. Public Health Service/Food and Drug Administration's Grade A Pasteurized Milk Ordinance 2003 Revision (PMO). These Regulations establish standards for the production and sale of milk and milk products within the State of Delaware.

##### **Notice of Public Hearing**

The Health Systems Protection Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed *State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products*.

The public hearing will be held on March 23, 2005 at 10:00 a.m. in the 3<sup>rd</sup> Floor Conference Room of the Jesse Cooper Building located at the intersection of Federal and Water Streets in Dover Delaware. Copies of the proposed regulations are available for review by calling the following location:

Community Environmental Health (Mr. Ed Pettee)  
Williams State Service Center  
805 River Road  
Dover, DE 19901  
Telephone: (302) 739-5305

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David P. Walton at (302) 744-4700 by Tuesday, March 22, 2005. Anyone wishing to submit written comments as a supplement to or in lieu of oral

testimony can fax them to David Walton at (302) 739-6659 or submit such comments by Thursday, March 31, 2005 to:

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

#### **461 Regulations Governing the Production and Sale of Milk and Milk Products**

##### **1.0 General Provisions**

###### 1.2 Purpose

It is hereby declared that the purpose of this Regulation is to protect, preserve and promote the public health and wellbeing of the people, to minimize the incidence of communicable diseases and to regulate the inspection of dairy farms, milk and milk product plants and provide for the examination, labeling, pasteurization, distribution and sale of milk and milk products. It is hereby further declared that the purpose of this Regulation is to establish minimum chemical, bacteriological and temperature standards for milk and milk products and an adequate level of operation and maintenance and provision for the administrative and enforcement thereof.

###### 1.3 Definitions

Regulatory Agency: as defined in the PMO, Section 1, Definition II, shall mean the Secretary, Delaware Health and Social Services or his official designee.

###### 1.4 Application and Scope

The requirements of this section shall apply to the construction, alteration, addition, establishment maintenance and or the operation of all dairy farms, milk and milk product plants in the State of Delaware, and also to any milk and milk products from outside the boundaries of the state that are sold in Delaware.

The Regulatory Agency may grant a variance by modifying or waiving the requirements of these Regulations if in the opinion of the Regulatory Agency a health hazard or nuisance will not result from the variance or waiver.

Enforcement: It shall be the duty of the Regulatory Agency to enforce the provisions of these Regulations

Repeal and Date of Effect: All current or previous regulations or parts of regulations in conflict with these Regulations are hereby repealed; and these Regulations shall be in full force and effective on \_\_\_\_\_.

Severability: Should any section, paragraph, sentence, clause or phrase of these Regulations be declared unconstitutional or invalid for any reason, the remainder of the Regulation shall not be affected in any way.

1.5 Imminent Danger to Public Health: Suspension of Permit

If some condition(s) is/are determined to exist which present(s) an imminent health hazard to the public, the Regulatory Agency may suspend the operating permit of the

facility, without hearing, for a period not to exceed ten (10) government business days. The suspension shall be effective upon receipt of written notice by the permit holder or another reasonably responsible employee. A suspension statement recorded on an inspection report by the inspecting Regulatory Agency representative constitutes written notice. The permit shall not be suspended for a period longer than ten (10) government business days without a hearing. Failure to hold a hearing within ten (10) government business days shall automatically terminate the suspension.

The permit holder of the Facility may request, in writing, a hearing before the Regulatory Agency at any time during the period of suspension, for the purpose of demonstrating the imminent health hazard(s) no longer exist. The request for hearing shall not stay the suspension.

1.6 Unsanitary Conditions: Suspension, Revocation or Refusal to Reissue Permit

The Regulatory Agency, may after providing an opportunity for a hearing, suspend, for a period not to exceed ninety (90) days, revoke, or recommend non-reissuance of a permit to operate a Facility for serious or repeated violations of any requirements of these Regulations or refusing access to representatives of the Regulatory Agency.

This section is not intended to preclude enforcement of this Regulation through the institution of court action by the Regulatory Agency.

###### 1.7 Global Footnote Clarification

Whereas indicated in the PMO as footnote 2, page v, of the introduction and footnote 1, pages 1, 8, 9 and 113 of the body, insert "the State of Delaware".

#### **2.0 Grade "A" Pasteurized Milk Ordinance 2003 Revision**

This section incorporates by reference the U.S. Public Health Service/Food and Drug Administration's Grade "A" Pasteurized Milk Ordinance, 2003 Revision. For copies contact the Division of Public Health or the Registrar of Regulations.

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#### **DIVISION OF SOCIAL SERVICES**

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

#### **PUBLIC NOTICE**

#### **TANF and Food Stamp Employment Training Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health

and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding changes to Delaware's Temporary Assistance for Needy Families (TANF) and Food Stamp Employment and Training policies.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2005.

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

### **Summary Of Proposed Changes**

#### **Temporary Assistance for Needy Families (TANF)**

1. TANF sections 3002.1, 3002.2, 3002.3, 3002.9, 3006.2, 3006.6, 3030 and 3031.5 have been changed to reflect an increase from 20 hours per week to 25 hours per week in the required amount of participation hours for workfare, education, and work hours. This change now requires participants to work, participate in workfare, or education for 25 hours per week in order to meet participation requirements. The change in the participation requirement is also reflected in the time limited TANF programs' monthly time count. The hours of participation required to stop the TANF month from counting towards the participant's time limit has increased from 20 to 25.

These changes will prepare Delaware Division of Social Services (DSS) for TANF reauthorization and increase the number of participants DSS can count towards the mandated participation rate.

2. TANF sections 3007 Supportive Services and Transitional Benefits and 3007.6 Transportation Assistance.

Transportation benefits will now be automatically generated by DCIS II for TANF recipients who are referred to a Workfare Vendor. New Castle County (NCC) participants will receive \$5.00 per referral, Kent and Sussex (K/S) participants will receive \$10.00 per referral. This is not a new practice; the existing practice will now be automated. This will allow for state wide consistency of Transportation services.

#### **Food Stamp Employment & Training**

1. Section 10007 Participation Reimbursement has been re-designed to accommodate Transportation Reimbursement, section 10007.1, Dependent Care

Reimbursement, section 10007.2, and Supportive Services Reimbursement, section 10007.3. Supportive Services Reimbursement is a new addition to policy. Transportation and Dependent Care Reimbursement sections have been modified to accommodate the changes due to automating and consolidating the Employment and Training (E&T) system into the DCIS II system. All of the above outlined reimbursements were, or are currently, practiced in the field. The consolidation of the computer systems has provided the opportunity to automate the majority of these procedures. This will provide consistent application of Transportation and Supportive Services participant reimbursement throughout the state. Participant reimbursement for E&T related expenses is mandated in the Code of Federal Regulations.

#### **2. Section 10007.1 Transportation**

Transportation allowances have been automated. New Castle County (NCC) participants will receive \$5.00 allowances and Kent and Sussex (K/S) participants will receive \$10.00. This maintains consistency between the FS and TANF transportation services.

Transportation allowances will be automatically issued upon successful completion of the Independent Job Search (IJS) Log and verified monthly attendance at a One Stop facility.

The FS E&T participants will have the ability to request more Transportation funds in addition to the initial \$5.00 or \$10.00 allowances when the additional expense is verified.

#### **3. Section 10007.3 Supportive Services**

Supportive Services were offered initially prior to redesign. There are no policies in place that reflect these services. For consistency the previous TANF Supportive Services categories and limits have been used for the FS E&T and work related participant expenses.

### **DSS PROPOSED REGULATION #05-05 REVISIONS:**

#### **3002.1 Two-Parent Families - Time Limit, Temporary Welfare Program**

A.) Delaware's Temporary Assistance for Needy Families Program (TANF), cash benefits are time-limited for households headed by two employable adults age 18 or older who are included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive these benefits only through participation in a pay-after-performance work experience position or if the adults are working at least ~~20~~ 25 hours per week and the family has countable income ~~is~~ below the need standard.

Time limits apply when three conditions are met:

- the caretaker is included in the grant,

- the caretaker is age 19 or older,
- the caretaker is employable, and

When one or more of the conditions listed above is not met, the family receives benefits in the non-time limited program known as the Children's Program.

### 3002.2 Single Parent / Non-Parent Caretaker Families

Delaware's Temporary Assistance for Needy Families Program (TANF), cash benefits are time-limited for households headed by an employable adult age 18 or older who is included in the grant. For households applying on or after 01/01/2000, the lifetime time limit will be thirty-six (36) cumulative months. Families will receive benefits only through participation in a pay-after-performance work experience position or if the adult is working at least ~~20~~ 25 hours per week and the family has countable income ~~is~~ below the need standard.

Time limits apply when four conditions are met:

- the caretaker is included in the grant;
- the caretaker is age 19 or older;
- the caretaker is employable; and

When one or more of the conditions listed above is not met, the family receives benefits in the non-time-limited program known as the Children's Program.

### 3002.3 Time Limits For Single Parent and Two Parent Families On Assistance Prior To 01/01/2000

If a family was headed by an employable adult age 18 or older who was included in the grant and received Delaware's Temporary Assistance for Needy Families Program (TANF) cash benefits prior to 01/01/2000 they had a forty-eight (48) cumulative month time limit. This lifetime limit will still apply for those families. After twenty-four (24) cumulative months these families can only receive benefits if the adult is working at least ~~twenty~~ twenty-five hours per week or through participation in a pay-after-performance work experience position. The family must still have countable income that is below the need standard. Families with a forty-eight (48) month cumulative time limit who reapply for assistance on or after 01/01/2000 can only receive benefits if the adult is working at least ~~twenty~~ twenty-five hours per week or if through participation in a pay-after-performance work experience position.

Here are some examples:

1. Example:

A family initially began receiving TANF on 08/01/97. The TANF case was closed 06/30/1998. The family applied for and received TANF benefits while the time limit was forty-eight months. The family used eleven (11) months of time limited TANF benefits. The family reapplies for benefits 02/01/2000. The family can receive up to thirty-

seven (37) more cumulative months of TANF benefits in the time-limited program if and only if:

- the employable adult is working at least ~~twenty~~ twenty-five hours per week; or
- by participating in a pay-after-performance work experience position; and
- the family still has countable income that is below the need standard.

2. Example:

A family had not received TANF benefits prior to 01/01/2000. The family applies for and it opened in TANF 03/01/2000. The family can only receive TANF benefits for up to thirty-six (36) cumulative months and only if:

- the employable adult is working at least ~~twenty~~ twenty-five hours per week; or
- by participating in a pay-after-performance work experience position; and
- the family still has countable income that is below the need standard.

See 3002.3 Time Limits For Those On Assistance Prior To 01/01/2000 - History

### 3002.9 Exceptions To The Time Limit Counter

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 calls for a maximum sixty (60) month lifetime limit on the receipt of Temporary Assistance For Needy Families (TANF) benefits. A family that has an employable adult will be able to receive cash benefits that do not count to the State's thirty-six (36) month or forty-eight (48) month time limit if:

- The adult is working for ~~twenty (20) hours~~ twenty-five (25) or more hours per week; and
- The countable income of the family is still below the need standard.

The Federal time limit does not apply in these cases.

### 3006.2 TANF Employment and Training Participation Rates

Under the Temporary Assistance For Needy Families Block Grant, DSS is required to meet the following work participation rates with respect to all families that include an adult or minor child head of household receiving assistance:

ALL FAMILIES		TWO-PARENT FAMILIES	
Fiscal Year	Minimum Participation Rate	Fiscal Year	Minimum Participation Rate
1997	25	1997	75

1998	30	1998	75
1999	35	1999 and after	90
2000	- - 40		
2001	- - 45		
2002 and after	50		

DSS may face a lower work participation rate if it experiences a net caseload reduction compared to FY 1995.

Example: If it is determined that DSS' average monthly caseload in FY 1997 was 4 percentage points lower than average monthly caseloads in FY 1996, then, rather than having to meet at 30% work participation rate requirement in FY 1998, the rate would be lowered by 4 percentage points to 26%.

To be counted toward meeting the work participation rate, each individual must meet the minimum number of hours averaged over a month. This differs from the old JOBS requirement in which the hours were averaged among participants, and where participants only had to meet at least 75% of the scheduled hours.

~~Example: Under JOBS, if Ms. Jones was scheduled for 20 hours and attended 15, she was counted as having participated for 20 hours. Under TANF, Ms. Jones would fail to meet her 20 hours requirement, and DSS could not count her as participating. In addition, under JOBS, you could pair participants and combine their hours to get more participants to the 20 hour level. For instance, one participant working 25 hours could be paired with one participant working 15 hours to get two participants. Under TANF, only one participant could count as having met the 20 hour rule.~~

The monthly participation rate is calculated as follows:

Numerator: # of families receiving assistance that include adult or minor head of household who is engaged in work for the requisite hours

divided by

Denominator: # of families that include an adult or a minor child head of household receiving assistance, less # of families sanctioned in that month for failure to participate in work (for up to 3 months in preceding 12 month period), less the number of non-needy caretaker households, less the number of temporarily incapacitated households, less the number of mothers with a child under 13 weeks old.

### **3006.6 Senate Bill 101-1997 and Employment & Training Activities**

Under Senate Bill 101- 1997, persons who must participate in Delaware's Temporary Assistance for Needy Families Program, can qualify for participation purposes if they are engaged in secondary education, post-secondary education up to the baccalaureate level, adult basic education or vocational training. Participants must meet the following

Senate Bill 101-1997 requirements in order to meet participation rates.

(a) Persons who qualify for assistance under Delaware's Temporary Assistance for Needy Families program shall be eligible to participate in adult basic education, secondary education, post-secondary education up to the baccalaureate level, adult basic education or vocational training, as an approved work activity provided each of the following requirements are met:

1. The person does not hold a baccalaureate degree.

2. The secondary, post-secondary education up to the baccalaureate level, or vocational training is pursued through an accredited or approved school program.

3. The person is enrolled with enough credit hours to have full-time student status and is in good standing as it relates to attendance and achievement as defined by the program the person is attending.

4. If the person attending school would otherwise be subject to a work requirement in order to receive assistance under TANF, the combination of credit hours and work hours shall equal at least 25 hours per week while the program is in session. This work requirement may be met through work-study, internships, externships, or through work as a research assistant. If possible, during scheduled breaks, the work requirement will be the same as for other program participants, with work experience related to the field of study. However, if the student is enrolled full-time for the next semester and work activity placement cannot be arranged for the duration of the break in classes, it may be excused.

For every 1 credit hour count 1.5 hours of study as part of the fulfillment of the required work participation hours. Therefore if a persons full-time status is 12 credit hours count the 12 hours plus an additional 18 hours (12 x 1.5=18) for a total of 30 hours of weekly participation.

(b) Loans, scholarships, grants and work-study received by the recipient to pay for tuition and materials are excluded in determination of eligibility for assistance under TANF or the amount of assistance received by the recipient.

(c) The Department of Health and Social Services shall advise all persons of this section at application interviews and, at a minimum, at each recertification appointment.

(d) Persons attending education and training programs under this section shall receive support services, such as assistance with transportation and child care, while they attend the educational or vocational training program on the same basis as support services are provided other persons who are receiving assistance under TANF.

(e) If program completion will occur within one semester or quarter after the time limit expires, an extension may be granted for that semester or quarter.



(f) Persons sanctioned while attending educational or vocational programs shall be afforded the same due process as provided other persons under TANF.

### **3007 TANF Supportive Services and Transitional Benefits**

The Division will ensure that Supportive Services are available. The Division will ensure the availability of these services, to the extent it determines they are necessary for a recipient to participate.

Currently child care is provided in accordance with child care policy in DSSM 11000. Transportation assistance is provided in accordance with DSSM 3007.6. All other supportive services are included and provided by the vendors as specified in the employment contracts.

~~Support services based on the actual cost of services. The limit is imposed when the cost exceeds the maximum allowed. Participants are not automatically entitled to the maximum cost. Support services are paid or reimbursed to the participant based on the verified actual amount and the participant's need.~~

All other Supportive Services are included and provided by the vendor as specified in the employment contracts.

#### **3007.6 Transportation Assistance**

Transportation assistance will be paid to participants who are referred to the TANF E&T Workfare Vendor to assist with the transportation costs incurred during the initial contact with the Workfare Vendor.

Participants residing in New Castle County will receive a \$5.00 Transportation assistance check.

Participants residing in Kent and Sussex Counties will receive a \$10.00 Transportation assistance check.

The Transportation checks will be sent automatically by DICS II after Confirmation. Replacement checks can be issued by the supervisor after the completion of the affidavit.

### **3031 Work For Your Welfare**

All two-parent households, who are without employment, must enter a Work For Your Welfare activity to qualify for benefits. Single-parent adult recipients who reach their 22nd month of benefit and are without employment, and all eligible applicants on or after 01/01/2000, must enter a Work For Your Welfare activity to qualify for benefits. Additionally, all TANF recipients who are employed must have regular earnings of the current federal minimum wage at twenty-five hours per week. (The current federal minimum wage is \$5.15 per hour, which at 25 hours per week equals \$128.75 per week earnings.) A person who is employed but not earning at least the equivalent of the current federal minimum wage at twenty-five hours per week will be considered mandatory for Work for Your Welfare. A contracted worker must receive his or her wages on a regular basis to be exempted from this requirement.

Work for Your Welfare is defined as a work experience program in which participants work to earn their benefits. In addition, DSS requires each participant to complete 10 hours of job search activity per week. The failure to complete job search as required will result in a progressive 1/3 sanction. For two parent households, one parent must participate in the Work For Your Welfare program in order to earn benefits. The second parent, unless exempt, must also participate in required employment related activities as defined by DSS and the DSS contractor.

#### **3031.5 Ending a Work For Welfare Placement**

Work for welfare placements will end when any of the following circumstances occur:

- The participant secures a full-time, non-subsidized job or a part-time, non-subsidized job of ~~20~~25 hours or more.
- The participant becomes exempt. Exemptions, however, can only occur if DSS declares participants unemployable, using the standard TANF definition for unemployable. In this case, DSS will transfer the participants to the Children's Program under TANF.
- The participant requests an end to benefits payments.
- When the time limit has been reached.

NOTE: Participants in either one parent or two parent households are exempt from work for your welfare participation if a parent is working ~~20~~ 25 or more hours per week in a non-subsidized job.

#### **10007 E&T Non ABAWD Participant Reimbursement**

Participants are reimbursed for necessary expenses incurred ~~in~~ while fulfilling Food Stamp Employment and Training requirements or obtaining/maintaining employment, as follows Reimbursements are available in the following areas:

A. ~~up to \$30 per participant, per month, for transportation and~~ Transportation as defined in 10007.1.

B. up to \$496.65 per month for dependents under age 2; or \$521.60 per month for dependents with special needs under the age of 2; and

~~up to \$370.88 per month for dependents over 2, or \$389.36 per month for dependents with special needs over 2.~~ Dependent care expenses as defined in 10007.2.

C. Support Services as defined in 10007.3.

~~The amounts noted represent the statewide limits DSS has set for its TANF Child Care programs. DSS elects to set its Food Stamp Employment and Training dependent care rates comparable to its TANF child care rates. The federal share of these statewide limits does not exceed half of the amounts noted.~~

DSS provides dependent care services through licensed care and exempt facilities. The types of care provided include: full-time care, before/after school care, and extended child care in either a family/group home or child care center.

When a Food Stamp Employment and Training work registrant needs dependent care to participate or continue participating in a component activity, offer the work registrant an option of using a child care facility with a contract with DSS or any other licensed or exempt facility a registrant might choose. Monthly child care providers submit attendance reports to the Division of Management Services, Payment Section. The Payment Section enters the attendance data in the Child Care Management Information System which makes payment to providers based on attendance and the prescribed Food Stamp Employment and Training dependent care formula.

Transportation, Dependent Care and Supportive Services payments are for all E&T mandatory or voluntary Non ABAWD participants.

### **10007.1 Method of Reimbursement for ~~Non-Dependent Care Costs~~ Transportation**

The State agency elects to reimburse participants for transportation ~~and costs other than dependent care~~ based on an initial allowance plus actual verified expenses incurred beyond the initial allowance.

The total cost per participant per month is a reimbursement amount equal to the initial allowance plus actual costs documented by the participant that are above the initial allowance, but not exceeding the standard amount of ~~\$30:~~ \$30.00. ~~Transportation reimbursement is given for those participants residing beyond a ten block radius from the place of work for urban areas, and 1/4 mile radius for rural areas, except in extenuating circumstances such as physical impairment. Contract providers and Case Managers are responsible for providing payments to participants.~~

Upon successful completion of the IJS log the participant will automatically receive a system generated transportation allowance. The allowance is \$5.00 for New Castle County (NCC) and \$10.00 for Kent and Sussex (K/S).

Upon computer verified participation at a DOL One Stop Service Center the participant will automatically receive a system generated transportation allowance. The allowance is \$5.00 for NCC and \$10.00 for K/S.

Participants can receive only one transportation allowance check per month to attend the One Stop Service Center regardless of the number of times they go to the One Stop Service Center. Participants can only receive one transportation allowance check per month. If the participant completes an IJS log and goes to the One Stop Service Center in the same month they will only receive one allowance check.

A participant may be reimbursed additional monies if the participant brings in verification of the actual expenses that were above the initial \$5.00 or \$10.00 allowance. The total monthly reimbursement should not exceed \$30.00.

Any monthly total exceeding \$30.00 must be verified and approved by a supervisor.

~~Depending on the individual's circumstances, an advance allowance or reimbursement after incurred expenses is provided. All records are maintained by contract providers and DSS. Providers attach supporting documentation to their monthly expenditure report to justify participant reimbursement expense. Reimbursement of participant expenses may not exceed \$30 per month per participant.~~

### **10007.2 Dependent Care Reimbursement**

Dependent Care reimbursement can be authorized when a Food Stamp Employment and Training participant needs dependent care to participate in an E&T component or employment.

Dependent Care expenses are determined by the approved Purchase of Care program fee scale.

DSS provides dependent care services through licensed and exempt facilities. The types of care provided include: full-time care, before/after school care, and extended child care in either a family/group home or child care center.

Offer the participant an option of using a child care facility with a contract with DSS or any other licensed or exempt facility a registrant might choose. Monthly Child care providers submit monthly attendance reports to the Division of Management Services, Payment Section. The Payment Section enters the attendance data in the Child Care Management Information System which makes payment to providers based on attendance and the prescribed Food Stamp Employment and Training dependent care formula.

Dependent Care can be authorized to a voluntary participant.

Example:

An 18 year old High School graduate with a 3 year old child can volunteer for the E&T program and receive child care for either work hours or school hours.

### **10007.3 Supportive Services Reimbursements**

All Supportive Services reimbursements/payments must be actual costs that are necessary for Employment and Training participation or obtaining employment. They must be verified and documented.

Supportive Services reimbursements /payments can be provided under the following categories;

#### A. Fees

These services can include licenses such as Commercial Drivers License and Nurses licenses, testing for employment or education (this includes GED test fees), or other fees directly related to training or employment.

Monetary Limit of Service / Expense: Verified actual cost up to \$200.00 per individual, per month as determined by need.

**B. Clothing**

These services can include clothes that are appropriate for interviewing or the first few days of employment.

Monetary Limit of Service / Expense: Verified actual cost up to \$150.00 per individual. This is a one time only service.

**C. Accessories for Work or Training**

These services can include purchase of safety equipment, uniforms, shoes, or tools required to participate in training or work. The need in some cases can be verified by Office of Safety and Health Administration (OSHA) regulations.

Monetary Limit of Service / Expense: Verified actual cost up to \$150.00 per individual, per month as determined by need.

**D. Physical Exam**

This service can be authorized when a participant is required to undergo a physical exam to participate in training or accept employment and such exam is not available through a public health facility or covered by Medicaid.

Monetary Limit of Service / Expense: Verified actual cost up to \$100.00 per individual, per month as determined by need.

**E. Dental Services**

This service is only necessary when a participant's dental condition poses a significant barrier to employment.

Monetary Limit of Service / Expense: Verified actual cost up to \$400.00 per individual, per month as determined by need.

**F. Eye exams and eyeglasses**

When the assessment indicates the participant's vision is impaired, or when the individual needs glasses to continue in a component or job. This does not include contact lenses unless they are medically necessary.

Monetary Limit of Service / Expense: Verified actual cost up to \$200.00 per individual, per month as determined by need.

**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**

**Long Term Care Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting annuities for the eligibility process.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2005.

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

**Summary Of The Proposed Change**

**Citation**

20 CFR §416.1201(a) - Resources

Adds a new rule at DSSM 20330.4.1 that addresses annuities and how they count towards the eligibility process.

**DSS PROPOSED REGULATION #05-07  
NEW:**

**20330.4.1 Annuities**

An annuity is a financial device that conveys a right to receive periodic payments for life or a fixed number of months or years. While the annuity itself may or may not be an available resource, the stream of income generated by the annuity is a countable asset. If there is a market to purchase the annuity stream of income it is considered to be available for the applicant's or spouse's support and maintenance. See 20 CFR 416.1201 (a).

To calculate the value of the annuity's stream of income use the amount at which the annuity was originally purchased and subtract all payments received to date. The remainder is the value of the annuity's income stream. The

annuity income stream must be sold at Fair Market Value. See DSSM 20350.1.7.

An annuity purchased by a third party, e.g., the applicant's employer, as a retirement benefit to the applicant is not counted as an available resource. However, the income generated from a third party annuity is counted as income.

An annuity that is revocable is always a countable resource. Revocable annuities are able to be converted to cash.

Spouses that claim the income allowance is inadequate to meet the needs of the Community Spouse may request additional resources be set aside to bring their income up to the minimum maintenance needs allowance. These requests MUST go through the fair hearing process in order to retain excess resources for their protected income share. See DSSM 20970 and 42 USC 1396r-5(e). In these cases, at the death of the annuity's owner, the beneficiary of the annuity must be the estate of the Medicaid recipient.

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## **DIVISION OF SOCIAL SERVICES**

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

### **PUBLIC NOTICE**

#### **Attendant Services Waiver Program (ASWP)**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual (DSSM) regarding the Attendant Services Waiver Program (ASWP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2005.

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

#### **Summary Of Proposed Change**

The Attendant Services Waiver Program (ASWP) is a community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD).

The proposal sets forth the rules and regulations governing the administration of the ASWP, and describes the types of services available under the program. The regulations being proposed would also define the eligibility criteria that must be met by applicants for the services and the scope of services available to eligible applicants.

The earliest effective date for the ASWP is October 1, 2004.

#### **DSS PROPOSED REGULATION #05-08 NEW:**

##### **20700.6 Attendant Services Waiver**

The Attendant Services Waiver (ASW) is a home and community based services program that will be managed by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The purpose of the Wavier is to minimize the likelihood of institutionalization and maximize the potential for independent living for adults with physical disabilities. This program is a consumer directed support program. Participants will have the opportunity to hire and train their own attendants and serve as the employer of record for these attendants. DSAAPD staff will provide initial intake, assessment, service authorization, and wavier service plan. The Division of Social Services (DSS) will be responsible for determining financial eligibility for the Waiver. The effective date is October 1, 2004.

##### **20700.6.1 Eligibility Criteria**

To be eligible for this program, individuals must:

- Be a resident of the state of Delaware
- Be 18 years of age or older
- Meet the financial and medical criteria for DSS Long Term Care Medicaid Program
- Medical criteria must meet nursing facility admission standards
- Meet the ASW criteria as determined by DSAAPD
  - Financial eligibility is determined by DSS
  - Medical eligibility is determined by the Pre-Admission Screening Unit of DSAAPD
  - Program eligibility is determined by DSAAPD.

An individual must meet ALL of the following criteria:

- have an anatomical/physical deficit anticipated to last 12 months or more

# PROPOSED REGULATIONS

- be medically stable
- have ability to self-direct or have a surrogate who can support the client in making decisions

Priority will be applicants who are:

- persons who, with an attendant, can complete an education, or can attain or retain gainful employment;
- persons with greater environmental, social supportive and financial capacity constraints, especially those with constraints in all three areas;
- persons living in costly, congregate living facilities who could live independently and more cost effectively if they had attendants.

## **20700.6.2 Number Of Recipients**

There are a maximum number of recipients who may be served under the ASW each fiscal year. The total unduplicated number of recipients served under the program cannot exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS). DSAAPD will monitor the number of individuals receiving ASW so the maximum number will not be exceeded.

## **20700.6.3 Cost Effective Requirement**

In order for an applicant to be eligible for the ASW, the applicant's cost of care cannot exceed the cost if the same applicant were institutionalized. This determination is made on an aggregate basis which considers all ASW recipients. A DSAAPD worker determines cost effectiveness.

## **20700.6.4 Approval**

Upon approval, DSS will send a notice of approval to the applicant or his representative. The notice will include the effective date of coverage and the patient pay amount if any. The client's start date is determined by DSAAPD staff.

## **20700.6.5 Post Eligibility Budgeting**

For recipients in the ASW the personal needs allowance is equal to 250% of the Federal SSI Benefit Rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the provider who is administering the most costly service.

## **20700.6.6 Hospitalization Or Illness**

Waiver services will terminate upon the 31st consecutive day of hospitalization. There are no Medicaid bed hold days for hospitalization. DSS will redetermine eligibility for continued Medicaid coverage. Waiver services may restart after hospital discharge as determined by DSAAPD staff.

## **20700.6.7 ASW Services**

The Attendant Services Waiver will include the following:

- Attendant Services
- Adult Day Health
- Respite
- Equipment/Supplies
- Emergency Response Systems
- Supports Brokerage

## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Sections 311(a) and 2304(1)  
(18 Del.C. §§311(a) and 2304(1))  
18 DE Admin. Code 702

### **702 Required Disclosures For Residential Homeowners Policies**

#### **PUBLIC NOTICE**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Wednesday, March 30, 2005 at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment on proposed **Regulation 702** relating to **REQUIRED DISCLOSURES FOR RESIDENTIAL HOMEOWNERS POLICIES**.

The purpose for proposing Regulation 702 is to require insurance companies to deliver a separate form to policyholders on an annual basis explaining information about coverage limitations. That form would, among other things: explain that Delaware homeowners insurance does not cover flood damage, and will explain to the homeowner how flood insurance can be obtained; explain how to assure replacement coverage; explain limitations on reimbursement for theft from the home and how to obtain additional coverage for theft; and to require explanations for an insurer's decision not to renew a homeowner's policy at the end of the term.

The hearing will be conducted in accordance with 18 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Tuesday, March 29,

2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

## **702 Required Disclosures For Residential Homeowners Policies**

### **1.0 Authority**

This regulation is adopted by the Commissioner pursuant to 18 Del. C. §§ 311(a) and 2304(1). It is promulgated in accordance with 29 Del. C. Chapter 101.

