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# Delaware Register of Regulations

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Issue Date: November 1, 2003

Volume 7 - Issue 5

Pages 535

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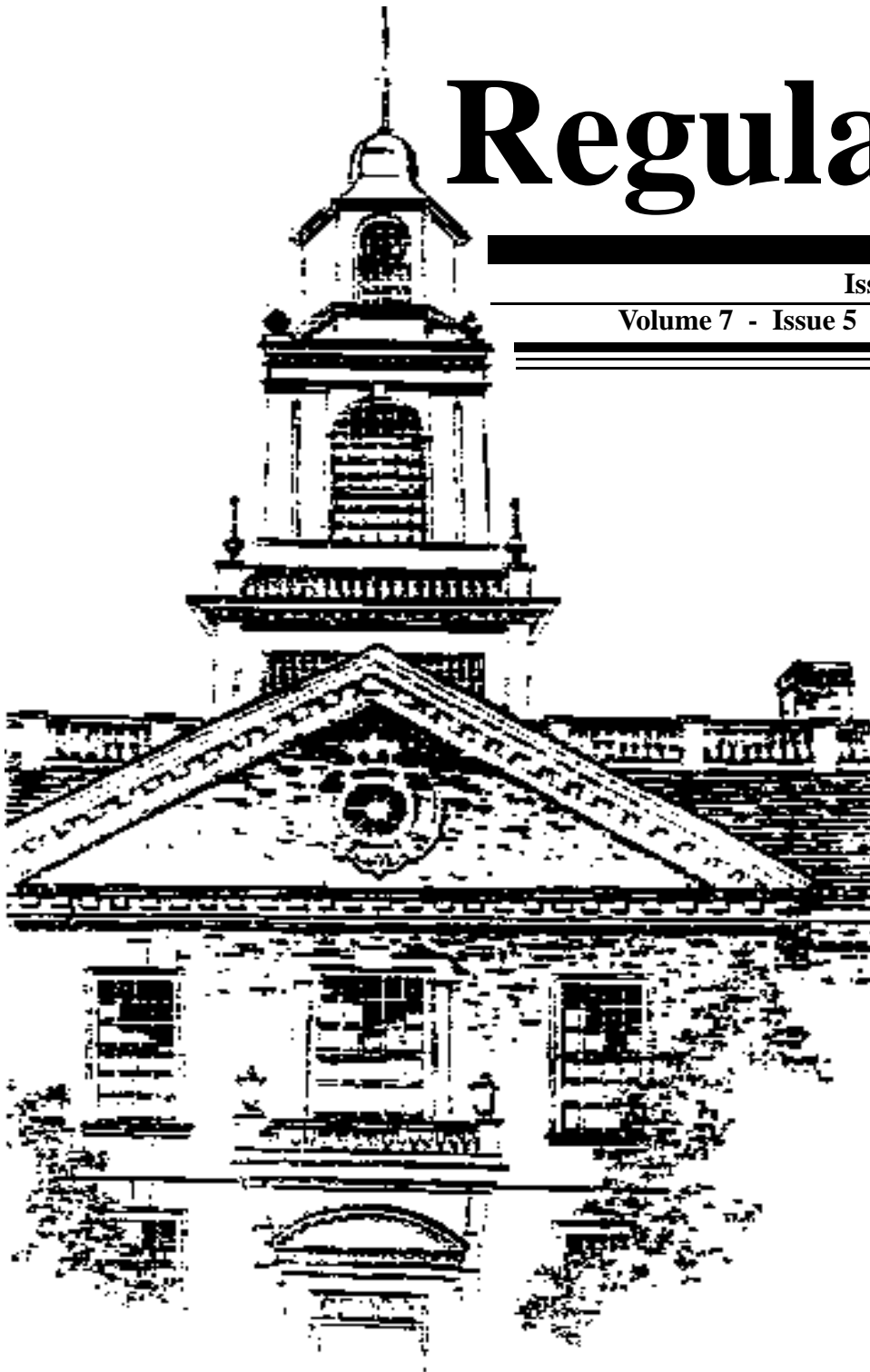
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Calendar of Events &  
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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before October 15, 2003.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

**6 DE Reg. 1541-1542 (06/01/03)**

Refers to Volume 6, pages 1541-1542 of the Delaware Register issued on June 1, 2003.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section,

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

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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
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:40 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.

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### DIVISION OF RESEARCH STAFF:

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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.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS IN OPTOMETRY**

24 DE Admin. Code 2100

Statutory Authority: 24 Delaware Code,  
Section 2104(a)(1) (24 **Del.C.** §2104(a)(1))

**PUBLIC NOTICE**

The Board issues this proposed rule amendment pursuant to 24 **Del.C.** §2104(a)(1) and 29 **Del.C.** §10115. The Board will accept written comments from November 1, 2003 through November 30, 2003. The Board will hold a public hearing on the proposed amendment on December 4, 2003 at 6:30 p.m. in the second floor conference room in the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467. Written comments should be submitted to Jane Youmans, Administrative Specialist, Division of Professional Regulation, at the same above-listed address.

The Board proposes to amend Rule 3.1.2 to clarify that the Board may approve the start of an internship as of the date an applicant has in good faith submitted all licensure materials and the Board is unable to review said materials due to an insufficient number of statutorily appointed members. The proposed amendment to Rule 3.1.2 is as follows:

**3.0 Internship**

3.1 An internship is a course of study in which

applicants receive part of their clinical training in a private practice setting under the supervision of a licensed optometrist or ophthalmologist. An active, licensed Optometrist or Ophthalmologist may act as a supervisor. Any applicant's participation in such an internship program must be approved by the Board and is subject to the following terms and conditions:

3.1.1 A letter from the practitioner with whom the applicant will be interning stating the goals, duties and the number of hours he/she will be working. If the applicant is not doing his/her internship with a therapeutically certified optometrist or ophthalmologist, he/she must also complete an additional one hundred (100) hours of clinical internship with a therapeutically certified Optometrist, Medical doctor or Osteopathic physician.

3.1.2 Each applicant who will be participating in the internship program must provide the name and address of the supervisor and the dates of the internship for approval by the Board before the internship may begin provided that, in the event an applicant has made a good faith effort to submit all necessary licensure materials for approval of the internship, and in the event that the Board is unable to meet to review said licensure materials due to the absence of a sufficient number of statutorily appointed Board members, as occurred in July-August, 2003, the Board may approve said internship starting as of the date when the applicant has submitted all licensure materials.

3.1.3 A letter must be received by the Board from the supervisor verifying the completion of the internship.

3.1.4 For purposes of this Section and 29 **Del.C.** §2110, the term "duration" shall be defined as "a period of no less than six (6) months and no greater than the period

ending on the date of the next Board meeting following the end of the six (6) month period." No intern may practice on a temporary license beyond the duration of the internship.

3.2 Subject to the approval requirements stated above, a candidate's internship requirements may be satisfied while the candidate is a member of the Armed Forces if he/she:

3.2.1 Functions as a fully credentialed therapeutically certified optometric practitioner; and (for purposes of this Section equivalent to the Air Force regulations).

3.2.2 Performs his optometric duties on a full-time basis in a completely equipped eye clinic.

3.3 Full-time: minimum of 35 hours per week.

3.4 All supervisors must supervise the interns on a one-to-one basis whenever an applicant performs a task which constitutes the practice of optometry. No supervisor may be a supervisor for more than one intern, or student extern, at a time. Only one intern shall be permitted in any practice for any period of time.

3.5 All acts which constitute the practice of optometry under 24 Del.C. §2101(a) may be performed by the intern only under the following conditions:

3.5.1 The supervisor shall be on the premises and immediately available for supervision at all times;

3.5.2 All intern evaluations of any patient shall be reviewed by the supervisor prior to final determination of the patient's case before the patient leaves the premises; and

3.5.3 A supervisor shall at all times effectively supervise and direct the intern.

3.6 A violation of any of the conditions enumerated in this rule may be grounds for the Board to revoke their approval of an internship program. The Board may also revoke its approval of an internship program if it determines that either the supervising optometrist or the intern has engaged in any conduct described by 24 Del.C. §2113(a). Furthermore, any violation of the terms of this rule by a supervising optometrist who is a licensed optometrist shall be considered unprofessional conduct and a violation of 24 Del.C. §2113(a)(7).

**See 2 DE Reg 85 (5/1/99)**

**\* PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE BOARD OF EXAMINERS IN OPTOMETRY REGULATIONS ARE AVAILABLE AT:**

**<http://www.state.de.us/research/profreg/Frame.htm>**

## DIVISION OF PROFESSIONAL REGULATION

### BOARD OF PHARMACY

24 DE Admin. Code 2500

Statutory Authority: 24 Delaware Code,  
Section 2509 (24 Del.C. §2509)

PLEASE TAKE NOTICE, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) proposes to modify Regulation 11.0 as it relates to emergency use medication, labeling, consultant pharmacist duties, and drug disposal in nursing homes. There were technical and substantive errors in the changes published September 1, 2003 and they are being republished with the corrections to the following sections: 11.2.5, 11.2.6, 11.4.1, 11.5.2, 11.5.3.2

A public hearing will be held on December 8, 2003 at 9:30 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of David Dryden, Executive Director, at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained by calling (302)739-4798.

#### 11.0 Pharmaceutical Services in Nursing Homes

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

##### 11.2 General Requirements

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

11.2.2 ~~All bleaches, detergents, disinfectants, and external preparations so labeled shall be kept in a separate locked cabinet, compartment, or room apart from medicines, drugs or foods.~~ Internal medications must be stored separately from external medications.

11.2.3 ~~Adequate refrigeration (36° to 46° Fahrenheit) must be used to store medications requiring refrigeration.~~ Medications requiring refrigeration must be

stored within the USP/NF refrigeration temperature range of 36 to 46 degrees Fahrenheit.

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

11.2.5 No persons except properly authorized licensed personnel shall handle or administer medications "caution legend drugs" from individual prescriptions.

11.2.6 Schedule II substances shall be secured under two locks in securely fixed boxes or drawers in the medication storage area, medication cart, interim or emergency use medication supplies. These are to be kept separate from non-controlled medications. There shall be accountability procedures for all Schedule II substances present.

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

### 11.3 Stock Medication Emergency Use Medications

#### 11.3.1 Non-legend medications:

11.3.1.1 A minimal amount of non-legend drugs may be kept as stock supply.

11.3.1.2 If accountabilities for individual patients are found to be inadequate upon inspection, then the stock non-legend medications may be subject to limitations.

#### 11.3.2 Legend medications—Emergency, IV, and Anaphylactic supplies

11.3.2.1 Certain legend medications for emergency use may be stocked by the nursing home subject to Board approval.

11.3.2.2 Emergency use medications are those which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk or harm to patients by delay resulting from obtaining such drugs from other sources.

11.3.2.3 IV's and Vaccines must be submitted on an IV interim a stock list

11.3.2.4 Only one IV box may be maintained at the facility, unless an exemption is granted, by the Board. The number of Anaphylaxis or Emergency boxes must also be submitted for Board approval.

11.3.2.5 If there is no specific accountability procedure at the facility for needles and syringes, then these must be submitted on an IV or emergency box list for approval. These are legend items in the State of Delaware.

#### 11.3.3 Legend medications—Interim supply

The criteria for legend interim medications requiring Board approval are as follows:

11.3.3.1 The interim supply may consist of

medications selected from the following categories:

11.3.3.1.1 antibiotics

11.3.3.1.2 pain medications

11.3.3.1.3 antidiarrheal

11.3.3.1.4 cold/cough/antihistamines

11.3.3.1.5 antiemetics

11.3.3.1.6 antihypertensive

11.3.3.1.7 anticonvulsants

11.3.3.1.8 antidiabetic agents

11.3.3.1.9 cardiovascular drugs

11.3.3.1.10 respiratory/bronchodilators

11.3.3.1.11 sedatives/hypnotics

11.3.3.1.12 anticoagulants

11.3.3.1.13 H2 antagonists

11.3.3.2 The pharmacy, medical, and nursing staff committee may select a maximum quantity of 6 dosage units for items present in this supply.

11.3.3.3 There can be no more than a total of 60 legend items present in this interim supply.

11.3.3.4 Only one interim box may be maintained at the facility, unless an exemption is granted, by the Board. A request for an additional box or supply must be submitted to the Executive Secretary of the Board for approval.

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

11.3.2 It is the responsibility of the facility and provider pharmacy to determine the supply of emergency use medication that are to be stocked as well as documenting their locations within the facility. A list of current contents must be attached to the medication supply.

11.3.3 Accountability for emergency use medications.

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

11.3.3.2 The provider pharmacy is responsible for the accuracy of all emergency use medications at the time of the filling of the medication. This check must also include any medication that became available when the medication is accessed. Records documenting use of an emergency medication must be kept for a minimum of 2 years at the provider pharmacy and must be readily available for inspection by the Board.

11.3.3.3 Failure to comply with these procedures can result in the suspension or denial of the use of emergency use medications.

11.3.3.4 Violations of accountability procedures for emergency use medications may result in

review proceedings before the Board.

~~11.3.4 There must be an accountability procedure at the facility for needles and syringes.~~

~~11.3.4 Approved lists for legend drug boxes.~~

~~11.3.4.1 The most current approved signed list or lists for each box must be maintained in the pharmacy, attached to the box or boxes in the facility, and shall become part of the Policy and Procedures manual.~~

~~11.3.4.2 When additions or deletions are made, then a complete revised list must be submitted for Board approval~~

~~11.3.5 Accountability for legend stock usage.~~

~~11.3.5.1 The pharmacy provider must be contacted within 24 hours after medication is used from the supply. The pharmacist shall review the records of new or changed orders to assure appropriateness. These records must indicate the patient name, location, name of medication, strength, quantity removed, date, time and nurse's signature.~~

~~11.3.5.2 Failure to comply with all aspects and intent of these procedures outlined can result in the revocation, suspension, or denial of the privilege of having controlled substances present in these supplies.~~

~~11.3.5.3 Continuous violations of accountability procedures for the non-controlled legend medications may result in review proceedings before the Board of Pharmacy.~~

11.4 Return Medication Procedures.

11.4.1 All unused portions of any patient's discontinued prescription medication shall be immediately isolated. Non-controlled medication shall be destroyed or and returned to the pharmacist or provider pharmacy supplying pharmaceutical services within 72 hours with the appropriate notation of such returns for disposal disposition. The notation shall include the date, quantity, and name and strength of the medication.

11.4.2 Medications for hospitalized patients must be isolated, and may be held until the patient's return or permanent discharge.

~~11.4.2~~ 11.4.3 Destruction of discontinued controlled patient medication and discharged or deceased patient's controlled medication may be jointly performed by the consultant pharmacist or provider pharmacist with a designated nurse witness if shall be jointly performed by two authorized licensed personnel within 72 hours of the discontinuation of the medication or discharge of the patient. A record of the destruction must be signed by both parties and kept at the facility for 2 years.

11.5 Labeling

11.5.1 Labels on controlled substances must show the actual refill date and amount of medication dispensed.

11.5.2 ~~If a unit dose system is used, then~~ The provider pharmacy must maintain prescription records

required by State and Federal law in addition to a readily retrievable record of the actual refills, amount dispensed and accountability of the amounts used.

11.5.3 A pharmacy providing prescriptions for ~~inpatient~~ use in a nursing home may label the prescription, "to be administered according to current physician's orders." ~~provided that:~~

~~11.5.3.1 The MAR accurately reflects the prescriber's current orders.~~

~~11.5.3.2 The pharmacy is informed of any change in directions within twenty-four (24) hours and promptly records the change on the patient's profile. Prescriptions for leave of absence or discharge must be labeled in compliance with 24 Del.C. §2536.~~

11.5.4 A change in a medication order that involves a direction change must be communicated to the pharmacy within 24 hours, and the labeling on medication currently in the facility may be handled in the following ways:

11.5.4.1 A licensed nurse or pharmacist may apply an accessory label to the medication which denotes that there has been a direction change.

11.5.4.2 A label(s) with new directions may be requested from the pharmacy and applied to the current medication supply by a licensed nurse or pharmacist.

11.6 Duties of Consultant Pharmacist (CP).

11.6.1 A consultant pharmacist (CP) to a nursing home in the State of Delaware must be licensed to practice pharmacy in the State of Delaware. The consultant pharmacist shall be responsible for the general supervision of the nursing home pharmaceutical services and the direct supervision of registered pharmacy interns, who may assist in chart reviews. Supervision of chart reviews by a pharmacy intern must be documented by the supervising pharmacist.

11.6.2 The consultant pharmacist shall provide the administrator of a nursing home with a statement indicating those minimum professional services that will be provided. This statement shall be incorporated into the nursing home Pharmacy Policy and Procedure Manual.

~~11.6.3 When a pharmacist becomes the consultant to a nursing home, he or she~~ The consultant pharmacist must notify the Board in writing within ten days of ~~the starting date.~~ starting as a consultant in the State. The Delaware State Board of Pharmacy shall be notified in writing within ten days by the consultant pharmacist of termination of said services.

11.6.3.1 If the consultant pharmacist has not served in that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming that position.

11.6.4 The consultant pharmacist shall be responsible for written policies and procedures which shall include, but not be limited to:

11.6.4.1 Procedures for administering the services outlined in the statement of proposed services.

11.6.4.2 Policies governing practitioner medication orders, medication errors, automatic stop orders, medications for patient discharge and leave of absence.

11.6.4.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs through out the nursing home in compliance with State and Federal laws.

11.6.4.4 Policies and procedures outlining the destruction of wastage for all controlled medications.

11.6.4.5 Policies governing appropriate storage of medications, an effective drug recall procedure and labeling of all prescription drugs and biologicals in accordance with State and Federal requirements. For registered out-of-state providers an additional labeling requirement is having the toll-free telephone number on the prescription labels.

11.6.4.6 Policies and procedures governing patient drug regimen review, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all practitioners' orders to be reviewed with the information on the patient profiles.

11.6.4 The CP shall be responsible for the development of written policies and procedures which shall include, but not be limited to:

11.6.4.1 Procedures for administering the services outlined in the statement of proposed services.

11.6.4.2 Policies governing physician medication orders, medication errors, automatic stop orders, and medications for patient discharge and leave of absence. emergency; medication

11.6.4.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs throughout the nursing home in compliance with Federal and State laws.

11.6.4.4 Policies and procedures outlining the return or destruction on site of wastage for all controlled substances.

11.6.4.5 Policies governing appropriate storage of medications, an effective drug recall procedure, and labeling of all prescription drugs and biologicals in accordance with Federal and State requirements. For registered out-of-state providers an additional labeling requirement is having their toll-free telephone number on the prescription labels.

11.6.4.6 Policies and procedures governing patient drug regimen reviews, which shall include procedures for reporting irregularities, and documenting that such reviews have been performed. The provider pharmacy is to receive copies of all physicians' orders to be reviewed with the information on the patient profiles.

11.6.5 If the nursing home has a pharmacy or

quality related committee Pharmacy and Therapeutics Committee or Quality Assurance or Assessment Committee, the consultant pharmacist CP shall serve on that committee.

11.6.6 The consultant pharmacist or designated pharmacy staff shall make inspections of each nursing station and related drug storage areas at least monthly. A pharmacy support person may assist with inspection under the direct supervision of a pharmacist. Nursing station inspections must include, but are not limited to the following : (1) Documentation of medication storage area(s) (59 to 86 Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit), (2) documentation of security of all drugs (e.g. medication room cabinets, carts, Board approved drug boxes), (3) proper labeling, including any accessory or cautionary instructions, (4) proper expiration dates, (5) cleanliness, (6) accountability of all medication and (7) interim, emergency, IV, anaphylactic boxes or kits are properly maintained. A copy of these inspection reports must be maintained at the facility.

11.6.6.1 Nursing station inspections must include, but are not limited to, documentation of the following:

11.6.6.1.1 medication storage area(s) (59 to 86 degrees Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit);

11.6.6.1.2 security of all drugs;

11.6.6.1.3 proper labeling, including any accessory or cautionary instructions;

11.6.6.1.4 proper expiration dating;

11.6.6.1.5 cleanliness;

11.6.6.1.6 emergency use medication supplies are properly maintained.

11.6.6.2 A copy of these inspection reports must be maintained at the facility for two years.

11.6.7 The consultant pharmacist shall review the drug regimen of each patient monthly at the facility. Each patient's chart will be reviewed at the facility. Documentation of the review is accomplished in the following manner:

11.6.7.1 If the pharmacist determines that there are no irregularities in the patient's drug regimen, he/she must note in the patient's chart that he/she has reviewed the drug regimen, found no irregularities, and sign and date this notation. This documentation must remain on the patients' charts for a minimum of 12 months.

11.6.7.2 If the pharmacist determines that there are irregularities, he/she must prepare a drug regimen review report summary which includes any pertinent information such as the patient's diagnosis(es), the drug regimen, any pertinent laboratory findings, dietary considerations, etc., and his/her recommendations for improving the drug therapy of the patient. This written recommendation shall be forwarded to the attending practitioner, with the original documentation maintained in the patient chart. The written

summaries must be maintained in the facility. A copy must be sent to the Medical Director, attending physician, Administrator and the Director of Nursing.

11.6.7.3 Nursing unit inspections and a summary report of patient drug regimen reviews must be submitted to the Director of Nursing and the Administrator monthly.

11.6.8 The consultant pharmacist is responsible for the accountability of all medications. A random sample will be done monthly to identify overages or shortages of any medications. Documentation will be made of irregularities and will include date of audit, patient identification, a listing of overages or shortages, and an explanation if known. A plan for correction will be included in the documentation where appropriate. Documentation will be maintained for a period of 12 months at the facility.

11.6.9 ~~11.6.8~~ The consultant pharmacist ~~CP~~ shall be responsible for providing information to the nursing home staff, as may be appropriate or required, to ensure safety, understanding and compliance with policies and procedures pertaining to pharmacy-related activities and concerns.

11.6.10 ~~11.6.9~~ The consultant pharmacist ~~CP~~ shall assume all other responsibilities required of a consultant pharmacist ~~CP~~ as set forth in any State or Federal ~~or State~~ statutes or regulations as enacted or amended or may be enacted or amended.

~~Notwithstanding this Regulation, nothing in the Regulation shall render a practice unlawful which is required by Federal regulation.~~

## PUBLIC SERVICE COMMISSION

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

### ORDER NO. 6282

**AND NOW**, this 7<sup>th</sup> day of October, 2003, the Commission having considered the proposed "Regulations Governing Termination Of Residential Electric Or Natural Gas Service By Public Utilities For Non-Payment During Extreme Seasonal Temperature Conditions" prepared by the Staff, the comments and discussion at a workshop on August 20, 2003, and written comments received from interested parties;

#### IT IS ORDERED THAT:

1. Pursuant to 26 Del.C. §209(a) and 29 Del.C. §§ 10111 *et seq.*, the Commission promulgates proposed "Regulations Governing Termination Of Residential Electric Or Natural Gas Service By Public Utilities For Non-Payment During Extreme Seasonal Temperature Conditions"

("Regulations").

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

3. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before November 1, 2003.

4. The Secretary shall cause a copy of this Order and the enclosed Notice to be sent by United States mail to all jurisdictional electric distribution utilities and all jurisdictional gas public utilities currently operating in Delaware, and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

5. The public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del.C. §114.

6. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

#### BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair  
Joshua M. Twilley, Vice Chair  
Joann T. Conaway, Commissioner  
Donald J. Puglisi, Commissioner  
Jaymes B. Lester, Commissioner

ATTEST: Karen J. Nickerson, Secretary

#### EXHIBIT "A"

IN THE MATTER OF THE REGULATION GOVERNING TERMINATION OF RESIDENTIAL ELECTRIC OR NATURAL GAS SERVICE BY PUBLIC UTILITIES FOR NON- PAYMENT DURING EXTREME SEASONAL TEMPERATURE CONDITIONS (OPENED APRIL 15, 2003)	PSC REGULATION DOCKET NO. 53
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**NOTICE OF COMMENT PERIOD AND PUBLIC  
HEARING ON PROPOSED REGULATIONS  
GOVERNING TERMINATION OF RESIDENTIAL  
ELECTRIC OR NATURAL GAS SERVICE BY  
PUBLIC UTILITIES FOR NON-PAYMENT DURING  
EXTREME SEASONAL TEMPERATURE  
CONDITIONS**



On October 30, 1979, the Delaware Public Service Commission ("Commission") adopted regulations that specified the circumstances under which a public utility could terminate service to residential customers during the heating season for nonpayment of utility bills. The regulations have since been modified. On March 7, 2003, the Division of the Public Advocate ("DPA") filed a petition asking the Commission to consider revising the Regulations to, among other things, increase the existing temperature threshold of twenty degrees Fahrenheit, below which the termination of service is prohibited, and to extend the regulations to cover periods of extreme high temperatures during the cooling season.

On April 15, 2003, the Commission entered Order No. 6148 in which it granted the DPA's petition to initiate these proceedings to consider revisions to the Commission's regulations. Pursuant to Order No. 6148, the Commission directed that a public notice be published on April 17, 2003 in **The News Journal** and the **Delaware State News** newspapers soliciting public comments and inviting interested persons to participate in these proceedings. Subsequently, on August 20, 2003, a workshop was held to discuss revisions to the regulations and the comments received by the Commission. Since then, the participants in the docket, including the DPA and the Commission Staff, have exchanged comments on numerous occasions in writing and by teleconference to further consider proposed revisions to the regulations.

The Commission has determined to promulgate revised regulations. The revised regulations would: 1) increase the threshold temperature level at which the termination of service is prohibited from the present level of twenty degrees Fahrenheit to thirty-two degrees Fahrenheit; 2) extend the scope of the regulations to encompass the termination of utility service used for cooling during the period from June 1 through September 30, in circumstances where the Heat Index (a combination of air temperature and humidity) will equal or exceed one-hundred five degrees Fahrenheit; 3) add definitions for the terms "Cooling Season" and "Heat Index;" (4) delete any reference to heating oil service, because it is no longer regulated by the Commission under Delaware law; 5) enlarge the period of notice of termination which must be given to residential customers from five working days to fourteen calendar days; 6) revise the interest rate that may be charged to customers on past due amounts being paid under installment agreements from 18 percent per year to the interest rate set forth in the utility's approved tariff, which revision is expected to reduce the interest rate charged to customers; 7) amend a provision in the existing regulations regarding the minimum duration of an installment agreement to repay an undisputed arrearage by providing that the restriction will not apply to subsequent installment agreements in the event the customer defaults on the initial agreement; 8) clarify the language in the

regulations to require covered utilities to make a reasonable good faith attempt to make personal contact with the customer at the premises to be disconnected prior to termination; 9) specify that the revised regulations do not apply during the cooling season to customers of a natural gas utility, unless the natural gas utility provides natural gas service for space cooling to the customer's dwelling unit; 10) revise language in the existing regulations about providing customers who are unable to pay their utility bill with information about organization(s) that may provide the customers with assistance; 11) revise a provision of the existing regulations to deal with situations where a customer tenders cash to a utility employee who is not authorized to accept cash; 12) update provisions dealing with non-mandatory third party notice programs that may be adopted by utilities; and 13) revise provisions related to the termination of service to multiple occupancy dwelling units served through a master meter, including the posting of notice at each affected building.

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

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before November 30, 2003.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before November 30, 2003.

In addition, the Commission will conduct a public hearing concerning the proposed changes on December 9, 2003, beginning at 1:00 PM. The public hearing will be held at the Commission's Dover office, located at the address set forth in the preceding paragraph. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

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

Any individual with disabilities who wishes to participate in these proceedings, or to review these revised regulations, should contact the Commission to discuss any

auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone (including Telecommunications Relay Service or Text Telephone), or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. Persons with questions concerning these revised regulations may also contact the Commission by either Text Telephone ("TT") or by regular telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to [andrea.maucher@state.de.us](mailto:andrea.maucher@state.de.us).

## EXHIBIT "B"

### REGULATIONS GOVERNING TERMINATION OF RESIDENTIAL ELECTRIC OR NATURAL GAS SERVICE BY PUBLIC UTILITIES FOR NON- PAYMENT DURING EXTREME SEASONAL TEMPERATURE CONDITIONS

#### PSC REGULATION DOCKET NO. 53

#### I. GENERAL

##### 1.1 Authority

These regulations are adopted pursuant to the authority granted to the Public Service Commission under 26 Del.C. § 209(a) and 29 Del.C. § 101.

##### 1.2 Application and Purpose

These regulations establish uniform procedures which must be followed prior to termination of service for non-payment during the heating or cooling season and apply to all covered utilities. The purpose of these regulations is to protect public health, safety, and property by taking reasonable steps to insure that an individual has the opportunity to act to avoid termination of certain utility services for non-payment during the heating or cooling season without imposing substantial additional cost on other utility customers. Notwithstanding anything stated in these regulations to the contrary, the provisions of these regulations do not apply during the cooling season to a customer of a natural gas utility, unless the natural gas utility provides natural gas service for space cooling to the customer's dwelling unit.

#### II. DEFINITIONS

**"Cooling Season"** – means that portion of the calendar year extending from June 1 through September 30.

**"Covered Utility"** - means any utility regulated by the Public Service Commission of Delaware that supplies electric or natural gas service to a dwelling unit.

**"Dwelling Unit"** - means one or more rooms arranged for the use of one or more individuals as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities.

**"Heat Index"** – a measure utilized by the National Weather Service of the apparent temperature (how hot it

feels) when relative humidity is added to the actual air temperature.

**"Heating Season"** - means that portion of the calendar year extending from November 15 to March 31.

**"Personal Contact"** - means a face-to-face meeting between the customer or responsible occupant of the premises served and an employee of the covered utility who is authorized to receive payment and issue a receipt or make other arrangements for payment.

**"Written Notice"** - means notice in writing, mailed by First Class mail to the person who is being given notice, using the current billing address as shown on the records of the utility.

#### III. PROHIBITIONS

##### 3.1. Written and Verbal Notice

A. Notwithstanding any tariff provision or contract provision to the contrary, no covered utility shall terminate service to a dwelling unit during the heating or cooling season for non-payment of a past due bill or bills, unless at least fourteen (14) calendar days prior to such termination, written notice is given to the customer. The notice shall state the fact of impending termination, the date on or after which such termination will occur, and the steps which may be taken to avoid such termination. In addition, the covered utility shall make at least two (2) documented attempts on separate days to contact the customer by telephone prior to actual termination of service. One such attempt shall be after 6:00 P.M.

B. During the heating season only, in those situations where the billing address is different from the location at which the service is being provided, the advance written notice required by § 3.1.A must also be given to the occupant of the premises being served.

##### 3.2 Content of Notice

The written and verbal notice required by §3.1 shall, at a minimum, include notification of the following:

A. The date on or after which termination of service will occur unless some satisfactory arrangement is made for the payment of the undisputed delinquent bill or bills, which date shall be no less than fourteen (14) calendar days from the mailing of written notice.

B. That if there is a good faith dispute concerning the unpaid bill or bills, termination of service will not take place pending determination of the dispute, provided the utility is notified of the existence of the dispute prior to actual termination. In this regard, the utility must also give the name or names of the persons or office authorized to receive notification of the existence of the dispute and empowered to resolve such disputes, together with the telephone number and address at which such persons or office can be contacted and notified of the existence of a dispute. No covered utility shall be required to delay termination of service pending resolution of a disputed bill

or bills where the undisputed portion of the bill or bills would otherwise justify termination of service or where the customer does not agree to pay current undisputed bills as they become due and to eliminate undisputed arrearages by installment payments. Service will not be reconnected after termination for non-payment on the grounds that a good faith dispute exists unless and until arrangements satisfactory to the covered utility have been made for payment in the event the dispute is resolved in favor of the utility.

C. That if the customer is unable to pay the full amount of the undisputed bill or bills, termination of service may be avoided by entering into an initial installment agreement with the utility whereby the customer will agree to pay current bills as they become due and eliminate, by monthly installment payments, the undisputed arrearage over a period of not less than that during which the unpaid bills were incurred with interest on the unpaid balance at the next billing date. If the customer violates the initial installment agreement, the limitation on the minimum duration of the initial installment agreement shall not apply to any subsequent installment agreement. The interest rate shall be set forth in the approved tariff of the covered utility. The name, address, and telephone number of the utility employees or office empowered to enter into installment arrangements on behalf of the covered utility must be provided to the customer.

D. That if the customer is unable to pay the undisputed bill or bills in full, or to enter into a satisfactory reasonable installment arrangement, there are charitable or governmental organizations or agencies that may be able to assist customers who are so situated and that the customer should immediately contact such organizations. The written notice required by § 3.1 shall contain either a list of those organizations who have notified the covered utility that they may be able to assist customers, or the name and telephone number of an organization that the customer can contact to obtain such information.

E. That if any occupant of the dwelling unit is so ill that termination of the utility service would adversely affect health or recovery, which fact has been certified by a statement from any licensed Delaware physician or any accredited Christian Science practitioner, when such certification is received by the covered utility or its employee, termination of service is prohibited by Delaware Law (26 Del.C. § 117(d)).

### 3.3 Final Contact Prior to Termination

The employee of the utility who is to disconnect service shall make a reasonable good faith attempt to make personal contact at the premises to be disconnected. If personal contact is made, the employee shall:

A. Identify himself or herself to the customer or some responsible person then upon the premises and shall announce the purpose of his or her presence.

B. Identify and record the name of the person

contacted.

C. Accept payment of all amounts tendered which are necessary to avert disconnection and issue a receipt for such payment. If the form of payment is unacceptable to the utility, the employee can make other payment arrangements with the customer.

D. Record and report to his or her supervisor any statements disputing the accuracy of the utility's findings concerning the cause for termination of service.

E. Record and report to his or her supervisor statements or other information concerning the existence of any condition on the premises which would result in a medical emergency if service were terminated.

F. Receive written certification from a duly licensed Delaware physician or accredited Christian Science practitioner that a named occupant of the dwelling unit is so ill that termination of service will adversely affect the occupant's health or recovery. Upon receipt of such certification, the utility shall not disconnect service.

## IV. THIRD PARTY NOTICE

### 4.1 Non-Mandatory Third Party Notice

All covered utilities shall inform all of their customers of the availability of any third party notification program offered by the utility, whereby the customer can designate, in writing, a third person to receive notice of past due bills and written notice of termination of service. The third party so designated must indicate, in writing, willingness to receive such notice and shall not be held, in any way, liable to the utility by reason of acceptance of third party status.

### 4.2 Termination Notice Without Third Party Notice Program

No covered utility without a third party notice program, shall terminate service to a dwelling unit during the heating or cooling season without first having given the written notice required by § 3.1 and, in addition, having made actual contact on a face-to-face basis with an occupant over the age of 15 years of such dwelling unit, giving the minimum notice set forth in § 3.3.

### 4.3 Information Concerning Third Party Notice

If a covered utility adopts such a program, the utility shall take appropriate steps to see that all customers are aware of the existence of the third party notice program.

## V. TERMINATION OF SERVICE TO MULTIPLE OCCUPANCY DWELLING UNITS SERVED THROUGH A MASTER METER

### 5.1 Prohibition

Notwithstanding any tariff provision or contract provision to the contrary, no covered utility shall terminate service during the heating or cooling season to any apartment complex, trailer park, or other grouping of individual residential dwelling units to which service is

provided directly or indirectly through a master meter without individual meters, unless such utility has provided the notice required in §§ 5.2 and 5.3.

#### 5.2 Notice to Owner

A written notice pursuant to § 5.1 shall be sent by First Class mail not less than fourteen (14) calendar days prior to the scheduled date of termination for non-payment to the owner of the premises affected or in lieu thereof, to the person, firm, or corporation to whom or which the last preceding bill has been rendered or from whom or which the covered utility has received payment. The content of such notice shall, at minimum, include the notification required by § 3.2.

#### 5.3 Notice to Occupants

The covered utility shall, at least ten (10) calendar days prior to termination for non-payment, provide notice to the occupants, which notice shall state the intended date of termination of service, the amount due for such service, and the procedure by which any tenant or public agency may make or guarantee such payment, and thereby avoid termination of service.

Such notice to occupants shall either be mailed by first class mail to the "occupant" of each dwelling unit in the building complex to which service is proposed to be terminated or posted in a conspicuous place or places at each building subject to termination, including common areas accessible to the utility.