### **2.0 Purpose**

The purpose of this regulation is to ensure that homeowners insurance policyholders are aware that they are not insured for certain types risks or claims, to the extent that they do not have such coverage. This regulation does not mandate any coverage by any carrier issuing homeowners insurance in the State of Delaware.

### **3.0 Applicability**

This regulation shall apply to homeowners insurance policies. A homeowners insurance policy for purposes of this regulation means a property or casualty contract of insurance covering residential properties as defined by 18 Del. C. § 4120.

### **4.0 Requirement of Disclosure**

Insurers, upon initial delivery of a homeowners policy terms and declaration page, and not less than once annually after delivery, shall provide a form to the policyholder entitled "Important Information About Your Homeowners Insurance." The title of the document shall be in at least 30 point type.

### **5.0 Content of Disclosure**

5.1 Each form presented pursuant to Section 4.0 of this Regulation shall make the following disclosures:

5.1.1 Disclosure that the policy does not cover damage caused by flooding, and sufficient information to allow the policyholder to contact the National Flood Insurance Program in order to purchase flood insurance if so desired. The following language shall be sufficient to ensure compliance with this subsection 5.1: "This policy does not cover damage to your property caused by flooding. Flood insurance is available for communities and property that participate in the National Flood Insurance Program ("NFIP"). Not all communities participate in the NFIP. Flood insurance may be available even if you do not live in a flood hazard area as defined by the NFIP. Please call the NFIP at 1-800-427-4661 to see if your community and property are eligible for coverage. If your community does not participate in the NFIP, you may contact your insurance

agent or broker to see if there is other flood insurance coverage available to you." The disclosure may also inform the policyholder that the insurer offers flood insurance as a participant in the NFIP's "Write Your Own" program. The disclosure required by this subsection shall be entitled "Flood Insurance," and the subsection title shall be in at least 18 point type.

5.1.2 Disclosure that the policy may not cover the full cost of replacement without depreciation of the property, and sufficient information to allow the policyholder to purchase such coverage from the carrier if it is offered by the carrier. The following language shall be sufficient to ensure compliance with this subsection 5.2: "This policy may not cover the full cost of replacing your home if your home should be destroyed in an event otherwise covered by this policy. If this is the case, you may purchase additional coverage from us sufficient to cover the full cost of replacing your home, at an additional cost." The disclosure required by this subsection shall be entitled "Replacing Your Home," and the subsection title shall be in at least 18 point type.

5.1.3 Disclosure of any limitations in the policy regarding reimbursement for items stolen from the property, including but not limited to jewelry, furs, fine art, etc. and sufficient information to allow the policyholder to purchase insurance which would not contain such limitation if such coverage is offered by the insurer. The following language shall be sufficient to ensure compliance with this subsection 5.3: "This policy may not cover the full value of certain items stolen from your home. Please carefully review your policy to determine which items stolen from your home are not covered by this policy." The disclosure required by this subsection shall be entitled "Reimbursement for Stolen Items," and the subsection title shall be in at least 18 point type.

5.1.4 Disclosure of factors and conditions considered by the insurer regarding non-renewal of the policy on the basis of claims asserted by the policyholder. The following language shall be sufficient to ensure compliance with this subsection 5.4: "Certain events may lead to the non-renewal of your homeowners policy. Those factors include, but are not limited to: (list factors and conditions that are likely to cause non-renewal of a policyholder's policy). Be sure to contact (the company or) your insurance agent to learn more." The disclosure required by this subsection shall be entitled "Non-Renewal of Your Policy," and the subsection title shall be in at least 18 point type.

5.2 Where a policy provides full coverage for any of the items required by sections 5.1.1 through 5.1.3, the insurer may indicate that the disclosure, as to each such item, is not applicable or "N/A."

## **6.0 Review and Approval of Forms**

All form required by this regulation shall be submitted to and approved by the Commissioner, or his representative, pursuant to 18 Del. C. § 2712 et seq.

## **7.0 Separability**

If any provision of this regulation, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provisions to any person or circumstance other than those as to which it is held invalid, shall not be affected.

## **8.0 Causes of Action**

This regulation shall not create, nor form the basis for, a cause of action for any person or entity, other than the Delaware Department of Insurance, against any insurer for violation of the provisions hereof.

## **9.0 Effective Date**

The effective date of this regulation shall be July 1, 2005.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES**

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

**REGISTER NOTICE**

### **7408 TMDL's For The Murderkill River Watershed**

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

The Department of Natural Resources and Environmental Control (DNREC) is proposing to amend the 2001 Total Maximum Daily Loads (TMDLs) Regulation for the Murderkill River Watershed, Delaware. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

The proposed amendments are the result of additional technical studies and field work that has shown that the 2001 Murderkill River TMDL Regulation should be amended.

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

Following adoption of the proposed amendments to the 2001 Murderkill River Total Maximum Daily Loads, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with the Murderkill River Tributary Action Team, other stakeholders, and the public.

#### **3. Statutory Basis or Legal Authority to Act**

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 et. seq., as amended.

#### **4. Other Legislation That May be Impacted**

None

#### **5. Notice of Public Comment**

A public hearing will be held at 6:00 p.m., April 7, 2005, at the Felton Fire Hall, 9 East Main Street, Felton, Delaware. If you cannot attend the hearing, you are encouraged to submit written comments well in advance of the hearing date. All written and oral comments must be received by the conclusion of the hearing. The hearing record will close at the conclusion of the hearing. Please send written comments to Hassan Mirsajadi, DNREC/ Division of Water Resources, Watershed Assessment Section, Silver Lake Plaza – Suite 220, 820 Silver Lake Boulevard, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140, email: ([Hassan.Mirsajadi@state.de.us](mailto:Hassan.Mirsajadi@state.de.us)). You are encouraged to submit comments electronically.

Copies of the proposed amended regulation and supporting technical document are available at the Department's website at <http://www.dnrec.state.de.us/water2000/Sections/Watershed/TMDL/tmdlinfo.htm> or may be obtained by contacting Hassan Mirsajadi.

#### **6. Prepared By:**

Hassan Mirsajadi, Watershed Assessment Branch, 739-4590

### **Proposed Amendment of the 2001 Total Maximum Daily Loads (TMDLs) for the Murderkill River Watershed, Delaware**

#### **Introduction And Background**

On December 2001, the Cabinet Secretary of the Delaware Department of Natural Resources and Environmental Control (DNREC) issued Order No. 2001-A-0044 adopting a Total Maximum Daily Loads (TMDLs) Regulation for nutrients and oxygen consuming compounds

for the entire Murderkill River Watershed. The TMDLs, which are developed in compliance with requirements of Section 303(d) of the Clean Water Act (CWA), establish maximum amounts of pollutants that can be discharged to a waterbody from point and nonpoint sources while maintaining water quality standards. The TMDLs include Waste Load Allocations (WLAs) for point sources, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

Following adoption of the Murderkill River TMDLs Regulation in December 2001, Kent County Levy Court, which owns and operates the Kent County Facility, appealed the TMDLs Regulation for the lower Murderkill River to the State Environmental Appeal Board and State Superior Court. As a result of settlement negotiations, which have been concluded, and additional technical studies, the Department concluded that the original hydrodynamic and water quality WASP5 model of the Murderkill River needed to be refined. Following refinement of the WASP5 model and evaluation of several loading scenarios, DNREC is proposing to amend the 2001 TMDLs Regulation.

## **7408 TMDLs for the Murderkill River Watershed**

### **1.0 Introduction and Background**

1.1 Intensive water quality monitoring performed by Delaware Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Murderkill River and several of its tributaries and ponds are impaired as the result of low dissolved oxygen and high nutrients. Low concentrations of dissolved oxygen are harmful to fish, shellfish, and other aquatic life. With regard to nutrients (nitrogen and phosphorus), although they are essential elements for both plants and animals, their presence in excessive amounts causes undesirable conditions. Symptoms of nutrient overenrichment include frequent phytoplankton blooms, decreased water clarity, dissolved oxygen deficiency, alteration of composition and diversity of economically important native species of plants and animals, and possible human health effects.

1.2 A reduction in the amount of nutrients and oxygen consuming pollutants reaching the waters of the Murderkill River and its tributaries and ponds is necessary to reverse these undesirable impacts. These pollutants and nutrients enter the waters of the Murderkill River from point sources and nonpoint sources. Point sources are end-of-pipe discharges from municipal or industrial wastewater treatment plants. Nonpoint sources include runoff from agricultural and urban areas, septic tank effluent, and ground water discharges.

1.3 Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria

and to develop Total Maximum Daily Loads (TMDLs) for pollutants of concern. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

1.4 DNREC listed the Murderkill River and several of its tributaries and ponds on the Delaware's 1996, 1998, and 2000 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Carbonaceous Biochemical Oxygen Demand (CBOD).

### **2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Murderkill River Watershed, Delaware**

~~**Article 1.** The total nitrogen load from the four point source facilities in the watershed (City of Harrington, Kent County Facility, Canterbury Crossing Mobile Home Park, and Southwood Acres Mobile Home Park) shall be limited to 406.3 pounds per day. The load allocation for each facility includes: City of Harrington (25 pounds per day), Kent County Facility (375 pounds per day), Canterbury Crossing Mobile Home Park (4.3 pounds per day), and Southwood Acres Mobile Home Park (2.0 pounds per day).~~

~~**Article 2.** The total phosphorous load from the four point source facilities in the watershed shall be limited to 27.3 pounds per day. The load allocation for each facility includes: City of Harrington (2 pounds per day), Kent County Facility (25 pounds per day), Canterbury Crossing Mobile Home Park (0.2 pounds per day), and Southwood Acres Mobile Home Park (0.1 pounds per day).~~

~~**Article 3.** The CBOD5 (5 day Carbonaceous Biochemical Oxygen Demand) load from the four point source facilities in the watershed shall be limited to 672.1 pounds per day. The load allocation for each facility includes: City of Harrington (33 pounds per day), Kent County Facility (625 pounds per day), Canterbury Crossing Mobile Home Park (9.6 pounds per day), and Southwood Acres Mobile Home Park (4.5 pounds per day).~~

~~**Article 4.** The nonpoint source nitrogen load in the entire watershed shall be reduced by 30 percent (from the 1997 base-line). This shall result in a yearly average total nitrogen load of 560 pounds per day.~~

~~**Article 5.** The nonpoint source phosphorus load in the entire watershed shall be reduced by 50 percent (from the 1997 base-line). This shall result in a yearly average total phosphorous load of 96 pounds per day.~~

~~**Article 6.** Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 5, DNREC has determined that, with an adequate margin of safety, water quality standards and nutrient targets will be met in the Murderkill River and its tributaries and ponds.~~



Article 7. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Department's Whole Basin Management Program, Murderkill River Tributary Action Team, and other affected parties.

Article 1. The total nitrogen waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 755.3 pounds per day. The waste load allocation for the Kent County Facility will be 751 pounds per day and for Canterbury Crossing Mobile Home Park will be 4.3 pounds per day.

Article 2. The total phosphorus waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 62.7 pounds per day. The waste load allocation for the Kent County Facility will be 62.5 pounds per day and for Canterbury Crossing Mobile Home Park will be 0.2 pounds per day.

Article 3. The CBOD5 (5-day Carbonaceous Biochemical Oxygen Demand) waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 1010.6 pounds per day. The waste load allocation for Kent County Facility will be 1001 pounds per day and for Canterbury Crossing Mobile Home Park will be 9.6 pounds per day.

Article 4. Treated wastewater from the City of Harrington wastewater treatment facility shall be used for spray irrigation. However, during the winter season, as well as during wet weather periods, when spray irrigation of treated wastewater is not practical, the effluent may be discharged into Browns Branch. During periods of surface discharge, the maximum discharge flow rate shall not exceed 750,000 gallons per day and daily waste loads shall not exceed 140 pounds per day for total nitrogen, 0.75 pounds per day for total phosphorus, and 37.5 pounds per day for CBOD5. Furthermore, the total annual waste load discharged from the City of Harrington wastewater treatment facility to the surface waters of Browns Branch shall not exceed 9125 pounds per year for total nitrogen, 55 pounds per year for total phosphorus, and 3000 pounds per year for CBOD5.

Article 5. The nonpoint source nitrogen load in the entire watershed shall be reduced by 30 percent (from the 1997 base-line). This shall result in a yearly-average total nitrogen load of 560 pounds per day.

Article 6. The nonpoint source phosphorus load in the entire watershed shall be reduced by 50 percent (from the 1997 base-line). This shall result in a yearly-average total phosphorous load of 96 pounds per day.

Article 7. Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 6, DNREC has determined that, with an adequate margin of safety, water

quality standards and nutrient targets will be met in the Murderkill River and its tributaries and ponds.

Article 8. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Murderkill River Tributary Action Team, other stakeholders, and the public.

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**Symbol Key**

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

**Final Regulations**

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

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

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
100 BOARD OF ACCOUNTANCY  
Statutory Authority: 24 Delaware Code,  
Section 105(a)(1) (24 Del.C. §105(a)(1))  
24 DE Admin. Code**

**ORDER**

AFTER due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 16, 2005 at a scheduled meeting of the Delaware Board of Accountancy to receive comments regarding proposed Regulation 15.0. The proposed regulation identifies crimes substantially related to the practice of accountancy as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005.

**Background**

Under Title 24, Chapter 1, one of the qualifications for a certificate is that the applicant shall submit evidence that the applicant "is of good character." "Good character", for purposes of this section, means that an applicant has not been convicted of a crime that is substantially related to the

practice of accountancy" 24 Del.C. §107(a)(1). 24 Del.C. §117, as amended by SB 229, provides that any individual holding a certificate and any individual or firm holding a permit to practice shall be subject to disciplinary action set forth in § 118 if, after a hearing, the Board finds that the individual or firm "has been found guilty of or has entered a plea of guilty or nolo contendere to a crime that is substantially related to the practice of accountancy." 24 Del.C. §117(4). "Substantially related" means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to accountancy." 24 Del.C. §102(13).

The Board's authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 53 is set forth in 24 Del.C. §105(a)(1). The specific mandate for this rule is set forth in 24 Del.C. §105(b). The proposed regulation specifically identifies those crimes which are substantially related to the practice of accountancy.

**Summary Of The Evidence And Information Submitted**

No written comments were received. No public comment was received at the February 16, 2005 hearing.

### Findings Of Fact With Respect To The Evidence And Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the Delaware Code. The overarching concern of the Board was the safety of the public since licensed certificate and permit holders work closely in a position of trust and responsibility with the members of the public they serve gaining access to the details of their clients' personal and business financial information. Certificate holders and permit holders often deal with individuals who are inexperienced in financial matters and place a great deal of trust in the practitioner. These individuals, including the elderly, may be vulnerable to manipulation and undue influence. In addition practitioners work in a variety of settings, including private offices, where it is not uncommon for certificate holders to meet with clients after hours when no one else is present in order to accommodate the client's schedule.

The "primary objective of the Board of Accountancy, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are the direct recipients of services regulated by this chapter) from unsafe practices, including incompetent auditing, accounting and tax services rendered by certificate and permit holders, and from occupational practices which tend to reduce competition or fix the price of services rendered." 24 **Del.C.** §101.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities of accountancy in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or fraudulent conduct; offenses against public administration including but not limited to bribery and perjury; financial exploitation and tax offenses; mistreatment or abuse of children and the elderly; and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment.

In summary, the Board finds that adopting regulation 15.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of accountancy services.

### Decision And Effective Date

The Board hereby adopts the changes to Regulation 15.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

### Text And Citation

The text of the revised rule remains as published in *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005, and as attached hereto as Exhibit A.

SO ORDERED this 16th day of February, 2005.

BOARD OF ACCOUNTANCY  
James R. Zdimal, President, CPA Member  
John A. McManus, PA Member  
Cathel Tanner, PA Member  
Norma Rohleder, CPA Member  
James Horty, CPA Member  
Sandra Gulledege, CPA Member  
Joyce Dyer, Public Member  
Diane Marky, Public Member

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

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

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

15.1.2 Reckless endangering in the first degree.

11 Del.C. §604

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

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

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

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

15.1.7 Assault by abuse or neglect. 11 Del.C. §615.

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

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

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

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

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

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

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

15.1.15 Promoting suicide. 11 Del.C. §645.

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

- 15.1.17 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 15.1.18 Rape in the fourth degree. 11 Del.C. §770.
- 15.1.19 Rape in the third degree. 11 Del.C. §771.
- 15.1.20 Rape in the second degree. 11 Del.C. §772.
- 15.1.21 Rape in the first degree. 11 Del.C. §773.
- 15.1.22 Sexual extortion. 11 Del.C. §776.
- 15.1.23 Continuous sexual abuse of a child. 11 Del.C. §778.
- 15.1.24 Dangerous crime against a child. 11 Del.C. §779.
- 15.1.25 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 15.1.26 Kidnapping in the second degree. 11 Del.C. §783.
- 15.1.27 Kidnapping in the first degree. 11 Del.C. §783A.
- 15.1.28 Arson in the second degree. 11 Del.C. §802.
- 15.1.29 Arson in the first degree. 11 Del.C. §803.
- 15.1.30 Burglary in the third degree. 11 Del.C. §824.
- 15.1.31 Burglary in the second degree. 11 Del.C. §825.
- 15.1.32 Burglary in the first degree. 11 Del.C. §826.
- 15.1.33 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828.
- 15.1.34 Robbery in the second degree. 11 Del.C. §831.
- 15.1.35 Robbery in the first degree. 11 Del.C. §832.
- 15.1.36 Carjacking in the second degree. 11 Del.C. §835.
- 15.1.37 Carjacking in the first degree. 11 Del.C. §836.
- 15.1.38 Shoplifting; felony. 11 Del.C. §840.
- 15.1.39 Use of illegitimate retail sales receipt or Universal Product Code Label; felony. 11 Del.C. §840A.
- 15.1.40 Theft. 11 Del.C. §841.
- 15.1.41 Theft; lost or mislaid property; mistaken delivery. 11 Del.C. §842.
- 15.1.42 Theft; false pretense. 11 Del.C. §843.
- 15.1.43 Theft; false promise. 11 Del.C. §844.
- 15.1.44 Theft of services. 11 Del.C. §845.
- 15.1.45 Extortion. 11 Del.C. §846.
- 15.1.46 Misapplication of property; felony. 11 Del.C. §848.
- 15.1.47 Receiving stolen property. 11 Del.C. §851.
- 15.1.48 Identity theft. 11 Del.C. §854.
- 15.1.49 Forgery. 11 Del.C. §861.
- 15.1.50 Possession of forgery devices. 11 Del.C. §862.
- 15.1.51 Falsifying business records. 11 Del.C. §871.
- 15.1.52 Tampering with public records in the second degree. 11 Del.C. §873.
- 15.1.53 Tampering with public records in the first degree. 11 Del.C. §876.
- 15.1.54 Offering a false instrument for filing. 11 Del.C. §877.
- 15.1.55 Issuing a false certificate. 11 Del.C. §878.
- 15.1.56 Defrauding secured creditors. 11 Del.C. §891.
- 15.1.57 Fraud in insolvency. 11 Del.C. §892.
- 15.1.58 Interference with levied-upon property. 11 Del.C. §893.
- 15.1.59 Issuing a bad check; felony. 11 Del.C. §900.
- 15.1.60 Unlawful use of credit card; felony. 11 Del.C. §903.
- 15.1.61 Reencoder and scanning devices. 11 Del.C. §903A.
- 15.1.62 Deceptive business practices. 11 Del.C. §906.
- 15.1.63 Criminal impersonation. 11 Del.C. §907.
- 15.1.64 Criminal impersonation, accident related. 11 Del.C. §907A.
- 15.1.65 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 15.1.66 Unlawfully concealing a will. 11 Del.C. §908.
- 15.1.67 Securing execution of documents by deception. 11 Del.C. §909.
- 15.1.68 Debt adjusting. 11 Del.C. §910.
- 15.1.69 Fraudulent conveyance of public lands. 11 Del.C. §911.
- 15.1.70 Fraudulent receipt of public lands. 11 Del.C. §912.
- 15.1.71 Insurance fraud. 11 Del.C. §913.
- 15.1.72 Health care fraud. 11 Del.C. §913A.
- 15.1.73 Home improvement fraud. 11 Del.C. §916.
- 15.1.74 New home construction fraud. 11 Del.C. §917.
- 15.1.75 Unauthorized access. 11 Del.C. §932.
- 15.1.76 Theft of computer services. 11 Del.C. §933.
- 15.1.77 Interruption of computer services. 11 Del.C. §934.
- 15.1.78 Misuse of computer system information. 11 Del.C. §935.
- 15.1.79 Destruction of computer equipment. 11 Del.C. §936.
- 15.1.80 Unrequested or unauthorized electronic mail or use of network or software to cause same. 11 Del.C. §937.

- 15.1.81 Failure to promptly cease electronic communication upon request. 11 **Del.C.** §938.
- 15.1.82 Dealing in children. 11 **Del.C.** §1100.
- 15.1.83 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 15.1.84 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 15.1.85 Possession of child pornography. 11 **Del.C.** §1111.
- 15.1.86 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112.
- 15.1.87 Sexual solicitation of a child. 11 **Del.C.** §1112A.
- 15.1.88 Criminal non-support and aggravated criminal non-support. 11 **Del.C.** §1113.
- 15.1.89 Bribery; felony. 11 **Del.C.** §1201
- 15.1.90 Receiving a bribe; felony. 11 **Del.C.** §1203.
- 15.1.91 Giving unlawful gratuities. 11 **Del.C.** §1205.
- 15.1.92 Receiving unlawful gratuities. 11 **Del.C.** §1206.
- 15.1.93 Improper influence. 11 **Del.C.** §1207.
- 15.1.94 Official misconduct. 11 **Del.C.** §1211.
- 15.1.95 Profiteering. 11 **Del.C.** §1212.
- 15.1.96 Perjury in the second degree. 11 **Del.C.** §1222.
- 15.1.97 Perjury in the first degree. 11 **Del.C.** §1223.
- 15.1.98 Making a false written statement. 11 **Del.C.** §1233.
- 15.1.99 Terroristic threatening of public officials or public servants; felony. 11 **Del.C.** §1240.
- 15.1.100 Hindering prosecution; felony. 11 **Del.C.** §1244.
- 15.1.101 Falsely reporting an incident; felony. 11 **Del.C.** §1245.
- 15.1.102 Promoting prison contraband; felony. 11 **Del.C.** §1256.
- 15.1.103 Bribing a witness. 11 **Del.C.** §1261.
- 15.1.104 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 15.1.105 Tampering with a witness. 11 **Del.C.** §1263.
- 15.1.106 Interfering with child witness. 11 **Del.C.** §1263A.
- 15.1.107 Bribing a juror. 11 **Del.C.** §1264.
- 15.1.108 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 15.1.109 Tampering with a juror. 11 **Del.C.** §1266.
- 15.1.110 Misconduct by a juror. 11 **Del.C.** §1267.
- 15.1.111 Tampering with physical evidence. 11 **Del.C.** §1269.
- 15.1.112 Unlawful grand jury disclosure. 11 **Del.C.** §1273.
- 15.1.113 Hate crimes; felony. 11 **Del.C.** §1304.
- 15.1.114 Stalking; felony. 11 **Del.C.** §1312A.
- 15.1.115 Violation of privacy; felony. 11 **Del.C.** §1335.
- 15.1.116 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 15.1.117 Adulteration. 11 **Del.C.** §1339.
- 15.1.118 Possessing a destructive weapon. 11 **Del.C.** §1444.
- 15.1.119 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.
- 15.1.120 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 15.1.121 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 15.1.122 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 15.1.123 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
- 15.1.123 Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 15.1.125 Victim or Witness Intimidation 11 **Del.C.** §3532 & 3533.
- 15.1.126 Financial exploitation of residents or patients; felony 16 **Del.C.** §1136 (b).
- 15.1.127 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
- 15.1.128 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).
- 15.1.129 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 15.1.130 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).
- 15.1.131 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.
- 15.1.132 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767
- 15.1.133 Drug paraphernalia; felony. 16 **Del.C.** §4771 (b) and (c) [manufacture and sale, delivery to a minor].
- 15.1.134 Attempt to evade or defeat tax. 30 **Del.C.** §571.
- 15.1.135 Failure to collect or pay over tax. 30 **Del.C.** §572.
- 15.1.136 Failure to file return, supply information or pay tax. 30 **Del.C.** §573.

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

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

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

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

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

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

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

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

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

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

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

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

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

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## **DIVISION OF PROFESSIONAL REGULATION**

### **500 BOARD OF PODIATRY**

Statutory Authority: 24 Delaware Code,

Section 506 (24 Del.C. §506(a))

24 DE Admin Code 506

### **ORDER**

After due notice in the *Register of Regulations* and publication of notice in two Delaware Newspapers, a public hearing was held on February 17, 2005 at a scheduled meeting of the Board of Podiatry to receive and consider public comment concerning proposed Regulation No. 29. This Regulation sets forth crimes which the Board of Podiatry believes are substantially related to the practice of podiatric medicine. The proposed regulation was published

in the *Register of Regulations* in Volume 8, Issue 7, on Saturday, January 1, 2005.

### **Background**

The 142<sup>nd</sup> General Assembly of the State of Delaware passed Senate Bill No. 229 which, among other things, directed various Boards, Agencies and Commissions including the Board of Podiatry to adopt a regulation specifically identifying and setting forth crimes which were deemed to be substantially related to the practice of podiatry. (See Section 13, Senate Bill No. 229, Del. Code Ann., §1730(e) (June 30, 2004)). The Governor signed this legislation into law.

In this legislation, the term “substantially related to” means that the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the provision of the particular professional services.

### **Summary Of The Evidence And Information Submitted**

The Board received no written comments and no individuals appeared at the scheduled hearing to make comments concerning the proposed regulation.

In proposing the Regulation, the Board carefully considered a compilation of crimes extracted from the Delaware Code and included federal criminal offenses (Title 18, U.S.C.A.) to also include Federal Health Care offenses as being substantially related to the fitness of an individual to provide health care services in the State of Delaware as a podiatric physician. Also included are any crimes under other laws which are substantially similar to those crimes identified in the proposed regulation.

It is the view of the Board of Podiatry that the conviction of such crimes, which are the same crimes identified for physicians by the Board of Medical Practice, should form the basis for discipline or a proposal to deny certification to an applicant as a matter of public information and protection. It is unfortunate, in the view of the Board that it has been required to specify in advance a list of crimes which are deemed to be “substantially related to the practice of podiatry” because such determinations are in many instances more appropriately made after a review of the circumstances surrounding the crime and the particular facts leading to the conviction. The Board will be seeking legislative authorization similar to that present in 24 Del.C. §1720(d) for the Board of Medical Practice to allow the waiver of such convictions in appropriate circumstances.

**Decision And Effective Date**

The Board by this order adopts the proposed Regulation No. 9 to be effective on March 11, 2005. (Ten (10) days after the publication of this Order in the *Register of Regulations*).

**Text And Citation**

The text of the Regulation No. 9 remains as it was published in the *Register of Regulation*, Volume No. 8, Issue No. 7, Saturday, January 1, 2005, (a copy of which is attached).

IT IS SO ORDERED THIS 17<sup>th</sup> DAY OF February, 2005.

Dr. Jonathan P. Contompasis

Dr. Edwin M. Mow

Dr. Jeffrey Barton

Mr. Nathaniel Gibbs (abstaining)

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

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

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

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

Assaults and Related Offenses

9.1.1 §601. Offensive touching;

9.1.2 §602. Menacing;

9.1.3 §603. Reckless endangering in the second degree;

9.1.4 §604. Reckless endangering in the first degree;

9.1.5 §605. Abuse of a pregnant female in the second degree;

9.1.6 §606. Abuse of a pregnant female in the first degree;

9.1.7 §611. Assault in the third degree;

9.1.8 §612. Assault in the second degree;

9.1.9 §613. Assault in the first degree;

9.1.10 §614. Assault on a sports official.

9.1.11 §615. Assault by abuse or neglect;

9.1.12 §621. Terroristic threatening;

9.1.13 §625. Unlawfully administering drugs;

9.1.14 §626. Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;

9.1.15 §627. Prohibited acts as to substances releasing vapors or fumes;

9.1.16 §628. Vehicular assault in the second degree;

9.1.17 §629. Vehicular assault in the first degree;

9.1.18 §630. Vehicular homicide in the second degree;

9.1.19 §630A. Vehicular homicide in the first degree;

9.1.20 §631. Criminally negligent homicide;

9.1.21 §632. Manslaughter;

9.1.22 §633. Murder by abuse or neglect in the second degree;

9.1.23 §634. Murder by abuse or neglect in the first degree;

9.1.24 §635. Murder in the second degree;

9.1.25 §636. Murder in the first degree;

9.1.26 §645. Promoting suicide.

Abortion and Related Offenses

9.1.27 §651. Abortion;

9.1.28 §653. Issuing abortifacient articles.

Sexual Offenses

9.1.29 §763. Sexual harassment;

9.1.30 §764. Indecent exposure in the second degree;

9.1.31 §765. Indecent exposure in the first degree;

9.1.32 §766. Incest;

9.1.33 §767. Unlawful sexual contact in the third degree;

9.1.34 §768. Unlawful sexual contact in the second degree;

9.1.35 §769. Unlawful sexual contact in the first degree;

9.1.36 §770. Rape in the fourth degree;

9.1.37 §771. Rape in the third degree;

9.1.38 §772. Rape in the second degree;

9.1.39 §773. Rape in the first degree;

9.1.40 §776. Sexual extortion;

9.1.41 §777. Bestiality;

9.1.42 §778. Continuous sexual abuse of a child;

9.1.43 §780. Female genital mutilation.

Kidnapping and Related Offenses

9.1.44 §781. Unlawful imprisonment in the second degree;

9.1.45 §782. Unlawful imprisonment in the first degree;

9.1.46 §783. Kidnapping in the second degree;

9.1.47 §783A. Kidnapping in the first degree;

9.1.48 §785. Interference with custody;

Coercion

9.1.49 §791. Acts constituting coercion;

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

Arson and Related Offenses

9.2.1 §801. Arson in the third degree;

9.2.2 §802. Arson in the second degree;

9.2.3 §803. Arson in the first degree;

9.2.4 §804. Reckless burning or exploding;

9.2.5 §805. Cross or religious symbol burning;

Criminal Trespass and Burglary

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

9.2.7 §821. Criminal trespass in the third degree;

9.2.8 §822. Criminal trespass in the second degree;

9.2.9 §823. Criminal trespass in the first degree;

9.2.10 §824. Burglary in the third degree;

9.2.11 §825. Burglary in the second degree;

9.2.12 §826. Burglary in the first degree;

9.2.13 §828. Possession of burglar's tools or instruments facilitating theft;

Robbery

9.2.14 §831. Robbery in the second degree;

9.2.15 §832. Robbery in the first degree.

9.2.16 §835. Carjacking in the second degree;

9.2.17 §836. Carjacking in the first degree;

Theft and Related Offenses

9.2.18 §840. Shoplifting; class G felony;

9.2.19 §840A. Use of illegitimate retail sales receipt or Universal Product Code Label.

9.2.20 §841. Theft;

9.2.21 §842. Theft; lost or mislaid property; mistaken delivery.

9.2.22 §843. Theft; false pretense.

9.2.23 §844. Theft; false promise.

9.2.24 §845. Theft of services.

9.2.25 §846. Extortion;

9.2.26 §848. Misapplication of property;

9.2.27 §849. Theft of rented property;

9.2.28 §850. Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.

9.2.29 §851. Receiving stolen property;

9.2.30 §853. Unauthorized use of a vehicle;

9.2.31 §854. Identity theft;

9.2.32 §859. Larceny of livestock;

9.2.33 §860. Possession of shoplifter's tools or instruments facilitating theft;

Forgery and Related Offenses

9.2.34 §861. Forgery; class F felony;

9.2.35 §862. Possession of forgery devices;

Offenses Involving Falsification of Records

9.2.36 §871. Falsifying business records;

9.2.37 §872. Falsifying business records;

9.2.38 §873. Tampering with public records in the second degree;

9.2.39 §876. Tampering with public records in the first degree;

9.2.40 §877. Offering a false instrument for filing;

9.2.41 §878. Issuing a false certificate;

Bribery Not Involving Public Servants

9.2.42 §881. Bribery;

9.2.43 §882. Bribe receiving;

Frauds on Creditors

9.2.44 §891. Defrauding secured creditors;

9.2.45 §892. Fraud in insolvency;

9.2.46 §893. Interference with levied-upon property;

Other Frauds and Cheats

9.2.47 §900. Issuing a bad check;

9.2.48 §903. Unlawful use of credit card;

9.2.49 §903A. Reencoder and scanning devices;

9.2.50 §906. Deceptive business practices;

9.2.51 §907. Criminal impersonation;

9.2.52 §907A. Criminal impersonation, accident related;

9.2.53 §907B. Criminal impersonation of a police officer;

9.2.54 §908. Unlawfully concealing a will;

9.2.55 §909. Securing execution of documents by deception;

9.2.56 §910. Debt adjusting;

9.2.57 §911. Fraudulent conveyance of public lands;

9.2.58 §912. Fraudulent receipt of public lands;

9.2.59 §913. Insurance fraud;

9.2.60 §913A. Health care fraud;

9.2.61 §914. Use of consumer identification information;

9.2.62 §915. Use of credit card information;

9.2.63 §915A. Credit and debit card transaction receipts;

9.2.64 §916. Home improvement fraud;

9.2.65 §917. New home construction fraud;

Offenses Relating to Recorded Devices

9.2.66 §920. Transfer of recorded sounds;

9.2.67 §921. Sale of transferred recorded sounds;

9.2.68 §922. Improper labeling;



Computer Related Offenses9.2.69 §932. Unauthorized access.9.2.70 §933. Theft of computer services.9.2.71 §934. Interruption of computer services.9.2.72 §935. Misuse of computer system information.9.2.73 §936. Destruction of computer equipment.9.2.74 §937. Unrequested or unauthorized electronic mail or use of network or software to cause same.9.2.75 §938. Failure to promptly cease electronic communication upon request.Offenses Relating to Marriage9.2.76 §1001. Bigamy;9.2.77 §1003. Bigamous marriage contracted outside the State.9.3 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:Child Welfare; Sexual Offenses, Animal Offenses9.3.1 §1100. Dealing in children;9.3.2 §1101. Abandonment of child;9.3.3 §1102. Endangering the welfare of a child;9.3.4 §1105. Endangering the welfare of an incompetent person;9.3.5 §1106. Unlawfully dealing with a child;9.3.6 §1107. Endangering children;9.3.7 §1108. Sexual exploitation of a child;9.3.8 §1109. Unlawfully dealing in child pornography;9.3.9 §1111. Possession of child pornography;9.3.10 §1112. Sexual offenders; prohibitions from school zones.9.3.11 §1112A. Sexual solicitation of a child;9.3.12 §1113. Criminal non-support and aggravated criminal non-support.9.3.13 §1114. Body-piercing; tattooing or branding;9.3.14 §1114A. Tongue-splitting;9.3.15 §1116. Sale or distribution of tobacco products to minors;9.3.16 §1117. Notice;9.3.17 §1119. Distribution of cigarettes through vending machines;9.3.18 §1120. Distribution of tobacco products;9.3.19 §1124. Purchase or receipt of tobacco products by minor;9.3.20 §1325. Cruelty to animals;9.3.21 §1325A. The unlawful trade in dog or cat by-products;9.3.22 §1326. Animals; fighting and baiting prohibited;9.3.23 §1327. Maintaining a dangerous animal;9.4 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:Bribery and Improper Influence9.4.1 §1201. Bribery;9.4.2 §1203. Receiving a bribe;9.4.3 §1205. Giving unlawful gratuities;9.4.4 §1206. Receiving unlawful gratuities;9.4.5 §1207. Improper influence;9.4.6 §1211. Official misconduct;9.4.7 §1212. Profiteering.Perjury and related offenses9.4.8 §1221. Perjury in the third degree;9.4.9 §1222. Perjury in the second degree;9.4.10 §1223. Perjury in the first degree;9.4.11 §1233. Making a false written statement;9.4.12 §1239. Wearing a disguise during the commission of a felony;9.4.13 §1240. Terroristic threatening of public officials or public servants;9.4.14 §1241. Refusing to aid a police officer;9.4.15 §1243. Obstructing fire-fighting operations;9.4.16 §1244. Hindering prosecution;9.4.17 §1245. Falsely reporting an incident;9.4.18 §1246. Compounding a crime;9.4.19 §1248. Obstructing the control and suppression of rabies;9.4.20 §1249. Abetting the violation of driver's license restrictions;9.4.21 §1250. Offenses against law-enforcement animals;9.4.22 §1251. Escape in the third degree;9.4.23 §1252. Escape in the second degree;9.4.24 §1253. Escape after conviction;9.4.25 §1254. Assault in a detention facility;9.4.26 §1257A. Use of an animal to avoid capture;9.4.27 §1259. Sexual relations in detention facility;9.4.28 §1260. Misuse of prisoner mail.Offenses Relating to Judicial and Similar Proceedings9.4.29 §1261. Bribing a witness;9.4.30 §1262. Bribe receiving by a witness;9.4.31 §1263. Tampering with a witness;9.4.32 §1263A. Interfering with child witness.9.4.33 §1264. Bribing a juror;9.4.34 §1265. Bribe receiving by a juror;

9.4.35 §1266. Tampering with a juror;  
9.4.36 §1267. Misconduct by a juror;  
9.4.37 §1269. Tampering with physical  
evidence;

9.4.38 §1271. Criminal contempt;  
9.4.39 §1271A. Criminal contempt of a domestic  
violence protective order;

9.4.40 §1273. Unlawful grand jury disclosure.

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

Disorderly Conduct and Related Offenses

9.5.1 §1301. Disorderly conduct;  
9.5.2 §1302. Riot;  
9.5.3 §1304. Hate crimes;  
9.5.4 §1311. Harassment;  
9.5.5 §1312. Aggravated harassment;  
9.5.6 §1312A. Stalking;  
9.5.7 §1313. Malicious interference with  
emergency communications;

9.5.8 §1315. Public intoxication;  
9.5.9 §1316. Registration of out-of-state liquor  
agents;

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

9.5.11 §1321. Loitering  
9.5.12 §1322. Criminal nuisance;  
9.5.13 §1323. Obstructing public passages;  
9.5.14 §1324. Obstructing ingress to or egress  
from public buildings;

9.5.15 §1331. Desecration;  
9.5.16 §1332. Abusing a corpse;  
9.5.17 §1333. Trading in human remains and  
associated funerary objects.

9.5.18 §1335. Violation of privacy;  
9.5.19 §1338. Bombs, incendiary devices,  
Molotov cocktails and explosive devices;

9.5.20 §1339. Adulteration;  
9.5.21 §1340. Desecration of burial place.  
Offenses Involving Public Indecency

9.5.22 §1341. Lewdness;  
9.5.23 §1342. Prostitution;  
9.5.24 §1343. Patronizing a prostitute  
prohibited.

9.5.25 §1351. Promoting prostitution in the  
third degree;

9.5.26 §1352. Promoting prostitution in the  
second degree;

9.5.27 §1353. Promoting prostitution in the first  
degree;

9.5.28 §1355. Permitting prostitution;  
Obscenity

9.5.29 §1361. Obscenity; acts constituting;  
9.5.30 §1365. Obscene literature harmful to  
minors;

9.5.31 §1366. Outdoor motion picture theatres;  
Offenses Involving Gambling

9.5.32 §1403. Advancing gambling in the first  
degree;

9.5.33 §1404. Providing premises for gambling;  
9.5.34 §1405. Possessing a gambling device;  
class A misdemeanor.

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

9.5.36 §1407. Engaging in a crap game;  
9.5.37 §1411. Unlawfully disseminating  
gambling information.

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

9.6.1 §4751. Prohibited acts A;  
9.6.2 §4752. Prohibited acts B;

9.6.3 §4752A. Unlawful delivery of  
noncontrolled substance.

9.6.4 §4753. Prohibited acts C.  
9.6.5 §4753A. Trafficking in marijuana, cocaine,  
illegal drugs, methamphetamines, L.S.D., or designer drugs.

9.6.6 §4754. Prohibited acts D;  
9.6.7 §4754A. Possession and delivery of  
noncontrolled prescription drug.

9.6.8 §4755. Prohibited acts E;  
9.6.9 §4756. Prohibited acts;

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

9.6.11 §4758. Keeping drugs in original  
containers.

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

9.6.13 §4761A. Purchase of drugs from minors;  
9.6.14 §4767. Distribution, delivery, or  
possession of controlled substance within 1,000 feet of  
school property;

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

9.7 Any crime which involves the misuse or illegal  
possession or sale of a deadly weapon or dangerous

instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the Delaware Code Annotated:

Offenses Involving Deadly Weapons and Dangerous Instruments

9.7.1 §1442. Carrying a concealed deadly weapon;

9.7.2 §1443. Carrying a concealed dangerous instrument;

9.7.3 §1444. Possessing a destructive weapon;

9.7.4 §1445. Unlawfully dealing with a dangerous weapon;

9.7.5 §1446. Unlawfully dealing with a switchblade knife;

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

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

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

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

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

9.7.11 §1450. Receiving a stolen firearm;

9.7.12 §1451. Theft of a firearm;

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

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

9.7.15 §1454. Giving a firearm to person prohibited;

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

9.7.17 §1456. Unlawfully permitting a minor access to a firearm;

9.7.18 §1457. Possession of a weapon in a Safe School and Recreation Zone;

9.7.19 §1458. Removing a firearm from the possession of a law enforcement officer;

9.7.20 §1459. Possession of a weapon with a removed, obliterated or altered serial number;

9.7.21 §1471. Prohibited acts.

Offenses Involving Drug Paraphernalia

9.7.22 §4774. Penalties.

Offenses Involving Organized Crime and Racketeering

9.7.23 §1504. Criminal Penalties for Organized Crime & Racketeering Offenses Involving Intimidation of Victims or Witnesses

9.7.25 §3533. Aggravated act of intimidation, Class D felony

9.7.24 §3532. Acts of Intimidation: Class E felony

Other Crimes

9.7.26 Title 3 §1041. Willfully or maliciously starting fires; Carelessly Starting Fires;

9.7.27 §1043. Setting fire to woodland; Unseasonable Marsh Burning.

9.7.28 Title 4 §901. Offenses carrying penalty of imprisonment for 3 to 6 months;

9.7.29 §902. Offenses carrying penalty of fine of \$500 to \$1,000 or imprisonment of 3 to 6 months on failure to pay fine;

9.7.30 §903. Offenses carrying penalty of fine of not more than \$100 imprisonment for 1 month on failure to pay fine;

9.7.31 §904. Offenses concerning certain persons;

9.7.32 §905. Unlicensed manufacture of alcoholic liquor; Possession of still, apparatus, mash, etc., by unlicensed person;

9.7.33 §906. Transportation or shipment;

9.7.34 §907. Interference with officer or inspector;

9.7.35 §908. Failure of licensee to file report;

9.7.36 §909. Violation of rules respecting liquor taxes.

9.7.37 Title 7 §1717. Unauthorized acts against a service guide or seeing eye dog.

9.7.38 Title 11 §2403. Manufacture, possession or sale of intercepting device;

9.7.39 §2410. Breaking and entering, etc. to place or remove equipment;

9.7.40 §2412. Obstruction, impediment or prevention of interception;

9.7.41 §2422. Divulging contents of communications;

9.7.42 §3532. Act of intimidation;

9.7.43 §3533. Aggravated act of intimidation;

9.7.44 §3534. Attempt to intimidate;

9.7.45 §8523. Penalties [for violation of reporting provision re: SBI];

9.7.46 §8562. Penalties [for failure of child-care provider to obtain information required under §8561 or for those providing false information]

9.7.47 §8572. Penalties [for providing false information when seeking employment in a public school]

9.7.48 §9016. Filing false claim [under Victims' Compensation Fund].

9.7.49 Title 12 §210. Alteration, theft or destruction of Will.

9.7.50 Title 16 §1136. Abuse or neglect of a patient or resident of a nursing facility.

9.7.51 Title 21 §2118A. Unlawful possession or manufacture of proof of insurance;

9.7.52 §2133. Penalties; jurisdiction of justices of the peace.

- 9.7.53 §2315. False statements;
- 9.7.54 §2316. Altering or forging certificate of title, manufacturer's certificate of origin, registration sticker or vehicle I identification plate;
- 9.7.55 §2620. False statements; incorrect or incomplete information;
- 9.7.56 §2703. License to operate a motorcycle, motorbike, etc.;
- 9.7.57 §2710. Issuance of a Level 1 Learner's Permit and Class D operator's license to persons under 18 years of age;
- 9.7.58 §2722. Restricted licenses based on driver's physical limitations;
- 9.7.59 §2751. Unlawful application for or use of license or identification card;
- 9.7.60 §2752. False statements;
- 9.7.61 §2756. Driving vehicle while license is suspended or revoked; penalty;
- 9.7.62 §2760. Duplication, reproduction, altering, or counterfeiting of driver's licenses or identification cards.
- 9.7.63 Title 23 §2302. Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs;
- 9.7.64 §2305. Penalties; jurisdiction.
- 9.7.65 Title 24 §903. Sale to persons under 21 or intoxicated persons.
- 9.7.66 Title 29 §3107. Motor vehicle safety-responsibility; False statements;
- 9.7.67 §4175A. Reckless driving;
- 9.7.68 §4177. Driving a vehicle while under the influence or with a prohibited alcohol content; evidence; arrests; and penalties.
- 9.7.69 §4177M. Operating a commercial motor vehicle with a prohibited blood alcohol concentration or while impaired by drugs;
- 9.7.70 §4183. Parking areas for vehicles being used by persons with disabilities;
- 9.7.71 §4198J. Bicycling on highways under influence of drugs or alcohol;
- 9.7.72 §4198O. Operation of electric personal assistive mobility devices (EPAMD);
- 9.7.73 §4201. Duty of driver involved in accident resulting in property damage or injury;
- 9.7.74 §4202. Duty of driver involved in accident resulting in injury or death to any person;
- 9.7.75 §4203. Duty to report accidents; evidence;
- 9.7.76 §4204. Report of damaged vehicles; cars involved in fatal accidents;
- 9.7.77 §4604. Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires;
- 9.7.78 §6420. Odometers penalties;
- 9.7.79 §6702. Driving vehicle without consent of owner;
- 9.7.80 §6704. Receiving or transferring stolen vehicle;
- 9.7.81 §6705. Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity;
- 9.7.82 §6707. Penalty;
- 9.7.83 §6709. Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers;
- 9.7.84 §6710. Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers.
- 9.7.85 Title 30 §571. Attempt to evade or defeat tax;
- 9.7.86 §572. Failure to collect or pay over tax;
- 9.7.87 §573. Failure to file return, supply information or pay tax;
- 9.7.88 §574. Fraud and false statements;
- 9.7.89 §576. Misdemeanors.
- 9.7.90 Title 31§1007. Fraudulent acts penalties;
- 9.7.91 §3913. Welfare violations [knowing or reckless abuse of an infirm adult]
- 9.8 Any crime which is a violation of Title 24, Chapter 5 as it may be amended from time to time or of any other statute which requires the reporting of a medical situation or condition to state, federal or local authorities or a crime which constitutes a violation of the Podiatric Practice Act of the state in which the conviction occurred or in which the physician is licensed.
- 9.9 The Board reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 **Del.C.** §10119 to address imminent peril to the public health, safety or welfare.

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

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

**DIVISION OF PROFESSIONAL REGULATION  
2700 BOARD OF PROFESSIONAL LAND  
SURVEYORS**

Statutory Authority: 24 Delaware Code,  
Section 2706(g) (24 Del.C. §2706(g))  
24 DE Admin. Code 2700

**ORDER**

After due notice in the *Register of Regulations* and two Delaware Newspapers, a public hearing was held on January 20, 2005 at a scheduled meeting of the Delaware Board of Professional Land Surveyors to receive comments regarding proposed Regulation 20.0. The proposed regulation identifies crimes substantially related to the practice of professional land surveying as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

**Background**

Under Title 24, Chapter 27, one of the qualifications for licensure is that the applicant shall submit evidence that the applicant “shall not have a criminal conviction record, nor pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of land surveying. Applicants who have criminal conviction records or pending criminal charges shall request appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of land surveying. 24 Del.C. §2708(5). 24 Del.C. §2712(a)(2), as amended by SB 229, provides that a practitioner licensed under this chapter shall be subject to disciplinary actions set forth in §2714 of this title after a hearing, the Board finds that the land surveyor “has been convicted of a crime that is substantially related to the practice of land surveying; a copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor;”. “‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of land surveying.” 24 Del.C. §2702(9).

The Board’s authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 27 is set forth in 24 Del.C. §2702(a)(1). The specific mandate for this rule is set forth in 24 Del.C. §2706(b). The proposed regulation specifically identifies those crimes which are substantially related to the practice of land surveying.

**Summary Of The Evidence And Information Submitted**

No written comments were received. No public comment was received at the January 20, 2005 hearing.

**Findings Of Fact With Respect To The Evidence And Information Submitted**

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the Delaware Code. The primary concern of the Board was the safety of the public since the licensed practitioners frequently work outdoors, in residential subdivisions, office parks, farms, and other types of properties, under conditions that sometimes can lead to potential confrontations over boundary disputes or other real estate controversies. In addition, Land Surveyors have regular contact with public officials regarding land use matters, where honesty and respect for the integrity of public institutions is of paramount concern. Land Surveyor clients may also include the elderly who are vulnerable to undue influence or other forms of abuse. Land Surveyors may also have access to confidential client information health and financial information.

The “primary objective of the Board of Professional Land Surveyors, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.” 24 Del.C. §2701.

The Board finds that the crimes identified in the proposed rule are substantially related to the fitness or ability to perform 1 or more of the duties and responsibilities of land surveying services in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children, the elderly or animals; and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment.

In summary, the Board finds that adopting regulation 20.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of land surveying services.

**Decision And Effective Date**

The Board hereby adopts the changes to Regulation 20.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

**Text And Citation**

The text of the revised rule remains as published in *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

**SO ORDERED** this 20th day of January, 2005.

BOARD OF PROFESSIONAL LAND SURVEYORS  
 Elton M. Murray, Chairman, Professional Member  
 Roy B.Kemp, Vice-Chairman, Professional Member  
 Russel Y. Dolbeare, Professional Member  
 Lena M. Corder, Public Member  
 Michael J. Early, Professional Member  
 Amos W. Aiken, Professional Member  
 Victor Kennedy, Public Member

**20.0 Crimes substantially related to practice of land surveyors**

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

- 20.1.1 Menacing. 11 Del.C. §602
- 20.1.2 Reckless endangering in the second degree. 11 Del.C. §603
- 20.1.3 Reckless endangering in the first degree. 11 Del.C. §604
- 20.1.4 Abuse of a pregnant female in the second degree. 11 Del.C. §605
- 20.1.5 Abuse of a pregnant female in the first degree. 11 Del.C. §606
- 20.1.6 Assault in the second degree. 11 Del.C. §612
- 20.1.7 Assault in the first degree. 11 Del.C. §613
- 20.1.8 Assault by abuse or neglect. 11 Del.C. §615
- 20.1.9 Terroristic threatening. 11 Del.C. §621(a)(b)
- 20.1.10 Unlawful administering drugs. 11 Del.C. §625
- 20.1.11 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626
- 20.1.12 Prohibited acts as to substances releasing vapors or fumes. 11 Del.C. §627
- 20.1.13 Vehicular assault in the second degree. 11 Del.C. §628
- 20.1.14 Vehicular assault in the first degree. 11 Del.C. §629
- 20.1.15 Vehicular homicide in the second degree. 11 Del.C. §630
- 20.1.16 Vehicular homicide in the first degree. 11

- Del.C. §630A
- 20.1.17 Criminally negligent homicide. 11 Del.C. §631
- 20.1.18 Manslaughter. 11 Del.C. §632
- 20.1.19 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 20.1.20 Murder by abuse or neglect in the first degree. 11 Del.C. §634
- 20.1.21 Murder in the second degree. 11 Del.C. §635
- 20.1.22 Murder in the first degree. 11 Del.C. §636
- 20.1.23 Unlawful sexual contact in the second degree. 11 Del.C. §768
- 20.1.24 Unlawful sexual contact in the first degree. 11 Del.C. §769
- 20.1.25 Rape in the fourth degree. 11 Del.C. §770
- 20.1.26 Rape in the third degree. 11 Del.C. §771
- 20.1.27 Rape in the second degree. 11 Del.C. §772
- 20.1.28 Rape in the first degree. 11 Del.C. §773
- 20.1.29 Sexual extortion. 11 Del.C. §776
- 20.1.30 Continuous sexual abuse of a child. 11 Del.C. §778
- 20.1.31 Female genital mutilation. 11 Del.C. §780
- 20.1.32 Unlawful imprisonment in the first degree. 11 Del.C. §782
- 20.1.33 Kidnapping in the second degree. 11 Del.C. §783
- 20.1.34 Kidnapping in the first degree. 11 Del.C. §783A
- 20.1.35 Arson in the first degree. 11 Del.C. §803
- 20.1.36 Burglary in the third degree. 11 Del.C. §824
- 20.1.37 Burglary in the second degree. 11 Del.C. §825
- 20.1.38 Burglary in the first degree. 11 Del.C. §826
- 20.1.39 Multiple Offenses. 11 Del.C. §827
- 20.1.40 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828
- 20.1.41 Robbery in the second degree. 11 Del.C. §831
- 20.1.42 Robbery in the first degree. 11 Del.C. §832
- 20.1.43 Carjacking in the second degree. 11 Del.C. §835
- 20.1.44 Carjacking in the first degree. 11 Del.C. §836
- 20.1.45 Shoplifting. 11 Del.C. § 840
- 20.1.46 Theft. 11 Del.C. §841
- 20.1.47 Theft of Services. 11 Del.C. §845
- 20.1.48 Extortion. 11 Del.C. §846
- 20.1.49 Misapplication of property. 11 Del.C. §848
- 20.1.50 Theft of rented property. 11 Del.C. §849

20.1.51	<u>Receiving stolen property. 11 Del.C. §851</u>		20.1.85	<u>Perjury in the third degree. 11 Del.C. §1221</u>
20.1.52	<u>Identity theft. 11 Del.C. §854</u>		20.1.86	<u>Perjury in the second degree. 11 Del.C. §1222</u>
20.1.53	<u>Forgery. 11 Del.C. §861</u>		20.1.87	<u>Perjury in the first degree. 11 Del.C. §1223</u>
20.1.54	<u>Falsifying business records. 11 Del.C. §871</u>		20.1.88	<u>Making a false written statement. 11 Del.C. §1233</u>
20.1.55	<u>Tampering with public records in the second degree. 11 Del.C. §873</u>		20.1.89	<u>Threats to public officials. 11 Del.C. §1240</u>
20.1.56	<u>Tampering with public records in the first degree. 11 Del.C. §876</u>		20.1.90	<u>Assault in a detention facility. 11 Del.C. §1254</u>
20.1.57	<u>Offering a false instrument for filing. 11 Del.C. §877</u>		20.1.91	<u>Bribing a witness. 11 Del.C. §1261</u>
20.1.58	<u>Issuing a false certificate. 11 Del.C. §878</u>		20.1.92	<u>Bribe receiving by a witness. 11 Del.C. §1262</u>
20.1.59	<u>Bribery. 11 Del.C. §881</u>		20.1.93	<u>Tampering with a witness. 11 Del.C. §1263</u>
20.1.60	<u>Bribe receiving. 11 Del.C. §882</u>		20.1.94	<u>Interfering with child witness. 11 Del.C. §1263A</u>
20.1.61	<u>Issuing a bad check. 11 Del.C. §900</u>		20.1.95	<u>Bribing a juror. 11 Del.C. §1264</u>
20.1.62	<u>Criminal impersonation of a police officer. 11 Del.C. §907B</u>		20.1.96	<u>Bribe receiving by a juror. 11 Del.C. §1265</u>
20.1.63	<u>Unlawfully concealing a will. 11 Del.C. §908</u>		20.1.97	<u>Tampering with physical evidence. 11 Del.C. §1269</u>
20.1.64	<u>Fraudulent conveyance of public lands. 11 Del.C. §911</u>		20.1.98	<u>Disorderly conduct. 11 Del.C. §1301</u>
20.1.65	<u>Fraudulent receipt of public lands. 11 Del.C. §912</u>		20.1.99	<u>Felony hate crimes. 11 Del.C. §1304</u>
20.1.66	<u>Insurance fraud. 11 Del.C. §913</u>		20.1.100	<u>Harassment. 11 Del.C. §1311</u>
20.1.67	<u>Health care fraud. 11 Del.C. §913A</u>		20.1.101	<u>Aggravated harassment. 11 Del.C. §1312</u>
20.1.68	<u>New home construction fraud. 11 Del.C. §917</u>		20.1.102	<u>Felony stalking. 11 Del.C. §1312A</u>
20.1.69	<u>Unauthorized access. 11 Del.C. §932</u>		20.1.103	<u>Trading in human remains and associated funerary objects. 11 Del.C. §1333</u>
20.1.70	<u>Theft of computer services. 11 Del.C. §933</u>		20.1.104	<u>Adulteration. 11 Del.C. §1339</u>
20.1.71	<u>Interruption of computer services. 11 Del.C. §934</u>		20.1.105	<u>Carrying a concealed deadly weapon. 11 Del.C. §1442</u>
20.1.72	<u>Misuse of computer system information. 11 Del.C. §935</u>		20.1.106	<u>Possessing a destructive weapon. 11 Del.C. §1444</u>
20.1.73	<u>Destruction of computer equipment. 11 Del.C. §936</u>		20.1.107	<u>Felony possession of a deadly weapon during the commission of a felony. 11 Del.C. §1447</u>
20.1.74	<u>Dealing in children. 11 Del.C. §1100</u>		20.1.108	<u>Possession of a firearm during commission of a felony. 11 Del.C. §1447A</u>
20.1.75	<u>Abandonment of a child. 11 Del.C. §1101</u>		20.1.109	<u>Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448</u>
20.1.76	<u>Endangering the welfare of a child. 11 Del.C. §1102</u>		20.1.110	<u>Theft of a firearm. 11 Del.C. §1451</u>
20.1.77	<u>Sexual exploitation of a child. 11 Del.C. §1108</u>		20.1.111	<u>Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455</u>
20.1.78	<u>Unlawful dealing in child pornography. 11 Del.C. §1109</u>		20.1.112	<u>Removing a firearm from the possession of a law enforcement officer. 11 Del.C. §1458</u>
20.1.79	<u>Possession of child pornography. 11 Del.C. §1111</u>		20.1.113	<u>Act of intimidation. 11 Del.C. §3532</u>
20.1.80	<u>Sexual solicitation of a child. 11 Del.C. §1112A</u>		20.1.114	<u>Aggravated act of intimidation. 11 Del.C. §3533</u>
20.1.81	<u>Bribery. 11 Del.C. §1201</u>		20.1.115	<u>Prohibited drug offenses A. 16 Del.C. §4751</u>
20.1.82	<u>Receiving a bribe. 11 Del.C. §1203</u>		20.1.116	<u>Prohibited drug offenses B. 16 Del.C. §4751</u>
20.1.83	<u>Giving unlawful gratuities. 11 Del.C. §1205</u>			
20.1.84	<u>Receiving unlawful gratuities. 11 Del.C. §1206</u>			

§4752

20.1.117 Unlawful delivery of noncontrolled substances. 16 Del.C. §4752A

20.1.118 Prohibition against transfer, sale and purchase. 7 Del.C. §5306

20.1.119 Alteration, theft or destruction of will. 12 Del.C. §210

20.1.120 Receiving or transferring stolen vehicle. 21 Del.C. §6704

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

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Professional Land Surveyors is available at: <http://www.professionallicensing.state.de.us/boards/landsurveyors/index.shtml>**

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**DIVISION OF PROFESSIONAL REGULATION  
2900 REAL ESTATE COMMISSION**

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

**ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 10, 2005 at a scheduled meeting of the Delaware Real Estate Commission to receive comments regarding proposed Regulation 16.0. The proposed regulation identifies crimes substantially related to services provided by real estate brokers, salespersons and appraisers as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005.

**Background**

Under Title 24, Chapter 29, as amended by SB 229, one of the qualifications for licensure is that the applicant “shall not have been convicted of a crime that is substantially related to the practice of real estate brokering or real estate sales, nor have been professionally penalized, nor convicted for drug addiction nor have been professionally penalized or convicted for fraud.” 24 Del.C. §2907(a)(4). In addition, a real estate appraiser may be subject to disciplinary action for

conduct which includes, but is not limited to, “conviction of a crime that is substantially related to the practice of real estate appraisal.” 24 Del.C. § 2938(4).

“‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of real estate brokering, real estate sales or real estate appraisal.” 24 Del.C. §2901(a)(7).