#### 5.4 Notice to State Agencies

Not less than fourteen (14) calendar days prior to termination of service to a multiple occupancy dwelling unit, the covered utility shall provide written notice of its intention to so terminate to the Public Service Commission of the State of Delaware, and to the Division of the Public Advocate.

### **VI. PROHIBITION ON TERMINATION DURING EXTREME SEASONAL TEMPERATURE CONDITIONS**

#### 6.1 Conditions of Termination

##### A. Heating Season

Under no circumstances may a covered utility terminate service for non-payment to a dwelling unit on a day when the National Weather Service reports that the 8:00 A.M. temperature measured at a location in the State of Delaware that is within fifty (50) miles of the subject dwelling unit is thirty-two degrees Fahrenheit (32×F) or below on the morning of the date when said service is scheduled for termination.

##### B. Cooling Season

Under no circumstances may a covered utility terminate service for non-payment to a dwelling unit on a day when the 8:00 A.M. National Weather Service forecast contains a special weather statement or other information predicting that the Heat Index measured at a location in the

State of Delaware that is within fifty (50) miles of the subject dwelling unit may equal or exceed one-hundred five degrees Fahrenheit (105×F) on the date when said service is scheduled for termination.

#### 6.2 Deferred Termination

Where termination of service, otherwise authorized, has been deferred by virtue of § 6.1, notice of such fact shall be left at the subject dwelling unit on the date on which termination was to be effected, notifying the occupant that unless proper payment arrangements are made, service will be terminated thereafter on a day when § 6.1 does not apply. If the termination of service involves an apartment complex, trailer park, or other grouping of individual residential dwelling units to which service is provided directly or indirectly through a master meter without individual meters, the notice required by this section shall be deemed sufficient if the notice is given in accordance with § 5.3.

### **VII. PENALTY AND BURDEN OF PROOF**

#### 7.1 Penalty

Any covered utility determined, after hearing, to have terminated service for non-payment to a dwelling unit or multiple occupancy dwelling unit in violation of these regulations, may be fined an amount equal to twice the amount of arrearage for which service was terminated, or such lesser amount as deemed appropriate after full consideration of the circumstances. The fine which may be imposed shall not exceed the sum of \$1,000 for each day during which the termination is in violation of these regulations.

#### 7.2 Burden of Proof

The burden of proof of compliance with these regulations shall be upon the covered utility at any proceeding instituted by formal written complaint to or upon motion of the Public Service Commission of Delaware. The Commission specifically reserves the right to randomly select termination cases and require the covered utility to appear before the Commission at a duly notice hearing and establish compliance with these regulations.

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## **DEPARTMENT OF EDUCATION**

14 DE Admin. Code 220

Statutory Authority: 14 Delaware Code,  
Section 220 (14 Del.C. §220)

**EDUCATION IMPACT ANALYSIS  
PURSUANT TO 14 DEL. C. SECTION 122(D)**

**220 Diversity**

**A. Type of Regulatory Action Required**

Re-adopt Existing Regulation

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

The Secretary of Education intends to re-adopt regulation 220 Diversity. The regulation defines diversity and requires the local school districts to take certain steps to infuse diversity concepts into student classrooms.

**C. Impact Criteria**

1. Will the re-adopted regulation help improve student achievement as measured against state achievement standards? The re-adopted regulation will help to contribute to student achievement by promoting diversity.

2. Will the re-adopted regulation help ensure that all students receive an equitable education? The re-adopted regulation will assist in supporting concepts that support equitable education opportunities.

3. Will the re-adopted regulation help to ensure that all students' health and safety are adequately protected? The re-adopted regulation addresses diversity not student health and safety.

4. Will the re-adopted regulation help to ensure that all students' legal rights are respected? The re-adopted regulation addresses diversity not students' legal rights.

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

6. Will the re-adopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The re-adopted 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 re-adopted 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 re-adopted 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 re-adopted regulation? There is no less

burdensome method for addressing the purpose of the re-adopted regulation.

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

**220 Diversity**

1.0 Definition: A school community that values diversity is one which embraces and builds on the strengths of individual and group differences, and by so doing enriches the educational program for all students. A curriculum that is multicultural and inclusive of many racial, ethnic, regional, religious, linguistic, and socio-economic groups, and which gives visibility to both women and men, to people of all ages, and to persons with disabilities, affirms the richness of our pluralistic society. The Secretary of Education and the State Board of Education believe that students achieve their best in classrooms where diversity is commonplace.

2.0 Each school district shall:

2.1 Infuse information on diverse cultural groups throughout the K-12 curriculum in order to equip students with the knowledge and skills necessary to participate productively in a culturally diverse society.

2.2 Provide professional development to equip all teachers with various instructional techniques and best practices for infusing multicultural information into the curriculum and effectively meeting the needs of diverse learners.

2.3 Describe in district strategic plans and school plans how disparities and gaps in student achievement associated with the student's gender, race, ethnicity, socioeconomic status, limited English proficiency, or disability will be identified and eliminated.

2.4 Provide student counseling, assessment, discipline and placement that is sensitive to the needs of diverse populations.

2.5 Provide appropriate instruction to limited English proficient students so that they will have success in a mainstream classroom where the medium of instruction is English.

2.6 Describe in the district strategic plan a strategy to attract and retain a highly skilled and committed faculty and staff reflective of the diversity in the school community.

2.7 Enact measures to avoid and address inequitable and prejudicial behaviors among employees and students.

2.8 Describe in the school plans specific ways principals and building staff create an atmosphere which recognizes, accepts and values diversity as a positive, integral resource of a democratic society.

**See 2 DE Reg. 1244 (1/1/99)**

**EDUCATION IMPACT ANALYSIS  
PURSUANT TO 14 DEL. C. SECTION 122(D)**

**225 Prohibition of Discrimination**

**A. Type of Regulatory Action Required**

Re-adopt Existing Regulation

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

The Secretary of Education intends to re-adopt regulation 225 Prohibition of Discrimination. The regulation is a statement of non-discrimination in programs and activities approved by the Department of Education and the State Board of Education.

**C. Impact Criteria**

1. Will the re-adopted regulation help improve student achievement as measured against state achievement standards? The re-adopted regulation addresses nondiscrimination as required by federal statute.

2. Will the re-adopted regulation help ensure that all students receive an equitable education? The re-adopted regulation addresses non discrimination which contributes to providing for an equitable education for all students.

3. Will the re-adopted regulation help to ensure that all students' health and safety are adequately protected? The re-adopted regulation addresses non-discrimination not students' health and safety.

4. Will the re-adopted regulation help to ensure that all students' legal rights are respected? The re-adopted regulation is about non-discrimination which is a part of students' legal rights.

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

6. Will the re-adopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The re-adopted 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 re-adopted 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 re-adopted regulation will be consistent with

and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The regulation is required by federal statute.

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 re-adopted regulation.

**225 Prohibition of Discrimination**

1.0 No person in the State of Delaware, shall, on the basis of race, color, creed, national origin, disability, or gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving approval or financial assistance from or through the Delaware State Board of Education and/or the Delaware Department of Education.

**See 2 DE Reg. 1246 (1/1/99)**

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**EDUCATION IMPACT ANALYSIS  
PURSUANT TO 14 DEL. C. SECTION 122(D)**

**230 Promotion**

**A. Type of Regulatory Action Required**

Re-adopt Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to re-adopt regulation 230 Promotion. The regulation requires that local school districts have promotion policies in place for grades K through grade 12. The local policies must also incorporate the promotion requirements as defined in the *Delaware Code* and in regulation 925 Children with Disabilities.

**C. Impact Criteria**

1. Will the re-adopted regulation help improve student achievement as measured against state achievement standards? The re-adopted regulation supports efforts to improve student achievement by not permitting students to be promoted if they have not met academic standards.

2. Will the re-adopted regulation help ensure that all students receive an equitable education? The re-adopted regulation applies to all students and consequences are applied in an equitable manner.

3. Will the re-adopted regulation help to ensure that all



students' health and safety are adequately protected? The re-adopted regulation applies to promotion issues not health and safety issues.

4. Will the re-adopted regulation help to ensure that all students' legal rights are respected? The re-adopted regulation continues to reflect the requirements set fourth in the *Delaware Code* concerning promotion reflecting the laws attention to students' legal rights.

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

6. Will the re-adopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The re-adopted 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 re-adopted regulation? The regulation is required under state statute.

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.

### **230 Promotion**

1.0 Each local school district shall have a promotion policy for kindergarten through grade 12.

1.1 Local school districts must follow the requirements for promotion as defined in 14 Del.C. §153, titled Matriculation and Academic Promotion Requirements and Regulation 925, Children with Disabilities.

1.2 The promotion policies for grades 1-8 must also, at a minimum, include the following:

1.2.1 Students in grades 1-8 must receive

instruction in English Language Arts or its equivalent, mathematics, social studies and science each year as defined in the Delaware Content Standards.

1.2.2 Students in grades 1-8 must pass 50% of their instructional program each year (excluding physical education) to be promoted to the next grade level. One of the subject areas that must be passed is English Language Arts or its equivalent. English Language Arts or its equivalent includes English as a Second Language (ESL), and bilingual classes that are designed to develop the English language proficiency of students who have been identified as LEP. Classes in English Language Arts, mathematics, science and social studies include those which employ alternative instructional methodologies designed to meet the needs of LEP students in the content areas.

**See 2 DE Reg. 1248 (1/1/99)**

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### **EDUCATION IMPACT ANALYSIS PURSUANT TO 14 DEL. C. SECTION 122(D)**

#### **275 Charter Schools**

**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 regulation 275 Charter Schools. A change was made in 4.5.3 on the requirements of the charter school applicant to provide for the health and safety of students, employees and guests. An addition was made as 8.1.1 that now addresses the enrollment preferences for founding members of the charter school. Changes to 10.3 were made to clarify the circumstances that are necessary for the renewal of school charters and the words Relative Caregiver were capitalized in the definitions in 2.0. This regulation was previously advertised in the August 2003 Register of Regulations. The amended sections are the same in this version but the wording has been changed.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments to the regulation specifically address the management of charter schools which can be a factor in improving student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments to the regulation address the management of the charter schools in order to assure equity of treatment for charter school students.

3. Will the amended regulation help to ensure that all

students' health and safety are adequately protected? The amended regulation does address health and safety in the changes made to section 4.5.3 of the regulation.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses charter school administration which assists in protecting 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 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 school level.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The amended regulation is necessary in order to clarify certain elements of school charters.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be additional costs to the charter schools for compliance with this regulation especially the amendments concerning provisions for the health and safety of students employees and guests.

## 275 Charter Schools

### 1.0 Purpose and Effect

1.1 The purpose of these regulations is to provide rules to govern the implementation of Chapter 5 of Title 14 of the Delaware Code (hereafter, the "Charter School Law").

1.2 These regulations establish the requirements for applying for a charter to operate a public school, and for opening and operating the school, when a charter is granted

by the Department of Education with the approval of the State Board of Education.

1.3 Schools, the parents and other care givers of these students, the directors, staff and administrators of the Charter Schools, and the students, staff, administrators and boards of the reorganized school districts of the State.

1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by the Department with the consent of the State Board.

**See 6 DE Reg. 274 (9/1/02)**

**2.0 Definitions.** The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

**"Accountability Committee"**: Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.

**"Applicant"**: A legal entity organized under the Delaware General Corporation Law that has applied to the Department for, but not yet received, a charter to operate a charter school, or the renewal or modification of such a charter, as the context indicates.

**"Audit"**: An informal financial, programmatic, or compliance audit of a charter school.

**"Charter Holder"**: The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.

**"Charter School"**: A non-home based full time public school that is operated in an approved physical plant under a charter granted by the Department with the approval of the State Board for the personal physical attendance of all students.

**"DSTP"**: The Delaware Student Testing Program established at 14 Del.C. §151, et.seq., and, as the context requires, the assessments administered pursuant to the program.

**"Department"**: The Delaware Department of Education

**"First Instructional Day"**: The first day a Charter School is open with students in attendance.

**"Formal Review"**: The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school's operations and educational programs.

**"Founding Board of Directors"**: The duly elected Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.

**"Parent"**: The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. "Parent"



also includes individuals authorized to act as “~~relative caregivers~~” Relative Caregivers under the provisions of 14 Del.C. §202(e)(2).

“**Performance Review**”: Reserved

“**Renewal**”: The approval of an application to continue operating an existing Charter School for an additional five year period, available after the school has been in operation for three years.

“**Secretary**”: The Secretary of the Delaware Department of Education.

“**State Board**”: The Delaware State Board of Education.

**See 6 DE Reg. 274 (9/1/02)**

### 3.0 Application Process

3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students the second September 1st thereafter.

3.2 All applications, whether for an original charter, a modification of a charter or the Renewal of a charter, shall be made on forms approved by the Department.

3.3 The Department may require a criminal background check on any person involved in the preparation of an application, whether for an original charter, a major modification or a charter Renewal, and on any person involved in the development of the proposed Charter School.

3.4 An original and ten (10) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered. Incomplete applications, or applications received after the deadline, will not be considered.

3.5 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.

3.6 An application is not complete unless all of the following requirements are met:

3.6.1 All questions on the application form are answered.

3.6.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received.

3.7 No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications.

3.8 Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be

considered in subsequent years.

3.9 The State Board of Education may designate one or more of its members to sit as non-voting members of the Accountability Committee.

3.10 In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter or the Renewal of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the preliminary and final report of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee’s final report and any written or electronic comments received at or before any such public hearing. No other evidence shall be considered. Written and electronic comments must be received by the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.

**See 6 DE Reg. 274 (9/1/02)**

### 4.0 Standards and Criteria for Granting Charter

#### 4.1 Applicant Qualifications

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research-based curriculum and instructional strategies, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business Management, including but not limited to accounting and finance.

4.1.1.3 Personnel management.

4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.

4.1.1.5 At-risk populations and children with disabilities, including but not limited to students eligible for special education and related services.

4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant’s bylaws must be submitted with the application and must demonstrate that:

4.1.3.1 The Charter Holder’s board of directors will include a certificated teacher employed as a teacher at the Charter School and a Parent of a currently

enrolled student of the school no later than the school's First Instructional Day;

4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.

4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 **Del.C.** Chapter 100 in conducting the Charter School's business.

#### 4.2 Student Performance

##### 4.2.1 Minimum Requirements

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 Del. C. §§ 151, 152, 153, 154, and 157 and Department rules and regulations implementing Accountability, to specifically include the Delaware Student Testing Program.

4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the assessments administered pursuant to the Delaware Student Testing Program (DSTP), and a timetable for accomplishment of those goals.

4.2.1.3 At a minimum, the Applicant must agree and certify that the Charter School's average student performance on the DSTP assessments in each content area will meet the statewide average student performance of students in the same grades for each year of test administration.

##### 4.2.2 Special Student Populations

4.2.2.1 An Applicant for a charter proposing enrollment preferences for students at risk of academic failure shall comply with the minimum performance goals established in Subsections 4.2.1.2 and 4.2.1.3. This requirement may be waived where the Applicant demonstrates to the satisfaction of the Department and State Board that the Charter School will primarily serve at risk students and will apply performance goals and timetables which are appropriate for such a student population.

4.2.2.2 An Applicant for a charter proposing an enrollment preference other than a preference for students at risk of academic failure shall comply with the Section. 4.2.1. In addition, the Department, with the approval of the State Board, may require such an Applicant to establish and apply additional and higher student performance goals consistent with the needs and abilities of the student population likely to be served as a result of the proposed enrollment preferences.

4.2.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the DSTP, the application must specifically identify those additional standards or assessments and include a planned baseline acceptable level

of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the DSTP.

#### 4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision of extra instructional time for at risk students, summer school and other services required to be provided by school districts pursuant to the provisions of 14 **Del.C.** §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 Del. C. Ch. 31 and with Department Regulation 925, specifically including a plan for having a continuum of educational placements available for children with disabilities.

4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.

4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.

4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.

#### 4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start-up period prior to the opening of the school.

4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.

4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.

4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. "Major contracts" shall include, without limitation, the school's contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction and/or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, and/or the construction and/or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.

4.4.5 Reserved

#### 4.5 Attendance, Discipline, Student Rights and Safety

4.5.1 The application must include a draft "Student Rights and Responsibilities Manual" that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

4.5.1.1 The "Student Rights and Responsibilities Manual" must comply with the Gun- Free Schools Act of 1994 (20 U.S.C.A. §8921) and Department

Regulation 878

4.5.1.2 The application must include a plan to distribute the "Student Rights and Responsibilities Manual" to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the "Student Rights and Responsibilities Manual" at the time of enrollment.

4.5.2 The application must include the process and procedures the Charter School will follow to comply with the following laws:

4.5.2.1 Chapter 27 of Title 14 of the **Delaware Code** and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.

4.5.2.2 Chapter 85 of Title 11 of the **Delaware Code** and applicable Department regulations regarding criminal background checks for public school related employment.

4.5.2.3 Section 4112 of Title 14 of the **Delaware Code** and applicable Department regulations regarding the reporting of school crimes.

4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.

4.5.2.5 The provision of free and reduced lunch to eligible students pursuant to any applicable state or federal statute or regulation.

4.5.3 ~~The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. However, the services of at least one (1) full time nurse must be provided for each facility in which students regularly attend classes. The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time nurse will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School's policies and procedures for routine student health screenings, for administering medications to students (including any proposed self-administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the~~

full-time services of a corresponding number of registered nurses.

### **5.0 Nature of Charter**

5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.

5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department may require the Charter Holder to produce satisfactory evidence, including written documentation, of compliance.

5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School's failure to comply with these regulations may be treated as a failure on the part of the school to comply with its charter.

**See 6 DE Reg. 274 (9/1/02)**

### **6.0 Funding**

6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.

6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.

6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.

6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

**See 6 DE Reg. 274 (9/1/02)**

### **7.0 Reserved**

**See 6 DE Reg. 274 (9/1/02)**

### **8.0 Enrollment Preferences, Solicitations and Debts**

#### **8.1 Enrollment Preferences**

8.1.1 ~~Reserved~~ An Applicant to establish a new Charter School shall indicate in its application whether

children of the Charter School's founders will be given an enrollment preference. If a founders' preference will be given, the application shall include the standard adopted by the Founding Board of Directors to determine the founders. The standard used to determine the founders shall be consistent with the requirements of Section 506(b)(4) of the Charter School Law. If the application is approved, the Charter Holder shall provide the Department with the identity of its founders no later than March 1 immediately preceding the First Instructional Day.