The Board’s authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 29 is set forth in 24 Del.C. §2905(2)(1). The specific mandate for this rule is set forth in 24 Del.C. §2905(c). The proposed regulation specifically identifies those crimes which are substantially related to the practice of real estate brokering, real estate sales or real estate appraisal.

**Summary Of The Evidence And Information Submitted**

No written comments were received. No public comment was received at the February 10, 2005 hearing.

**Findings Of Fact With Respect To The Evidence And Information Submitted**

Within the purview of its responsibilities, the Board has carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the Delaware Code. The overarching concern of the Board was the safety of the public since the licensed practitioners work closely in a position of trust and responsibility with the members of the public they serve. For example, they gain access to their homes and businesses, many times without the knowledge of others. Oftentimes too, licensed practitioners transport to or meet prospective buyers at homes or other locations in isolated situations when no one else is aware of their whereabouts. Clients and coworkers should not have to be concerned for their physical safety or the safety of their property. Licensees also have access to confidential financial information pertaining to prospective sellers and buyers. In addition, they deal with individuals who seldom experience real estate transactions and are unaware of the proper conduct of such endeavors. The Board also considered that many sellers and buyers are elderly and may be mentally or physically impaired. Many of these individuals are often in stressful situations when buying or selling a home and may be subject to undue influence or manipulation.

The “primary objective of the Real Estate Commission, to which all other objectives and purposes are secondary, is to protect the general public, especially those persons who are direct recipients of services regulated by this chapter from unsafe practices, and from occupational practices which tend to reduce competition or fix the price of services rendered. The secondary objectives of the Commission are



to maintain and establish minimum standards of licensee competency, and establish and maintain certain standards in the delivery of services to the public.” 24 **Del.C.** §2929.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform one or more of the duties and responsibilities of a real estate broker, real estate salesperson or real estate appraiser in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; burglary and arson offenses evidencing a disregard for safety of persons and property; violation of privacy; theft, dishonesty, or false or fraudulent conduct; mistreatment or abuse of children and the elderly, including financial exploitation; and those drug offenses classified as violent felonies involving manufacture, delivery and intent to deliver and/or trafficking.

In summary, the Board finds that adopting regulation 16.0, as proposed, is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of real estate brokering, real estate sales and rentals, or real estate appraisal services.

#### **Decision And Effective Date**

The Board hereby adopts the changes to Regulation 16.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

#### **Text And Citation**

The text of the revised rule remains as published in *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005, and as attached hereto as Exhibit A.

**SO ORDERED** this 10th day of February, 2005.

DELAWARE REAL ESTATE COMMISSION  
Marvin R. Sachs, Chairperson, Presiding  
Joseph P. Connor, Jr., Vice-Chairperson  
Paul Davis  
John R. Giles  
Harry W. Kreger  
James D. McGinnis

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

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

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

16.1.2 Murder by abuse or neglect in the first degree; class A felony. 11 **Del.C.** §634.

16.1.3 Murder in the second degree; class A felony. 11 **Del.C.** §635.

16.1.4 Murder in the first degree; class A felony. 11 **Del.C.** §636.

16.1.5 Unlawful sexual contact in the second degree; class G felony. 11 **Del.C.** §768.

16.1.6 Unlawful sexual contact in the first degree; class F felony. 11 **Del.C.** §769.

16.1.7 Rape in the fourth degree; class C felony. 11 **Del.C.** §770.

16.1.8 Rape in the third degree; class B felony. 11 **Del.C.** §771.

16.1.9 Rape in the second degree; class B felony. 11 **Del.C.** §772.

16.1.10 Rape in the first degree; class A felony. 11 **Del.C.** §773.

16.1.11 Continuous sexual abuse of a child; class B felony. 11 **Del.C.** §778.

16.1.12 Dangerous crime against a child; class B felony. 11 **Del.C.** §779.

16.1.13 Kidnapping in the second degree; class C felony. 11 **Del.C.** §783.

16.1.14 Kidnapping in the first degree; class B felony. 11 **Del.C.** §783A.

16.1.15 Arson in the third degree; class G felony. 11 **Del.C.** §801.

16.1.16 Arson in the second degree; class D felony. 11 **Del.C.** §802.

16.1.17 Arson in the first degree; class C felony. 11 **Del.C.** §803.

16.1.18 Burglary in the second degree; class D felony. 11 **Del.C.** §825.

16.1.19 Burglary in the first degree; class C felony; class B felony. 11 **Del.C.** §826.

16.1.20 Robbery in the second degree; class E felony. 11 **Del.C.** §831.

16.1.21 Robbery in the first degree; Class B. 11 **Del.C.** §832.

16.1.22 Carjacking in the first degree; class C felony; class B felony. 11 **Del.C.** §836.

16.1.23 Extortion; class E felony. 11 **Del.C.** §846.

16.1.24 Misapplication of property; class G felony. 11 **Del.C.** §848.

16.1.25 Theft of rented property; class G felony. 11 **Del.C.** §849.

16.1.26 Identity theft; class E felony; class D felony. 11 **Del.C.** §854.

16.1.27 Forgery; class F felony; class G felony. 11 **Del.C.** §861.

16.1.28 Possession of forgery devices; class G

felony. 11 **Del.C.** §862.

16.1.29 Tampering with public records in the first degree; class E felony. 11 **Del.C.** §876.

16.1.30 Issuing a false certificate; class G felony. 11 **Del.C.** §878.

16.1.31 Fraudulent conveyance of public lands; class G felony. 11 **Del.C.** §911.

16.1.32 Fraudulent receipt of public lands; class G felony. 11 **Del.C.** §912.

16.1.33 Insurance fraud; class G felony. 11 **Del.C.** §913.

16.1.34 Home improvement fraud; class G felony. 11 **Del.C.** §916.

16.1.35 New home construction fraud; class C felony, class F felony, class G felony. 11 **Del.C.** §917.

16.1.36 Dealing in children; class E felony. 11 **Del.C.** §1100.

16.1.37 Endangering the welfare of a child; class E or G felony. 11 **Del.C.** §1100.

16.1.38 Sexual exploitation of a child; class B felony. 11 **Del.C.** §1108.

16.1.39 Unlawfully dealing in child pornography; class D felony. 11 **Del.C.** §1109.

16.1.40 Possession of child pornography; class F felony. 11 **Del.C.** §1111.

16.1.41 Sexual solicitation of a child; class C felony. 11 **Del.C.** §1112A.

16.1.42 Bribery; class E felony. 11 **Del.C.** §1201.

16.1.43 Receiving a bribe; class E felony. 11 **Del.C.** §1203.

16.1.44 Perjury in the second degree; class F felony. 11 **Del.C.** §1222.

16.1.45 Perjury in the first degree; class D felony. 11 **Del.C.** §1223.

16.1.46 Tampering with physical evidence; class G felony. 11 **Del.C.** §1269.

16.1.47 Hate crimes; class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony. 11 **Del.C.** §1304.

16.1.48 Possession of a deadly weapon during commission of a felony; class B felony. 11 **Del.C.** §1447.

16.1.49 Possession of a firearm during commission of a felony; class B felony. 11 **Del.C.** §1447A.

16.1.50 Removing a firearm from the possession of a law enforcement officer; class C felony. 11 **Del.C.** §1458.

16.1.51 Organized Crime and Racketeering, Class B Felony. 11 **Del.C.** §1504.

16.1.52 Abuse of patient or resident in nursing home; Class D felony; Class G felony; Class A felony. 16 **Del.C.** §1136(a).

16.1.53 Prohibited acts A; Class B felony. 16 **Del.C.** §4751.

16.1.54 Trafficking in marijuana, cocaine, illegal

drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA); Class B felony. 16 **Del.C.** §4753A.

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

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

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

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

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## **DIVISION OF PROFESSIONAL REGULATION**

### **3100 BOARD OF FUNERAL SERVICES**

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

24 **DE Admin. Code** 3100

### **ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 26, 2005 at a scheduled meeting of the Delaware Board of Funeral Services to receive comments regarding proposed Regulation 11.0. The proposed regulation identifies crimes substantially related to the practice of funeral services as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

### **Background**

The enabling legislation for the practice of funeral services is found in 24 **Del.C.** Chapter 31. One of the qualifications for licensure is that the applicant “shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of funeral services. Applicants who have criminal convictions records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge

is substantially related to the practice of funeral services.” 24 Del.C. §3107(a)(7). Furthermore, it is grounds for discipline if a practitioner “has been convicted of a crime that is substantially related to the provision of funeral services or any offense which would limit the ability of the practitioner to carry out the practitioner’s professional duties with due regard for the health and safety of the public; a copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefore...” 24 Del.C. §3112(a)(3). “‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice funeral services.” 24 Del.C. §3101(12). The Board is empowered “to promulgate regulations specifically identifying those crimes which are substantially related to the provision of funeral services.” 24 Del.C. §3105(f). This regulation specifically identifies those crimes which are substantially related to the practice of funeral services.

#### Summary Of The Evidence And Information Submitted

No written comments were received. No public comment was received at the January 26, 2005 hearing.

#### Findings Of Fact With Respect To The Evidence And Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the Delaware Code. The overarching concerns of the Board of Funeral Services were the public health, the protection of clients who are especially vulnerable during a time of bereavement, and the dignity of the decedent. The ability to maintain the public trust and work with a diverse population are essential to the practice of funeral services. A practitioner may have access to confidential information about the decedent. Children may not be well monitored during a funeral service by grieving family. Practitioners have access to chemicals that can be harmful if abused. At times a practice may involve animals who have passed.

The Board finds that the identified crimes are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities of a practitioner in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children, the elderly or animals; and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment.

In summary, the Board finds that adopting regulation 11.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the individuals who need the services of a practitioner and maintain appropriate standards in the delivery of services. 24 Del.C. §3100.

#### Decision And Effective Date

The Board hereby adopts the changes to Regulation 11.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

#### Text And Citation

The text of the revised rule remains as published in *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

**SO ORDERED** this 26th day of January, 2005.

BOARD OF FUNERAL SERVICES

Kelly Anne Pepper, President  
William J. Doherty II, Secretary  
Lyle Dabson  
Rose L. Pritchett

#### 11.0 Crimes substantially related to the provision of Funeral Services

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

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

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

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

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

11.1.5 Felony abuse of a sports official. 11 Del.C. §614

11.1.6 Assault by abuse or neglect. 11 Del.C. §615.

11.1.7 Unlawfully administering of drugs. 11 Del.C. §625.

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

11.1.9 Prohibited acts as to substances releasing vapors or fumes. 11 Del.C. §627.

11.1.10 Manslaughter. 11 Del.C. §632.

11.1.11 <u>Murder by abuse or neglect in the second degree.</u> 11 <b>Del.C.</b> §633.	§836	11.1.46 <u>Felony theft.</u> 11 <b>Del.C.</b> §841	
11.1.12 <u>Murder by abuse or neglect in the first degree.</u> 11 <b>Del.C.</b> §634.	§842	11.1.47 <u>Theft; lost or mislaid property.</u> 11 <b>Del.C.</b>	
11.1.13 <u>Murder in the second degree.</u> 11 <b>Del.C.</b> §635.		11.1.48 <u>Theft; false pretense.</u> 11 <b>Del.C.</b> §843	
11.1.14 <u>Murder in the first degree.</u> 11 <b>Del.C.</b> §636.		11.1.49 <u>Extortion</u> 11 <b>Del.C.</b> §844	
11.1.15 <u>Promoting suicide.</u> 11 <b>Del.C.</b> §645		11.1.50 <u>Theft, extortion; claim of right as an affirmative defense.</u> 11 <b>Del.C.</b> §846	
11.1.16 <u>Abortion.</u> 11 <b>Del.C.</b> §651	§848	11.1.51 <u>Misapplication of property.</u> 11 <b>Del.C.</b>	
11.1.17 <u>Self-abortion.</u> 11 <b>Del.C.</b> §652		11.1.52 <u>Use, possession manufacture, distribution and sale of unlawful telecommunication and access devises</u> 11 <b>Del.C.</b> §850	
11.1.18 <u>Issuing abortion articles.</u> 11 <b>Del.C.</b> §653		11.1.53 <u>Receiving stolen property</u> 11 <b>Del.C.</b> §851	
11.1.19 <u>Unlawful sexual contact in the third degree.</u> 11 <b>Del.C.</b> §767		11.1.54 <u>Unauthorized use of a vehicle</u> 11 <b>Del.C.</b>	
11.1.20 <u>Unlawful sexual contact in the second degree.</u> 11 <b>Del.C.</b> §768	§853	11.1.55 <u>Identity theft</u> 11 <b>Del.C.</b> §854	
11.1.21 <u>Unlawful sexual contact in the first degree.</u> 11 <b>Del.C.</b> §769		11.1.56 <u>Forgery</u> 11 <b>Del.C.</b> §861	
11.1.22 <u>Rape in the fourth degree.</u> 11 <b>Del.C.</b> §770	§862	11.1.57 <u>Possession of forgery devices</u> 11 <b>Del.C.</b>	
11.1.23 <u>Rape in the third degree.</u> 11 <b>Del.C.</b> §771		11.1.58 <u>Falsifying business records</u> 11 <b>Del.C.</b>	
11.1.24 <u>Rape in the second degree.</u> 11 <b>Del.C.</b> §772	§871	11.1.59 <u>Tampering with public records in the second degree</u> 11 <b>Del.C.</b> §873	
11.1.25 <u>Rape in the first degree.</u> 11 <b>Del.C.</b> §773		11.1.60 <u>Tampering with public records in the first degree</u> 11 <b>Del.C.</b> §876	
11.1.26 <u>Sexual extortion.</u> 11 <b>Del.C.</b> §776		11.1.61 <u>Offering a false instrument for filing.</u> 11 <b>Del.C.</b> §877	
11.1.27 <u>Bestiality.</u> 11 <b>Del.C.</b> §777		11.1.62 <u>Issuing a false certificate</u> 11 <b>Del.C.</b> §878	
11.1.28 <u>Continuous sexual abuse of a child.</u> 11 <b>Del.C.</b> §778		11.1.63 <u>Bribery</u> 11 <b>Del.C.</b> §881	
11.1.29 <u>Dangerous crimes against a child.</u> 11 <b>Del.C.</b> §779		11.1.64 <u>Bribe receiving</u> 11 <b>Del.C.</b> §882	
11.1.30 <u>Female genital mutilation.</u> 11 <b>Del.C.</b> §780		11.1.65 <u>Unlawful use of credit card.</u> 11 <b>Del.C.</b>	
11.1.31 <u>Kidnapping in the second degree.</u> 11 <b>Del.C.</b> §783	§903	11.1.66 <u>Reencoder and scanning devices.</u> 11 <b>Del.C.</b> §903A	
11.1.32 <u>Kidnapping in the first degree.</u> 11 <b>Del.C.</b> §783A		11.1.67 <u>Criminal impersonation .</u> 11 <b>Del.C.</b> §907	
11.1.33 <u>Acts constituting coercion.</u> 11 <b>Del.C.</b> §791		11.1.68 <u>Criminal impersonation, accident related.</u> 11 <b>Del.C.</b> §907A	
11.1.34 <u>Arson in the third degree.</u> 11 <b>Del.C.</b> §801	§802	11.1.69 <u>Criminal impersonation of a police officer.</u> 11 <b>Del.C.</b> §907B	
11.1.35 <u>Arson in the second degree.</u> 11 <b>Del.C.</b>		11.1.70 <u>Unlawfully concealing a will.</u> 11 <b>Del.C.</b>	
	§804	11.1.71 <u>Securing execution of documents by deception.</u> 11 <b>Del.C.</b> §909	
	§824	11.1.72 <u>Insurance fraud</u> 11 <b>Del.C.</b> §913	
	§825	11.1.73 <u>Use of consumer identification information.</u> 11 <b>Del.C.</b> §914	
	§826	11.1.74 <u>Use of credit card information.</u> 11 <b>Del.C.</b>	
11.1.41 <u>Possession of burglar's tools or instruments facilitating theft.</u> 11 <b>Del.C.</b> §828	§915	11.1.75 <u>Unauthorized access</u> 11 <b>Del.C.</b> §932	
11.1.42 <u>Robbery in the second degree.</u> 11 <b>Del.C.</b>		11.1.76 <u>Misuse of computer system information.</u> 11 <b>Del.C.</b> §935	
§831		11.1.77 <u>Endangering the welfare of a child</u> 11 <b>Del.C.</b> §1102	
11.1.43 <u>Robbery in the first degree.</u> 11 <b>Del.C.</b>			
§832			
11.1.44 <u>Carjacking in the second degree.</u> 11 <b>Del.C.</b>			
§835			
11.1.45 <u>Carjacking in the first degree.</u> 11 <b>Del.C.</b>			

11.1.78 Endangering the welfare of an incompetent person. 11 **Del.C.** §1105

11.1.79 Unlawfully dealing with a child. 11 **Del.C.** §1106

11.1.80 Sexual exploitation of a child. 11 **Del.C.** §1108

11.1.81 Unlawfully dealing in child pornography. 11 **Del.C.** §1109

11.1.82 Possession of child pornography. 11 **Del.C.** §1111

11.1.83 Sexual solicitation of a child. 11 **Del.C.** §1112A

11.1.84 Perjury in the second degree. 11 **Del.C.** §1222

11.1.85 Perjury in the first degree. 11 **Del.C.** §1223

11.1.86 Making a false written statement. 11 **Del.C.** §1233

11.1.87 Tampering with physical evidence. 11 **Del.C.** §1269

11.1.88 Hate crimes 11 **Del.C.** §1304

11.1.89 Aggravated harassment 11 **Del.C.** §1312

11.1.90 Abusing a corpse 11 **Del.C.** §1332

11.1.91 Trading in human remains and associated funerary objects 11 **Del.C.** §1333

11.1.92 Adulteration 11 **Del.C.** §1339

11.1.93 Desecration of a burial place. 11 **Del.C.** §1340

11.1.94 Act of intimidation. 11 **Del.C.** §3532

11.1.95 Aggravated act of intimidation. 11 **Del.C.** §3533

11.1.96 Attempt to intimidate. 11 **Del.C.** §3534.

11.1.97 Alteration, theft, or destruction of will. 12 **Del.C.** §210

11.1.98 Abuse, Neglect Mistreatments or Financial Exploitation of residents or patients. 16 **Del.C.** §1136

11.1.99 Controlled substance prohibited acts A. 16 **Del.C.** §4751

11.1.100 Controlled substance prohibited acts B. 16 **Del.C.** §4752.

11.1.10 Trafficking in marijuana, cocaine, illegal drugs, metamphetamines, L.S.D., or designer drugs. 16 **Del.C.** §4753A

11.1.102 Possession and delivery of noncontrolled prescription drug. 16 **Del.C.** §4754A (d) E felony

11.1.103 Hypodermic syringe or needle delivering or possessing; disposal; exceptions. 16 **Del.C.** §4757

11.1.104 Distribution to persons under 21 years of age. 16 **Del.C.** §4761

11.1.105 Purchase of drugs from minors. 16 **Del.C.** §4761A

11.1.106 Distribution, delivery, or possession

of controlled substance within 1,000 feet of school property. 16 **Del.C.** §4767

11.1.107 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768

11.1.108 Duty of driver involved in accident resulting in injury or death to any person. 21 **Del.C.** §4202

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

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Funeral Services is available at: <http://www.professionallicensing.state.de.us/boards/funeralservices/index.shtml>**

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**DIVISION OF PROFESSIONAL REGULATION  
3800 STATE COMMITTEE ON DIETETICS/  
NUTRITION**

Statutory Authority: 24 Delaware Code,  
Section 3805(1) (24 **Del.C.** §3805(1))  
24 **DE Admin. Code** 3800

Pursuant to due notice of the time and place of hearing published in the News Journal and in the Delaware State News and in compliance with the requirements of 29 **Del.C.** §10115, 72 **Del. Laws C.** 292 and the Delaware Stated Committee on Dietetics/Nutrition (“Committee”) under its authority to enact rules and regulations specified in 24 **Del.C.** §3805, conducted a public hearing concerning proposed modifications to the Rules and Regulations of the Committee. The proposed modifications and additions were published in the Delaware *Register of Regulations* Volume 8, Issue 6, Wednesday, December 1, 2004.

Notice of the hearing was also published in two newspapers of general circulation and on page 929 of Volume 8, Issue 6 of the Delaware Register of Regulations. The public hearing was held on January 19, 2005 as scheduled in Conference Room B, Cannon Building, 861 Silver Lake Boulevard, Dover, Kent County, Delaware. A quorum of the Committee was present for the hearing.

**Summary Of The Evidence**

Pursuant to 29 **Del.C.** §10118, the following is a summary of the evidence and information provided at the

hearing: No written comments were received and no individuals appeared to make oral comments.

### **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 Committee.

### **Decision And Order**

Based upon the findings and conclusions set forth above, the undersigned, constituting a quorum of the Delaware State Committee on Dietetics/Nutrition, adopt the proposed modification to the Rules and Regulations published in the *Register of Regulations* in Volume 8, Issue 6, Wednesday, December 1, 2004, beginning at page 787 as a modification to the Rules and Regulations of the Committee, effective (See Attached EXHIBIT A).

SO ORDERED this 19th Day of January, 2005.

BY ORDER OF THE COMMITTEE ON DIETETICS/  
NUTRITION.

Marianne Carter  
Genalda Cornwall  
Tracie Sinibaldi

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

6.1 For the purposes of this section the following definition shall apply:

6.1.1 "Conviction" means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been discharged under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program). Including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

6.2 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the provision of Dietetics/Nutrition services as a Certified Dietitian and/or Nutritionist in the State of Delaware without regard to the place of conviction:

- 6.2.1 Homicide
- 6.2.2 Assault
- 6.2.3 Criminal Sexual Abuse
- 6.2.4 Tax Evasion

- 6.2.5 Kidnapping
- 6.2.6 Theft and all related offenses
- 6.2.7 Embezzlement
- 6.2.8 Child pornography
- 6.2.9 Forgery
- 6.2.10 Identity theft
- 6.2.11 Insurance fraud
- 6.2.12 Bribery
- 6.2.13 Perjury
- 6.2.14 Abuse- any abuse of a person or animal
- 6.2.15 Counterfeiting
- 6.2.16 Tampering with consumer products
- 6.2.17 Hate crimes
- 6.2.18 False or fraudulent statements
- 6.2.19 Kick Back schemes
- 6.2.20 Abduction or unlawful restraint

6.3 Crimes substantially related to the provision of services as a Certified Dietitian and/or Nutritionist shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the State Committee on Dietetics/Nutrition is available at: <http://www.professionallicensing.state.de.us/boards/dietitians/index.shtml>**

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## **DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10103 (3 Del.C. §10103)

### **ORDER**

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting one of two proposed amendments to the Commission's Rules. Following notice and a public hearing on January 11, 2005, the Commission makes the following findings and conclusions:

### **Summary Of The Evidence**

1. The Commission posted public notice of the proposed amendments in the December 1, 2004 *Register of Regulations* and for two consecutive weeks in the Delaware Capital Review and Delaware State News. The Commission proposed to enact a new Rule 11.14.1.5 to provide for a recommended fine of \$1,000 for owners or trainers who

scratch their horses in Delaware in order to race in another jurisdiction. The Commission also proposed to amend Rule 19.3.1.1 to require that persons filing appeals before the Commission must pay a \$150 nonrefundable fee to cover court reporter fees.

2. The Commission received no written comments prior to the public hearing. The Commission held a public hearing on January 11, 2005. Steward Fritz Burkhardt stated that, on proposed Rule 11.14.1.5, the stewards would initially look to the trainer as the person responsible for any scratch of a horse. Commissioner Decker stated that the owner or trainer could be responsible, depending on who entered the horse. Larry Samuel of the Jockeys' Guild stated that there could be instances where the Race Secretary would request that a trainer enter a horse and then later allow the horse to scratch. In such cases, the Race Secretary would sign the slip authorizing the scratch.

3. Regarding proposed Rule 19.3.1.1, Administrator of Racing John Wayne stated that the proposed rule change is the same as the existing Harness Racing Commission Rule. Mr. Wayne stated that there is a lot of labor involved in sending out notices in connection with appeals. Mr. Wayne stated that the proposed \$150 fee would cover the court reporter's fee. Commissioner Patterson stated that it would be more accurate to revise the proposed rule to reference "administrative expenses or the court reporter's fee."

#### Findings Of Fact And Conclusions

4. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

5. The Commission has considered the public comments at the January 11, 2005 public hearing. The Commission finds that Rule 11.14.1.5 should be adopted in its current form. The Rule addresses the serious problem of trainers or owners scratching a horse in Delaware in order to race the same horse in another jurisdiction. The Rule contains a recommended \$1,000 fine which the Commission finds is necessary for this type of conduct. The Rule would also properly penalize the party who is responsible for scratching the horse in Delaware so that the horse can race in another jurisdiction.

6. The Commission concludes that Rule 19.3.1.1 should not be adopted in its current form. The rule as proposed should be amended to refer to a nonrefundable fee of \$150 to cover the cost of the court reporter and the costs of administrative expenses. The Commission will submit a new proposed Rule 19.3.1.1 for publication in the *Register of Regulations*.

7. The Commission concludes that the proposed amendment to Rule 11.14.1.5 should be adopted in order for

this agency to achieve its statutory duty to effectively regulate thoroughbred racing pursuant to 3 Del.C. § 10103. The Commission concludes that the proposed Rule 19.3.1.1 should not be adopted at this time and will be resubmitted for publication.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on March 1, 2005.

Bernard Daney, Chair	Date
Duncan Patterson, Commissioner	Date
H. James Decker, Commissioner	Date
Debbie Killeen, Commissioner	Date

#### Rule Amendments of the Delaware Thoroughbred Racing Commission

##### Rule 11.14.1.5 Scratches and Rule 19.3.1.1 Applications for Review

#### 11.0 Entries, Subscriptions, Delegations

##### 11.1 Entering Required:

11.1.1 No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the Licensee without notice or reason given therefor.

##### 11.2 Procedure for Making Entries:

11.2.1 It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Commission's Veterinarian or Stewards on official forms from that State prior to entry.

11.2.2 All entries, subscriptions, declarations and scratches shall be lodged with the Racing Secretary and shall not be considered as having been made until received by the Racing Secretary who shall maintain a record of time of receipt of same.

11.2.3 Every entry must be in the name of such horse's registered Owner, as completely disclosed and registered with the Racing Secretary under these Rules and made by the Owner, Trainer or a person deputized by such Owner or Trainer.

11.2.4 Every entry must be in writing, or by telegraph promptly confirmed in writing, except that an entry may be made by telephone to the Racing Secretary but must be confirmed in writing should the Stewards, the Racing Secretary or an assistant to the Racing Secretary so request.

11.2.5 Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age color, sex, sire, dam and broodmare sire, as reflected by such horse's registration certificate.

11.2.6 No horse may race unless correctly

identified to the satisfaction of the Stewards as being the horse duly entered;

11.2.7 In establishing the identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the Owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.

11.2.8 At the time of entering a horse, the Trainer of such horse or his representative, must declare to the Racing Secretary or his representative, whether the horse will race on any medication permitted by these Rules and shall not deviate from such declaration.

11.2.9 Within the discretion of the Stewards, a list of horses so declared to race on medication may, in whole or in part, be announced, released for publication or otherwise made public without liability for the accuracy thereof.

11.2.10 In order to claim an apprentice allowance at the time of entry, an Apprentice Jockey must be designated by name.

11.2.11 No alteration may be made in any entry after the closing of entries, except that an error may be corrected.

11.2.12 No horse may be entered in two races to be run on the same day.

11.3 Limitation as to Spouses:

Repealed 1/6/92.

11.4 Mutuel Entries:

11.4.1 All horses entered in the same race and owned wholly or in part by the same owner or spouse thereof shall be joined as a mutuel entry and a single betting interest. Horses shall be regarded as having a common owner when an owner of one horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation, has an ownership interest in another horse, either as an individual or as a licensed shareholder of a partnership or as a licensed shareholder of a corporation. No trainer of any horse shall have any ownership interest in any other horse in the same race unless such horses are coupled as a single wagering interest.

11.4.2 No owner shall have more than one horse start in a trifecta or twin-trifecta race. No mutuel entry shall start in a trifecta or twin-trifecta race. However, the Stewards may, in their discretion, permit mutuel entries to start in stakes races and simulcast races when there is trifecta wagering.

11.4.3 Except with the permission of the Stewards, no more than two horses having such common ties through ownership as to require them to be joined as a mutuel entry may be entered in a purse race. When making such double entry, a preference for one of the horses may be made.

11.4.4 In no case may two horses having common ties through ownership start in a purse race to the exclusion of a single interest.

Revised: 6/19/92

11.5 Subscriptions:

11.5.1 Nominations to or entry of a horse in a stakes race is a subscription. Any subscriber to a stakes race may transfer or declare such subscription prior to closing.

11.5.1.1 Joint subscription and entries may be made by any one of the joint Owners of a horse and each such Owner shall be jointly and severally liable for all payments due thereon.

11.5.1.2 Death of a horse or a mistake in its entry, when such horse is eligible, does not release the subscriber or transferee from liability for all stakes fees due thereon. No fees paid in connection with a subscription to a stakes race that is run shall be refunded.

11.5.1.3 Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry or right of entry thereunder; all rights, privileges and obligations shall attach to the successor Owner, including the legal representatives of the decedent.

11.5.1.4 When a horse is sold privately, sold at public auction or claimed, stakes engagements for such horse shall be transferred automatically with such horse to its new Owner, except that if such horse is transferred to a person whose registration is suspended or otherwise unqualified to race or enter such horse, then subscriptions shall be void as of the date of such transfer.

Rule 11.4 Rev. July 1977

Rule 11.4 Rev. July 1978

11.5.1.5 All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the conditions for such stakes race. In the event a stakes race is not run for any reason, all such subscription fees paid shall be refunded.

11.6 Closings:

11.6.1 Entries for purse races and subscriptions to stakes races shall close at the time designated by the Licensee in the previously published conditions for such races. If a race is not split, no entry, subscription or declaration shall be accepted after such closing time, except that in the event of an emergency or if a purse race fails to fill, then the Racing Secretary may, with the approval of a Steward, extend such closing time.

11.6.2 If the hour of closing is not specified for stakes races, then subscriptions and declarations therefor may be accepted until midnight of the day of closing, provided they are received in time for compliance with every other condition of such race.

11.6.3 Entries which have closed shall be compiled without delay by the Racing Secretary and, along with declarations, be posted.