#### **8.2 Solicitations.**

8.2.1 Any person or entity soliciting contributions, gifts or other funding on behalf of or for the benefit of an existing or potential Charter School shall notify the person or entity solicited that enrollment of an individual student in the Charter School is not contingent on, or assured by, any such contribution, gift or other funding.

8.2.2 Written notices of fund raising activities for the benefit of a Charter School must contain the following statement: "The [name of school] is a public school. Contributions and gifts are not required for admission to the school and will in no way affect or improve a student's opportunity for admission."

#### **8.3 Debts**

8.3.1 Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

**See 6 DE Reg. 274 (9/1/02)**

### **9.0 Reserved**

**See 6 DE Reg. 274 (9/1/02)**

### **10.0 Renewals**

10.1 Charters are granted for an initial period of 3 years of operation and are renewable every 5 years thereafter. A Charter School shall file [it's its] application for Renewal not less than six months prior to the end of any Renewal Period.

10.2 Renewals are only available to the current Charter Holder and may not be used to transfer a charter to a different legal entity.

10.3 ~~Charters shall be renewed only if the school receives a satisfactory Performance Review. Renewals will be deferred until any then pending formal review process is completed.~~ Charters shall be renewed only if the school receives a satisfactory Performance Review.

### **11.0 Public Hearings**

11.1 Any public hearing conducted by the Department pursuant to the provisions of the Charter School Law shall be conducted as a joint public hearing with the State Board of Education.

See 6 DE Reg. 274 (9/1/02)

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**EDUCATION IMPACT ANALYSIS  
PURSUANT TO 14 DEL. C. SECTION 122(D)**

**1102 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or after March 1, 2002 With Specified Changes For Buses Placed in Production on or after March 1, 2003 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000)**

**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 regulation 1102 Standards for School Bus Chassis and Bodies For Buses Placed in Production on or after March 1, 2002 With Specified Changes For Buses Placed in Production on or after March 1, 2003 and on or after January 1, 2004 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000). The amendments are necessary in order to add new standards for buses built after January 2004 and update the document for current equipment terminology, production capabilities and additional safety features.

**C. Impact Criteria**

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

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses standards for building school buses.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses standards for building school buses and the standards help to ensure the safety of students riding the buses.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses standards for building school buses.

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 amended regulation? The statute requires the Department to make regulations concerning standards for school buses.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The state pays for the costs associated with school buses.

**1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 With Specified Changes for Buses Placed in Production on or after March 1, 2003 and on or after January 1, 2004 (terminology and school bus types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000**

**1.0 Bus Chassis Standards**

**1.1 Air Cleaner**

1.1.1 A dry element type air cleaner shall be provided.

1.1.2 All diesel engine air filters shall include a latch-type restriction indicator that retains the maximum restriction developed during operation of the engine. The indicator should include a reset control so the indicator can be returned to zero when desired.

1.2 Axles: The front and rear axle and suspension systems shall have a Gross Axle Weight Rating (GVWR) at ground commensurate with the respective front and rear weight loads that will be imposed by the bus.

1.2.1 For bus chassis and bodies produced after March 1, 2003, all buses with a capacity of 66 passengers or greater shall have a 9,000 pound front axle minimum.

### 1.3 Brakes, General

1.3.1 The chassis brake system shall conform to the provisions of Federal Motor Vehicle Safety Standards (FMVSS) 105, 106 and 121 as applicable.

1.3.2 The anti-lock brake system (ABS), provided in accordance with FMVSS 105 and 121, shall provide wheel speed sensors for each front wheel and for each wheel on at least one rear axle. The system shall provide anti-lock braking performance for each wheel equipped with sensors. (Four Channel System).

1.3.3 All brake systems shall be designed to permit visual inspection of brake lining wear without removal of any chassis component(s).

1.3.4 The brake lines, booster-assist lines, and control cables shall be protected from excessive heat, vibration, and corrosion and installed in a manner which prevents chafing.

1.3.5 The parking brake system for either air or hydraulic service brake systems may be of a power assisted design. The power parking brake actuator should be a push-pull device located on the instrument panel within a seated reach of a 5th percentile female driver. As an option, the parking brake may be set by placing the automatic transmission shift control mechanism in the "park" position.

1.3.6 The power operated parking brake system may be interlocked to the engine key switch. Once the parking brake has been set and the ignition switch turned to the "off" position, the parking brake cannot be released until the key switch is turned back to the "on" position.

1.4 Brakes, Hydraulic: Buses using a hydraulic-assist brake shall be equipped with audible and visible warning signals that provide a continuous warning to the driver of a loss of fluid flow from the primary source and of a failure of the back-up pump system.

### 1.5 Brakes, Air

1.5.1 The air pressure supply system shall include a desiccant-type air dryer installed according to the manufacturers' recommendations. The air pressure storage tank system may incorporate an automatic drain valve.

1.5.2 The chassis manufacturer shall provide an accessory outlet for air operated systems installed by the body manufacturer. This outlet shall include a pressure protection valve.

1.5.3 For air brake systems, an air pressure gauge shall be provided in the instrument panel capable of complying with CDL pre-trip inspection requirements.

1.5.4 All air brake-equipped buses may be equipped with a service brake interlock. The parking brake cannot be released until the brake pedal is depressed

1.5.5 Air brake systems may include a system for anti-compounding of the service brakes and parking brakes.

1.5.6 Air brakes shall have both a visible and audible warning device whenever the air pressure falls below

the level where warnings are required under FMVSS 121.

### 1.6 Bumper Front

1.6.1 School buses shall be equipped with a heavy duty front bumper. The front bumper shall be furnished by the chassis manufacturer for all school bus types unless there is a specific agreement between the chassis manufacturer and body manufacturer.

1.6.2 The front bumper shall be of pressed steel channel or equivalent material (except Type A buses having a GVWR of 14,500 pounds or less which may be Original Equipment Manufacturer supplied) at least 3/16" thick and not less than 8" wide (high). It shall extend beyond forward-most part of the body, grille, hood, and fenders and shall extend to outer edges of the fenders at the bumper's top line.

1.6.3 The front bumper, except breakaway bumper ends, shall be of sufficient strength to permit pushing a vehicle of equal gross vehicle weight without permanent distortion to the bumper, chassis, or body.

1.6.4 The bumper shall be designed or reinforced so that it will not deform when the bus is lifted by a chain that is passed under the bumper (or through the bumper if holes are provided for this purpose) and attached to both tow eyes. For the purpose of meeting this standard, the bus shall be empty and positioned on a level, hard surface and both tow eyes shall share the load equally.

1.7 Certification: The chassis manufacturer, upon request of the Delaware Department of Education, shall certify that its product meets the state's minimum standards on items not covered by the FMVSS certification requirements of 49 CFR, Part 567.

### 1.8 Clutch

1.8.1 Clutch torque capacity shall be equal to or greater than the engine torque output.

1.8.2 A starter interlock shall be installed to prevent actuation of the starter if the clutch pedal is not depressed.

### 1.9 Color

1.9.1 The chassis, including wheels and front bumper, shall be black. Body cowl, hood, and fenders shall be in National School Bus Yellow (NSBY). The flat top surface of the hood may be painted with non-reflective NSBY. (See appendix B, 2000 National School Transportation Specifications and Procedures ).

1.9.2 Demountable rims, if used, may be, silver, gray or black as received from the wheel manufacturer.

1.9.3 Wheel covers shall not be permitted.

1.9.4 Mud flaps if used shall be completely black.

1.9.4.1 For bus chassis and bodies produced after January 1, 2004, the buses shall be equipped with mud flaps. They shall be black except they may have manufacturer's logo or name in white or yellow.

1.10 Daytime Running Lamps: Head lamps shall be provided with a switch to automatically operate the lamps

when the vehicle is placed in gear or the parking brake is released. If this switch is designed to provide reduced illumination under normal operating conditions, a means whereby the head lamps can be engaged at full power shall be provided.

1.11 Drive Shaft: The drive shaft shall be protected by a metal guard or guards around the circumference of the drive shaft to reduce the possibility of its whipping through the floor or dropping to the ground, if broken.

#### 1.12 Electrical System

##### 1.12.1 Battery

1.12.1.1 The storage batteries shall have minimum cold cranking capacity rating (cold cranking amps) equal to the cranking current required for 30 seconds at 0 degrees Fahrenheit and a minimum reserve capacity rating of 120 minutes at 25 amps. Higher capacities may be required, depending upon optional equipment and local environmental conditions.

1.12.1.2 Since all batteries are to be secured in a sliding tray in the body, chassis manufacturers shall mount the battery temporarily on the chassis frame, except that van conversion or cutaway front-section chassis may be secured in accordance with manufacturer's standard configuration. In these cases, the final location of the battery and the appropriate cable lengths shall be agreed upon mutually by the chassis and body manufacturer. However, in all cases the battery cable provided with the chassis shall have sufficient length to allow some slack.

##### 1.12.2 Alternator

1.12.2.1 All Type A-2 buses and Type B buses with a GVWR of 15,000 lbs. or less shall have a minimum 60 ampere alternator

1.12.2.2 Types A-2 and Type B buses over 15,000 lbs. GVWR and all Type C and Type D buses shall be equipped with a heavy-duty truck or bus-type alternator meeting SAE J 180, having a minimum output rating of 100 amperes or higher which produce a minimum current output of 50 percent of the rating at engine idle speed.

1.12.2.3 Buses equipped with an electrically powered wheelchair lift shall have a minimum 130 ampere alternator

1.12.2.4 A belt alternator drive shall be capable of handling the rated capacity of the alternator with no detrimental effect on any other driven components. (See School Bus Manufacturers Technical Council (SBMTC), "School Bus Technical Reference," for estimating required alternator capacity.)

1.12.2.5 A direct-drive alternator is permissible in lieu of a belt driven alternator.

##### 1.12.3 Wiring

1.12.3.1 All wiring shall conform to current applicable recommended practices of the Society of Automotive Engineers (SAE).

1.12.3.1.1 All wiring shall use color

and at least one other method of identification. The other method shall be either a number code or name code, and each chassis shall be delivered with a wiring diagram that illustrates the wiring of the chassis.

1.12.3.1.2 Body accessories shall be wired through the ignition switch and the clearance lights through a separate switch wired through the ~~body solenoid~~ body-controlled electronic control module.

1.12.3.2 The chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or in an accessible location in the engine compartment of vehicles designed without a cowl. The strip or plug shall contain the following terminals for the body connections:

- 1.12.3.2.1 Main 100 amp body circuit;
- 1.12.3.2.2 Tail lamps;
- 1.12.3.2.3 Right turn signal;
- 1.12.3.2.4 Left turn signal;
- 1.12.3.2.5 Stop lamps;
- 1.12.3.2.6 Back-up lamps; and
- 1.12.3.2.7 Instrument panel lights

(rheostat controlled by headlamp switch)

##### 1.12.4 Circuits

1.12.4.1 An appropriate identifying diagram (color plus a name or number code) for all chassis electrical circuits shall be provided to the body manufacturer for distribution to the end user.

1.12.4.1.1 The headlight system must be wired separately from the ~~body-controlled solenoid~~ body-controlled electronic control module.

1.13 Engine: All engines shall have an engine block heater.

1.14 Engine Fire Extinguisher: The chassis manufacturer may provide an automatic fire extinguisher system in the engine compartment.

##### 1.15 Exhaust System

1.15.1 The exhaust pipe, muffler and tailpipe shall be outside the bus body compartment and attached to the chassis so as not to damage any other chassis component.

1.15.2 The tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing of equal diameter.

1.15.3 Chassis manufacturers shall furnish an exhaust system with tailpipe of sufficient length to exit the rear of the bus or at the left side of the bus body no more than 18" forward of the front edge of the rear wheel house opening. If designed to exit at the rear of the bus, the tailpipe shall extend at least five inches beyond the end of the chassis frame. If designed to exit to the side of the bus, the tailpipe shall extend at least 48.5 inches (51.5 inches if the body is to be 102 inches wide) outboard from the chassis centerline.

1.15.3.1 On Types C and D vehicles, the tailpipe shall not exit beneath a fuel fill or emergency door exit.

1.15.3.2 Types A and B chassis may be furnished with the manufacturer's standard tailpipe configuration.

1.15.3.3 Chassis manufacturers may furnish a tailpipe that exits through the rear bumper.

1.15.4 The exhaust system on a chassis shall be adequately insulated from the fuel system.

1.15.5 The muffler shall be constructed of corrosion-resistant material.

1.15.6 The exhaust system on the chassis may be routed to the left of the right frame rail to allow for the installation of a power lift unit on the right side of the vehicle.

1.15.7 The tailpipe may be flush with, but shall not extend out more than two inches beyond, the perimeter of the body for side-exit pipe or the bumper for rear-exit pipe.

1.15.8 The tailpipe shall exit to the left of the emergency exit door in the rear of the vehicle or to the left side of the bus in front or behind the rear drive axle. The tailpipe exit location on all Types A-1 or B-1 buses may be according to the manufacturer's standard. The tailpipe shall not exit beneath any fuel filler location or beneath any emergency door.

1.15.8.1 For bus chassis and bodies produced after January 1, 2004, the tailpipe shall exit to the left or right of the emergency exit door in the rear of the vehicle. The tailpipe exit location on all Types A-1 or B01 buses may be according to the manufacturers standard. The tailpipe shall not exit beneath any fuel filler location or beneath any emergency door.

#### 1.16 Fenders, Front-Type C Vehicles

1.16.1 Total spread of outer edges of front fenders, measured at fender line, shall exceed total spread of front tires when front wheels are in a straight-ahead position.

1.16.2 Front fenders shall be properly braced and shall not require attachment to any part of the body.

#### 1.17 Frame

1.17.1 The frame (or equivalent) shall be of such design and strength characteristics as to correspond at least to standard practices for trucks of the same general load characteristics, which are used for highway service.

1.17.2 Any secondary manufacturer that modifies the original chassis frame shall guarantee the performance of workmanship and materials resulting from such modification.

1.17.3 Frames shall not be modified for the purpose of extending the wheel base.

1.17.4 Holes in top or bottom flanges or side units of the frame, and welding to the frame, shall not be permitted except as provided or accepted by chassis manufacturer.

1.17.5 Frame lengths shall be established in accordance with the design criteria for the complete vehicle.

#### 1.18 Fuel Tank

1.18.1 The fuel tank (or tanks) provided by the chassis manufacturer shall have a minimum 60-gallon capacity for school buses with a capacity of 36 passengers and above. School buses less than a capacity of 36 shall have a manufacturer's standard fuel tank. The tank shall be filled and vented to the outside of the body and the fuel filler shall be placed in a location where accidental fuel spillage will not drip or drain on any part of the exhaust system.

1.18.2 Fuel lines shall be mounted to the chassis frame in such a manner that the frame provides the maximum possible protections from damage.

1.18.3 The fuel system shall comply with FMVSS 301.

1.18.4 Fuel tank(s) may be mounted between the chassis frame rails or outboard of the frame rails on either the left or right side of the vehicle.

1.18.5 The actual draw capacity of each fuel tank shall be a minimum of 83% of the tank capacity.

1.18.6 Installation of alternative fuel systems, including fuel tanks and piping from tank to the engine, shall comply with all applicable fire codes in effect on the date of manufacture of the bus.

1.18.7 Installation of LPG tanks shall comply with National Fire Protection Association (NFPA) 58.

1.18.8 Fuel gauges must be calibrated for size of tank used. If more than one tank is used, there must be a gauge for each tank.

1.19 Governor: When the engine is remotely located from the driver, the governor shall be set to limit engine speed to maximum revolutions per minute as recommended by the engine manufacturer, and a tachometer shall be installed so the engine speed may be known to the driver while seated in a normal driving position.

1.20 Heating System, Provision For: The chassis engine shall have plugged openings for the purpose of supplying hot water for the bus heating system. The openings shall be suitable for attaching 3/4-inch pipe thread/hose connectors. The engine shall be capable of supplying coolant at a temperature of at least 170 degrees Fahrenheit at the engine cooling thermostat opening temperature. The coolant flow rate shall be 50 pounds per minute at the return end of 30 feet of one-inch inside diameter automotive hot water heater hose. (See SBMTC-001.)

1.21 Horn: The bus shall be equipped with dual electrical horns capable of producing a complex sounds in bands of audio frequencies between 250 and 2,000 cycles per second and tested in accordance with SAE J-377.

1.21.1 For bus chassis and bodies produced after January 1, 2004, the bus shall be equipped with a horn(s) capable of producing a complex sound in bands of audio frequencies between 250 and 2,000 cycles per second and tested in accordance with SAE J-377. Type A buses may be equipped according to the manufacturer's standard.



**1.22 Instruments and Instrument Panel**

1.22.1 The chassis shall be equipped with the instruments and gauges listed below. (Telltale warning lamps in lieu of gauges are not acceptable, except as noted):

1.22.1.1 Speedometer;

1.22.1.2 Odometer, which will give, accrued mileage (to seven digits), including tenths of miles;

1.22.1.3 Voltmeter: An ammeter with graduated charge and discharge indications is permitted in lieu of a voltmeter; however, when used, the ammeter wiring must be compatible with the current flow of the system;

1.22.1.4 Oil pressure gauge;

1.22.1.5 Water temperature gauge;

1.22.1.6 Fuel gauge;

1.22.1.7 Upper beam headlight indicator;

~~1.22.1.8 Brake indicator gauge (vacuum or air): A telltale warning lamp indicator in lieu of a gauge is permitted on a vehicle equipped with hydraulic over-hydraulic brake system;~~

~~1.22.1.9 1.22.1.8~~ Turn signal indicator; and

~~1.22.1.10 1.22.1.9~~ Glow-plug indicator light

where appropriate

1.22.2 All instruments shall be easily accessible for maintenance and repair.

1.22.3 The instruments and gauges shall be mounted on the instrument panel so that each is clearly visible to the driver while seated in a normal driving position.

1.22.4 The instrument panel shall have lamps of sufficient candlepower to illuminate all instruments, gauges and shift selector indicator for the automatic transmission.