11.7 Number of Starters in a Race:

11.7.1 The maximum number of starters in any race shall be limited to the number of starting positions afforded by the Licensee's starting gate and such extensions



thereof as can be positioned across the width of the track at the starting point for such race. Such maximum number of starters shall be further limited by the number of horses which, in the opinion of the Stewards, considering the safety of the horses and riders and the distance from the start of the first turn, can be afforded a fair and equal start.

11.7.2 If any purse race in the printed condition book fails to fill, then the Licensee may cancel or declare off such race.

11.8 Split or Divided Races:

11.8.1 In the event a race is cancelled or declared off, the Licensee may split any race programmed for the same day and which may previously have been closed.

11.8.2 When a purse race is split, forming two or more separate races, the Racing Secretary shall give notice thereof not less than 15 minutes before such races are closed so as to grant time for the making of additional entries to such split races.

11.8.3 Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions therefor were made and in the absence of specific prohibition by such conditions:

11.8.3.1 Horses originally joined as a mutuel entry shall, to the greatest extent possible, be placed in different divisions of a split race;

11.8.3.2 Division of other entries in any split race may be made according to age, sex or weight, except that such entries not so divided shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of such split race.

11.9 Post Positions:

11.9.1 Post positions for all races shall be determined by lot drawn in the presence of those making the entries for such race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for such split race. The Racing Secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race includes two or more horses joined as a single betting interest.

11.10 Also Eligible List:

11.10.1 If the number of entries for a purse race exceeds the number of horses permitted to start in such race, then the names of as many as six (6) additional horses may be drawn as provided in Rule 11.9. The names drawn shall be posted, in the order they were drawn, as "also eligible" to start.

11.10.2 After any horses have been excused from a purse race at scratch time, the starting and post position of such horses as needed from the also-eligible list shall be determined by the order in which they appear on the entry sheet.

Revised: 10/26/95

11.10.3 Any Owner or Trainer of any horse on the also-eligible list who does not wish to start such horse in

such race shall so notify the Racing Secretary prior to scratch time for such race and such horse shall forfeit any preference to which it may have been entitled.

11.10.4 Where entries are closed two racing days prior to the running of a race, any horse on an also-eligible list, which has also been drawn into a race as a starter for the succeeding day, shall not be given an opportunity to be drawn into the earlier race for which he had been listed as also-eligible.

11.11 Preferred List; Stars:

11.11.1 The Racing Secretary shall maintain a list of horses which were entered but denied an opportunity to race because eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. Horses so eliminated shall be awarded a preference "star" for each such elimination. As to drawing in from the also-eligible list to subsequent races of similar distance and similar conditions, such horses shall be given preference over horses with fewer number or no preference stars.

11.11.2 No preference shall be given a horse otherwise entitled thereto for a race if such horse is also entered for a race on the succeeding day.

11.11.3 No preference shall be given a horse otherwise entitled thereto for a race unless preference is claimed at the time of entry by indicating same on the entry with the word "preferred".

11.12 Arrears:

11.12.1 No horse may be entered or raced if the Owner thereof is in arrears as to any stakes fees due by such Owner, or is indebted in any sum to Licensee, except with the approval of the Racing Secretary. (Also, see Rule 6.11).

11.13 Declarations:

11.13.1 Withdrawal of a horse from a race before closing thereof by the Owner or Trainer or person deputized by either, such being known as a "declaration", shall be made in the same manner as to form, time and procedure as provided for the making of entries. Declarations and scratches are irrevocable. No declaration fee shall be required by any Licensee.

11.14 Scratches:

11.14.1 Withdrawal of a horse from a race after closing thereof by the Owner or Trainer or person deputized by either, such being known as a "scratch", shall be permitted only under the following conditions:

11.14.1.1 A horse may be scratched from a stakes race for any reason at any time up until 45 minutes before post time for that race.

11.14.1.2 No horse may be scratched from a purse race without approval of the Stewards and unless such intention to scratch has been filed in writing with the Racing Secretary or his assistant at or before the time conspicuously posted as "scratch time". Scratch of one horse coupled in a mutuel entry in a purse race must be made at or before the posted scratch time, unless permission is granted by the

Stewards to allow both horses to remain in the race until a later appointed scratch time therefor.

11.14.1.3 In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. Horses that are not physically disabled or sick may be scratched only with the permission and in the manner prescribed by the Stewards.

11.14.1.4 Entry of any horse which has been scratched or excused from starting by the Stewards because of a physical disability or sickness shall not be accepted until the expiration of three calendar days after such horse was scratched or excused.

11.14.1.5 The Stewards will review all cases in which a horse is entered to run at a licensed track in Delaware, while appearing in the entries in another racing jurisdiction, during the five day entry period for Delaware. It shall be a violation of these Rules for a licensee to scratch a horse entered to race in Delaware in order for said horse to race in another jurisdiction within the five day entry period. Violations of this Rule, absent mitigating circumstances, will be subject to fines of not less than \$1,000 and no more than \$2,500. This rule shall not pertain to Handicap and Stake races.

**4 DE Reg. 179 (7/1/00)**

## **19.0 Hearings, Reviews and Appeals**

### **19.1 Procedure Before Stewards:**

19.1.1 Before holding any Stewards' hearing provided for under these Rules, notice in writing must be given to any party charged with a violation, other than a routine riding offense occurring in a race, unless such notice is waived in writing by the person charged.

19.1.2 The notice required by the preceding subsection shall include:

19.1.2.1 Identification of the specific Rule or Rules involved, the infraction for which he is charged and a brief statement of the facts supporting such charge.

19.1.2.2 The time and place of hearing.

19.1.2.3 The statement that the party charged may be represented by legal counsel or by a representative of any racing trade organization of which he is a member.

19.1.3 All Stewards' hearings shall be closed and the Stewards shall cause no public announcement to be made concerning a matter under investigation until the conclusion of the hearing and the party charged has been notified of the decision.

19.1.4 The hearing shall be conducted by no less than two of the Stewards in such a manner as to ascertain and determine the substantial rights of the parties involved and shall not be bound by technical rules of procedure and evidence. In emergencies during the live racing meet or during periods when there is no live racing, a hearing may be conducted by only one Steward.

**7 DE Reg. 316 (9/1/03)**

19.1.5 All testimony at such hearings shall be given under oath. A record shall be made of the hearing, either by use of a tape recorder or by court reporter's transcript, or otherwise, if funds for such are made available from any source. The Stewards will not be required to receive testimony under oath in cases where their ruling is based upon a review of the video tapes of a race.

19.1.6 If, at the conclusion of their hearing, the Stewards find that a Rule has been violated, they promptly shall issue a written ruling which sets forth the name of every person charged with a violation, the Rule violated, their finding as to the violation of such Rule and the penalty affixed. Copies of such rulings shall be delivered to each party in interest and to the Commission and the Licensee, and posted in the Racing Secretary's office.

### **19.2 Review and Appeal:**

19.2.1 Any party who is penalized by any order or ruling of the Stewards may apply to the Commission for a review of such Stewards' order or ruling.

### **19.3 Application for Review:**

19.3.1 An application to the Commission for the review of a Steward's order or ruling must be made within forty-eight (48) hours after such order or ruling is issued by written or oral notice and shall:

19.3.1.1 Be in writing and addressed to the Commission's Administrator of Racing, accompanied by a filing fee of \$250 ~~[plus an additional fee of \$150 to cover the cost of the court reporter's attendance. The Commission, for just cause, may refund the \$250 portion of the filing fee. In no event shall the advance payment of the court reporter's fee be refunded.]~~

19.3.1.2 Contain the signature of the applicant and the address to which notices may be mailed to applicant;

19.3.1.3 Set forth the order or ruling requested to be reviewed and the date thereof;

19.3.1.4 Succinctly set forth the reasons for making such application;

19.3.1.5 Request a hearing;

19.3.1.6 Briefly set forth the relief sought; and

19.3.1.7 Provide assurance to the Commission that all expenses occasioned by the appeal will be borne by the applicant; and

19.3.1.8 Contain a sworn, notarized statement that the applicant has a good faith belief that the appeal is meritorious and is not taken merely to delay the penalty imposed by the stewards.

### **19.4 Disposition of Review Application:**

19.4.1 After consideration of any such application for review, the Commission may grant the application, defer it or reject it. The applicant shall be advised of the Commission's disposition of his application for review.

### **19.5 Commission Hearing:**

19.5.1 If the Commission grants any such

application for review, before holding any hearing thereon, it shall:

19.5.1.1 Give written notice forthwith to the applicant and all other necessary parties personally or by mail, including:

19.5.1.1.1 Time and place of such hearing as designated by the Commission Chairman, but such time shall not be less than five (5) days and no more than thirty (30) days after service of notice unless at the request of a party and in order to provide a fair hearing.

19.5.1.1.2 Except to applicant, a copy of the application for review.

19.5.2 The Commission may request the Attorney General to appoint a special prosecutor to carry the burden of proof showing a Rule violation if the matter involves a Rule violation and requires a proceeding of an adversary nature, such prosecutor being an attorney who has had no prior participation in the matter on review.

19.5.3 The Commission may request the Attorney General, or a member of his staff other than the special prosecutor, to serve as law officer for the Commission to assist the presiding officer in rendering decisions of a judicial nature.

19.5.4 The Commission shall permit all parties that so desire to be represented by counsel and, to the extent it deems necessary or appropriate, shall permit all parties to respond and present evidence and argument on all issues involved.

19.5.5 The Commission may issue, under the hand of its Chairman and the seal of the Commission, subpoenas for the attendance of witnesses and the production of books, papers and documents, before the Commission, and may administer oaths or affirmations to the witnesses whenever, in the judgment of the Commission, it may be necessary for the effectual discharge of its duties.

19.5.6 If any person refuses to obey any subpoena or to testify or produce any books, papers or documents, then any Commissioner may apply to the Superior Court of the county in which he or the Commission may be sitting and, thereupon, the Court shall issue its subpoena requiring the person to appear and to testify or produce any books, papers or documents.

19.5.7 Whoever fails to obey or refuses to obey a subpoena of the Superior Court shall be guilty of contempt of court and shall be punished accordingly.

19.5.8 False swearing on the part of any witness shall be deemed perjury and shall be punished as such.

19.5.9 All tape recordings or stenographic recordings taken and transcriptions made of the hearing or any part thereof shall be paid for by such parties as request that such a tape or stenographic record be made of the hearing, except that additional transcripts thereof shall be paid for by the person desiring such copies.

19.5.10 The Commission may exclude evidence

that is irrelevant, immaterial or unduly repetitious and may admit evidence that would be inadmissible under the Civil Rules of Procedure but is evidence of the type commonly relied upon by reasonably prudent men in the conduct of their affairs.

19.5.11 All or part of the evidence may be received in written form if the interest of the appearing parties will not be substantially prejudiced thereby.

19.5.12 The Commission may take official notice of technical facts or customs or procedures common to racing.

19.5.13 The Commission may make an informal disposition of the matter by stipulation, agreed settlement, consent order or default.

19.5.14 Upon conclusion of the hearing, the Commission shall take the matter under advisement, shall render a decision as promptly as possible and shall issue a ruling in final adjudication of the matter. Such ruling shall set forth the name of every person charged with a Rule violation; the Rule number and pertinent parts of the Rule alleged to have been violated; a separate statement of reasons for the decision; and penalties fixed by the Commission, if any. Copies of such ruling shall be delivered to each party in interest, posted in the Racing Secretary's office of the Licensee where the matter arose and forwarded to the national office of the National Association of State Racing Commissioners.

19.5.15 The Commission, for just cause, may refund the filing fee to the applicant.

Added: 9/27/94

19.6 Continuances:

19.6.1 All applications for a continuance of a scheduled hearing shall be in writing, shall set forth the reasons therefor and shall be filed with the Commission's Administrator of Racing after giving notice of such application by mail or otherwise to all parties or their attorneys, including counsel for the stewards. The Commission will not consider any continuance request from counsel for an appellant unless counsel has filed a written entry of appearance with the Commission. For attorneys who are not members of the Delaware bar, those attorneys must comply with the provisions of Delaware Supreme Court Rule 72 for admission pro hac vice before the Commission. The Commission will not consider any continuance request from attorneys who are not members of the Delaware bar unless and until that attorney has been formally admitted under Delaware Supreme Court Rule 72 as the attorney of record for the appellant.

19.6.2 When application is made for continuance of a cause because of the illness of an applicant, witness or counsel, such application shall be accompanied by a medical certificate attesting to such illness and inability.

19.6.3 An application for continuance of any hearing must be received by the Commission at least ninety-

six (96) hours prior to the time fixed for the hearing. An application received by the Commission within the 96-hour period will not be granted except for extraordinary reasons. The Commission will not consider any request for a continuance absent evidence of good cause for the request. A failure by an appellant to take reasonable action to retain counsel shall not be considered good cause for a continuance.

19.6.4 If the Commission approves the application for continuance, it shall, concurrently with such postponement, set a date for the continued hearing.

**3 DE Reg. 1541 (5/1/00)**

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Thoroughbred Racing Commission are available from the Registrar's Office.**

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## **DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(e) (14 Del.C. §122(e))  
14 DE Admin. Code 401

### **REGULATORY IMPLEMENTING ORDER**

#### **401 Major Capitol Improvement Program**

##### **I. Summary Of The Evidence And Information Submitted**

The Secretary of Education intends to amend 14 DE Admin. Code 401 Major Capitol Improvement Program by adding the phrase "or when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation" to line two of 2.1, and removing the phrase "It is preferable that at least four (4) sites be considered" at the end of 2.1. The phrase "and the State Budget Office" is also being added to 2.2 in line two along with the updated title of the Office of State Planning. These amendments reflect the changes required by Senate Bill 305 which amended 14 Del.C. §1714. The regulation is exempt from the Administrative Procedures Act 29 Del.C. 100113(b)(5) because the amendments are required by changes in the Delaware Code. The Regulation is being published as a final regulation.

##### **II. Findings of Facts**

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 401 in order to bring the Regulation in line with 14 Del.C. §1714.

### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 401. Therefore, pursuant to 14 Del.C. §1714, 14 DE Admin. Code 401 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 401 is hereby amended and shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

### **IV. Text and Citation**

The text of 14 DE Admin. Code 401 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 401 in the *Administrative Code of Regulations* for the Department of Education.

### **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on February 15, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 15 day of February 2005.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

#### **401 Major Capital Improvement Programs**

##### **1.0 Major Capital Improvement Programs are projects having a cost of \$500,000, or more.**

1.1 The Secretary of Education shall annually review the current cost per square foot for construction and make needed adjustments as required.

1.2 Projects may be considered together to form a single Major Capitol Improvement Project. However, the consolidated major capital project should be a consolidation of projects at one location.

##### **2.0 Procedures for Approval of a Site for School Construction**

2.1 Local school districts shall notify the Department of Education by letter to schedule a site review when they propose to purchase a site for school purposes; or when they propose to use a currently owned site for school purposes; or when they propose to obtain a site through donation, gift or condemnation. All prospective sites shall be reviewed at one

time. ~~It is preferable to have more than one site to be considered in the case of purchase.~~

2.2 The Department of Education will forward all prospective sites to the Office of State Planning Office of State Planning Coordination and the State Budget Office for the pre-application review process. The Department of Education will review the responses of the other agencies in order to rank the prospective sites and list all reasons for approval or rejection. The Department shall then notify the school district concerning their final decision.

### **3.0 Approval of Educational Specifications, Schematic Design Plans, Design Development Plans, and Construction Drawings.**

3.1 Educational Specifications are defined as a document which presents to an architect what is required of an educational facility to house and implement the educational philosophy and institutional program in an effective way.

3.1.1 Educational Specifications shall be approved by the local school board and the Department of Education. The Department will require a minimum of ten (10) working days for completion of the review and approval process.

3.2 All Schematic Design Plans shall be approved by the local school board and the Department of Education. Schematic Design Plans should be sent to the county or city planning office for information purposes only. The Department of Education requires one set of Schematic Design Plans.

3.3 All Design Development Plans shall be approved by the local school board and the Department of Education. The Department of Education requires one set of Design Development Plans.

3.4 All Final Construction Drawings shall be approved by the local school board and the Department of Education. The Department of Education requires one set of Final Construction Drawings.

3.5 The local school district must involve the following groups in reviewing Final Construction Drawings prior to the final approval. Copies of all local and state agency approvals shall be submitted to the Department of Education for final approval.

3.5.1 Fire Marshal to review the plans for fire safety.

3.5.2 Division of Public Health, Bureau of Environmental Health, Sanitary Engineering for Swimming Pools, and the County Health Unit for information on Kitchens and Cafeterias.

3.5.3 Division of Facilities Management, Chief of Engineering & Operations for compliance with building codes.

3.5.4 Division of Highways for review of the Site Plan showing entrances and exits.

3.5.5 Architectural Accessibility Board for access for persons with disabilities.

3.5.6 Department of Natural Resources and Environmental Control for wastewater and erosion control.

3.6 Exemptions: Major Capitol Projects that do not include structural changes or wall modifications such as, but not limited to, window replacement, HVAC, electrical or plumbing infrastructure upgrades do not require submission to the Department of Education.

### **4.0 Certificates of Necessity**

4.1 The Certificate of Necessity is a document issued by the Department of Education which certifies that a construction project is necessary and sets the scope and cost limits for that project.

4.2 Certificates of Necessity shall be obtained sufficiently in advance to meet all prerequisites for the holding of a local referendum and shall be issued only at the written request of the local school district. The Certificate of Necessity shall be quoted in the advertisement for the referendum.

4.3 Projects proposing the construction of a new building or for an addition to an existing building shall be issued a separate Certificate of Necessity. Funds issued for the construction of a new building or for an addition to an existing building shall not be transferred between projects or to projects in a separate Certificate of Necessity.

4.4 Additions to existing buildings that are done in connection with other renovations may be issued a single Certificate of Necessity. However, when the Certificate is issued, it shall identify each building in the program and describe the work to be done in that building including the dollar amount for that work. Funds may be transferred between projects issued under this Certificate of Necessity.

4.5 The Office of School Plant Planning will complete the final Certificates of Necessity and forward the Certificate of Necessity to the district superintendent for his/her signature.

4.6 A copy of the final Certificate of Necessity will be returned to the district within ten working days following final approval by the Department of Education.

### **5.0 Notification, Start of Construction, Completion of Construction and Certificate of Occupancy**

5.1 The school district shall submit to the Department of Education and the State Budget Director a construction schedule, showing start dates, intermediate stages and final completion dates.

5.2 The school district shall notify the Department of Education, the State Budget Director and the Insurance Coverage Office at the completion of the construction, which is defined as when the school district, with the concurrence of the architect, accepts the building as complete.

5.3 The school district shall notify the Department of Education, the State Auditor, and the State Budget Director upon approval of the Certificate of Occupancy.

5.4 Local school districts shall submit to the Department of Education a copy of the electronic autocad files. Electronic autocad files shall be submitted no later than 30 calendar days after the completion of any major renovation, addition to an existing facility, new school or replacement school.

#### **6.0 Purchase Orders.**

All purchase orders for any Major Capitol Improvement Project shall be approved by both the Department of Education and the Director of Capital Budget and Special Projects prior to submission to the Division of Accounting.

#### **7.0 Change Orders**

7.1 Change Orders are changes in the construction contract negotiated with the contractor. The main purpose is to correct design omissions, faults of unforeseen circumstances which arise during the construction process.

7.2 All Change Orders must be agreed upon by the architect, the school district and the contractor and shall be forwarded to the Department of Education.

7.2.1 Submission of a Change Order must include the following documents: Completed purchase order as applicable; local board of education minutes identifying and approving the changes; completed AIA document G701, and correspondence which gives a breakdown in materials mark-up and other expenses.

#### **8.0 Percentage of Funds Transferrable Between Projects within a Certificate of Necessity**

8.1 The transfer of funds between projects during the bidding and construction process shall have the written approval of the Department of Education. Acceptability of the transfer of funds will meet the following criteria:

8.1.1 No project may have more than 10% of its funding moved to another project.

8.1.2 No project may have more than 10% added to its initial funding.

#### **9.0 Educational Technology.**

All school buildings being constructed or renovated under the Major Capital Improvement Program shall include, wiring for technology that meets the state standards appropriate to the building type, such as high school, administration, etc. The cost of such wiring shall be borne by project funds.

#### **10.0 Air Conditioning.**

All school buildings with Certificates of Necessity for new school construction and/or major renovation/

rehabilitation shall require the inclusion of air conditioning unless otherwise waived by the Secretary of Education.

#### **11.0 Administration of the New School.**

The principle administrator of a new school may be hired for up to one (1) year prior to student occupancy to organize and hire staff. The State portion of salary/benefits may be paid from Major Capital Improvement Programs.

#### **12.0 Voluntary School Assessment**

12.1 The funds generated as a result of the Voluntary School Assessment, as authorized by the provisions of 14 Del.C. §103(c) relating to land use planning and education, shall be applied exclusively to offsetting the required local share of major capital construction costs.

12.1.1 Districts receiving Voluntary School Assessment funds shall have full discretion in the use of those funds for any construction activities that increase school capacity.

**2 DE Reg. 1380 (2/1/99)**

**4 DE Reg. 1252 (2/1/01)**

**4 De Reg. 1949 (6/1/01)**

**6 DE Reg. 1669 (6/1/03)**

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### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code,  
Section 122(e) (14 Del.C. §122(d))  
14 DE Admin. Code 309

### **REGULATORY IMPLEMENTING ORDER**

#### **309 Certification Administrative Supervisor of Special Education**

##### **I. Summary Of The Evidence And Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal regulation 309 from the **DE Admin. Code**. The regulation concerns the requirements for certification of educational personnel. As part of a continuing effort to reduce the number of regulations which govern virtually every aspect of State government, it is recommended that the above-referenced regulation be repealed.

Notice of the proposed repeal of the regulations was published in the *News Journal* and *Delaware State News* on November 23, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No written comments were received.

## II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal this regulation as the content is incorporated into amended 14 **DE Admin. Code** 1523, Director of Special Education, as part of the Professional Standards Board's continuing efforts to reduce the number and complexity of regulations governing the licensure and certification of educators.

## III. Decision To Repeal The Regulations

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulation should be repealed. Therefore, pursuant to 14 **Del. C.** §1203 and §1205(b), the regulations attached hereto as Exhibit "B" are hereby repealed.

## IV. Text And Citation

The text of the regulations 309, attached hereto as Exhibit "B" are repealed, and said regulations shall be deleted from the **DE Admin. Code**.

## V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 3<sup>RD</sup> DAY OF FEBRUARY, 2005.

Harold Roberts, Chair	Bruce Harter
Sharon Brittingham	Valerie Hoffmann
Norman Brown	Leslie Holden
Heath Chasanov	Carla Lawson
Edward Czerwinski	Mary Mirabeau
Angela Dunmore	Gretchen Pikus
Karen Gordon	Karen Schilling Ross
Barbara Grogg	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2005.

### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President

Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

## ~~309 Certification Administrative – Supervisor of Special Education~~

Effective July 1, 1993

~~1.0 The following shall be required for the Standard License~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college and;~~

~~1.2 Experience~~

~~1.2.1 Three years of full-time, classroom teaching experience as a special education teacher, while holding a Standard License for teaching Exceptional Children. Standard certification is limited to LD, SED, MD, VI, HI, PI, Autistic/Severely Disabled and combinations thereof and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Master's degree from a regionally accredited college with a major in Administration and Supervision of Programs for Exceptional Children and;~~

~~1.3.2 Eligible for a Standard License to teach Exceptional Children LD, SED, MD, VI, HI, Autistic/Severely Disabled and combinations thereof or;~~

~~1.3.3 Master's degree from a regionally accredited college and;~~

~~1.3.3.1 Eligible for a Standard Administrative License as an Administrative Supervisor in the State of Delaware and;~~

~~1.3.3.2 A three semester hour, graduate level course in the Administration and Supervision of Programs for Exceptional Children and;~~

~~1.3.3.3 Eligible for a Standard License in Exceptional Children LD, SED, MD, VI, HI, Autistic/Severely Disabled and combinations thereof.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0 or;~~

~~2.1.1 Master's degree from a regionally accredited college and;~~

~~2.1.2 Meets the requirements in 1.2 and;~~

~~2.1.3 Is eligible for a Standard License to teach Exceptional Children in 1.3.2 and;~~

~~2.1.4 Within six semester hours of meeting the course work requirements in 1.3.4.1 and 1.3.4.2.~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code,  
Section 122(e) (14 **Del.C.** §122(e))  
14 **DE Admin. Code** 1523

**REGULATORY IMPLEMENTING ORDER**

**307 Certification Administrative Director Of Special Education**

**I. Summary Of The Evidence And Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 307 Certification Administrative Director of Special Education. This regulation applies to the certification of educators as Directors of special Education, as established by 14 **Del.C.** §1220(a). The regulation is being amended to align it with the statutory changes in 14 **Del.C.** 1220(a), and to require that a candidate complete an NCATE or NASDTEC approved educator preparation program or an approved alternative routes to certification program for school leaders. The requirements for Supervisor of Special Education, as set forth in 14 **DE Admin. Code** 309, are incorporated into the amended regulation. The regulation will be renamed to make it consistent with the titles of other Professional Standards Board regulations and will be renumbered 1523 to reflect its movement to the Professional Standards Board section of the **DE Admin. Code**.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on November 23, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comments supporting the proposed amendment were received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens.

**II. Findings Of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute regarding the licensure and certification of educators.

**III. Decision To Adopt The Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text And Citation**

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1523 of the *Administrative Code of Regulations* of the Department of Education.

**V. Effective Date Of Order**

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

APPROVED BY THE PROFESSIONAL  
STANDARDS BOARD THE 3<sup>RD</sup> DAY OF FEBRUARY,  
2005.

Harold Roberts, Chair	Bruce Harter
Sharon Brittingham	Valerie Hoffmann
Norman Brown	Leslie Holden
Heath Chasanov	Carla Lawson
Edward Czerwinski	Mary Mirabeau
Angela Dunmore	Gretchen Pikus
Karen Gordon	Karen Schilling Ross
Barbara Grogg	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT  
OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 17<sup>TH</sup> DAY OF  
FEBRUARY, 2005

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith



**1523 307 Certification Administrative Standard**  
**Certificate Director of Special Education-Effective July**  
**1, 1993**

**1.0 Content.**

1.1 This regulation shall apply to the issuance of a Standard Certificate for Director of Special Education, pursuant to 14 Del.C. §1220(a).

**2.0 Definitions.**

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

**“Administrative Experience”** means experience in a pK-12 setting as an assistant principal, principal, School Leader I, or School Leader II.

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

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

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

**“Teaching Experience”** means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

**3.0 The following shall be required for the Standard Certificate for a Director of Special Education.**

1.0 The following is required for the Standard License

1.1 Degree required

3.1 Educational requirements.

3.1.1 A master’s degree in special education from a regionally accredited college or university where the program is NCATE approved or state approved, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards; and

3.1.1.1 Successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates shall fulfill the following requirements;

3.1.1.1.1 A minimum of twenty-four (24) semesters hours of graduate level course work in administration, completed either as part of the master’s degree or in addition to it, to include at least one course in each of the following areas, unless otherwise indicated:

3.1.1.1.1.1 Supervision/Evaluation of Staff;

3.1.1.1.1.2 Curriculum

Development;

3.1.1.1.3 School Law/Legal

Issues in Education;

3.1.1.1.4 Human Relations; and

3.1.1.1.5 Special Education (12 credits)(may include courses in curriculum, instruction, methods, and/or administration); or

3.1.2 [A master’s degree in school administration; and 30 graduate level semester hours in Special Education taken either as part of a degree program or in addition to it; or

~~1.1.1 3.1.3~~ A M master's degree in any field from a regionally accredited college or university; plus and

3.1.2[3].130 graduate level credits semester hours in Special Education[, to include at least one course in each of the areas set forth in 3.1.1.1.1 through 3.1.1.1.5 taken either as part of a degree program or in addition to it; and

3.1.3.2 Successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternative routes to certification program occurs, candidates shall fulfill the following requirements:

3.1.3.2.1 Supervision/Evaluation of Staff;

3.1.3.2.2 Curriculum Development;

3.1.3.2.3 School Law/Legal Issues in Education;

3.1.3.2.4 Human Relations; and

3.1.3.1.5 Special Education (12 credits)(may include courses in curriculum, instruction, methods, and/or administration taken either as part of a degree program or as part of the requirement for graduate level semester hours in Special Education set forth in 3.1.2.1 and 3.1.3.1, above; or]

3.1.[3 4] A current and valid special education administrative certificate from another state or the District of Columbia.

3.2 Experience requirements.

3.2.1 A minimum of three (3) years of teaching experience with children with disabilities at the pK-12 level; or

3.2.2 A minimum of three (3) years of professional experience with children with disabilities at the pK-12 level, in any setting, in a position requiring certification or licensing by the appropriate regulatory body, including, but not limited to a school psychologist, speech pathologist, or audiologist, regardless of whether the applicant’s position meets the definition of “teaching experience”; or

3.2.3 A minimum of three (3) years administrative experience with children with disabilities at

the pK-12 level; or

~~3.2.4 Any combination of these types of experiences which totals a minimum of three (3) years.~~

~~1.5 Experience~~

~~1.2.1 three years of administrative experience as a supervisor of programs for Special Education or as an administrator in a school for the disabled and,~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Master's degree in Administration and Supervision of Programs for Special Education from a regionally accredited college plus 30 graduate level semester hours in Special Education or,~~

~~1.3.2 A Master's degree from a regionally accredited college, in any field, plus 30 graduate semester hours. A total of 30 semester hours of graduate level course work shall be from the area of Special Education, taken either within or beyond the Master's degree and,~~

~~1.3.3 The individual shall meet the State of Delaware requirements for a Standard License as a Supervisor of Special Education or a Principal/ of a School for the Disabled.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in section 1.0.~~

~~2.1.1 Master's degree from a regionally accredited college and,~~

~~2.1.2 Meets the requirement in 1.2 and,~~

~~2.1.3 Within six semester hours of meeting the requirements in 1.3.1 or 1.3.2, and 1.3.3~~

~~3.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

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### **PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code,  
Section 122(e) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 1531

### **REGULATORY IMPLEMENTING ORDER**

#### **1531 Standard Certificate School Leader I**

#### **I. Summary Of The Evidence And Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks

the consent of the State Board of Education to amend 14 **DE Admin. Code** 1531 Certification Administrative School Leader I. This regulation applies to the certification of educators as school administrators, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to delete references to Director of Special Education, which will remain as an independent regulation.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on November 23, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

#### **II. Findings Of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to align it with changes in 14 **DE Admin. Code** 307.

#### **III. Decision To Adopt The Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### **IV. Text And Citation**

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1531 of the *Administrative Code of Regulations* of the Department of Education.

#### **V. Effective Date Of Order**

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL  
STANDARDS BOARD THE 3<sup>RD</sup> DAY of FEBRUARY,  
2005.

Harold Roberts, Chair	Bruce Harter
Sharon Brittingham	Valerie Hoffmann
Norman Brown	Leslie Holden
Heath Chasanov	Carla Lawson
Edward Czerwinski	Mary Mirabeau

Angela Dunmore  
Karen Gordon  
Barbara Grogg

Gretchen Pikus  
Karen Schilling Ross  
Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT  
OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED THIS 17<sup>TH</sup> DAY OF  
FEBRUARY, 2005.

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Richard M. Farmer, Jr.  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

### 1.0 Content.

1.1 The following shall apply to the issuance of a Standard Certificate for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers in instructional areas, except Directors of Special Education (See 14 **DE Code** 1523), pursuant to 14 **Del.C.** §1220.

**7 DE Reg. 190 (8/1/03)**

**7 DE Reg. 1744 (6/1/04)**

### 2.0 Definitions.

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

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

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

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

“**Teaching Experience**” means meeting students on a regularly scheduled basis, planning and delivering instruction, developing or preparing instructional materials, and evaluating student performance in any pK-12 setting.

**7 DE Reg. 190 (8/1/03)**

**7 DE Reg. 1744 (6/1/04)**

3.0 The following shall be required for the Standard Certificate for Directors, Supervisor, Administrative Assistants, Coordinators, and Managers in instructional areas.

### 3.1 Educational requirements

3.1.1 A master’s degree in educational leadership from an NCATE or state approved program where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards from a regionally accredited college or university, or

3.1.2 A master’s degree in education offered by an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program where the state approval body employed the appropriate NCATE specialty organization standards from a regionally accredited college or university and a current and valid equivalent central office administrative certificate from another state, or

3.1.3 A master’s degree in any field from a regionally accredited college or university and successful completion of a Delaware approved alternative routes to certification program for school leaders. Until approval and implementation of an alternatives routes to certification program occurs, candidates completing the Standard Certificate in accordance with 3.1.3.1 of this regulation shall fulfill the following requirements;

3.1.3.1 A minimum of twenty-four semester hours of graduate level course work, completed either as part of the master’s degree or in addition to it, in administration, to include at least one course in each of the following areas:

3.1.3.1.1 Curriculum Development,

3.1.3.1.2 Supervision/Evaluation of

Staff,

3.1.3.1.3 Human Relations, and

3.1.3.1.4 School Law/Legal Issues and

3.1.3.1.5 In the area(s) to be

supervised (may include courses in curriculum, instruction, and/or methods), and

### 3.2 Experience requirements

3.2.1 A minimum of three (3) years of teaching experience at the pK-12 level. ~~Teaching experience for Directors, Supervisors, Administrative Assistants, Coordinators, and Managers of programs for exceptional children must have been with exceptional children.~~

**7 DE Reg. 190 (8/1/03)**

**7 DE Reg. 1744 (6/1/04)**

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

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

**ORDER****Private Duty Nursing Services****Nature Of The Proceedings**

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the provider manual of the Delaware Medicaid/Medical Assistance Program and the Title XIX Medicaid State Plan to revise and clarify the criteria and reimbursement methodology for Private Duty Nursing (PDN) services. 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 January 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Citations**

- Section 1905(a)(8) of the Social Security Act, *includes private duty nursing services in the definition of medical assistance*
- 42 CFR §440.80, *defines Private Duty Nursing Services*
- 42 CFR 447.205, *defines requirement for Public Notice of Statewide Methods and Standards for Setting Payment Rates*

**Background**

Coverage practices not specified by the Delaware Medicaid/Medical Assistance Program (DMAP) policy includes: serving multiple clients in a congregate setting; self-employed individual providers enrolled independently of a nursing agency; multiple nurses providing service to a single client, congregate group of clients, or when the PDN provider is a caretaker not legally responsible for the client.

Currently, DMAP enrolls multiple nurses to serve one or more clients in a home setting at negotiated rates. Rates negotiated for independent nurses are intended to be lower

than the PDN rate paid to nursing agencies. Independent nurses were also intended to assure service when agencies were unreliable or unavailable. DSS staff prepares claims for reimbursement based on time logs submitted by independent PDN providers. This practice has provided adequate nursing care for clients, but has exposed DSS to possible billing issues and overpayments, and may not be consistent with current DMAP policy.

**Summary of Proposed Changes**

1. Private Duty Nursing may be provided by a single nurse to an individual or to multiple clients in a group setting. Private Duty Nursing is NOT necessarily defined as one-on-one nursing care, and may apply to services provided by a single nurse to multiple clients. This will be referred to as “Shared Nursing Services” because no single client is receiving the total attention of the nurse.

2. Special arrangements for other than one-on-one service for children in home settings will be considered if Shared Nursing Services are medically appropriate, advantageous to the client and to DMAP. Private Duty Nursing or Shared Nursing Services may supplement the care provided by a parent.

3. Private Duty Nursing reimbursement rates will be set at a One Nurse to One Client baseline. Shared Nursing Services will be reimbursed at a reduced or discounted rate per client, and will be limited to a maximum of three clients per nurse at one time.

4. Clients authorized for Private Duty Nursing may change from “private” services to Shared Nursing Services at the discretion of the DMAP Medical Director with no change to their medical condition. Areas considered by the Medical Director’s decision include availability of nursing staff, the housing situation of the client, the medical needs of the client, and the economic advantage of DMAP.

5. Referring physicians must be informed when DMAP has determined that Shared Nursing Services are appropriate. Referring physicians may object to Shared Nursing Services for their client if their interpretation of Private Duty Nursing is one-on-one nursing care.

6. Reimbursement rates will be based on the individual client, rather than the provider. A fixed rate will be established for each unit of client service for PDN. A reduced rate will be established for each unit of client service for shared nursing care for up to three clients. For example, a client who is authorized 8 hours of PDN per day may share a nurse with another client also authorized 8 hours of PDN per day. They will each be billed as 8 hours of Shared Nursing Service, at the discounted rate, rather than each 4 hours of PDN.

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

expected to provide routinely or on a sustained basis more than 16 hours of service per day.

8. Neither DMAP Policy nor the State Plan makes a distinction between agency PDN and nursing services provided by independent contract nurses. Shared Nursing Service policy will apply to both, and will depend upon provider availability, the needs of the client, and the economic advantages of DMAP.

9. DHSS/DSS or their fiscal agent should not be involved in preparing, altering, revising, submitting, or correcting provider claims. Submission of claims for reimbursement is the responsibility of the provider. Retroactive adjustments for rate updates adjust the fee file and the reimbursement, not the claim.

10. A Prior Authorization template will be established for each client to display the authorized hours for the provider, and for the DSS staff to monitor claims. The template will document the authorized hours of service for each client, and coordinate the amount of service available from each provider. The Prior Authorization number will be entered in the MMIS, so edits/audits and payments can be automated. Billing will be oriented to the client, not to the provider.

### Reimbursement Methodology

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

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

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

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

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

### Summary Of Comments Received With Agency Response With Explanation Of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

First, in Section 1.0, the last bullet indicates that the Provider Manual standards do not apply to "waiver group homes". We believe the DDDC HCBS waiver also covers foster homes. The sentence could either be amended to include such settings or deleted altogether since the first bullet already covers beneficiaries enrolled in waivers.

**Agency Response:** Accepted comment and change made.

Second, in Section 1.1.1, the inclusion of the word "skilled" imposes a higher standard than the Federal PDN regulation, 42 CFR 440.80, which does not use the term "skilled". The State cannot adopt a definition of a Medicaid service which is narrower than the Federal standard. Moreover, the reference to 42 CFR 440.80 should be 42 CFR 440.70.

**Agency Response:** Accepted comment and change made.

Third, in Section 1.1.4.1, we recommend adding "or community settings" after the word "home". CMS modified its policy to permit PDN services to be provided in other community settings. Moreover, the limited reference to "home" in Section 1.1.4 is inconsistent with Sections 5.2.5 and 5.2.6 which authorize PDN in the contexts of accompaniment to medical appointments, accompaniment to school, and in-school settings.

**Agency Response:** Added the phrase, "or other DMAP approved community setting".

Fourth, in Section 1.1.4, we recommend deletion of the second sentence which recites that "(g)enerally, the total cost of PDN services shall not exceed the cost of care provided in an institutional setting." This is not a waiver program in which the cost of services are subject to an aggregate or individual cap. Moreover, it is inconsistent with the ADA and Olmstead which encourages states to review and revamp policies which encourage unnecessary institutionalization.

**Agency Response:** PDN is included in Delaware's 1115(c) waiver. No change.

Fifth, Section 4.1.3 suggests that DSS will pay less to self-employed nurses than agency-based nurses. Given the nursing shortage, this approach may discourage individual nurses from providing PDN services. It would be preferable

to establish compensation standards which attract, not deter, self-employed nurse participation in the Medicaid program.

**Agency Response:** The difference in the rates takes into account the fact that agencies have higher costs than self-employed nurses. No change.

Sixth, the regulations are unduly constrictive in the context of “carryover”. See Sections 5.1.5 and 5.2.9. The standards explicitly disallow carryover even to the next day. A completely rigid and inflexible system is simply not realistic and will result in hardship to families. Recognizing that a weekly schedule is developed at a minimum, consider the following alternative to Section 5.2.9:

DSS projects a sufficient amount of hours per day. If the hours authorized are not used on a particular day, the hours do not generally carry over to the next day or weekend nor can the hours be “banked” to be used at a later time. Occasional variations of 3 hours or less within a week based on unexpected or extenuating circumstances may be acceptable.

**Agency Response:** If a situation arises that necessitates the use of additional hours, the nurse or facility may seek prior approval from DMAP. No change.

Seventh, Section 5.2.3 is objectionable. This establishes a categorical requirement that no one (adult or child) is eligible for PDN unless they have a least 2 independent caregivers. This is not authorized by Federal law. If a single parent with a medically fragile child has no relatives in the area, she would be precluded from obtaining PDN to which her child is otherwise entitled. Moreover, the implication of the sentence is that if an agency nurse does not appear as scheduled, the agency need not arrange for a substitute. Rather, the primary caretaker or back-up caregiver would be expected to “cover” for the defaulting nurse to the exclusion of the provider. The sentence should be deleted.

**Agency Response:** The phrase, “and one back-up caregiver”, has been removed.

Eighth, Section 5.2.4 recites as follows: “DSS cannot guarantee that PDN services will be available from a specific home health agency.” The reference to “home health agency” is problematic since it suggests that PDN is a “home health service”. PDN is a distinct service. At a minimum, we recommend substituting “provider” for “home health agency”. Moreover, the sentence could be construed to mean that PDN may not be available based on a lack of participating providers or openings. DSS has a duty to ensure the ready availability of participating providers throughout the State. Therefore, Section 5.2.4 could be improved as follows:

Although a sufficient network of PDN providers will be enrolled to ensure statewide availability, DSS cannot guarantee that PDN services will be available from a specific provider.

**Agency Response:** The phrase, “home health agency” has been removed and replaced with the word, “provider”.

Ninth, there is some “tension” between Section 5.2.5 (which categorically prohibits a PDN accompanying a caregiver to a medical appointment or hospital) and Section 5.3.1 (which contemplates that some caregivers may not be sufficiently trained/skilled to care for a Medicaid beneficiary (e.g. with new trach or vent). Section 5.2.5 should be revised to permit such accompaniment when the beneficiary’s health and safety would be compromised by transport without a private duty nurse. This is similar to the authorization of accompaniment in the school transit context authorized by Section 5.2.6.

**Agency Response:** The intent of this section is to clarify that DMAP will not pay for a PDN when a parent/caregiver is available. No change.

Tenth, Section 5.2.6 should be revised to clarify that the “compromised airway” is only one of multiple medical conditions which may justify nurse accompaniment. Consider inserting “or other high risk condition” after the word “airway”.

**Agency Response:** Accepted comment. Added the phrase “or other DMAP approved high risk condition”.

Eleventh, for similar reasons, Section 5.3.4 could be revised by substituting “due to compromised airway (trach/vent) or other high risk condition” for “with a compromised airway (trach/vent)”.

**Agency Response:** Accepted comment. Added the phrase “or other DMAP approved high risk condition”.

Twelfth, the regulations establish a utilization cap of 16 hours/day for children. See Section 5.3.1. Under EPSDT, utilization limits may be used as guides but not absolute caps. Section 5.3.3 ostensibly recognizes that the utilization standard is a guide and not an absolute cap by authorizing more hours to avoid hospitalization. At a minimum, we therefore recommend substitution of “upper utilization guideline” for “maximum number of hours a day” in Section 5.3.1.

**Agency Response:** Section 5.3.1 - no change.

Thirteenth, for similar reason, we recommend the following substitute for the first sentence in Section 5.3.1:

In absence of compelling circumstances (e.g. unavailability of other appropriate options), DSS does not approve 24 hour on-going PDN services.

**Agency Response:** Refer to Section 5.3.3.

Fourteenth, for similar reasons, we recommend inserting “or institutional placement” after the word “hospitalization”. There are non-hospital settings (e.g. Voorhees) which should be disfavored over community settings.

**Agency Response:** Accepted comment and change made.

**DSS Note:** In addition to the above changes, please be notified of the following change. To indicate the appropriate number of units to bill based on the minutes of service provided, a new section numbered 4.2.1 has been added to clarify how to calculate units of PDN service.

### Findings Of Fact

The Department finds that the proposed changes as set forth in the January 2005 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the policies for Private Duty Nursing Services is adopted and shall be final effective March 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 2/15/05

## DSS FINAL ORDER REGULATIONS #05-12a REVISIONS:

### Private Duty Nursing Program Provider Specific Policy

#### 1.0 Overview

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

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

Providers shall refer to the Managed Care section of the

General Policy for the required forms and procedures related to Diamond State Partners (DSP).

This manual reflects the policies as they relate to:

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

#### 1.1 Service Definition

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

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

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

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

#### 2.0 Qualified Providers

##### 2.1 General Criteria

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

2.1.2 Home health agencies that employ and provide qualified nursing staff as described above or self-employed qualified nursing staff are considered qualified providers and may enroll as PDN providers.

2.1.2.1 Individual nurses, either employed by

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

### **3.0 Documentation**

#### 3.1 Provider Requirements

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

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

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

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

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

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

### **4.0 Reimbursement**

#### 4.1 Methodology

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

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

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

charges or the maximum rate.

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

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

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

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

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

#### **[4.2 Counting of 15-Minute Increments**

**4.2.1 Visits are to be rounded to the nearest 15-minute increment. The following chart is to be used to assist providers in determining the number of units to be billed:**

<b>1 unit</b>	<b>1 minute to &lt;23 minutes</b>
<b>2 units</b>	<b>&gt;23 minutes to &lt;38 minutes</b>
<b>3 units</b>	<b>&gt;38 minutes to &lt;53 minutes</b>
<b>4 units</b>	<b>&gt;53 minutes to &lt;68 minutes</b>
<b>5 units</b>	<b>&gt;68 minutes to &lt;83 minutes</b>
<b>6 units</b>	<b>&gt;83 minutes to &lt;98 minutes</b>
<b>7 units</b>	<b>&gt;98 minutes to &lt;113 minutes</b>
<b>8 units</b>	<b>&gt;113 minutes to &lt;128 minutes</b>

**NOTE: Unless prior authorized, providers cannot exceed the limited number of units assigned to each private duty nursing service.]**

### **5.0 Prior Authorization**

#### 5.1 Requirements

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

5.1.2 Private duty nursing services for clients who are eligible for the Elderly and Disabled HCBS Waiver program or the Assisted Living Medicaid Waiver program must be prior authorized by the nursing staff of the Division of Services for Aging and Adults with Physical Disabilities



(DSAAPD). See the Index in back of General Policy for appropriate address and telephone number.

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

5.1.4 The maximum number of hours provided by an individual nurse will be restricted to a level that can safely and reasonably be provided. No individual nurse will be authorized to work more than a 16 hour shift per day except in an emergency situation which will be reviewed by the Medical Review Team.

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

## 5.2 General Guidelines for Private Duty Nursing Authorization

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

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

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

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

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

5.2.6 PDN may be approved to accompany school-age children with a compromised airway [or other DMAP approved high risk condition] in transport to school and to provide medically necessary care during school hours.

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

5.2.8 DSS may approve PDN to cover summer vacation as well as scheduled school year holiday vacations for school age children if parent/caregiver requests the coverage timely. Absence of parents/guardian from the home for employment or work-related education reasons must be documented.

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

## 5.3 Determination of Hours Needed

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

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

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

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

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

related classes, vo-tech, GED, high school, college, etc. and must be documented.

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

**DSS FINAL ORDER REGULATIONS #05-12b REVISIONS:**

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

ATTACHMENT 3.1-A  
Page 3a Addendum

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

LIMITATIONS:

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

**DSS FINAL ORDER REGULATIONS #05-12c REVISIONS:**

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

ATTACHMENT 4.19-B  
Page 10

DELAWARE RATES FOR PRIVATE DUTY NURSING

~~Private Duty Nursing Services, whether performed by a provider located in Delaware or a provider with an out-of-state location are reimbursed at a capped unit rate with weekly maximum dollar limit per client, as set by the Delaware Medicaid Program. The unit rates are reviewed whenever a rate increase is requested by a provider, but no more frequently than annually, by conducting a survey of agencies that provide private duty nursing services and capping the rate at the lowest level available of these prevailing rates. The weekly maximum dollar limit is derived by multiplying the capped unit rate by the minimum~~

~~number of units necessary to maintain the client in the home as an alternative to institutionalization, but not to exceed eight (8) hours daily.~~

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

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

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

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

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

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

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

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

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## DIVISION OF SOCIAL SERVICES

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

### ORDER

#### Child Care Subsidy Program

#### Nature Of The Proceedings

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the child care subsidy program as it relates to the determination of the child care parent fee and fee waiving situations. 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 January 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary Of Proposed Changes

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

- In accordance with the Trademark Agreement, replaced previous program name with Delaware’s Temporary Assistance for Needy Families Welfare Reform Program, where applicable.
- Renumbered and revised the conditions under which child care fees will be waived; and, included examples.
- Added one more condition: waive the parent fee of teen parent attending high school.

#### Summary Of Comments Received With Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD) offered the following summarized comments.

Most of the proposed changes would not affect persons with disabilities. The most significant change for persons

with disabilities is in the context of “special needs” children. The current standard authorizes waiver of all childcare fees for “families where the need for service is based on the special needs of the child or caretaker. The proposed version narrows this authorization to “families where the need for service is solely based on the special needs of the child or caretaker/parent.” The problem with this approach is that it presumes that the need for child care can be neatly categorized into a single justification. Life is rarely so “neat”. At a minimum, we recommend that the word “primarily” be substituted for the word “solely”. This would provide guidance to the DSS intake worker while still allowing some limited discretion.

DSS provides two illustrations of this standard. The first example could easily be misconstrued to mean that waiver of the childcare fee for a special needs child will never be justified if the childcare facilitates the parent’s employment. In the example, the employment could very well be prompted by the special needs of the child. We ask that the following substitute example be considered:

**EXAMPLE:** A family consisting of a working mother and two children applies for Purchase of Care. One child has ADD/HD and mom needs childcare because she is working. The parent fee for the child with ADD/HD would not be waived unless employment is directly linked to the special needs of the child (e.g. special school tuition; tutoring).

**Agency Response:** The Division of Social Services has considered the recommendation and respectfully chooses to retain the word “solely. The word “solely” was specifically chosen to emphasize and clarify that waiving a parent fee based on “special needs” can only happen when the need for child care is based on the identified “special need” of the individual who needs the child care.

#### Findings Of Fact

The Department finds that the proposed changes as set forth in the January 2005 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the policies for the Child Care Subsidy Program is adopted and shall be final effective March 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 2/15/05

#### DSS FINAL ORDER REGULATION #05-10 REVISIONS:

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

Under regulations, eligible families are required to contribute to the cost of child care services based upon their

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

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

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

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

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

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

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

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

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

3. Families where the need for service is solely based

on the special needs of the child or the caretaker/parent. Families must first be financially eligible for Child Care Services. (See policy section 11003.7)

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

EXAMPLE: A family consisting of a working father, stay at home mother and two children applies for POC. They are income eligible and the mom states she needs childcare because her one child is developmentally delayed and needs increased socialization. If this is verified by a professional on the Special Needs form 644, they may receive child care for that child based on the special need and the parent fee for that child will be waived. (Note, the only need for child care is due to the child's special need, Mom is at home so there would not otherwise be a need for POC.)

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

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

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

EXAMPLE:

A family of three has gross monthly income of

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

Total income per month equals: \$1,417.00

Total expenses are: \$ 635.00

After deductions: \$ 782.00

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

EXAMPLE:

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

Total income per month equals: \$2,203.00

Total expenses are: \$ 785.00

After deductions: \$1,418.00

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

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

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

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

### **DIVISION OF SOCIAL SERVICES**

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

### **ORDER**

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

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting annuities and their stream of income for the

eligibility process; to clarify that the list of non-liquid resources is not all inclusive; and, to correct an inconsistency in language. 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 January 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### **Summary Of Proposed Changes**

1. To DSSM 20300.2 Non-Liquid Resources:
  - Add the word "annuity" to the list of non-liquid resources; and,
  - Add the words "including but not limited to".
2. From DSSM 20360 Conditional Medicaid Coverage While Disposing of Resources:
  - Delete the word "securities" from DSSM 20360. There exists an inconsistency in DSSM 20360 which lists "securities" as a non-liquid resource while DSSM 20300.1 lists "stocks" as a liquid resource.

#### **Summary Of Comments Received With Agency Response**

The Governor's Advisory Council for Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD) offered the following summarized observations:

We are concerned that not all "securities" can be readily converted to cash in 20 working days. There are bonds, notes, and non-negotiable instruments that may not be convertible within 20 working days. For example, a parent holding a mortgage and note creating a lien on an adult child's home would not readily find a buyer for the mortgage and note. The same result would occur if a seller of a home provided "owner financing" by holding the mortgage and note on the property. Moreover, stock in a small business which is not publicly traded in which the other stockholders have the right of first purchase may not be convertible within 20 working days.

Therefore, while it may be appropriate for DSS to delete "securities" as an example of non-liquid resource since some securities are easily sold, it would be helpful to add a

clarification in the finds section of the final regulation. Specifically, DSS could include the following comment:

While publicly traded securities will generally qualify as liquid resources, other securities may vary widely in liquidity and no absolute characterization of securities as a liquid or non-liquid resource is intended by the amendment to §20360.

We request that DSS consider making decisions on a case by case analysis because there are cases that can't be liquidated in 20 days. It may be that after due diligence an extension of the time limits would be appropriate for non-liquid resources.

**Agency Response:** Both liquid and non liquid resources are counted. However, applicants with non liquid resources have the option of signing an "agreement to sell" while attempting to dispose of the resource and may then get conditional Medicaid. The word "securities" was deleted because of a conflict within the Division of Social Services Manual and its vague reference to resources. DSS has corrected this.

#### **Findings Of Fact:**

The Department finds that the proposed changes as set forth in the January 2005 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the policies for the Long Term Care Program is adopted and shall be final effective March 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 2/15/05

#### **DSS FINAL ORDER #05-09**

#### **REVISIONS:**

20300.2 Non-Liquid Resources

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

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

(Break in Continuity of Sections)

20360 Conditional Medicaid Coverage While Disposing of Resources

Effective September 1, 1987 "conditional" Medicaid

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

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

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

#### **ORDER**

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

#### **Nature Of The Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program related to the redemption period for certain U.S. Savings Bonds and provides instructions on waiving the redemption period for U.S. Savings Bonds. 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 January 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Citations

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

To DSSM 20330.7 - U.S. Savings Bonds:

1. Change the redemption period for U.S. Savings Bonds Series EE and I from 6 months to 12 months; and,

2. Include instructions provided by the Centers for Medicare and Medicaid Services (CMS) on waiving the mandatory redemption period.

#### Summary Of Comments Received With Agency Response And Explanation Of Change

The Governor's Advisory Council for Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD) offered the following summarized comments:

First, some savings bonds are not redeemable for several months after initial purchase. During this period, they are not a countable resource since they cannot be converted to cash. Traditionally, savings bonds had a 6 month minimum "retention" period. However, some savings bonds now have a 12-month retention period. Therefore, DSS has modified its regulation to characterize both types of bonds as "non-resources" during the 6 or 12 month retention period.

Second, a bondholder may avoid the retention period and obtain a refund based on hardship (e.g. bondholder needs funds for nursing home care). DSS has added several sentences to describe this option.

We believe that the consequences of obtaining a refund of a bond based on hardship are not clearly stated. We infer that the refund would constitute a resource, at least as of the next month. In contrast, DSS clearly states that bonds redeemed after the retention period become resources in the 7<sup>th</sup> or 13<sup>th</sup> month. DSS may wish to add a similar clarifying sentence covering the status of a hardship refund.

**Agency Response:** The following clarifying sentence is added to the final order regulation: *If the Treasury receives the bond(s) and grants the waiver, it will issue the individual a check. At that point, the individual would have a countable resource in the amount of the check.*

#### Findings Of Fact:

The Department finds that the proposed changes as set forth in the January 2005 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the policies for the Long Term Care Program is adopted and shall be final effective March 10, 2005.

Vincent P. Meconi, Secretary, DHSS, 2/15/05

#### DSS REGULATION #05-11 REVISIONS:

20330.7 U.S. Savings Bonds

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

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

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

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

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

Statutory Authority: 7 Delaware Code,  
Sections 903(2)(b7) (7 Del.C. §§903(2)(b7))

**ORDER No. 2005-F-0011**

**Summary Of Evidence And Information**

Pursuant to due notice in Vol. 8, Issue 6 *Delaware Register of Regulations*, pp. 859 and 861, the Department of Natural Resources and Environmental Control proposes changes to Non-Tidal Fishing Regulation 3308 pertaining to adding the northern snakehead fish (*Channa argus*) and the blotched snakehead fish (*Channa maculata*) to the list of species for which it shall be unlawful for any person to transport, purchase, possess or sell within Delaware. Further, the Department of Natural Resources and Environmental Control proposes adopting a possession limit of 25 blueback herring (*Alosa aestivalis*) and/or alewife (*Alosa pseudoharengus*) per person per day unless said person has a valid bill-of-sale or receipt for said river herring that indicates the date said river herring were received; and the name, address and signature of the commercial food fisherman who legally caught said river herring; or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said river herring for resale.

Public hearings were held on January 4 and February 1, 2005 to take comments on proposed amendment to Non-Tidal Fishing Regulation 3308 and new Tidal Fishing Regulation 3553. The comment period for these hearings remained open until February 7, 2005.

**Findings Of Fact**

- The exotic northern snakehead fish is known to be an aggressive predator that is capable of reproducing in Maryland and Pennsylvania, even though the species is native to southeast Asia. The U.S. Fish and Wildlife Service has declared all known species of snakehead fishes to be

injurious wildlife that may not be imported into states and territories of the U.S. The surrounding states of Maryland, Pennsylvania, and New Jersey have already outlawed the possession of northern snakehead fishes (*Channa argus*), and Maryland recently included the blotched snakehead (*Channa maculata*) in their ban because both species are tolerant of temperate climates and are a threat to survive and breed in the mid-Atlantic area. By banning both the northern and blotched snakehead fishes, Delaware's proposal would complement action already taken by Maryland. This regulation would make it illegal to possess any of the two target species of snakeheads in Delaware. This action is necessary to protect native and naturalized populations of gamefish and fish food organisms from an additional source of competition and predation.

- 903(e)(2)(a) 7 Delaware Code authorizes the Department of Natural Resources and Environmental Control (DNREC) to promulgate regulations concerning species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish. The most recent amendment (Amendment 1) to the Interstate Fishery Management Plan for Shad and River Herring was released by the Atlantic States Marine Fisheries Commission in April 1999. All jurisdictions were urged to conserve and restore river herring populations throughout their range along the Atlantic Coast.
- The proposed daily possession limit (creel limit) should serve to discourage the development of a fishery in Delaware conducted by recreational fishermen seeking to take river herring to be sold as live bait for striped bass. In neighboring states fisheries were developing where river herring concentrate at the base of dams while on their spawning migrations. At such confined locations river herring would be vulnerable to overharvest. In addition Delaware has been actively attempting to restore river herring populations by installing fish ladders over dams so that remnant river herring adults can reach ancestral spawning areas. It is these spawning adults that are sought after as bait for large striped bass, and as a result, live river herring can bring a premium price. Bait and tackle dealers and commercial crabbers will still be able to obtain river herring from commercial fishermen, but recreational



fishermen will not be able to keep more than they need for a day of fishing.

- Pennsylvania and New Jersey have already taken regulatory action to set a daily harvest limit on river herring by recreational fishermen in order to discourage expansion of this fishery.
- All comments received on the proposal favored both regulatory changes.
- The Delaware Advisory Council on Tidal Finfisheries was apprised of both proposed regulatory changes in separate actions in 2004. The Advisory Council endorsed the proposed ban on snakehead fishes in Delaware on October 20, 2004 but did not vote on the river herring proposal because a quorum was not present on the night it was discussed (March 17, 2004).

### Conclusions

- The Department of Natural Resources and Environmental Control has a statutory obligation to manage the freshwater (non-tidal) fisheries to ...assure the conservation of freshwater fish,...as it deems necessary or advisable for the protection and conservation of wildlife or freshwater fish (§103 7 **Del.C.**). Further, the Department has the statutory obligation to manage the tidal water finfisheries of Delaware in a manner that is ...consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish. (§903(2)b7 **Del.C.**).
- The regulations as proposed will help prevent the unwanted introduction into the wild of two species of exotic fishes declared by the U.S. Fish and Wildlife Service to be injurious.
- The regulations as proposed will help prevent the establishment of a commercialized-bait fishery among recreational fishermen within spawning tributaries for river herring. The river herring comprise two species which the State is actively attempting to restore to former abundance through the building of fish ladders to increase access to historical spawning areas.

### ORDER

It is hereby ordered this \_\_\_\_ day of February in the year 2005 that amendments to Non-Tidal Fishing Regulation 3308 and new Tidal Fishing Regulation 3553, copies of which are attached hereto, are adopted pursuant to §103, 7 **Del.C.** and §903(2)b7 **Del.C.** and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on March 10, 2005.