**1.22.5 Multi-function gauge (MFG)**

1.22.5.1 The driver must be able to manually select any displayable function of the gauge on a MFG whenever desired.

1.22.5.2 Whenever an out-of-limits condition that would be displayed on one or more functions of a MFG occurs, the MFG controller should automatically display this condition on the instrument cluster. This should be in the form of an illuminated telltale warning lamp as well as having the MFG automatically display the out-of-limits indications. Should two or more functions displayed on the MFG go out of limits simultaneously, then the MFG should sequence automatically between those functions continuously until the condition(s) are corrected.

1.22.5.3 The use of a MFG does not relieve the need for audible warning devices, where required.

1.23 Oil Filter: An oil filter with a replaceable element shall be provided and connected by flexible oil lines if it is not a built-in or an engine-mounted design. The oil filter shall have a capacity of at least one (1) quart.

1.24 Openings: All openings in the floorboard or firewall between chassis and passenger compartment (e.g. for gearshift selector and parking brake lever) shall be

sealed.

**1.25 Passenger Load**

1.25.1 The actual gross vehicle weight (GVW) is the sum of the chassis weight, plus the body weight, plus the driver's weight, plus total seated pupil weight. (For purposes of calculation, the driver's weight is 150 pounds and the pupil weight is 120 pounds per pupil.)

1.25.2 Actual GVW shall not exceed the chassis manufacturer's GVWR for the chassis, nor shall the actual weight carried on any axle exceed the chassis manufacturer's Gross Axle Weight Rating (GAWR).

1.25.3 The manufacturer's GVWR for a particular school bus shall be furnished by manufacturers in duplicate (unless more copies are requested) to the Delaware Department of Education. The Department of Education shall, in turn, transmit such ratings to the Department of Public Safety, Division of Motor Vehicles.

**1.26 Power and Grade Ability:**

1.26.1 GVWR shall not exceed 185 pounds per published net horsepower of the engine at the manufacturer's recommended maximum number of revolutions per minute.

1.26.2 For school buses with less than 36 passenger capacity, the minimum power plant shall be 160 hp engine or equal.

1.26.3 For school buses with a capacity of 36 passengers or greater, the engine will produce at least 170 hp measured at an RPM not to exceed 2,600 and generate at least 420 foot pounds of torque.

1.26.3.1 For bus chassis and bodies produced after March 1, 2003, all buses with a capacity of 36 passengers or greater, shall have an engine that produces at least 190 hp.

1.27 Retarder System: A retarder system, if used, shall maintain the speed of a fully loaded school bus at 19.0 mph on a 7 % grade for 3.6 miles.

1.28 Road Speed Control: The bus shall be equipped with a vehicle speed limiter to accurately control vehicle maximum speed to 65 miles per hour.

1.29 Shock Absorbers: The bus shall be equipped with double-action shock absorbers compatible with manufacturer's rated axle capacity at each wheel location.

**1.30 Steering Gear**

1.30.1 The steering gear shall be approved by the chassis manufacturer and designed to ensure safe and accurate performance when the vehicle is operated with maximum load and at maximum speed.

1.30.2 If external adjustments are required, steering mechanism shall be accessible to make adjustments.

1.30.3 No changes shall be made in the steering apparatus, which are not approved by the chassis manufacturer.

1.30.4 There shall be a clearance of at least 2 inches between the steering wheel and cowl, instrument panel, windshield, or any other surface.

1.30.5 Power steering is required and shall be of the integral type with integral valves.

1.30.6 The steering system shall be designed to provide a means for lubrication of all wear-points, which are not permanently lubricated.

#### 1.31 Suspension Systems

1.31.1 The capacity of springs or suspension assemblies shall be commensurate with the chassis manufacturer's GVWR.

1.31.2 Rear leaf springs shall be of a progressive rate or multi-stage design. Front leaf springs shall have a stationary eye at one end and shall be protected by a wrapped leaf, in addition to the main leaf.

1.32 Throttle: The force required to operate the throttle shall not exceed 16 pounds throughout the full range of accelerator pedal travel.

#### 1.33 Tires and Rims

1.33.1 Rims of the proper size and tires of the proper size and load rating commensurate with chassis manufacturer's gross vehicle weight rating shall be provided. All wheel rims shall be the same size to allow for ~~interchangeability~~ interchangeability. The use of multi-piece rims and/or tube-type tires shall not be permitted.

1.33.2 Dual rear tires shall be provided on Type A-2, Type B, Type C, and Type D school buses.

1.33.3 All tires on a vehicle shall be tubeless radials and be of the same size, and the load range of the tires shall meet or exceed the GVWR, as required by FMVSS 120.

1.33.4 If the vehicle is equipped with a spare tire and rim assembly, it shall be the same size as those mounted on the vehicle.

1.33.5 If a tire carrier is required, it shall be suitably mounted in an accessible location outside the passenger compartment.

1.34 Tow Eyes or Hooks: Tow eyes or hooks shall be furnished and attached so they do not project beyond the front bumper. Tow eyes or hooks attached to the frame chassis shall be furnished by the chassis manufacturer. This installation shall be in accordance with the chassis manufacturer's specifications. (Note: Type A buses are exempt from this requirement.)

#### 1.35 Transmission

1.35.1 Automatic transmissions (AT-545 or approved equal) shall have no fewer than three forward speeds and one reverse speed. Mechanical shift selectors shall provide a detent between each gear position when the gear selector quadrant and shift selector are not steering-column mounted.

1.35.2 In manual transmissions, second gear and higher shall be synchronized, except when incompatible with engine power. A minimum of three forward speeds and one reverse speed shall be provided.

1.35.3 An electronic control, or similar device,

may be installed to ensure that automatic transmissions cannot accidentally be moved out of the "neutral" or "park" gear position while the driver is not seated in the driver's seat.

#### 1.36 Turning Radius

1.36.1 A chassis with a wheelbase of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, curb-to-curb measurement.

1.36.2 A chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44 1/2 feet, curb-to-curb measurement.

1.37 Undercoating: The chassis manufacturers, or their agents, shall coat the undersides of steel or metallic-constructed front fenders with a rust-proofing compound, for which the compound manufacturer has issued notarized certification of compliance to chassis builder that the compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B, using modified tests.

**See 6 DE Reg. 1351 (4/1/03)**

## 2.0 Bus Body Standards

### 2.1 Aisle

2.1.1 All emergency doors shall be accessible by a 12" minimum aisle. The aisle shall be unobstructed at all times by any type of barrier, seat, wheelchair or tiedown.

2.1.2 A 2" white line shall separate the driver compartment from the passenger compartment.

2.1.3 The seat backs shall be slanted sufficiently to give aisle clearance of 15" at tops of seat backs.

2.2 Back-Up Warning Alarm: An automatic audible alarm shall be installed behind the rear axle and shall comply with the published Backup Alarm Standards (SAE J994B), providing a minimum of 112 dBA.

### 2.3 Battery

2.3.1 The battery is to be furnished by the chassis manufacturer.

2.3.2 When the battery is mounted as described in the "Bus Chassis Standards", the body manufacturer shall securely attach the battery on a slide-out or swing-out tray in a closed, vented compartment in the body skirt, so that the battery is accessible for convenient servicing from the outside. The battery compartment door or cover shall be hinged at the front or top, and secured by an adequate and conveniently operated latch or other type fastener. The battery compartment is not required on Type A-1 buses.

2.3.3 Buses may be equipped with a battery shut-off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

### 2.4 Bumper (Front)

2.4.1 On a Type D school bus, if the chassis manufacturer does not provide a bumper, it shall be provided by the body manufacturer. The bumper will conform to the standards described in the "Bus Chassis Standards".

**2.5 Bumper (Rear)**

2.5.1 The bumper shall be pressed steel channel at least 3/16" thick or equivalent strength material (except for Type A buses). Type A-1 buses bumper shall be a minimum of 8" wide (high) and Type A-2, B, C, and D buses bumper shall be a minimum of 9 1/2" wide (high). The bumper shall be of sufficient strength to permit being pushed by another vehicle without permanent distortion.

2.5.2 The bumper shall be wrapped around the back corners of the bus. It shall extend forward at least 12", measured from the rear-most point of the body at the floor line, and shall be flush-mounted to body sides or protected with an end panel.

2.5.3 The bumper shall be attached to the chassis frame in such a manner that it may be easily removed. It shall be so braced as to withstand impact from the rear or the side. It shall be so attached as to discourage hitching of rides by an individual.

2.5.4 The bumper shall extend at least 1" beyond the rear-most part of the body surface measured at the floor line.

2.6 Ceiling: See Insulation and Interior, this section.

2.7 Certification: The body manufacturer shall, upon request, certify to the Delaware Department of Education, that its product meets state standards on items not covered by FMVSS certification requirements of 49 CFR, Part 567.

2.8 Chains (Tire): See Wheelhousing, this section.

**2.9 Color**

2.9.1 The school bus body shall be painted National School Bus Yellow (NSBY).

2.9.2 The body exterior paint trim, bumper, lamp hoods, emergency door arrow, and lettering shall be black. (See illustration in NSTSP, Appendix B)

~~2.9.2~~ 2.9.3 Optionally, the roof of the bus may be painted white down to ~~the top window lines~~ no lower than the top window lines except that the front and rear roof caps shall remain NSBY.

2.10 Communications: Buses shall be equipped with a radio (non-CB) or telephonic communication device. It will be added by the school district, school, or contractor.

**2.11 Construction****2.11.1 Side Intrusion Test:**

2.11.1.1 The bus body shall be constructed to withstand an intrusion force equal to the curb weight of the vehicle; but shall not exceed 20,000 pounds, whichever is less. Each vehicle shall be capable of meeting this requirement when tested in accordance with the procedures set forth below.

2.11.1.2 The complete body structure, or a representative seven-body section mock up with seats installed, shall be load-tested at a location 24 inches plus or minus two inches above the floor line, with a maximum 10-inch diameter cylinder, 48 inches long, mounted in a horizontal plane.

2.11.1.3 The cylinder shall be placed as close as practical to the mid-point of the tested structure, spanning two internal vertical structural members. The cylinder shall be statically loaded to the required force of curb weight or 20,000 pounds, whichever is less, in a horizontal plane with a load applied from the exterior toward the interior of the test structure. Once the minimum load has been applied, the penetration of the loading cylinder into the passenger compartment shall not exceed a maximum of ten inches from its original point of contact. There can be no separation of lapped panels or construction joints. Punctures, tears or breaks in the external panels are acceptable but are not permitted on any adjacent interior panel.

2.11.1.4 Body companies shall certify compliance with this intrusion requirement, including test results, if requested.

2.11.2 Construction shall be reasonably dust-proof and watertight.

**2.12 Crossing Control Arm**

2.12.1 Buses shall be equipped with a crossing control arm mounted on the right side of the front bumper. The arm when opened shall extend in a line parallel with the body side and positioned on a line with the right side wheels.

2.12.2 All components of the crossing control arm and all connections shall be weatherproofed.

2.12.3 The crossing control arm shall incorporate system connectors (electrical, vacuum, or air) at the gate and shall be easily removable to allow for towing of the bus.

2.12.4 The crossing control arm shall meet or exceed SAE Standard J1133.

2.12.5 The crossing control arm shall be constructed of noncorrosive or nonferrous material or treated in accordance with the body sheet metal standard (see "Metal Treatment").

2.12.6 There shall be no sharp edges or projections that could cause hazard or injury to students.

2.12.7 The crossing control arm shall extend minimum 70" (measured from the bumper at the arm assembly attachment point) when in the extended position.

2.12.8 The crossing control arms shall extend simultaneously with the stop arm(s) by means of the stop arm controls.

**2.13 Defrosters**

2.13.1 Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog and snow.

2.13.2 The defrosting system shall conform to SAE J381 and J382.

2.13.3 The defroster and defogging system shall be capable of furnishing heated, outside ambient air, except that the part of the system furnishing additional air to the windshield, entrance door and stepwell may be of the

recirculating air type.

2.13.4 Auxiliary fans are not considered defrosting or defogging systems and are described under "Ventilation."

2.13.5 Portable heaters shall not be used.

#### 2.14 Doors

2.14.1 The service door shall be in the driver's control, designed to afford easy release and to provide a positive latching device on manual operating doors to prevent accidental opening. When a hand lever is used, no part shall come together that will shear or crush fingers. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation, as tested on a 10 percent grade both uphill and downhill.

2.14.2 The bus, opposite and within direct view of driver.

2.14.3 The service door shall have a minimum horizontal opening of 24" and a minimum vertical opening of 68". Type A-1 vehicles shall have a minimum opening area of 1,200 square inches.

2.14.4 Service door shall be a split-type, sedan-type, or jackknife type. (Split-type door includes any sectioned door that divides and opens inward or outward.) If one section of a split-type door opens inward and the other opens outward, the front section shall open outward. School buses with a capacity of 36 passengers or greater shall be equipped with an outward opening service door.

2.14.5 Lower, as well as upper, door panels shall be of approved safety glass. The bottom of each lower glass panel shall not be more than 10" from the top surface of bottom step. The top of each upper glass panel shall not be more than 3" from the top of the door. Type A vehicles shall have an upper panel (windows) of safety glass with an area of at least 350 square inches.

2.14.6 Vertical closing edges on split-type or folding-type entrance doors shall be equipped with flexible material to protect children's fingers. Type A-1 vehicles may be equipped with chassis manufacturer's standard entrance door.

2.14.7 There shall be no door to left of driver on Type B, C or D vehicles. All Type A vehicles may be equipped with chassis manufacturer's standard left-side door.

2.14.8 All doors shall be equipped with padding at the top edge of each door opening. Padding shall be at least 3" wide and 1" thick and extend the full width of the door opening.

2.14.9 If a power-assisted service door is used, the actuation switch shall be to the right of the steering wheel within reach of drivers in the 95th percentile of the male/female adult population).

2.14.10 On power-operated service doors, the emergency release valve, switch or device to release the service door must be placed above or to the immediate left or

right of the service door and clearly labeled.

2.14.11 For bus chassis and bodies produced after January 1, 2004, the power entrance door shall be capable of being operated by a single three (3) position sequential switch, located convenient and accessible to the right of the driver. The first position shall activate the red flashing lights and the stop arm with the door closed. The second position shall open the door. Returning the switch to the off position shall close the door and cancel the stop arm and lights. The amber lights shall be controlled by a manual button located on the control panel to the right or left of the driver. Controls shall be a sequential operation system.

#### 2.15 Driver Compartment

2.15.1 The driver's seat supplied by the body company shall be a high back seat with a minimum seat back adjustable to 15 degrees, without requiring the use of tools, and a head restraint to accommodate a 95th percentile adult male, as defined in FMVSS 208. The driver's seat shall be secured with nuts, bolts and washers or flanged-head nuts.

2.15.2 Driver seat positioning and range of adjustments shall be designed to accommodate comfortable actuation of the foot control pedals by 95% of the male/female adult population.

2.15.3 Type A buses may utilize the standard driver's seat provided by the chassis manufacturer.

2.15.4 Driver Restraint System: A Type 2 lap/shoulder belt shall be provided for the driver. The assembly shall be equipped with an ~~automatic~~ locking retractor for the continuous belt system. On all buses except Type A equipped with a standard chassis manufacturer's driver seat, the lap portion of the belt system shall be guided or anchored to prevent the driver from sliding sideways under it. The lap/shoulder belt shall be designed to allow for easy adjustment in order to fit properly and to effectively protect drivers varying in size from 5th percentile adult female to 95th percentile adult male.

#### 2.16 Emergency Exits

2.16.1 All installed emergency exits shall comply with the requirements of FMVSS 217.

##### 2.16.2 Emergency door requirements

2.16.2.1 The upper portion of the emergency door shall be equipped with approved safety glazing, the exposed area of which shall be at least 400 square inches. The lower portion of the rear emergency doors on Types A-2, B, C, and D vehicles shall be equipped with a minimum of 350 square inches of approved safety glazing.

2.16.2.2 There shall be no steps leading to an emergency door.

2.16.2.3 The emergency door(s) shall be equipped with padding at the top edge of each door opening. Padding shall be at least 3" wide and 1" thick, and shall extend the full width of the door opening.

2.16.2.4 The side emergency door, if required, must meet the requirements as set forth in FMVSS 217,

regardless of its use with any other combination of emergency exits. There shall be a clear aisle leading to it i.e., flip seats shall not be used.

2.16.2.5 There shall be no obstruction higher than 1/4 inch across the bottom of any emergency door opening.

2.16.2.6 The rear emergency window shall have an assisted lifting device that will aid in lifting and holding the rear emergency window open.

2.16.3 Emergency exit requirements: Types A, B, C, and D vehicles shall be equipped with a total number of emergency exits as follows for the ~~indicated~~ equipped capacities of vehicles. Exits required by FMVSS 217 may be included to comprise the total number of exits specified.

0 to 42 Passenger = 1 emergency exit per side and 1 roof hatch.

43 to 78 Passenger = 2 emergency exits per side and 2 roof hatches.

79 to 90 Passenger = 3 emergency exits per side and 2 roof hatches.

2.16.4 Side emergency exit windows when installed may be vertically hinged on the forward side of the window. No side emergency exit window will be located above a stop arm.

2.16.5 In addition to the audible warning required on emergency doors by FMVSS 217, additional emergency exits shall also be equipped with an audible warning device.

## 2.17 Emergency Equipment

### 2.17.1 Fire Extinguisher

2.17.1.1 The bus shall be equipped with at least one UL-approved pressurized, dry chemical fire extinguisher. The extinguisher shall be mounted (and secured) in a bracket, located in the driver's compartment and readily accessible to the driver and passengers. A pressure gauge shall be mounted on the extinguisher and shall be easily read without moving the extinguisher from its mounted position.

2.17.1.2 The fire extinguisher shall have a total rating of 2A10BC or greater. The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher.

### 2.17.2 First-aid kit

2.17.2.1 The bus shall have a removable, moisture-proof and dust-proof first aid kit in an accessible place in the driver's compartment. It shall be properly mounted (and secured) and identified as a first aid kit. The location for the first aid kit shall be marked.

#### 2.17.2.2 Minimum contents include:

Units	Qty. per unit
2	12 - 1" x 3" adhesive bandages
1	2 - 2" bandage compress
1	1 - 4" bandage compress
1	1 - non-sterile triangular bandages approximately 40" x 36" x 54" with 2 safety pins

1	1	-eye kit with 2 sterile eye pads and 1 oz. wash
1	3	- burn ointment, 1/8 oz.
1	5	- ammonia inhalants
1	5	- PVP antiseptic swabs
1	5	- insect sting swabs

2.17.3 Body fluid clean-up kit: Each bus shall have a removable and moisture- proof body fluid clean-up kit accessible to the driver. It shall be properly mounted and identified as a body fluid clean-up kit in the driver's compartment. Minimum contents of the body fluid clean-up kit shall include the following:

2.17.3.1 1- 16 oz. bottle of 70% rubbing alcohol or 10% solution of bleach

2.17.3.2 1- plastic trash bag with tie, minimum of 12" x 12"

2.17.3.3 2- pairs of medical examination gloves (non-latex)

2.17.3.4 10- paper towels, approximately 10 1/2" x 12 1/2"

2.17.4 Warning devices: Each school bus shall contain at least three (3) reflectorized triangle road warning devices mounted in an accessible place that meet requirements in FMVSS 125.

2.17.5 Any of the emergency equipment may be mounted in an enclosed compartment provided the compartment is labeled in not less than 1" letters, identifying each piece of equipment contained therein.

### 2.18 Floor

2.18.1 The floor in the under-seat area, including tops of wheel housings, driver's compartment and toe board, shall be covered with rubber floor covering or equivalent, having a minimum overall thickness of .125". The driver's area on all Type A buses may be manufacturer's standard flooring and floor covering.

2.18.2 The floor covering in the aisles shall be of aisle-type rubber or equivalent, wear-resistant and ribbed. Minimum overall thickness shall be .187" measured from tops of ribs.

2.18.3 The floor covering must be permanently bonded to the floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be a type recommended by the manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.

2.18.4 On Types B, C and D buses, a flush-mounted, screw-down plate that is secured and sealed shall be provided to access the fuel tank sending unit.

2.19 Handrails: At least one handrail shall be installed. The handrail(s) shall assist passengers during entry or exit, and be designed to prevent entanglement, as evidenced by the passage of the National Highway Transportation Safety Administration (NHTSA) string and nut test as defined in the NSTSP.

**2.20 Heater and Air Conditioning Systems****2.20.1 Heating System**

2.20.1.1 The heater shall be a hot-water type.

2.20.1.2 Every bus with a capacity of 36 or more shall have 2 heaters at the front: 1 to the left of the driver, and 1 to the right of the driver near the entrance door, and 1 heater in the rear portion of the bus.

2.20.1.3 If only one heater is used, it shall be fresh-air or combination fresh-air and re-circulation type.

2.20.1.4 If more than one heater is used, additional heaters may be temperatures as specified re-circulating air type.

2.20.1.5 The heating system shall be capable of maintaining bus interior in SAE test procedure J2233.

2.20.1.6 All forced air heaters installed by body manufacturers shall bear a name plate that indicates the heater rating in accordance with SBMTC-001. The plate shall be affixed by the heater manufacturer and shall constitute certification that the heater performance is as shown on the plate.

2.20.1.7 Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or any sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hoses shall conform to SAE J20c. Heater lines on the interior of bus shall be shielded to prevent scalding of the driver or passengers.

2.20.1.8 Each hot water system installed by a body manufacturer shall include one shut-off valve in the pressure line and one shut-off valve in the return line with both valves at the engine in an accessible location, except that on all Types A and B buses, the valves may be installed in another accessible location.

2.20.1.9 There shall be a water flow regulating valve installed in the pressure line for convenient operation by the driver while seated.

2.20.1.10 Accessible bleeder valves shall be installed in an appropriate place in the return lines of body company-installed heaters to remove air from the heater lines.

2.20.1.11 Access panels shall be provided to make heater motors, cores and fans readily accessible for service. An outside access panel may be provided for the driver's heater.

**2.20. Air Conditioning****2.20.2.1 Performance Specifications**

2.20.2.1.1 The installed air conditioning system shall cool the interior of the bus down to at least 80 degrees Fahrenheit, measured at a minimum of three points, located 4' above the floor at the longitudinal centerline of the bus. The three points shall be: (1) near the driver's location, (2) at the midpoint of the body, and (3) 2' forward of the emergency door, or, for type D rear-engine buses, 2' forward of the end of the aisle.

2.20.2.1.2 The test conditions under which the above performance must be achieved shall consist of: (1) placing the bus in a room (such as a paint booth) where ambient temperature can be maintained at 100 degrees Fahrenheit (2) heat soaking the bus at 100 degrees Fahrenheit with windows open for at least 1 hour and (3) closing windows, turning on the air conditioner with the engine running at the chassis manufacturer's recommended low idle speed, and cooling the interior of the bus to 80 degrees Fahrenheit or lower within a maximum of 30 minutes while maintaining 100 degrees Fahrenheit outside temperature.

2.20.2.1.3 Alternately, this test may be performed under actual summer conditions, which consist of temperatures above 85 degrees Fahrenheit, humidity above 50 percent with normal sun loading of the bus and the engine running at the engine manufacturer's recommended low idle speed. After a minimum of 1 hour of heat soaking, the system shall be turned on and must provide a minimum 20 degree temperature drop in the 30-minute time limit.

**2.20.2.2 Other Requirements**

2.20.2.2.1 Evaporator cases, lines and ducting (as equipped) shall be designed in such a manner that all condensation is effectively drained to the exterior of the bus below the floor level under all conditions of vehicle movement and without leakage on any interior portion of bus.

2.20.2.2.2 Any evaporator or ducting system shall be designed and installed so as to be free of injury-prone projections or sharp edges. Any ductwork shall be installed so that exposed edges face the front of the bus and do not present sharp edges.

2.20.2.2.3 Evaporator cases and/or ducting systems shall be equipped with diffusers that are adjustable.

2.20.2.2.4 On specially equipped school buses, the evaporator and ducting (if used) shall be placed high enough that they will not obstruct occupant securement shoulder strap upper attachment points. This clearance shall be provided along entire length of the passenger area on both sides of the bus interior to allow for potential retrofitting of new wheelchair positions and occupant securement devices throughout the bus.

2.20.2.2.5 The condensers shall be equipped with a sight glass (or at least one for each part of a split system) that is accessible and directly visible for checking the level of the refrigerant.

2.20.2.2.6 The compressor system shall be equipped with both a high pressure and a low pressure switch to prevent compressor operation when system temperatures are above or below recommended safe levels. Lubrication of moving compressor parts shall be accomplished automatically. An automatic (electric) clutch shall be provided on each compressor.

2.20.2.2.7 All system operating controls, including on-off switch (es), blower switch (es) and thermostat controls shall be accessible to the driver in a seated position.

2.20.2.2.8 Blowers shall be a minimum of two speeds.

2.20.2.2.9 Wiring shall be copper with color-coded insulation. The air conditioning system shall be equipped with at least one manually resettable circuit breaker per side to provide overload protection for the main power circuit feeding the evaporator blowers and condenser fans. System control circuits shall also have overload protection, but may be fused.

2.20.2.2.10 Refrigerant shall be R 134A.

2.20.2.2.11 All wiring, hoses, and lines shall be grommited, routed, and supported so as to reduce wear. All flexible refrigerant hoses shall be double braided.

2.20.2.2.12 The body shall be equipped with insulation, including sidewalls, roof, firewall, rear, inside body bows and plywood (see "Insulation") or composite floor insulation to aid in heat dissipation and reflection.

2.20.2.2.13 All glass (windshield, service and emergency doors, side and rear windows) shall be equipped with maximum integral tinting allowed by federal or ANSI standards for the respective locations, except that windows rear of the driver's compartment shall have approximately 28 percent light transmission.

2.20.2.2.14 Type A buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 120 amperes. Type B, C, and D buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 160 amperes.

2.20.2.2.15 Roofs shall be painted white (see "Color").

2.21 Hinges: All exterior metal door hinges which do not have stainless steel, brass, or nonmetallic hinge pins or other designs that prevent corrosion shall be designed to allow lubrication to be channeled to the center 75 percent of each hinge loop without disassembly.

#### 2.22 Identification

2.22.1 The body shall bear words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of body or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Letters shall conform to "Series B" of Standard Alphabets for Highway Signs. "SCHOOL BUS" lettering shall have a reflective background. All lettering on NSBY surfaces shall be black, and lettering on black surfaces shall be NSBY or white.

2.22.2 Bus identification number shall be displayed on the sides, on the rear, and on the front.

2.22.3 District or company name or owner of the bus shall be displayed;

2.22.4 Other lettering, numbering, or symbols which may be displayed on the exterior of the bus, shall be limited to:

2.22.4.1 The location of the battery(s) identified by the word " Battery" or " Batteries" on the battery compartment door in 2" lettering;

2.22.4.2 Symbols or letters not to exceed 64 square inches of total display near the service door, displaying information for identification by the students of the bus or route served;

2.22.4.3 Symbols identifying the bus as equipped for or transporting students with special needs (see Specially Equipped School Bus section);

2.22.4.4 Lettering of fuel type in 2" lettering adjacent to the fuel filler opening; and

2.22.4.5 Manufacturer, company name, dealer, or school logo may be displayed in the right side plate location on the rear of the bus.

2.23 Inside Height: Inside body height shall be 72" or more, measured metal to metal, at any point on longitudinal center line from front vertical bow to rear vertical bow. Inside body height of Type A-1 buses shall be 62" or more.

#### 2.24 Insulation

2.24.1 If thermal insulation is specified, it shall be fire-resistant, UL approved, with minimum R-value of 5.5. Insulation shall be installed so as to prevent sagging.

2.24.2 If floor insulation is required, it shall be 5 ply nominal 5/8" thick plywood, and it shall equal or exceed properties of the exterior-type softwood plywood, C-D Grade, as specified in standard issued by U.S. Department of Commerce. When plywood is used, all exposed edges shall be sealed. Type A-1 buses may be equipped with nominal 1/2" thick plywood meeting the above requirements. Equivalent material may be used to replace plywood, provided it has an equal or greater insulation R value, deterioration, sound abatement and moisture resistance properties.

#### 2.25 Interior

2.25.1 The interior of bus shall be free of all unnecessary projections, which include luggage racks and attendant hand rails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed to contain lap joints, the forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and/or tow chains. (See "Storage Compartment")

2.25.2 The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

2.25.3 Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to

the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in the NSTSP, Appendix B. School buses with a capacity of 36 passengers or greater shall be equipped with a sound-proof body package that includes firewall and engine cover. The headliner over the driver's compartment to the front barriers shall be perforated to absorb sound.

2.25.4 Interior overhead storage compartments may be provided if they meet the following criteria:

2.25.4.1 Meet head protection requirements of FMVSS 222 where applicable;

2.25.4.2 Have a minimum rated capacity displayed for each compartment;

2.25.4.3 Be completely enclosed and equipped with latching doors which must be sufficient to withstand a force five times the maximum rated capacity of the compartment;

2.25.4.4 Have all corners and edges rounded with a minimum radius of 1" or padded equivalent to door header padding;

2.25.4.5 Be attached to the bus sufficiently to withstand a force equal to 20 times the maximum rated capacity of the compartment; and

2.24.4.6 Have no protrusions greater than ¼ inch.

2.25.5 For bus chassis and bodies produced after March 1, 2003, the interiors shall have mar-proof side walls.

## 2.26 Lamps and Signals

2.26.1 Interior lamps shall be provided which adequately illuminate the aisle and the stepwell. The stepwell light shall be illuminated by a service door-operated switch, to illuminate only when headlights and clearance lights are on and the service door is open.

2.26.2 Body instrument panel lights shall be controlled by an independent rheostat switch.

2.26.3 School bus alternately flashing signal lamps:

2.26.3.1 The bus shall be equipped with two red lamps at the rear of vehicle and two red lamps at the front of the vehicle. Lamps may be the sealed beam or halogen type.

2.26.3.2 In addition to the four red lamps described above, four amber lamps shall be installed so that one amber lamp is located near each red signal lamp, at same level, but closer to the vertical centerline of bus. The system of red and amber signal lamps shall be wired so that amber lamps are energized manually, and red lamps are automatically energized (with amber lamps being automatically de-energized) when stop signal arm is extended or when bus service door is opened. An amber pilot light and a red pilot light shall be installed adjacent to the driver controls for the flashing signal lamp to indicate to the driver which lamp system is activated.

2.26.3.3 The area around lens of alternately

flashing signal lamps extending outward from the edge of the lamps 3" (+/- ¼") to the sides and top and minimum 1" to the bottom, shall be black in color on the body or roof area against which the signal lamp is seen (from distance of 500 feet along axis of vehicle). Visors or hoods, black in color, are required and shall have a minimum depth of 4". (See NSTSP, Appendix B)

2.26.3.3.1 For bus chassis and bodies produced after January 1, 2004, the visors or hoods, black in color, are only required on non-flush mounted lights and shall have a minimum depth of 4".

2.26.3.4 Red lamps shall flash at any time the stop signal arm is extended.

2.26.3.5 All flashers for alternately flashing red and amber signal lamps shall be enclosed in the body in a readily accessible location.

2.26.4 Turn signal and stop/tail lamps:

2.26.4.1 Bus body shall be equipped with amber rear turn signal lamps that are at least 7" in diameter. These signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. Turn signal lamps are to be placed as wide apart as practical and their centerline shall be a maximum of 12" below the rear window. Type A-1 conversion vehicle lamps must be at least 21 square inches in lens area and must be in the manufacturer's standard color.

2.26.4.1.1 For bus chassis and bodies produced after January 1, 2004, the bus body shall be equipped with amber rear turn signal lamps that are at least 7" in diameter, or if the shape is other than round, a minimum 38 square inches. These signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. Turn signal lamps are to be placed as wide apart as practical and their centerline shall be a maximum of 12" below the rear window. Type A-1 conversion vehicle lamps must be at least 21 square inches in lens area and must be in the manufacturer's standard color.

2.26.4.2 Buses shall be equipped with amber side-mounted turn signal lights. The turn signal lamp on the left side shall be mounted rearward of the stop signal arm and the turn signal lamp on the right side shall be mounted rearward of the service door. An additional side turn signal lamp may be mounted over the rear wheel opening on both sides.

2.26.4.2.1 For bus chassis and bodies produced after January 1, 2004, an additional amber side turn lamp shall be mounted between the rear wheel opening and the rear of the bus on both sides.

2.26.4.3 In addition to manufacturer's standard turn signals, Type C school buses shall also be equipped with front, Class A fender or hood-mounted turn signals.

2.26.4.4 Buses shall be equipped with four



combination red stop/tail lamps:

2.26.4.4.1 Two combination lamps with a minimum diameter of 7", or if a shape other than round, a minimum 38 square inches of illuminated area shall be mounted on the rear of the bus just inside the turn signal lamps.

2.26.4.4.2 Two combination lamps with a minimum diameter of 4", or if a shape other than round, a minimum 12 square inches of illuminated area shall be placed on the rear of the body between the beltline and the floor line. The rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated. Type A-1 buses with bodies supplied by chassis manufacturer may have manufacturer's standard stop and tail lamps.

~~2.26.4.5 All buses shall be equipped with a transistorized 16-light monitor that monitors the front and rear warning lamps of the school bus. The monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse or circuit breaker against any short circuit or intermittent shorts.~~ All buses shall be equipped with a 16-light monitor. The monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse, circuit breaker, or field effect transistor to protect against any short circuit or intermittent shorts.

2.26.4.6 Body markers shall be the armored type.

2.26.4.7 Backup lamps: The bus body shall be equipped with two white rear backup lamp signals that are at least 4" in diameter or, if a shape other than round, a minimum of 13 square inches of illuminated area, meeting FMVSS 108. If backup lamps are placed on the same horizontal line as the brake lamps and turn signal lamps, they shall be to the inside.

2.26.5 School buses may be equipped with fog lamps.

#### 2.27 Metal Treatment

2.27.1 All metal used in construction of bus body shall be zinc-coated or aluminum-coated or treated by equivalent process before the bus is constructed. Included are such items as structural members, inside and outside panels, door panels and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts.

2.27.2 All metal parts that will be painted, in addition to the above requirements, shall be chemically cleaned, etched, zinc-phosphate-coated and zinc-chromate- or epoxy primed, or the metal may be conditioned by equivalent process.

2.27.3 In providing for these requirements, particular attention shall be given to lapped surfaces, welded

connections of structural members, cut edges on punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subjected to abrasion during vehicle operation.

2.27.4 As evidence that above requirements have been met, samples of materials and sections used in the construction of the bus body shall not lose more than 10 percent of material by weight when subjected to a 1,000-hour salt spray test as provided for in latest revision of ASTM Standard B-117.

#### 2.28 Mirrors

2.28.1 The interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing which retains the glass in the event of breakage. The mirror shall have rounded corners and protected edges. All Type A buses shall have a minimum of a 6" x 16" mirror and Types B, C, and D buses shall have a minimum of a 6" x 30" mirror.

2.28.2 Each school bus shall be equipped with exterior mirrors meeting the requirements of FMVSS 111. Mirrors shall be easily adjustable, but shall be rigidly braced so as to reduce vibration.

2.28.3 Buses may be equipped with heated and/or remote control external mirrors.

2.28.3.1 For bus chassis and bodies produced after March 1, 2003, buses for 36 passengers or greater shall be equipped with heated and remote control exterior rear view mirrors.

2.28.3.2 For bus chassis and bodies produced after January 1, 2004, the buses, 36 passengers or greater, shall be equipped with heated cross-over mirrors.

#### 2.29 Mounting

2.29.1 The chassis frame shall support rear body cross member. The bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such manner as to prevent shifting or separation of the body from the chassis under severe operating conditions.

2.29.2 Insulators shall be installed at all contact points between the body and the chassis frame on Types A-2, B, C, and D buses, and shall be secured by a positive means to the chassis frame or body to prevent shifting, separation, or displacement of the isolators under severe operating conditions.