John A. Hughes, Secretary  
Department of Natural Resources  
and Environmental Control

### **3308 Fish Stocking Practices (Formerly NT-7)** (Penalty Section 7 **Del.C.** §1304)

#### **1.0 Stocking Fish Practices.**

1.1 It shall be unlawful for any person to stock any species of fish into the non-tidal public waters of this State without the written permission of the Director. This regulation does not prohibit the stocking of private impoundments.

#### **2.0 Transportation, Possession and Sale.**

2.1 It shall be unlawful for any person to transport, purchase, possess, or sell walking catfish (*Clarius batrachus*) or the white amur or grass carp (*Ctenopharyngodon idella*) or live northern snakehead fish (*Channa argus*) or blotched snakehead fish (*Channa maculata*) without the written permission of the Director.

**3 DE Reg. 289 (8/1/99)**

### **3553. River Herring Creel Limit**

(Penalty Section 7 **Del.C.** 936(b)(2))

Unless otherwise authorized, it shall be unlawful for any person to have in possession, except a person with a valid Delaware commercial food fishing license, more than twenty-five (25) blueback herring and/or alewife (*Alosa aestivalis* and/or *Alosa pseudoharengus*), collectively known as river herring, at or between the place caught and his/her personal abode or temporary or transient place of lodging; or unless said person has a valid bill-of-sale or receipt for said river herring that indicates the date said river herring were received, the number of said river herring received and the name, address and signature of the commercial food fisherman who legally caught said river herring; or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said river herring for resale.

**DEPARTMENT OF SAFETY AND  
HOMELAND SECURITY  
BAIL ENFORCEMENT AGENTS**

Statutory Authority: 24 Delaware Code,  
Section 5404(a) (24 Del.C. §5404(a))

**ORDER**

Pursuant to the Guidelines in 29 Del.C. Section 10118(a)(1)-(7), the Secretary of Safety and Homeland Security ("Secretary") hereby issues this Order. Following public notice held open until February 1, 2005 on the proposed amendment of promulgated rules and regulations 1.0 - Licensing, the Secretary makes the following Findings and Conclusions:

**Summary of Evidence and Information Submitted**

1. The Secretary did not receive written evidence or information pertaining to the proposed amendment.
2. The Secretary expressed his intent to amend the rule to clarify items and fees that a Bail Enforcement Agent will incur when applying for or renewing their license.

**Findings of Fact**

3. The public was given notice and the opportunity to provide the Secretary with comments, in writing, on the amendment of the rule. The written comments received are described in paragraph 1.
4. The Secretary finds that the amendment of this rule will clarify items and fees that a Bail Enforcement Agent will incur when applying for or renewing their license.
5. The Secretary finds that the amendment will have no adverse impact on the public.
6. The Secretary finds that the amendment is well written and describes its intent to clarify items and fees that a Bail Enforcement Agent will incur when applying for or renewing their license.

**Conclusion**

7. The proposed rule amendment was promulgated by the Secretary in accord with the statutory duties and authority as set forth in 24 Del.C. Section 5504 et seq. and, in particular, 24 Del.C. Section 5504(a).
8. The Secretary deems this amendment necessary and expedient to the full and official performance of his duties under 24 Del.C. Section 5504 et seq.
9. The Secretary concludes that the amendment of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Secretary therefore adopts the amendment of this rule pursuant to 24 Del.C. Section 5504(a) and guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This amended rule replaces 1.0 (1.1, 1.2, 1.3, 1.4, 1.4.1, 1.5, 1.6, 1.8, & 1.9), in its entirety, and any former rule or regulation heretofore promulgated by the Secretary.

12. The effective date of this Order shall be March 10, 2005.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Secretary on the 14<sup>th</sup> day of February, 2005.

Secretary David B. Mitchell

APPROVED AS TO FORM:

Patricia D. Murphy, Esquire  
Deputy Attorney General  
February 14, 2005

**Bounty Hunter/Bail Enforcement Agents****Preamble**

These Rules & Regulations are promulgated pursuant to 24 Del.C. §5504(a) and the Secretary of Public Safety delegates his regulatory authority granted by Chapter 55 to the Division of State Police.

**1.0 Licensing**

1.1 Any individual applying for a bail enforcement agent ID card under 24 Del.C. Ch. 55 must meet and maintain the following qualifications:

1.1.1 Must not be convicted of any felony; and

1.1.2 Must not have been convicted, within the last seven (7) years, of any two (2) of the following misdemeanors: theft, drug offenses, offensive touching, or assault III; and

1.1.3 Must not have been convicted of any charge or been involved in any conduct that may impair the performance of the bail enforcement agent and endanger public safety as determined by the Detective Licensing Section and

1.1.4 Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their 25<sup>th</sup> birthday.

1.2 An individual bail enforcement agent ID card will not be issued if there is a pending charge as listed in Section 1.1.1 or a pending charge as listed in Section 1.1.2 for an applicant with one (1) conviction of specified misdemeanor listed in Section 1.1.2.

1.3 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must also meet the following qualifications:

1.3.1 Must be at least 21 years of age; and

1.3.2 Must complete the training qualifications set forth in Section 6.0; and

1.3.3 If carrying a weapon, must meet and maintain the qualifications set forth in Section 4.0.

1.4 The individual bail enforcement agent applying for an ID card under Title 24 Chapter 55 must submit the following for approval:

1.4.1 A fee of ~~\$25~~ \$75 for a four (4) year ID card which shall expire and be renewable on the 4<sup>th</sup> anniversary date of the birth of the applicant next following the date of its issuance unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every 4<sup>th</sup> year; and

1.4.2 Any and all applications required by the Detective Licensing Section; and

1.4.3 Submit two (2) sets of fingerprints for a Delaware (CHRI) and Federal (FBI) criminal history record check. The Director of the State Bureau of Identification (SBI) determines the fee for this process. This subsection 1.4.3 does not apply to the renewal of ID cards, unless required by the Director of Detective Licensing.

1.5 The ID cards are the property of the Delaware State Police and must be returned to the Detective Licensing Section upon expiration of the ID card or at the request of the Detective Licensing Section.

1.6 A bail enforcement agent that has been issued an ID card by the Detective Licensing Section shall be required to have such card in their possession while in the performance of his or her duties.

1.7 A bail enforcement agent must not be a member or employee of any Delaware Law Enforcement Organization, as defined by the Council on Police Training, or a member or employee of a law enforcement organization of any other local, state or federal jurisdiction.

1.8 There will be no reciprocity with any other state regarding the issuing of an ID card to a bail enforcement agent.

1.9 A fee of \$50 shall be for the renewal of the ID card and license, which shall be valid for another four (4) years.

**7 DE Reg. 1782 (6/1/04)**

## 2.0 Badges, Patches, Advertisements

2.1 No individual licensed under 24 Del.C. Ch. 55 shall use any type of uniform or other clothing items displaying logos, badges, patches, or any other type of writing without first being approved by the Detective Licensing Section. Under no circumstances shall any item contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any

facsimile of the aforementioned seals or crests.

2.2 All advertisements or other forms of publication, subsequent to their use, are subject to review by the Detective Licensing Section for potential misrepresentation. If the Detective Licensing Section does not approve the advertisement or publication, it will forward its concerns to the licensee. Failure to correct the advertisement or publication will be considered a violation of these Rules & Regulations.

2.3 The use of auxiliary lights, sirens, or any markings on vehicles is prohibited.

## 3.0 Use Of Animals

3.1 The use of animals is prohibited in the performance of any bail enforcement agent activity.

## 4.0 Firearms Policy

4.1 No person shall carry a firearm under this chapter unless the individual first completed and passed an approved 40-hour firearm course, instructed by a certified firearm instructor, recognized by the Detective Licensing Section.

4.2 All persons licensed to carry a firearm under this chapter must be re-certified yearly, by an instructor as described in Section 4.1, by shooting a minimum of three (3) qualifying shoots a year. The shoots must be scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of the three (3) shoots, there will be one mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot. All individuals must qualify with the same type of weapon that he/she will carry. The minimum passing score is 75%.

4.2.1 All renewal shoot sheets must be submitted by January 31st of each year for the previous calendar year.

4.3 All handguns must be either a revolver or semi-automatic and be maintained to factory specifications. Only the handguns with the following calibers are permitted:

4.3.1 9mm

4.3.2 .357

4.3.3 .38

4.3.4 .40

4.3.5 .45

4.4 All ammunition will be factory fresh (no re-loads).

4.5 Any person requesting to carry any shotgun, rifle, any type of weapon or apprehension device must first provide proof of training to the Detective Licensing Section for approval.

## 5.0 Nightstick, PR24, Mace, Peppergas, Chemical Spray, And Handcuffs

5.1 To carry the above weapons/items a bail enforcement agent must have completed training by a Detective Licensing Section approved instructor, on each and every weapon/item carried. Proof of training, and any renewal training, must be provided to the Detective

Licensing Section. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Detective Licensing Section.

**7 DE Reg. 1782 (6/1/04)**

#### **6.0 Training**

6.1 All bail enforcement agents licensed under Title 24 Chapter 55 must complete training in the following courses: Constitution/Bill of Rights, Laws of Arrest, Laws of Search & Seizure of Persons Wanted, Police Jurisdiction, Use of Deadly Force, and the Rules & Regulations of Bounty Hunters/Bail Enforcement Agents.

6.2 The training must be completed prior to obtaining a license.

**7 DE Reg. 1782 (6/1/04)**

#### **7.0 Notification Of Apprehensions**

7.1 All bail enforcement agents licensed under 24 **Del.C.** Ch. 55 are required to notify the police emergency 911 dispatch center (i.e., Recom, Kentcom, Suscom) of the appropriate police agency in which the apprehension will be attempted.

#### **8.0 Notification Of Arrest**

8.1 Anyone licensed under 24 **Del.C.** Ch. 55 shall, excluding weekends and State holidays, notify the Detective Licensing Section within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any individual.

#### **9.0 Suspensions And Revocations**

9.1 The Detective Licensing Section shall have the power to suspend or revoke any individual, licensed under 24 **Del.C.** Ch. 55, that violates the Chapter or the promulgated Rules & Regulations.

9.2 The Detective Licensing Section may suspend or revoke any individual, licensed under 24 **Del.C.** Ch. 55, that has been arrested and that arrest could result in the conviction of any misdemeanor or felony as described in Section 1.0.

9.3 Anyone whose license has been suspended, revoked, rejected, or denied is entitled to a hearing before the Secretary of Safety and Homeland Security.

9.3.1 Anyone requesting a hearing shall notify the Detective Licensing Section, in writing, within 30 days from the suspension, revocation, rejection, or denial and the hearing shall be scheduled at the earliest possible time.

**5 DE Reg. 1523 (1/1/02)**

**7 DE Reg. 1782 (6/1/04)**

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER**  
**NUMBER SIXTY-FOUR**

**RE: Reallocation of State Private Activity Bond  
Volume Cap for Calendar Year 2004 and Initial  
Suballocation of State Private Activity Bond  
Volume Cap for Calendar Year 2005**

WHEREAS, pursuant to 29 Del.C. §5091, the State's private activity bond volume cap ("Volume Cap") for 2004 under §103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

WHEREAS, pursuant to Executive Order Number Fifty-Three, \$116,895,000 of the Volume Cap for 2004 which had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, the allocation of Volume Cap in Executive Order Number Fifty-Three is subject to modification by further Executive Order; and

WHEREAS, the State's Volume Cap for 2004 and 2005 is allocated among the various State and local government issuers by 29 Del.C. §5091(a); and

WHEREAS, Kent County has reassigned \$23,380,000 of its unallocated Volume Cap for 2004 to the State of Delaware; and

WHEREAS, Sussex County has reassigned \$23,380,000 of its unallocated Volume Cap for 2004 to the State of Delaware; and

WHEREAS, the City of Wilmington has reassigned \$29,225,000 of its unallocated Volume Cap for 2004 to the State of Delaware; and

WHEREAS, the Delaware Economic Development Authority has \$58,447,500 of unused Volume Cap for 2004, previously allocated by Executive Order Number Fifty-Three; and

WHEREAS, pursuant to 29 Del.C. §5091(b), the State's \$119,590,000 Volume Cap for 2005 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, the Acting Secretary of Finance recommends (i) that the \$75,985,000 unallocated Volume Cap for 2004 reassigned to the State of Delaware by other issuers be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; (ii) that the \$58,447,500 of unallocated Volume Cap reassigned by the Delaware Economic Development Authority be sub-allocated to the Delaware State Housing Authority for carry

forward for use in future years; and (iii) that the State's Volume Cap for 2005 of \$119,590,000 be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendations of the Acting Secretary of Finance.

NOW, THEREFORE, I, Ruth Ann Minner, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The \$75,985,000 of unallocated Volume Cap for 2004 that has been reassigned by Kent County, Sussex County and the City of Wilmington to the State of Delaware is hereby sub-allocated to the Delaware State Housing Authority for carry forward use, in addition to the \$58,447,500 previously sub-allocated to the Delaware State Housing Authority for 2004 under Executive Order Number Fifty-Three. Additionally, the \$58,447,500 of Volume Cap for 2004 previously allocated to the Delaware Economic Development Authority is allocated to the Delaware State Housing Authority, providing the Delaware State Housing Authority with a total carry forward amount of \$192,880,000.

2. The \$119,590,000 allocation to the State of Delaware of the 2005 Volume Cap is hereby sub-allocated: \$59,795,000 to the Delaware State Housing Authority and \$59,795,000 to the Delaware Economic Development Authority.

3. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

APPROVED THIS 17TH DAY OF DECEMBER, 2004.

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

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**GOVERNOR'S APPOINTMENTS**

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council on Planning Coordination	Mr. Richard C. Woodin	1/11/2008
Advisory Council to the Division of Substance Abuse and Mental Health	Mr. Joseph P. Connor, Jr. Mr. Richard E. Patterson, Ph.D. Mr. Pierre V. Stevens	1/7/2008 1/7/2008 1/7/2008
Authority on Radiation Protection	Robert W. Frelick, M.D.	7/1/2007
Board of Architects	Mr. Steven W. Atchley Mr. Goodwin K. Cobb, IV Mr. Charles M. Weymouth	1/11/2008 1/11/2008 7/19/2007
Board of Clinical Social Work Examiners	Mr. Ralph F. Robinson, Jr.	1/7/2008
Board of Cosmetology & Barbering	Ms. Winnie J. Lewis	1/11/2008
Board of Electrical Examiners	Mr. James T. Anderson Mr. Richard A. Strouse	1/10/2008 1/10/2008
Board of Examiners of Nursing Home Administrators	Mr. Michael R.S. Bundek Mr. Jerrold P. Spilecki	4/22/2005 5/16/2006
Board of Examiners of Psychologists	Mr. Hollis C. Anglin	5/12/2006
Board of Massage and Bodywork	Mr. Wade D. Carey	1/10/2008
Board of Medical Practice	Mr. George E. Brown	1/13/2008
Board of Nursing	Ms. Joyce E. Edwards Ms. Martha M. Hopkins	4/5/2007 1/11/2008
Board of Pension Trustees	Mr. Robert W. Allen Ms. Jan M. King	1/26/2009 1/26/2009
Board of Pharmacy	Mr. Chaitanya R. Gadde	1/11/2008
Board of Pilot Commissioners	Mr. Gary B. Patterson	1/11/2010
Board of Podiatry	Mr. Nathaniel Gibbs	1/10/2008
Board of Professional Counselors of Mental	Ms. Dawn S. Brown	1/7/2008

# GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Health & Chemical Dependency Professionals	Mr. John J. Dowling, M.A., CADC	1/27/2008
	M. Kathleen Nichols, Ph.D.	1/7/2008
Board of Professional Land Surveyors	Mr. Roy B. Kemp, III	1/10/2008
	Mr. Elton M. Murray	1/10/2008
Board of Speech/Language Pathologists	Mr. George A. Christensen	1/10/2008
Board of Professional Counselors of Mental	Mr. David M. Ciamaricone	1/7/2008
Child Placement Review Board-Kent	Mr. Brendan F. Buschi	1/10/2008
	Ms. Lorraine Lovely	1/10/2008
	Ms. Elizabeth Y. Olsen	1/10/2008
Child Placement Review Board-New Castle	Ms. Arlene Cronin	1/10/2008
Commission of Veterans' Affairs	Mr. Cornelius C. Carroll	1/11/2009
	Mr. Joseph M. Lank	1/11/2009
	Mr. Richard M. Magner	1/11/2009
	Mr. Louis E. Spitzfaden	1/11/2009
	Mr. James L. Thompson	1/11/2009
	Colonel Robert E. Wasson	1/11/2009
Committee on Employment of People with Disabilities	Ms. Carol E. Barnett	1/11/2008
	Mr. Griff Campbell	1/11/2008
	Mr. Mark A. Chamberlin	1/11/2008
	Mr. Bruce C. Crouch	1/11/2008
	Ms. Lorrie B. Ginegaw-Sonnenma	1/11/2008
	Ms. Regina Greenwald	1/11/2008
	Ms. Nancy L. Myshko	1/11/2008
	Ms. Celeste W. Williams	1/11/2008
Council on Development Finance	Mr. Fred C. Sears, II	1/11/2008
	Ms. Richelle Vible	1/11/2008
Council on Game and Fish	Mr. Alden Townsend	1/11/2008
Council on Manufactured Housing	Mr. Robert Fillmore	9/27/2006
Council on Services for Aging and Adults with Physical Disabilities	Mr. Bobby B. Brown	1/7/2008
	Ms. Charlotte R. Byers	1/7/2008

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**GOVERNOR'S APPOINTMENTS**

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Council on Services for Aging and Adults with Physical Disabilities	Mr. Keith E. Campbell	1/7/2008
	Ms. Mary T. Costello	1/7/2008
	Ms. Sandra H. Dole	1/7/2008
	Mr. David J. Friedland	1/7/2008
	Ms. Evelyn R. Hayes	1/7/2008
	Ms. La Vaida J. Owens-White	1/7/2008
	Ms. Lelia D. Perkins	1/7/2008
	Ms. Mary A. Teller	1/7/2008
	Ms. Karen W. Wood	1/7/2008
Deferred Compensation Council	Mr. Thomas M. Hurley	1/7/2008
	Mr. Larry Koenig	1/13/2008
Delaware Commission for Women	Ms. Nancy L. Charron	1/17/2008
	Ms. Rebecca L. Evaristo	1/17/2008
	Ms. Valerie A. Lemoi	9/27/2005
	Mr. Brian S. Olson	1/7/2008
	Ms. Susan G. Swan	1/7/2008
	Ms. Jo Ann D. Van Heest	9/24/2005
Delaware Natural Areas Advisory Council	Mr. Michael E. Riska	1/26/2009
Delaware Real Estate Commission	Mr. James C. Brannon, Jr.	1/11/2008
	Mr. Joseph P. Connor, Jr.	1/11/2008
	Mr. Harry Kreger	1/11/2008
	Ms. Denise R. Stokes	1/11/2008
Delaware River and Bay Authority	Ms. Verna Wilkins Hensley	7/1/2009
Delaware State Arts Council	Ms. Annabelle C. Kressman	10/4/2007
Delaware State Arts Council, Chair	Ms. Julia M. McCabe	Pleasure of the Governor
Delaware State University Board of Trustees	Ms. Cora Norwood Selby	1/11/2011
Governor's Advisory Council for Exceptional Citizens	Ms. Jennifer M. Pulcinella	Pleasure of the Governor
Governor's Council on Hispanic Affairs	Mr. George L. Camacho	1/10/2008
	Ms. Janette Medina	1/10/2008
	Mr. Noel Rodriguez	1/10/2008
Governor's Council on Hispanic Affairs	Mr. Harry J. Sanchez	1/10/2008



**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Governor's Council on Lifestyles & Fitness	Ms. Kimberly J. Eroh Christopher J. Malone, Ph.D.	1/13/2008 1/13/2008
Human Relations Commission	Mr. William D. Johnston Ms. Gail E. Launay Randal L. Perry, Ph.D. The Honorable John W. Pitts	1/7/2009 1/7/2009 1/7/2009 1/7/2009
Justice of the Peace in and for New Castle County	The Honorable Thomas M. Kenney The Honorable Marilyn Letts	1/31/2011 1/31/2011
Parks and Recreation Council	Ms. Deloris Donnelly	1/11/2008
Public Defender	The Honorable Lawrence M. Sullivan, Sr.	1/27/2011
Resident Associate Judge of the Superior Court in and for Kent County	The Honorable William L. Witham, Jr.	1/19/2007
State Committee of Dietetics/Nutrition	Ms. T. Genelda Cornwell	1/7/2008
State Employee Benefits Advisory Council	Corporal Edwin Justiniano	5/16/2005
State Examining Board of Physical Therapists and Athletic Trainers	Mr. Steven G. Kotrch Ms. Ruth Ann Messick	1/10/2008 1/10/2008
State Examining Board of Physical Therapists and Athletic Trainers for New Castle Co.	Mr. John J. Smith	11/9/2007
State Examining Board of Physical Therapists and Athletic Trainers for Sussex County	Mr. Patrick A. McKenzie	1/10/2008
State Rehabilitation Advisory Council	Ms. Kathryn S. Herel	2/24/2006
Vocational Rehabilitation Advisory Council for D.V.I.	Mr. Bruce C. Crouch Ms. Beverly W. Wieland	1/12/2008 1/7/2008
Worker's Compensation Advisory Council	Mr. John D. Daniello Mr. Melvin E. Phillips	1/11/2008 1/11/2008
Workforce Investment Board	T. Ben Hsu, Ph.D.	Pleasure of the Governor

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Workforce Investment Board	Mr. Toby Lamb	Pleasure of the Governor
	Ms. Carole Orr	Pleasure of the Governor

## DELAWARE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code,  
Section 6717(b) 16 Del.C. §6717(b)

### NOTICE OF SFPC POLICY

The Delaware State Fire Prevention Commission has adopted the "Policy For The Complaint Investigation and Resolution Process", which lists the procedures for handling complaints that are considered in the incident review process and complaints referred to the Commission for Hearing. The policy was adopted and effective on November 9, 2004 at the regularly scheduled Commission meeting held at the Delaware State Fire Prevention Commission, 1463 Chestnut Grove Road, Dover, Delaware 19904.

### PROCEDURES TO IMPLEMENT

#### Policy For The Complaint Investigation and Resolution Process

##### Complaints

- Can be from any source.
- Should include name of provider or unit #, date and time of incident, details of complaint, and destination hospital if any.
- The medical director reviewing the complaint will review the concern, contact any persons if needed, do an investigation and may;
  - Close the case.
  - Develop an investigation report and discuss about further action.

##### Closing the Case

- Refer the complaint to the fire chief or organization administrator.
- Speak with and educate the provider
- File report with State EMS Medical Director, BLS Medical Director, and Commission.

##### Investigative Report and Discussion

- For those incidents which may require further action.
- Discuss with Commissioner(s), State Medical Directors, Deputy Attorney General and, if needed, the Fire Chief
- Disposition can be;
  - Resolution Without Hearing
  - Commission Hearing

- Incident Review

##### Referral To Resolution Without Hearing

- The case may be referred to a resolution meeting.
- The resolution meeting shall include the following;
  - At least one Medical Director
  - Commissioner
  - Jurisdictional Chief Officer
  - Administrator for employing agency if different from Jurisdictional Chief Officer
- All information provided during the meeting can be used in future hearings if needed.
- A resolution may be agreed upon by all parties involved and the issue resolved without a hearing. A summary report and copy of the resolution signed by all involved will be sent to the State EMS Medical Director and Commission.
- If no resolution is found, the case may be referred to commission hearing, incident review, or closed.

##### Referral To The Commission For Hearing

- A case may be referred to the Commission for hearing if the Medical Director feels that there may be need for action to be taken against the provider's certification.
- If the case is referred to the Commission for hearing, no incident review is to be performed.
- The following will be notified in the event that a case is referred to the Commission for Hearing;
  - Provider
  - Commission
  - State EMS Medical Director
  - Chief or Administrative Officer for Employing Agency
- The Commission will hear the case at hearing and make any recommendations for action.
- The hearing will be briefly summarized including the recommendation, for the public record.

##### Incident Review

- Is indicated for those incidents that the medical director feels need further investigation but anticipates can be resolved without referral to the commission for further action against the provider's certification.
- Is a formal review regarding concerns over patient care and/or provider conduct, or which is part of a larger systems issue that directly impacts patient care.

- Complaints can be anonymous. In the event that they are anonymous, the name should still be provided for incident review committee contact but will be kept anonymous from the provider in question or the record. All complaints will be independently verified prior to incident review.
- The incident review committee shall include the following,
  - At least one Medical Director
  - Commissioner
  - Jurisdictional Chief Officer
  - Administrator for employing agency if different from Jurisdictional Chief Officer
- The contents of the incident review will be kept confidential as per Delaware State Law.
- The Incident Review Committee will make a final recommendation.
- This recommendation will be filed in writing with the Commission and State EMS Medical Director.

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

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch.60)

**ORDER 20050A-0008**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("the Department") under 29 Del.C. §§8001 *et seq.*, the following findings and conclusions are entered as an Order of the Secretary:

1. Based on the record developed, as reviewed in the Hearing Officer's Report ("Report"), dated January 14, 2005, and appended hereto and incorporated herein, I find and conclude that the record supports approval of the issuance, in final form, of the 2002 Demonstration Compliance document prepared pursuant to the federal Clean Air Act, as amended;

2. The 2002 Demonstration Compliance document indicates that Delaware's New Castle and Kent Counties have experienced a 9% reduction in air emissions of Volatile Organic Compounds and Nitrogen Oxide over the three year reporting period. These air contaminants produce ozone, and high levels of ground level ozone will harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pain, and increase the

susceptibility to respiratory infection, particularly among children, the elderly and anyone with respiratory diseases. High levels of ozone also damages agriculture and forests. The progress in achieving the 9% reduction in ozone producing emissions is based upon the success of the Department's State Implementation Plan, which has directed the regulatory steps to reduce ozone producing emissions in Delaware;

3. I find and conclude that the record supports approval of the issuance of the 2002 Demonstration Compliance as the Department's final document, and its submission to the EPA as Delaware's compliance with the federal law, as well as evidence of the success of Delaware's efforts to reduce ozone producing air emissions;

4. The Department provided adequate public notice of the public hearing in a manner required by the applicable law and regulations;

5. The final 2002 Demonstration Compliance document shall be published as a notice in the *Delaware Register of Regulations*;

6. The Department considered all timely public comments and questions on the 2002 Demonstration Compliance document; as presented to the Department in writing and orally at the public hearing; and

7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

John A. Hughes, Secretary

**Final Submittal**

**DELAWARE 2002 MILESTONE COMPLIANCE  
DEMONSTRATION FOR KENT AND NEW CASTLE  
COUNTIES**

**Demonstrating Adequate Progress toward Attainment of  
the 1-Hour National Ambient Air Quality Standard for  
Ground-Level Ozone**

**Submitted to US Environmental Protection Agency  
By Delaware Department of Natural Resources and  
Environmental Control**

**March 2005**

**Acronym List**

AQM	Air Quality Management Section of DNREC
CAAA	Clean Air Act Amendments of 1990
CMSA	Consolidated Metropolitan Statistical Area
CO	Carbon Monoxide
DAWM	Division of Air and Waste Management of DNREC
DNREC	Delaware Department of Natural Resources and Environmental Control

EID	Emission Inventory Development
EPA	United States Environmental Protection Agency
FMVCP	Federal Motor Vehicle Control Program
I/M	Inspection and Maintenance
LEV	Low Emission Vehicle
MCD	Milestone Compliance Demonstration
NAA	Nonattainment Area
NAAQS	National Ambient Air Quality Standard
NLEV	National Low Emission Vehicle
NOx	Oxides of Nitrogen
OAQPS-	Office of Air Quality Planning and Standards of EPA
OTAG	Ozone Transport Assessment Group
OTC	Ozone Transport Commission
OTR	Ozone Transport Region
PCP	Planning and Community Protection Branch of DNREC
PEI	Periodic Emission Inventory
RACT	Reasonably Available Control Technology
RPP	Rate-of-Progress Plan
RVP	Reid Vapor Pressure
SCC	Source Classification Code
SIC	Standard Industrial Classification
SIP	State Implementation Plan
TPD	Tons per day
TPY	Tons per year
VOC	Volatile Organic Compound

### Summary

Under the Clean Air Act Amendments of 1990 (CAAA), Kent and New Castle Counties in Delaware are classified as severe nonattainment areas with respect to the 1-hour ozone National Ambient Air Quality Standard (NAAQS). This document addresses Delaware's 2002 milestone year compliance demonstration regarding progress toward attainment of the 1-hour ozone NAAQS.

Under Sections 182(b)(1) and 182(d) of CAAA, Delaware is required (1) by 1996 to achieve a 15% reduction in emissions of volatile organic compounds (VOCs) from its 1990 level in the two nonattainment counties, (2) by 1999 to achieve an additional 9% reduction in emissions of either VOCs or oxides of nitrogen (NOx) from the 1990 levels, and (3) by 2002 to achieve a second additional 9% reduction in emissions of either VOCs or NOx from the 1990 levels. Under these requirements, the 2002 target levels of VOC and NOx emissions for the two nonattainment counties in Delaware have been determined to be 101.54 tons per day (TPD) and 143.12 TPD, respectively. To achieve these emissions targets, Delaware implemented numerous control measures over a large variety of VOC and NOx emission sources from 1990 to 2002. Delaware's 2002 emission inventory, which has been recently compiled, shows that the

2002 inventoried VOC and NOx emissions in Kent and New Castle Counties are 78.12 TPD and 144.49 TPD, respectively. These inventoried VOC and NOx emissions, when combined together and expressed as an equivalent VOC emission, are significantly lower than the required 2002 targets levels. Thus, Delaware demonstrates herein that its 2002 milestone for complying with the CAAA's VOC and NOx emission reduction requirements has been successfully met.

### 1.0 Introduction

#### 1.1 Background

The Clean Air Act Amendments of 1990 (CAAA) set forth National Ambient Air Quality Standards (NAAQS) for the ground-level ozone. High levels of ground level ozone will harm the respiratory system and cause breathing problems, throat irritation, coughing, chest pains, and greater susceptibility to respiratory infection. Children, the elderly and individuals with respiratory diseases are especially vulnerable to the threat of ozone. Even healthy individuals can be harmed if they attempt strenuous activity on days with high ozone levels. High levels of ozone also cause serious damage to forests and agricultural crops, resulting in economic losses to logging and farming operations. Currently, there are two national standards for the ground-level ozone, i.e., the 1-hour standard (0.12 ppm) and the 8-hour standard (0.08 ppm). This document addresses issues relevant to the 1-hour standard only.