2.30 Overall Length: Overall length of bus shall not exceed 40 feet, excluding accessories.

2.31 Overall Width: Overall width of bus shall not exceed 96", excluding accessories. ~~The body, excluding mirrors, shall have a minimum width of 75 inches and a minimum height of 79 inches from road surface to top of roof.~~

#### 2.32 Public Address System:

2.32.1 There shall be installed a public address amplifier specifically designed for vehicular applications

with a minimum power output of not less than 5 watts sine-wave power. Such system shall consist of an on-off switch, volume control, and an inside-outside speaker selector switch. Additionally, it shall have an outside speaker completely weather-proofed a minimum 7 watt power capability and two interior dynamic speakers with a minimum diameter of 4 inches. These speakers shall be located above the window line, to the rear of the driver, and shall not project more than 1/2 inch from the interlining of the bus. There shall be no sharp edges or corners that could cause injury to a passenger. The outside speaker shall be located on the front of the cowl under the hood or other suitable location under the hood.

2.32.2 Buses may be equipped with an AM/FM/audio system.

2.32.3 No internal speakers, other than the driver's communication systems, may be installed within 4' of the driver's seat back in its rearmost upright position.

### 2.33 Reflective Material (see NSTSP, Appendix B)

2.33.1 The front and/or rear bumper may be marked diagonally 45 degrees down to centerline of pavement with 2" +/- 1/4" wide strips of non-contrasting reflective material.

2.33.2 The rear of bus body shall be marked with strips of reflective NSBY material to outline the perimeter of the back of the bus using material that conforms with the requirements of FMVSS 131, Table 1. The perimeter marking of rear emergency exits per FMVSS 217 and/or the use of reflective "SCHOOL BUS" signs partially accomplishes the objective of this requirement. To complete the perimeter marking of the back of the bus, strips of at least 1 3/4" reflective NSBY material shall be applied horizontally above the rear windows and above the rear bumper, extending from the rear emergency exit perimeter, marking outward to the left and right rear corners of the bus. Vertical strips shall be applied at the corners connecting these horizontal strips.

2.33.3 "School Bus" signs shall be marked with reflective NSBY material comprising background for lettering of the front and/or rear "School Bus" signs.

2.33.4 Sides of bus body shall be marked with at least 1 3/4"- reflective- NSBY material, extending the length of the bus body and located (vertically) between the floor line and the beltline.

### 2.34 Rub Rails

2.34.1 There shall be one rub rail located on each side of the bus at seat cushion level which extends from the rear side of the entrance door completely around the bus body (except the emergency door or any maintenance access door) to the point of curvature near the outside cowl on the left side.

2.34.2 There shall be one additional rub rail located on each side at, or no more than 10" above, the floor line. The rub rail shall cover the same longitudinal area as

the upper rub rail, except at the wheel housings, and it shall extend only to the radii of the right and left rear corners.

2.34.3 Both rub rails shall be attached at each body post and all other upright structural members.

2.34.4 Each rub rail shall be 4" or more in width in their finished form, shall be of 16-gauge steel or suitable material of equivalent strength and shall be constructed in corrugated or ribbed fashion.

2.34.5 Both rub rails shall be applied outside the body or outside the body posts. (Pressed-in or snap-on rub rails do not satisfy this requirement.) For Type A-1 vehicles using the body provided by the chassis manufacturer, or for Types A-2, B, C and D buses using the rear luggage or the rear engine compartment, rub rails need not extend around the rear corners.

2.34.6 There shall be a rub rail (snow rail) or equivalent bracing located horizontally at the bottom edge of the body side skirts.

### 2.35 Seat and Restraining Barriers

#### 2.35.1 Passenger Seating

2.35.1.1 All seats shall have a minimum cushion depth of 15" and must comply with all requirements of FMVSS 222. School bus design capacities shall be in accordance with 49 CFR, Part 571.3 and FMVSS 222.

2.35.1.2 All restraining barriers and passenger seats shall be constructed with materials that enable them to meet the criteria contained in the School Bus Seats Upholstery Fire Block Test. (See NSTSP, Appendix B)

2.35.1.3 School buses equipped with front barriers shall have modesty panels (full width) installed under the barriers the full length to the floor.

2.35.1.4 Each seat leg shall be secured to the floor by a minimum of two (2) bolts, washers, and nuts. Flange-head nuts may be used in lieu of nuts and washers, or seats may be track-mounted in conformance with FMVSS 222. If track seating is installed, the manufacturer shall supply minimum and maximum seat spacing dimensions applicable to the bus, which comply with FMVSS 222. This information shall be on a label permanently affixed to the bus.

2.35.1.5 All seat frames attached to the seat rail shall be fastened with two (2) bolts, washers and nuts or flange-head nuts.

2.35.1.6 All school buses (including Type A) shall be equipped with restraining barriers which conform to FMVSS 222.

2.35.1.7 There shall be a minimum of 8" clearance between the last seat and the rear interior of the bus.

2.35.2 Pre-School Age Seating: When installed, all passenger seats designed to accommodate a child or infant carrier seat shall comply with FMVSS 225. These seats shall be in compliance with NHTSA's "Guideline for Safe Transportation of Pre-school Age Children in School

Buses.”

### 2.36 Steps

2.36.1 All school buses with a capacity of 36 passengers and above shall have a three-step stepwell.

2.36.2 The first step at service door shall be not less than 10" and not more than 14" from the ground when measured from the top surface of the step to the ground, based on standard chassis specifications, except that on Type D vehicles, the first step at the service door shall be 12" to 16" from the ground.

2.36.3 Step risers shall not exceed a height of 10". When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.

2.36.4 Steps shall be enclosed to prevent accumulation of ice and snow.

2.36.5 Steps shall not protrude beyond the side body line.

### 2.37 Step Treads

2.37.1 All steps, including floor line platform area, shall be covered with 3/16" rubber floor covering or other materials equal in wear and abrasion resistance to top grade rubber.

2.37.2 The metal back of the tread shall be permanently bonded to the step tread material.

2.37.3 Steps, including the floor line platform area, shall have a 1 1/2" white nosing as an integral piece without any joint.

2.37.4 Step treads shall have the following characteristics:

2.37.4.1 Special compounding for good abrasion resistance and coefficient of friction of at least 0.6 for the step surface, and 0.8 for the step nosing;

2.37.4.2 Flexibility so that it can be bent around a 1/2" mandrel both at 130 degrees Fahrenheit and 20 degrees Fahrenheit without breaking, cracking, or crazing;

2.37.4.3 A durometer hardness 85 to 95.

2.38 Stirrup Steps: Unless the windshield and lamps are not easily accessible from the ground, there shall be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning. Steps are permitted in or on the front bumper in lieu of the stirrup steps if the windshield and lamps are easily accessible for cleaning from that position.

2.39 Stop Signal Arm: The stop signal arm shall be reflectorized material and comply with the requirements of FMVSS 131.

2.40 Storage Compartment: A storage container for tools, tire chains, and/or tow chains may be located either inside or outside the passenger compartment. If inside, it shall have a cover capable of being securely latched and fastened to the floor, convenient to either the service or emergency door. (The seat cushion may not serve this purpose.)

### 2.41 Strobe Light

2.41.1 A white flashing strobe light shall be installed on the roof. It shall be located from 4 to 6 feet from the rear of the roof edge (except air conditioned buses with roof-top evaporators), within 1 foot of centerline, and behind all other roof equipment. The strobe shall extend above the roof between 4 1/2 to 6 3/4 inches, and the light shall be 12 to 16 joules with a clear lens emitting light 360 degrees around its vertical axis.

2.41.2 The light shall be wired to activate when the amber alternately flashing signal lamps are activated, continuing through the full loading or unloading cycle, with an override switch to allow activation of the strobe light during inclement weather.

2.41.3 A pilot light shall be included to indicate when the light is in operation

### 2.42 Sun Shield

2.42.1 An interior adjustable transparent sun shield with a finished edge not less than 6" X 30" for Types B, C, and D vehicles, shall be installed in a position convenient for use by driver.

2.42.2 On all Type A buses the sun shield (visor) shall be installed according to the manufacturer's standard.

### 2.43 Traction Assisting Devices

2.43.1 Where required or used, sanders shall:

2.43.1.1 Be of hopper cartridge-valve type;

2.43.1.2 Have a metal hopper with all interior surfaces treated to prevent condensation of moisture;

2.43.1.3 Be of at least 100 pound (grit) capacity;

2.43.1.4 Have cover on the filler opening of hopper, which screws into place, thereby sealing the unit airtight;

2.43.1.5 Have discharge tubes extending to the front of each rear wheel under the fender;

2.43.1.6 Have no-clogging discharge tubes with slush-proof, non-freezing rubber nozzles;

2.43.1.7 Be operated by an electric switch with telltale pilot light mounted on the instrument panel;

2.43.1.8 Be exclusively driver controlled; and

2.43.1.9 Have a gauge to indicate that the hopper needs refilling when it reaches one-quarter full.

2.43.2 Automatic traction chains may be installed.

### 2.44 Undercoating

2.44.1 Entire underside of bus body, including floor sections, cross member and below-floor-line side panels, shall be coated with rust-proofing material for which the material manufacturer has issued a notarized certification of compliance to the bus body builder that materials meet or exceed all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520b using modified test procedures\* for following requirements:

2.44.1.1 Salt spray resistance, pass test

modified to 5% salt and 1000 hours;

2.44.1.2 Abrasion resistance, pass; and

2.44.1.3 Fire resistance, pass.

\*Test panels to be prepared in accordance with paragraph 4.6.12 of TT-C-520b with modified procedure requiring that the test be made on a 48-hour air-cured film at a thickness recommended by the material manufacturer.

2.44.2 The undercoating material shall be applied with suitable airless or conventional spray equipment to the recommended film thickness and shall show no evidence of voids in cured film.

## 2.45 Ventilation

2.45.1 Auxiliary fans (2) shall meet the following requirements.

2.45.1.1 Fans for left and right sides shall be placed in a location where they can be adjusted for maximum effectiveness and where they do not obstruct vision to any mirror, the roadway, or students outside the bus. Note: Type A buses may be equipped with one fan.

2.45.1.2 fans shall be of 6" diameter

2.45.1.3 fan blades shall be covered with a protective cage. Each fan shall be controlled by a separate switch.

2.45.2 The bus body shall be equipped with a suitably controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without having to open windows except in extremely warm weather.

2.45.3 Static-type, non-closeable exhaust ventilation shall be installed ~~in a low pressure area of the roof~~ toward the front of the bus.

2.45.4 Roof hatches designed to provide ventilation in all types of exterior conditions may be provided. They may be equipped with additional ventilating fans.

## 2.46 Wheelhousing

2.46.1 The wheelhousing opening shall allow for easy tire removal and service.

2.46.2 Wheelhousings shall be attached to the floor sheets in such a manner so as to prevent any dust, water or fumes from entering the body. Wheelhousings shall be constructed of at least 16-gauge steel.

2.46.3 The inside height of the wheelhousings above the floor line shall not exceed 12".

2.46.4 The wheelhousings shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels.

2.46.5 No part of a raised wheelhousing shall extend into the emergency door opening.

## 2.47 Windows

2.47.1 Each side window, other than emergency exits designated to comply with FMVSS 217, shall provide an unobstructed opening of at least 9" high but not more than 13" high and at least 22" wide, obtained by lowering the

window. One side window on each side of the bus may be less than 22" wide.

2.47.2 Optional tinted and/or frost-free glazing may be installed in all doors, windows, and windshields consistent with federal, state, and local regulations. Windshields shall be tinted with maximum integral tinting allowed by federal or ANSI standards with a shaded band across the top.

2.48 Windshield Washers: A windshield washer system shall be provided.

## 2.49 Windshield Wipers

2.49.1 A two-speed or variable speed windshield wiping system shall be provided. An intermittent feature may be provided.

2.49.1.1 For bus chassis and bodies produced after March 1, 2003, a two- speed or variable speed windshield wiping system shall be provided and an intermittent feature shall be provided.

2.49.2 The wipers shall be operated by one or more air or electric motors of sufficient power to operate the wipers. If one motor is used, the wipers shall work in tandem to give full sweep of windshield.

## 2.50 Wiring

2.50.1 All wiring shall conform to current SAE standards.

### 2.50.2 Circuits:

2.50.2.1 Wiring shall be arranged in circuits, as required, with each circuit protected by a fuse, ~~or~~ circuit breaker or field effect transistor. A system of color and number coding shall be used and an appropriate identifying diagram shall be provided to the end user, along with the wiring diagram provided by the chassis manufacturer. The wiring diagrams shall be specific to the bus model supplied and shall include any changes to wiring made by the body manufacturer. Chassis wiring diagrams shall also be supplied to the end user. A system of color- and number-coding shall be used on buses. The following body interconnecting circuits shall be color-coded as noted:

FUNCTION	COLOR
Left Rear Directional Lamp	Yellow
Right Rear Directional Lamp	Dark Green
Stop Lamps	Red
Back-up Lamps	Blue
Tail Lamps	Brown
Ground	White
Ignition Feed, Primary Feed	Black

The color of cables shall correspond to SAE J 1128.

2.50.2.2 Wiring shall be arranged in at least six regular circuits as follows:

2.50.2.2.1 Head, tail, stop (brake) and instrument panel lamps;

2.50.2.2.2 Clearance lamps and stepwell lamps that shall be actuated when service door is open;

2.50.2.2.3 Dome lamps;  
2.50.2.2.4 Ignition and emergency door  
signal;  
2.50.2.2.5 Turn signal lamps; and  
2.50.2.2.6 Alternately flashing signal  
lamps.

2.50.2.3 Any of the above combination circuits may be subdivided into additional independent circuits.

2.50.2.4 Heaters and defrosters shall be wired on an independent circuit.

2.50.2.5 Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

2.50.2.6 Each body circuit shall be coded by number or letter on a diagram of circuits and shall be attached to the body in a readily accessible location.

2.50.3 The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

2.50.4 All wiring shall have an amperage capacity exceeding the design load by at least 25%. All wiring splices are to be done at an accessible location and noted as splices on the wiring diagram.

2.50.5 A body wiring diagram, of a size which can be easily read shall be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel.

2.50.6 The body power wire shall be attached to a special terminal on the chassis.

2.50.7 All wires passing through metal openings shall be protected by a grommet.

2.50.8 Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors, which shall be water-resistant and corrosion-resistant.

**See 6 DE Reg. 1351 (4/1/03)**

### **3.0 Standards for Specially Equipped School Buses**

#### **3.1 General Requirements**

3.1.1 School buses designed for transporting students with special transportation needs shall comply with these standards and with FMVSSs applicable to their GVWR category.

3.1.2 Any school bus to be used for the transportation of children who are confined to a wheelchair or other mobile positioning device, or who require life-support equipment that prohibits use of the regular service entrance, shall be equipped with a power lift, unless a ramp is needed for unusual circumstances related to passenger needs.

3.1.3 All lift buses shall have flat floors.

3.1.4 Padded barriers shall be installed to

protect wheelchair positions where seating does not interface as barrier.

3.1.5 Seats shall have the minimum spacing specified under FMVSS No. 222 School Bus Passenger Seating and Crash Protection (within 24 inches from the safety reference point) per NHTSA February 1999 Guideline for the Safe Transportation of Pre-School Age Children in School Buses.

3.1.6 All seats shall have seat belts installed (39" seats shall have 3 seatbelts and 30" seats shall have 2 seatbelts).

3.2 Aisles: All school buses equipped with a power lift shall provide a minimum 30" aisle leading from any wheelchair/mobility aid position to at least one emergency exit. A wheelchair securement position shall never be located directly in front of a power lift door location. It is understood that, when provided, the lift service door is considered an emergency exit.

3.3 Glazing: Tinted glazing may be installed in all doors, windows and windshields consistent with federal, state and local regulations.

3.4 Identification: Buses with power lifts used for transporting individuals with disabilities shall display the International Symbol of Accessibility below the window line. Such emblems shall be white on blue background, shall not exceed 12 square inches in size, and shall be of a high-intensity reflectorized material meeting Federal Highway Administration (FHWA) FP-85 Standards.

3.5 Passenger Capacity Rating: In determining the passenger capacity of a school bus for purposes other than actual passenger load (e.g., vehicle classification or various billing/reimbursement models), any location in a school bus intended for securement of an occupied wheelchair/mobility aid during vehicle operations are regarded as four designated seating positions. Similarly, each lift area may be regarded as four designated seating positions.

#### **3.6 Power Lifts and Ramps**

3.6.1 The power lift (power up and gravity down with a manual backup system) shall be located on the right side of the bus body when not extended.

3.6.1.1 School buses with hydraulic brakes shall be equipped with a hydraulic brake interlock system meeting Americans with Disabilities Act (ADA) standards and ensure the lift can not operate unless the parking brake is set. The interlock shall be wired through the ignition switch.

3.6.1.2 A ramp device may be used in lieu of a mechanical lift if the ramp meets all the requirements of the Americans with Disabilities Act (ADA) as found in 36 CFR §1192.23 Vehicle ramp. (See NSTSP, Appendix D)

3.6.1.3 A ramp device which does not meet the specifications of ADA but does meet the specifications of paragraph 3.6.3 of this section may be installed and used, when, and only when, a power lift system is not adequate to load and unload students having special and unique needs. A

readily accessible ramp may be installed for emergency exit use. If stowed in the passenger compartment, the ramp must be properly secured and placed away from general passenger contact. It must not obstruct or restrict any aisle or exit while in its stowed or deployed position.

3.6.1.4 All vehicles covered by this specification shall provide a level- change mechanism or boarding device (e.g., lift or ramp) complying with paragraphs 3.6.2 or 3.6.3 of this section with sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location.

#### 3.6.2 Vehicle lift

3.6.2.1 Design loads. The design load of the lift shall be at least 600 pounds. Working parts, such as cables, pulleys, and shafts, which can be expected to wear, and upon which the lift depends for support of the load, shall have a safety factor of at least six, based on the ultimate strength of the material. Non-working parts, such as platform, frame, and attachment hardware that would not be expected to wear, shall have a safety factor of at least three, based on the ultimate strength of the material.