The CAAA classifies five nonattainment areas (NAA) that exceed the 1-hour ozone NAAQS based on the severity of the pollution problem. In the order of increasing severity, they are marginal, moderate, serious, severe, and extreme. According to Section 181 of CAAA, attainment dates for individual areas depend on their nonattainment designations. The Philadelphia Consolidated Metropolitan Statistical Area (CMSA) is classified as a severe nonattainment area (Figure 1), which has an attainment date of 2005. As shown in Figure 1, Kent and New Castle Counties in Delaware fall within the Philadelphia CMSA. Thus, these two counties are subject to all requirements set forth for the severe ozone nonattainment class. All discussions and data presented in this document apply only to Kent and New Castle Counties.

Generally, the ground level ozone is not directly emitted to the atmosphere, but is formed in the lower atmosphere by photochemical reactions mainly between volatile organic compounds (VOC) and nitrogen oxides (NOx) in the presence of sunlight. Thus, VOC and NOx are defined as ozone precursors. In order to reduce ozone concentration in the ambient air, the CAAA requires all ozone nonattainment areas to achieve specific reductions in anthropogenic VOC emissions and/or NOx emissions over several specified periods of years until the ozone standard is attained. This requirement for periodic emission reductions

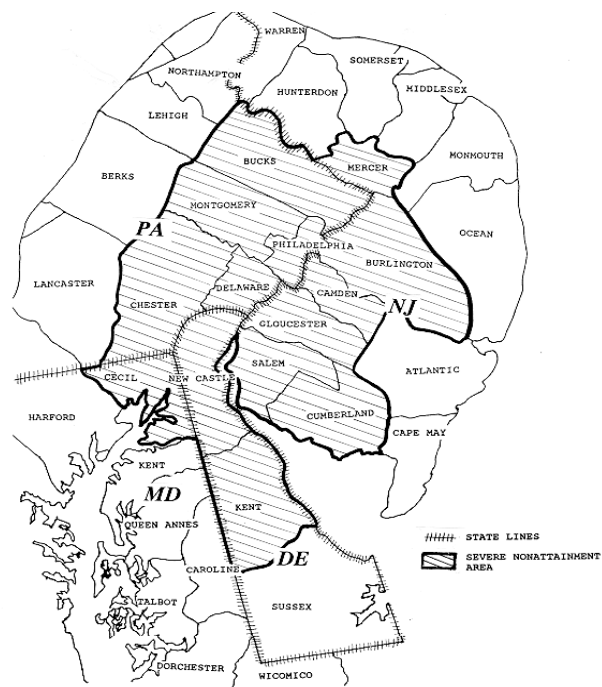
is termed as “rate of progress” toward the attainment of the 1-hour ozone standard (Reference 1).

Under Section 182(d) of CAAA, Delaware is required to develop and submit a State Implementation Plans (SIP) revision to the United States Environmental Protection Agency (EPA) for each of the milestone years of 1996, 1999, 2002 and 2005. In these plans, Delaware has to show that, by adopting and implementing adequate control measures, it can achieve adequate rate-of-progress reductions in VOC and/or NO<sub>x</sub> emissions for its severe ozone nonattainment area, i.e., Kent and New Castle Counties. Since these state implementation plans construct the path of Delaware’s rate of progress toward the attainment of the ozone standard, they are termed as Delaware’s Rate-of-Progress Plans (RPPs).

Under Section 182(a) of the CAAA, Delaware is required to develop comprehensive emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005 to monitor actual VOC and NO<sub>x</sub> emissions from its nonattainment areas along the path of rate of progress. These emission inventories are termed as Delaware’s periodic emission inventories (PEIs). Under Sections 182(a) and 182(g) of the CAAA, Delaware is required to use these periodic emission inventories (except the 1993 PEI) to demonstrate whether Delaware meets the required emission reductions as specified in its rate-of-progress plans in individual milestone years. This demonstrating process is termed as milestone compliance demonstration (Reference 1).

This document demonstrates Delaware 2002 milestone year compliance with adequate progress in emission reductions toward attainment of the 1-hour ozone NAAQS as required by the CAAA. The document is hereafter referred to as “Delaware 2002 Milestone Compliance Demonstration.”

**Figure 1. Philadelphia Consolidated Metropolitan Statistical Area (CMSA) Nonattainment Area.<sup>1</sup>**



### 1.2 Responsibilities

The agency with direct responsibility for preparing and submitting this document is Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Air and Waste Management (DAWM), Air Quality Management Section (AQM), under the direction of Ali Mirzakhaili, Program Administrator. The working responsibility for Delaware’s air quality management planning falls within the Planning and Community Protection (PCP) Branch of AQM Section, under the management of Raymond H. Malenfant, Program Manager and Ronald A. Amirikian, Planning Supervisor. Frank F. Gao, Environmental Engineer of Airshed Evaluation and Planning Program in the PCP Branch, is the project leader and principal author of this document. Questions or comments regarding this document should be addressed to F. Gao, (302)323-4542, AQM, 715 Grantham Lane, New Castle, DE 19720, or be e-mailed to [Frank.Gao@state.de.us](mailto:Frank.Gao@state.de.us).

1. This map is adopted from *Major CO, NO<sub>2</sub> and VOC Sources in the 25-Mile Boundary Around Ozone Nonattainment Areas, Volume 1: Classified Ozone Nonattainment Area*, EPA/4-92-005a, U.S. Environment Protection Agency, Office of Air Quality Planning and Standards, Office of Air and Radiation, Research Triangle Park, NC, February, 1992.

## 2.0 Delaware State Implementation Plans

### 2.1 Delaware 1990 Base Year Emission Inventory

Section 182(a)(1) of CAAA requires each state with ozone nonattainment areas to develop a comprehensive 1990 emission inventory for ozone precursors for its nonattainment areas. The emission inventory must be submitted as a state implementation plan (SIP) revision to EPA for approval. This 1990 base year emission inventory is used as the basis for a state to develop its rate-of-progress plans and control strategies toward attainment of the 1-hour ozone standard. Delaware's 1990 base year emission inventory was submitted to the EPA in May 1994, and approved by EPA in March 1996 (Reference 2).

The 1990 Base Year Inventory is categorized by five source sectors, i.e., point, stationary area, off-road mobile, on-road mobile and biogenic source sectors. Since volatile organic compounds (VOC), nitrogen oxides (NOx) and carbon monoxide (CO) are precursors for ground level ozone formation, their emissions from these source sectors in 1990 are inventoried and reported in the 1990 Base Year Inventory. Because the contribution of CO to ozone formation is insignificant, the CO component of the 1990 Base Year Inventory is not included in Delaware's rate-of-progress planning for attainment of ozone standard. A summary of VOC and NOx emissions by county in the 1990 Base Year Inventory is presented in Table 1. The unit of emissions reported in Table 1 is tons per day (TPD) in the peak ozone season. The peak ozone season in Delaware is defined as from June 1 through August 31.

**Table 1. Summary of VOC and NOx Emissions (in TPD) in 1990 Base Year Inventory\***

1990 Base Year All Source Sectors Total Emissions	Kent		New Castle		Total NAA	
	VOC	NOx	VOC	NOx	VOC	NOx
	65.23	25.84	131.30	137.00	196.53	162.85

\* Data obtained from Delaware 1990 Base Year Emission Inventory (Reference 2).

### 2.2 Delaware Rate-of-Progress Plans and Milestone Year Emission Targets

Under Sections 182(b)(1) and 182(d), Delaware is required to develop a rate-of-progress plan (as a SIP revision) for the period from 1990 to 1996. This plan must describe how Delaware could achieve an actual VOC emission reduction of at least 15% of its 1990 VOC emission level, and thus is termed as Delaware 1996 Rate-of-Progress Plan (RPP) or 15% RPP (Reference 3). The year of 1996 is

defined as the first milestone year toward attainment of the 1-hour ozone standard.

In addition to the 15% VOC emission reduction, Section 182(d) of CAAA requires Delaware to submit three post-1996 rate-of-progress plans that will lead to VOC and/or NOx emission reductions of at least 3% per year between 1996 and 2005. These three post-1996 plans are: the 1999 RPP covering a 3-year period from 1997 to 1999, the 2002 RPP covering the period from 2000 to 2002, and the 2005 RPP covering the period from 2003 and 2005. Based on the 3% per year emission reduction requirements, these three RPPs set forth Delaware's VOC and NOx emission targets in their corresponding milestone years of 1999, 2002 and 2005.

The required rate-of-progress reductions in VOC and/or NOx emissions in each rate-of-progress plan are estimated from the 1990 baseline level. For this purpose, the 1990 base year emissions in Table 1 must be adjusted to (1) include only anthropogenic and photochemically reactive emissions, and (2) exclude emission reductions from control measures promulgated prior to the 1990 CAA Amendments (Reference 1). After these adjustments, the required VOC and/or NOx emission reductions can be estimated, and then the VOC and/or NOx emission targets of each milestone year can be calculated. A summary of VOC and /or NOx emission targets for individual milestone years are presented in Table 2. Details of how to conduct base-year inventory adjustments and how to estimate emission reductions and emission targets can be found in References 1, 2, 3, 4, 5, 6 and 7.

**Table 2. Delaware VOC and/or NOx Emission Targets for Individual Milestone Years**

Emission Targets (TPD)	1996 Milestone Year	1999 Milestone Year	2002 Milestone Year	2005 Milestone Year
VOC	115.82	110.21	101.54	95.41
NOx	*	148.96	143.12	135.37

\*NOx reduction was not required for the 1996 milestone year.

### 2.3 Control Measures and Expected VOC/NOx Emissions in 2002 RPP

To meet the 2002 VOC and NOx emission targets, Delaware proposed numerous control measures in its 2002 RPP. These control measures include federal mandatory rules and Delaware state regulations to be promulgated prior to the peak ozone season of 2002. These rules and regulations cover a large variety of VOC and NOx emission sources in all anthropogenic source sectors. A list of the control measures, along with their implementation dates, is given in Table 3. Detailed descriptions of individual rules and regulations can be found in Delaware 2002 RPP, as

amended in December 2000 (Reference 5), and Delaware Regulations Governing Control of Air Pollution (Reference 8).

**Table 3. Control Measures Proposed in Delaware's 2002 RPP**

Control Measures and Regulations	Creditability	Emission Controlled	Effective Date
<b>Point Source Controls</b>			
RACT "Catch-Ups" in Kent County:			
Solvent Metal Cleaning	Creditable	VOC	31-May-95
Surface Coating of Metal Furniture	Creditable	VOC	31-May-95
Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufact. Equip.	Creditable	VOC	31-May-95
New RACT Regulations:			
Bulk Gas. Marine Tank Vessel Loading Facil.	Creditable		31-Dec-95
SOCMI Reactor Proc. and Distillation Operat.	Creditable	VOC	01-Apr-96
Batch Processing Operations	Creditable	VOC	01-Apr-96
Offset Lithography	Creditable	VOC	01-Apr-96
Aerospace Coatings	Creditable	VOC	01-Apr-96
Industrial Cleaning Solvents	Creditable	VOC	29-Nov-94
Non-CTG RACT	Creditable	VOC	31-May-95
Delaware NOx RACT	Creditable	NOx	31-May-95
Regional NOx Control OTC MOU	Creditable	NOx	01-May-99
Federal Benzene Waste Rule	Creditable	VOC	Spring 1995
Sanitary Landfills Irreversible Process Changes	Creditable	VOC	09-Oct-93 01-Jan-96
<b>Stationary Area Source Controls</b>			
RACT "Catch-Ups" in Kent County:			
Solvent Metal Cleaning	Creditable	VOC	31-May-95
Cutback Asphalt	Creditable	VOC	31-May-95

New RACT Regulations:			
Stage I Vapor Recovery-Gas.			
Dispensing Facil.	Creditable	VOC	15-Nov-94
Emulsified Asphalt Motor Vehicle	Creditable	VOC	31-May-95
Refinishing	Creditable	VOC	01-Apr-96
Offset Lithography	Creditable	VOC	01-Apr-96
Aerospace Coatings	Creditable	VOC	01-Apr-96
Stage II Vapor Recovery	Creditable	VOC	15-Nov-94
Open Burning	Creditable	VOC, NOx	08-Feb-95
<b>Off-Road Mobile Source Controls</b>			
Reformulated Fuel New Emission Standards	Creditable	VOC	01-Jan-95
Spark Ignition Engines			Court-Ordered
Compression Ignition Engines	Creditable	VOC, NOx	Court-Ordered
Marine Engines	Creditable	VOC	Court-Ordered
Locomotives	Creditable	NOx	31-Dec-01
<b>On-Road Mobile Source Controls</b>			
FMVCP and RVP	Noncreditable	VOC, NOx	Pre-1990
Tier I Vehicle Emissions Standards			Model Yr 1994
Basic I/M for Kent County	Creditable	VOC, NOx	01-Jan-91
ATP and Pressure Test for Kent County	Creditable	VOC, NOx	01-Jan-95
ATP and Pressure Test for New Castle County	Creditable	VOC, NOx	01-Jan-95
Reformulated Fuel	Creditable	VOC	01-Jan-95
LEV Program	Creditable	VOC, NOx	01-Nov-99

In the 2002 RPP, Delaware projected 2002 VOC and NOx emissions in the peak ozone season assuming all control measures listed in Table 3 were implemented as expected. The projections are termed as "control strategy projections" and conducted following the methods and procedures specified in relevant EPA guidance documents (References 9, 10 and 11). In the projection calculations, factors such as growth, control efficiency, rule effectiveness, and rule penetration, are considered and incorporated whenever appropriate for point sources, stationary area sources and non-road mobile sources. Emission projections for on-road mobile sources were conducted using EPA's MOBILE5a software. Details of the control strategy projections are presented in the 2002 RPP, as amended in



December 2000 (Reference 5). A summary of the 2002 VOC and NO<sub>x</sub> control strategy emission projections is given in Table 4.

**Table 4. Delaware 2002 Control Strategy Projections for VOC and NO<sub>x</sub> Emissions (TPD)**

2002 RPP All Source Sector	Kent		New Castle		Total NAA	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
<b>Emission Projections</b>	<b>20.53</b>	<b>24.01</b>	<b>81.01</b>	<b>118.07</b>	<b>101.54</b>	<b>142.08</b>

As shown in Table 4, the total VOC and NO<sub>x</sub> emissions projected for 2002 in Delaware's nonattainment area (i.e., Kent and New Castle Counties) are 101.54 TPD and 142.08 TPD, respectively. The VOC projection is equal to the emission target, while the NO<sub>x</sub> projection is lower than the target (143.12 TPD). Therefore, the 2002 RPP concludes that its proposed control measures are adequate and enough for Delaware to meet CAAA's rate-of-progress requirements on VOC and NO<sub>x</sub> emission reductions in the milestone year of 2002.

#### 2.4 Delaware 1993, 1996, 1999 and 2002 Periodic Emission Inventories

Under Section 182(a) of the CAAA, Delaware is required to compile comprehensive periodic emission inventories of ozone precursors for 1993, 1996, 1999, 2002 and 2005. The emission data in these periodic inventories are either reported directly by individual sources (e.g., point sources such as industrial facilities), or calculated from the subject year activity data obtained from relevant sources or other agencies (e.g., area sources). These periodic emission inventories cover all sources included in the Delaware 1990 Base Year Emission Inventory. Delaware submitted to EPA its 1993 periodic emission inventory (PEI) in January 1998, its 1996 PEI in November 1999, its 1999 PEI in June 2002, and its 2002 PEI in June 2004. Emissions in these periodic emission inventories are reported in tons per year (TPY) and in tons per day (TPD) in the peak ozone season. Details of how Delaware compiled these periodical emission inventories are described in References 12 through 15. For the purpose of demonstrating milestone year compliance, a summary of VOC and NO<sub>x</sub> emissions (in the unit of TPD) in the 1996 PEI, 1999 PEI and 2002 PEI is presented in Table 5.

**Table 5. Summary of Delaware's 1996, 1999 and 2002 Periodic Emission Inventories (TPD)**

All Source Sectors	1996 PEI		1999 PEI		2002 PEI	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
<b>Total Emissions</b>	<b>101.87</b>	<b>121.55</b>	<b>88.69</b>	<b>117.68</b>	<b>78.12</b>	<b>144.49</b>

#### 2.4 Delaware 1996 and 1999 Milestone Compliance Demonstration

As mentioned earlier, under Sections 182(d) of CAAA, Delaware was required (1) to achieve in 1996 an actual VOC emission reduction of at least 15% from its 1990 VOC emission level, (2) to achieve in 1999 an additional 9% VOC and/or NO<sub>x</sub> emission reductions from the 1990 base year VOC or NO<sub>x</sub> emission levels. To demonstrate achieving these emission reduction goals, Delaware developed its 1996 milestone compliance demonstration (MCD) document in February 2000, and its 1999 MCD document in June 2003. A summary of the 1996 MCD is presented in Table 6, and a summary of the 1999 MCD is presented in Table 7.

**Table 6. Delaware 1996 Milestone Compliance Demonstration Results\***

Emission (TPD)	1996 Required Emission Target	1996 PEI Actual Emission	PEI vs. Target** Lower(-)/ Higher(+)
	<b>VOC</b>	<b>115.81</b>	<b>101.87</b>

\*Data obtained from Reference 16. \*\* % = (1996 PEI - 1996 Target)/1996 Target.

**Table 7. Delaware 1999 Milestone Compliance Demonstration Results\***

Emission (TPD)	1999 Required Emission Target	1999 PEI Actual Emission	PEI vs. Target** Lower(-)/ Higher(+)
	<b>VOC</b>	<b>110.21</b>	<b>88.69</b>
<b>NO<sub>x</sub></b>	<b>148.96</b>	<b>117.68</b>	<b>-21.0%</b>

\*Data obtained from Reference 17. \*\* % = (1999 PEI - 1999 Target)/1999 Target.

As indicated in Table 6, the 1996 PEI VOC emission was 12.0% lower than the 1996 VOC emission target required by CAAA. As indicated in Table 7, the 1999 PEI VOC and NO<sub>x</sub> emissions were 19.5% and 21.0% lower than the required 1999 VOC and NO<sub>x</sub> emission targets,

respectively. Therefore, for these two milestone years (i.e., 1996 and 1999), Delaware demonstrated that its VOC and/or NOx emissions were fully in compliance with the emission reduction requirements set forth by CAAA.

**3.0 Delaware 2002 Milestone Compliance Demonstration**

In the 2002 RPP, Delaware determined that the 2002 targets of VOC and NOx emissions for its nonattainment area (i.e., Kent and New Castle Counties) were 101.54 TPD and 143.12 TPD, respectively, in the peak ozone season (Table 2). In the recently compiled 2002 PEI, Delaware has shown that the actual total VOC and NOx emissions in 2002 are 78.12 TPD and 144.49 TPD, respectively, in the peak ozone season (Table 5). A comparison of the 2002 emission targets and the 2002 PEI emissions is presented in Table 8. As indicated in Table 8, the VOC emission in the 2002 PEI is 23.42 TPD lower than the target level, while the NOx emission in the 2002 PEI is 1.37 TPD higher than the 2002 target

**Table 8. Comparison of 2002 Emission Targets and 2002 Inventoried Emissions.**

<b>Emission (TPD)</b>	<b>2002 Required Emission Target</b>	<b>2002 PEI Actual Emission</b>	<b>Difference (PEI - Target)</b>
<b>VOC</b>	<b>101.54</b>	<b>78.12</b>	<b>-23.42</b>
<b>NOx</b>	<b>143.12</b>	<b>144.49</b>	<b>+1.37</b>

The 1990 baseline emission levels for VOC and NOx, as adjusted to 2002, are 133.15 TPD and 158.40 TPD, respectively (Reference 5). Thus, the VOC-to-NOx substitution ratio is  $133.15:158.40 = 1:1.19$ . Using this ratio, the equivalent VOC emission for the over-target 1.37 TPD NOx emission can be calculated to be  $1.37/1.19 = 1.15$  TPD. Subtracting this number from the 23.42 TPD under-target VOC emission gives  $23.42 - 1.15 = 22.27$  TPD. In other words, the 2002 overall or net emission, expressed as an equivalent VOC emission, is 22.27 TPD lower than the 2002 emission target. Therefore, Delaware has demonstrated herein that its 2002 emissions are in compliance with the emission reduction requirements set forth by CAAA.

**4.0 References**

1. *Guidance on the Relationship between the 15 Percent Rate-of-Progress Plans and Other Provisions of the Clean Air Act*, EPA-452/R-93-007, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, May 1993.
2. *The 1990 Base Year Ozone SIP Emissions Inventory for VOC, CO, and NOx*. Air Quality Management Section,

Department of Natural Resources and Environmental Control, Dover, Delaware, revised as of May 3, 1994.

3. *The Delaware 15% Rate-of-Progress Plan*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 1995.

4. *The Delaware 1999 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, December 1997, as amended in June 1999.

5. *The Delaware 2002 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 2000, as amended in December 2000.

6. *The Delaware 2005 Rate-of-Progress Plan for Kent and New Castle Counties*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, December 2000.

7. *Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration*, Ozone/Carbon Monoxide Branch, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, 27711, February 18, 1994.

8. *Regulations Governing the Control of Air Pollution*. Air Quality Management Section, Division of Air and Waste Management, Delaware Department of Natural Resources and Environmental Control, Dover, Delaware.

9. *Procedures for Preparing Emissions Projections*. EPA-450/4-91-019, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, July 1991.

10. *Guidance for Growth Factors, Projections, and Control Strategies for the 15 Percent Rate-of-Progress Plans*. EPA-452/R-93-002, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

11. *Guidance on Preparing Enforceable Regulations and Compliance Programs for the 15 Percent Rate-of-Progress Plans*. EPA-452/R-93-005, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, March 1993.

12. *The 1993 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, January 1998.

13. *The 1996 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO*. Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, November 1999.

14. *The 1999 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NOx, and CO*. Air Quality

Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, June 2002.

15. *The 2002 Periodic Ozone State Implementation Plan Emission Inventory for VOC, NO<sub>x</sub>, and CO.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, June 2004.

16. *Delaware 1996 Milestone Demonstration for Kent and New Castle Counties.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, February 2000.

17. *Delaware 1999 Milestone Compliance Demonstration for Kent and New Castle Counties.* Air Quality Management Section, Department of Natural Resources and Environmental Control, Dover, Delaware, June 2003.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF ACCOUNTANCY  
Notice Of Public Hearing**

The Delaware Board of Accountancy in accordance with 24 **Del.C.** §105(a)(1) has proposed changes to its rules and regulations. The proposal amends Board Regulation 10.8: *Composition of Continuing Professional Education*. The regulation as amended converts the stated requirements from percentages to credit hours and adds a provision that four (4) of the required credit hours shall be in a Delaware specific ethics course approved by the Board. The regulation does not change the total number of required continuing education credit hours.

A public hearing will be held on April 20, 2005 at 9:00 a.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulation may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF CHIROPRACTIC  
Notice Of Public Hearing**

The Delaware Board of Chiropractic in accordance with 24 **Del.C.** §706(a)(1) has proposed changes to its rules and regulations. The proposal amends rule 4.2.1 *Continuing Education for Licensees Other Than New Licensees* to provide that the maximum allowable online continuing education credits permissible in each reporting period is twelve (12) of the twenty-four (24) required hours.

A public hearing will be held on April 21, 2005 at 8:45 a.m. in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Chiropractic, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above

address. The final date to receive written comments will be at the public hearing.

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

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF DENTAL EXAMINERS  
Notice Of Public Hearing**

The Delaware Board of Dental Examiners in accordance with 24 **Del.C.** §1106(1) has proposed changes to its rules and regulations as mandated by SB 229 (74 **Del. Laws C.** 262) to identify crimes that are substantially related to the provision of dentistry and dental hygiene. The change also clarifies who is eligible to take the practical (clinical) examination in dentistry or dental hygiene.

A public hearing will be held on March 10, 2005 at 6:00 P. M. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Dental Examiners, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF NURSING  
Notice Of Public Hearing**

PLEASE TAKE NOTICE pursuant to 29 **Del.C.** chapter 101 and 24 **Del.C.** §1906(1) the Delaware Board of Nursing proposes to revise its Rules and Regulations.

The subject matter of the proposed revisions relates to the insertion and removal of epidural catheters by Advanced Practice Nurses and also identifies specific health care acts to be excluded from delegation by competent individuals as specified in 24 **Del.C.** §1921(a)(19).

The proposed rule and regulation developed by the Board relating to the insertion and removal of epidural catheters provides that the insertion and removal of epidural catheters is an authorized practice for Certified Registered Nurse Anesthetists and provides that the removal of epidural

catheters is authorized practice for Nurse Practitioners, Clinical Nurse Specialists and Certified Nurse Midwives with specialized training.

Pursuant to 24 **Del.C.** §1906(1) and Senate Bill No. 261, as amended [74 **Del. Laws C.** 762], the Board of Nursing is also proposing Rules and Regulations which specifically identify health care acts to be excluded from delegation to unlicensed persons by competent individuals who do not reside in a medical facility or a facility regulated pursuant to Chapter 11 of Title 16. [See 24 **Del.C.** §1921(19)].

A public hearing concerning these proposed changes to the Board of Nursing Rules and Regulations will be held on Wednesday, April 13, 2005 at 9:30 a.m., in the auditorium of the Carter Partnership Building, Delaware Technical and Community College, Owens Campus, Georgetown, Delaware.

Anyone desiring a copy of the proposed Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 744-4515 or (302) 744-4516. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be April 12, 2005. Persons wishing to make comments at the public hearing on April 13, 2005 should contact Iva Boardman at the above address or by calling (302) 744-4517.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PHYSICAL THERAPISTS AND  
ATHLETIC TRAINERS  
Notice Of Public Hearing**

The Delaware Examining Board of Physical Therapists and Athletic Trainers in accordance with 24 **Del.C.** §2604(1) has proposed changes to its rules and regulations as the result of statutory amendments due to the enactment of SB 292. The proposal amends the rules to reflect the current practice of athletic training.

A public hearing will be held on April 19, 2005 at 6:30 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Examining Board of Physical Therapists and Athletic Trainers, 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 adopting the proposed amendments to its regulations at its regularly scheduled meeting following the public hearing

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF FUNERAL SERVICES  
Notice Of Public Hearing**

The Delaware Board of Funeral Services in accordance with 24 **Del.C.** §3105(a)(1) has proposed changes to its rules and regulations relating to continuing education. The proposal authorizes the automatic approval of courses offered by the Academy of Funeral Services Practitioners (AFSP) or state boards that license funeral directors.

A public hearing will be held at 10:30 a.m. on April 6, 2005, in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rule may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, March 17, 2005 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH  
Notice Of Public Hearing**

The Health Systems Protection Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed *State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products*.

The public hearing will be held on March 23, 2005 at 10:00 a.m. in the 3<sup>rd</sup> Floor Conference Room of the Jesse Cooper Building located at the intersection of Federal and Water Streets in Dover Delaware. Copies of the proposed regulations are available for review by calling the following location:

Community Environmental Health (Mr. Ed Pettee)  
Williams State Service Center  
805 River Road  
Dover, DE 19901  
Telephone: (302) 739-5305

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David P. Walton at (302) 744-4700 by Tuesday, March 22, 2005. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony can fax them to David Walton at (302) 739-6659 or submit such comments by Thursday, March 31, 2005 to:

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

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**DIVISION OF SOCIAL SERVICES**  
**Public Notice**

**TANF and Food Stamp Employment Training Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding changes to Delaware's Temporary Assistance for Needy Families (TANF) and Food Stamp Employment and Training policies.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2005.

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

**DIVISION OF SOCIAL SERVICES**  
**Public Notice**

**Long Term Care Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care Program. The proposal gives direction on counting annuities for the eligibility process.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2005.

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

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**DIVISION OF SOCIAL SERVICES**  
**Public Notice**

**Attendant Services Waiver Program (ASWP)**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual (DSSM) regarding the Attendant Services Waiver Program (ASWP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy & Program Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware 19720-0906 by March 31, 2005.

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

**DEPARTMENT OF INSURANCE**
**Notice Of Public Hearing**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice that a PUBLIC HEARING will be held on Wednesday, March 30, 2005 at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment on proposed **Regulation 702** relating to **REQUIRED DISCLOSURES FOR RESIDENTIAL HOMEOWNERS POLICIES**.

The purpose for proposing Regulation 702 is to require insurance companies to deliver a separate form to policyholders on an annual basis explaining information about coverage limitations. That form would, among other things: explain that Delaware homeowners insurance does not cover flood damage, and will explain to the homeowner how flood insurance can be obtained; explain how to assure replacement coverage; explain limitations on reimbursement for theft from the home and how to obtain additional coverage for theft; and to require explanations for an insurer's decision not to renew a homeowner's policy at the end of the term.

The hearing will be conducted in accordance with 18 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Tuesday, March 29, 2005, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES**

**Notice Of Public Hearing**

**7408 TMDL's For The Murderkill River Watershed**
**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to amend the 2001 Total Maximum Daily Loads (TMDLs) Regulation for the Murderkill River Watershed, Delaware. A TMDL sets a

limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.

The proposed amendments are the result of additional technical studies and field work that has shown that the 2001 Murderkill River TMDL Regulation should be amended.

**Notice of Public Comment**

A public hearing will be held at 6:00 p.m., April 7, 2005, at the Felton Fire Hall, 9 East Main Street, Felton, Delaware. If you cannot attend the hearing, you are encouraged to submit written comments well in advance of the hearing date. All written and oral comments must be received by the conclusion of the hearing. The hearing record will close at the conclusion of the hearing. Please send written comments to Hassan Mirsajadi, DNREC/ Division of Water Resources, Watershed Assessment Section, Silver Lake Plaza – Suite 220, 820 Silver Lake Boulevard, Dover, DE 19904-2464, (302) 739-4590, facsimile: (302) 739-6140, email: ([Hassan.Mirsajadi@state.de.us](mailto:Hassan.Mirsajadi@state.de.us)). You are encouraged to submit comments electronically.

Copies of the proposed amended regulation and supporting technical document are available at the Department's website at <http://www.dnrec.state.de.us/water2000/Sections/Watershed/TMDL/tmdlinfo.htm> or may be obtained by contacting Hassan Mirsajadi.

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**DELAWARE RIVER BASIN  
COMMISSION**

**Public Notice**

The Delaware River Basin Commission will meet on Wednesday, March 16, 2005 at 9:30 a.m. at the law offices of Wolf, Block, Schorr and Solis-Cohen, LLP, 1650 Arch Street, Philadelphia, Pennsylvania in the 26th floor conference room. For more information contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

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