3.6.2.2 Lift capacity: The lifting mechanism and platform shall be capable of lifting at least 800 pounds.

3.6.2.3 Controls: Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside the bus. The controls may be interlocked with the vehicle brakes, transmission or door, or they may provide other appropriate mechanisms or systems to ensure the vehicle cannot be moved when the lift is not stowed and so the lift cannot be deployed unless the interlocks or systems are engaged. The lift shall deploy to all levels (e.g., ground, curb, and intermediate positions) normally encountered in the operating environment. Where provided, each control for deploying, lowering, raising, and stowing the lift and lowering the roll-off barrier shall be of a momentary contact type requiring continuous manual pressure by the operator and shall not allow improper lift sequencing when the lift platform is occupied. The controls shall allow reversal of the lift operation sequence, such as raising or lowering a platform that is part way down, without allowing an occupied platform to fold or retract into the stowed position.

3.6.2.3.1 Exception: Where the lift is designed to deploy with its long dimension parallel to the vehicle axis which pivots into or out of the vehicle while occupied (i.e., "rotary lift"), the requirements of this paragraph, prohibiting the lift from being stowed while occupied, shall not apply if the stowed position is within the passenger compartment and the lift is intended to be stowed while occupied.

3.6.2.4 Emergency operation: The lift shall incorporate an emergency method of deploying, lowering to ground level with a lift occupant, and raising and stowing the empty lift if the power to the lift fails. No emergency

method, manual or otherwise, shall be capable of being operated in a manner that could be hazardous to the lift occupant or to the operator when operated according to manufacturer's instructions and shall not permit the platform to be stowed or folded when occupied, unless the lift is a rotary lift and is intended to be stowed while occupied. No manual emergency operation shall require more than 2 (two) minutes to lower an occupied wheelchair to ground level.

3.6.2.5 Power or equipment failure: Platforms stowed in a vertical position, and deployed platforms when occupied, shall have provisions to prevent their deploying, falling, or folding any faster than 12" per second or their dropping of an occupant in the event of a single failure of any load-carrying component.

3.6.2.6 Platform barriers: The lift platform shall be equipped with barriers to prevent any of the wheels of a wheelchair or mobility aid from rolling off the platform during its operation. A movable barrier or inherent design feature shall prevent a wheelchair or mobility aid from rolling off the edge closest to the vehicle until the platform is in its fully raised position. Each side of the lift platform that extends beyond the vehicle in its raised position shall have a barrier with a minimum height of 1 ½". Such barriers shall not interfere with maneuvering into or out of the aisle. The loading-edge barrier (outer barrier), which functions as a loading ramp when the lift is at ground level, shall be sufficient when raised or closed, or a supplementary system shall be provided, to prevent a power wheelchair or mobility aid from riding over or defeating it. The outer barrier of the lift shall automatically raise or close, or a supplementary system shall automatically engage, and remain raised, closed, or engaged at all times that the platform is more than 3" above the roadway or sidewalk and the platform is occupied. Alternatively, a barrier or system may be raised, lowered, opened, closed, engaged, or disengaged by the lift operator, provided an interlock or inherent design feature prevents the lift from rising unless the barrier is raised or closed or the supplementary system is engaged.

3.6.2.7 Platform surface: The platform surface shall be free of any protrusions over ¼" high and shall be slip resistant. The platform shall have a minimum clear width of 32" at the platform to 30" above it, and a minimum clear length of 48" measured from 2" above the surface of the platform to 30" above the surface of the platform.

3.6.2.8 Platform gaps: Any openings between the platform surface and the raised barriers shall not exceed 5/8" in width. When the platform is at vehicle floor height with the inner barrier (if applicable) down or retracted, gaps between the forward lift platform edge and the vehicle floor shall not exceed ½ inch horizontally and 5/8 inch vertically. Platforms on semi-automatic lifts may have a hand hold not exceeding 1 ½" by 4 ½" located between the edge barriers.

3.6.2.9 Platform entrance ramp: The outboard

entrance ramp or loading-edge barrier used as a ramp and the transition plate from the inboard edge of the platform to the vehicle floor shall not exceed a slope of 1:8, measured on level ground, for a maximum rise of 3", and the transition from roadway or sidewalk to ramp may be vertical without edge treatment up to 1/4". Thresholds between 1/4" and 1/2" high shall be beveled with a slope no greater than 1:2.

3.6.2.10 Platform deflection: The lift platform (not including the entrance ramp) shall not deflect more than 3 degrees (exclusive of vehicle roll or pitch) in any direction between its unloaded position and its position when loaded with 600 pounds applied through a 26" by 26" test pallet at the centroid of the platform.

3.6.2.11 Platform movement: No part of the platform shall move at a rate exceeding 6" per second while lowering and lifting an occupant, and shall not exceed 12" per second during deploying or stowing. This requirement does not apply to the deployment or stowage cycles of lifts that are manually deployed or stowed. The maximum platform horizontal and vertical acceleration when occupied shall be 0.3 g.

3.6.2.12 Boarding direction: The lift shall permit both inboard and outboard facing of wheelchair and mobility aid users.

3.6.2.13 Use by standees: Lifts shall accommodate persons using walkers, crutches, canes or braces, or who otherwise have difficulty using steps. The platform may be marked to indicate a preferred standing position.

3.6.2.14 Handrails: Platforms on lifts shall be equipped with handrails on two sides, which move in tandem with the lift, and which shall be graspable and provide support to standees throughout the entire lift operation. Handrails shall have a usable component at least 8" long with the lowest portion a minimum 30" above the platform and the highest portion a maximum 38" above the platform. The handrails shall be capable of withstanding a force of 100 pounds concentrated at any point on the handrail without permanent deformation of the rail or its supporting structure. The handrail shall have a cross-sectional diameter between 1 1/4" and 1 1/2" or shall provide an equivalent grasping surface, and have eased edges with corner radii of not less than 1/8". Handrails shall be placed to provide a minimum 1 1/2" knuckle clearance from the nearest adjacent surface. Handrails shall not interfere with wheelchair or mobility aid maneuverability when entering or leaving the vehicle.

3.6.2.15 Circuit breaker: A resettable circuit breaker shall be installed between the power source and lift motor if electrical power is used. It shall be located as close to the power source as possible, but not within the passenger/driver compartment.

3.6.2.16 Excessive pressure: Lift design shall prevent excessive pressure that could damage the lift system when the platform is fully lowered or raised or that could

jack the vehicle.

3.6.2.17 Documentation: The following information shall be provided with each vehicle equipped with a lift:

3.6.2.17.1 A phone number where information can be obtained about installation, repair, and parts. (Detailed written instructions and a parts list shall be available upon request.)

3.6.2.17.2 Detailed instructions regarding use of the lift and readily visible when the lift door is open, including a diagram showing the proper placement and positioning of wheelchair/mobility aids on lift.

3.6.2.18 Training materials: The lift manufacturer shall make available training materials to ensure the proper use and maintenance of the lift. These may include instructional videos, classroom curriculum, system test results, or other related materials.

3.6.2.19 Identification and certification: Each lift shall be permanently and legibly marked or shall incorporate a non-removable label or tag that states that it conforms to all applicable requirements of the NSTSP. In addition, the lift manufacturer or an authorized representative, upon request of the original titled purchaser, shall provide a notarized Certificate of Conformance, either original or photocopied, which states that the lift system meets all the applicable requirements of the NSTSP.

### 3.6.3 Vehicle ramp

3.6.3.1 If a ramp is used, it shall be of sufficient strength and rigidity to support the special device, occupant, and attendant(s). It shall be equipped with a protective flange on each longitudinal side to keep special device on the ramp.

3.6.3.2 Floor of ramp shall be constructed of non-skid material.

3.6.3.3 Ramp shall be equipped with handles and be of weight and design to permit one person to put ramp in place and return it to its storage place.

3.6.3.4 Ramps used for emergency evacuation purposes may be installed in raised floor buses by manufacturers. They shall not be used as a substitute for a lift when a lift is capable of servicing the need.

### 3.7 Regular Service Entrance

3.7.1 On power-lift equipped vehicles, steps shall be the full width of the step well, excluding the thickness of doors in the open position.

3.7.2 A suitable device shall be provided at the front and rear of the stepwell to assist passengers during ingress or egress. This device shall allow for easy grasping or holding and shall have no openings or pinch points that might entangle clothing, accessories or limbs.

### 3.8 Restraining Devices

3.8.1 On power lift-equipped vehicles, seat frames may be equipped with attachments or devices to which belts, restraining harnesses or other devices may be

attached. Attachment framework or anchorage devices, if installed, shall conform to FMVSS 210.

3.8.2 Belt assemblies, if installed, shall conform to FMVSS 209.

3.8.3 Child restraint systems, which are used to facilitate the transportation of children who in other modes of transportation would be required to use a child, infant, or booster seat, shall conform to FMVSS 213.

3.9 Seating Arrangements: Flexibility in seat spacing to accommodate special devices shall be permitted to meet passenger requirements. All seating shall be forward-facing.

3.10 Securement and Restraint System for Wheelchair/ Mobility Aid and Occupant: For purposes of better understanding the various aspects and components of this section, the term securement or phrase securement system is used exclusively in reference to the device(s) which secures the wheelchair/mobility aid. The term restraint or phrase restraint system is used exclusively in reference to the device(s) used to restrain the occupant of the wheelchair/ mobility aid. The phrase securement and restraint system is used to refer to the total system which secures and restrains both the wheelchair/mobility aid and the occupant.

3.10.1 Securement and restraint system-general

3.10.1.1 The Wheelchair/Mobility Aid Securement and Occupant Restraint System shall be designed, installed and operated to accommodate passengers in a forward-facing orientation within the bus and shall comply with all applicable requirements of FMVSS 222. Gurney-type devices shall be secured parallel to the side of each bus.

3.10.1.2 The securement and restraint system, including the system track, floor plates, pockets or other anchorages shall be provided by the same manufacturer, or shall be certified to be compatible by manufacturers of all equipment/systems used.

3.10.1.3 When a wheelchair/mobility aid securement device and an occupant restraint share a common anchorage, including occupant restraint designs that attach the occupant restraint to the securement device or the wheelchair/mobility aid, the anchorage shall be capable of withstanding the loads of both the securement device and occupant restraint applied simultaneously, in accordance with FMVSS 222. (See 3.10.2 and 3.10.3 of this section.)

3.10.1.4 When a wheelchair/mobility aid securement device (webbing or strap assembly) is shared with an occupant restraint, the wheelchair/mobility aid securement device (webbing or strap assembly) shall be capable of withstanding a force twice the amount as specified in §4.4(a) of FMVSS 209. (See 3.10.2 and 3.10.3 of this section.)

3.10.1.5 The bus body floor and sidewall structures where the securement and restraint system anchorages are attached shall have equal or greater strength

than the load requirements of the system(s) being installed.

3.10.1.6 The occupant restraint system shall be designed to be attached to the bus body either directly or in combination with the wheelchair/mobility aid securement system, by a method which prohibits the transfer of weight or force from the wheelchair/mobility aid to the occupant in the event of an impact.

3.10.1.7 When an occupied wheelchair/mobility aid is secured in accordance with the manufacturer's instructions, the securement and restraint system shall limit the movement of the occupied wheelchair/mobility aid to no more than 2" in any direction under normal driving conditions.

3.10.1.8 The securement and restraint system shall incorporate an identification scheme that will allow for the easy identification of the various components and their functions. It shall consist of one of the following, or combination thereof:

3.10.1.8.1 The wheelchair/mobility aid securement (webbing or strap assemblies) and the occupant restraint belt assemblies shall be of contrasting color or color shade.

3.10.1.8.2 The wheelchair/mobility aid securement device (webbing or strap assemblies) and occupant restraint belt assemblies may be clearly marked to indicate the proper wheelchair orientation in the vehicle, and the name and location for each device or belt assembly, i.e., front, rear, lap belt, shoulder belt, etc.

3.10.1.9 All attachment or coupling devices designed to be connected or disconnected frequently shall be accessible and operable without the use of tools or other mechanical assistance.

3.10.1.10 All securement and restraint system hardware and components shall be free of sharp or jagged areas and shall be of a non-corrosive material or treated to resist corrosion in accordance with §4.3(a) of FMVSS 209.

3.10.1.11 The securement and restraint system shall be located and installed such that when an occupied wheelchair/mobility aid is secured, it does not block access to the lift door.

3.10.1.12 A device for storage of the securement and restraint system shall be provided. When the system is not in use, the storage device shall allow for clean storage of the system, shall keep the system securely contained within the passenger compartment, shall provide reasonable protection from vandalism and shall enable the system to be readily accessed for use.

3.10.1.13 The entire securement and restraint system, including the storage device, shall meet the flammability standards established in FMVSS 302.

3.10.1.14 Each securement device (webbing or strap assembly) and restraint belt assembly shall be permanently and legibly marked or shall incorporate a



non-removable label or tag that states that it conforms to all applicable FMVSS requirements, as well as, the NSTSP. In addition, the system manufacturer, or an authorized representative, upon request by the original titled purchaser, shall provide a notarized Certificate of Conformance, either original or photocopied, which states that the wheelchair/mobility aid securement and occupants' restraint system meets all of the requirements as specified in FMVSS 222 and the NSTSP.

3.10.1.15 The following information shall be provided with each vehicle equipped with a securement and restraint system:

3.10.1.15.1 A phone number where information can be obtained about installation, repair, and parts. (Detailed written instructions and a parts list shall be available upon request).

3.10.1.15.2 Detailed instructions regarding use, including a diagram showing the proper placement of the wheelchair/mobility aids and positioning of securement devices and occupant restraints, including correct belt angles.

3.10.1.16 The system manufacturer shall make available training materials to ensure the proper use and maintenance of the wheelchair/mobility aid securement and occupant restraint system. These may include instructional videos, classroom curriculum, system test results or other related materials.

3.10.2 Wheelchair/mobility aid securement system

3.10.2.1 Each location for the securement of a wheelchair/mobility aid shall consist of a minimum of four anchorage points. A minimum of two anchorage points shall be located in front of the wheelchair/mobility aid and a minimum of two anchorage points shall be located in the rear. The securement anchorages shall be attached to the floor of the vehicle and shall not interfere with passenger movement or present any hazardous condition.

3.10.2.2 Each securement system location shall have a minimum clear floor area of 30" by 48". Additional floor area may be required for some applications. Consultation between the user and the manufacturer is recommended to ensure adequate area is provided.

3.10.2.3 The securement system shall secure common wheelchair/mobility aids and shall be able to be attached easily by a person who has average dexterity and who is familiar with the system and wheelchair/mobility aid.

3.10.2.4 Capable of withstanding a minimum force of 3,000 pounds when applied as specified in FMVSS 222. When more than one securement device shares a common anchorage, the anchorage shall be capable of withstanding the force indicated above, multiplied by the number of securement devices sharing that anchorage.

3.10.2.5 Each securement device, if incorporating webbing or a strap assembly, shall comply

with the requirements for Type 1 lap belt systems, in accordance with §4.2, §4.3, and §4.4(a) of FMVSS 209.

3.10.2.6 The securement system shall secure the wheelchair/mobility aid in such a manner that the attachments or coupling hardware will not become detached when any wheelchair/mobility aid component deforms, when one or more tires deflate, and without intentional operation of a release mechanism (e.g., a spring clip on a securement hook).

3.10.2.7 Each securement device (webbing or strap assembly) shall be capable of withstanding a minimum force of 2,500 pounds when tested in accordance with FMVSS 209.

3.10.2.8 Each securement device (webbing or strap assembly) shall provide a means of adjustment, of manufacturer's design, to remove slack from the device or assembly.

### 3.10.3 Occupant Restraint System

3.10.3.1 A Type 2A lap/shoulder restraint system that meets all applicable requirements of FMVSS 209 and 210 shall provide for restraint of the occupant.

3.10.3.2 The occupant restraint system shall be made of materials which do not stain, soil or tear an occupant's clothing, and shall be resistant to water damage and fraying.

3.10.3.3 Each restraint system location shall have not less than one anchorage of manufacturer's design for the upper end of the upper torso restraint.

3.10.3.3.1 The anchorage for each occupant's upper torso restraint shall be capable of withstanding a minimum force of 1,500 pounds when applied as specified in FMVSS 222.

3.10.3.4 Each wheelchair/mobility aid location shall have not less than two floor anchorages for the occupant pelvic restraint and the connected upper torso restraint.

3.10.3.4.1 Each floor anchorage shall be capable of withstanding a minimum force of 3,000 pounds when applied as specified in FMVSS 222.

3.10.3.4.2 When more than one occupant restraint shares a common anchorage, the anchorage shall be capable of withstanding a minimum force of 3,000 pounds multiplied by the number of occupant restraints sharing the common anchorage in accordance with FMVSS 222.

3.10.3.5 Each floor and wall anchorage that secures the occupant restraint to the vehicle which is not permanently attached, shall be of a "positive latch" design and shall not allow for any accidental disconnection.

### 3.10.4 Dynamic Testing

3.10.4.1 The wheelchair/mobility aid securement and occupant restraint system shall be subjected to and successfully pass a dynamic sled test at a minimum impact speed/deceleration of 30 mph/20g's.

3.10.4.2 The dynamic test shall be performed by experienced personnel using an impact simulator with proven ability to provide reliable, accurate test results that can be replicated.

3.10.4.3 The dynamic test shall be performed in accordance with the procedures set forth in Appendix A of SAE J2249 "Test for Frontal Impact Crash Worthiness."

3.10.4.4 The wheelchair/mobility aid used for testing purposes shall be a rigid, reusable surrogate wheelchair that complies with the requirements of Appendix D of SAE J2249 "Specification for Surrogate Wheelchair."

3.10.4.5 The dynamic test shall be performed using system assemblies, components and attaching hardware that are identical to the final installation in type, configuration and positioning. The body structure at the anchorage points may be simulated for the purpose of the sled test.

3.10.4.6 When tested, the wheelchair/mobility aid securement and occupant restraint system shall pass the criteria specified in Section 6.2 of SAE J2249 "Performance Requirements of Frontal Sled Impact Test." Following is an abridged summary of the criteria. (See NSTSP, Appendix D)

3.10.4.6.1 Retain the test dummy in the test wheelchair and on the test sled with the test wheelchair in an upright position.

3.10.4.6.2 Do not show any fragmentation or complete separation of any load carrying part.

3.10.4.6.3 Do not allow the horizontal excursions of the test dummy and the test wheelchair to exceed specified limits.

3.10.4.6.4 Prevent the test wheelchair from imposing forward loads on the test dummy.

3.10.4.6.5 Allow removal of the test dummy and the test wheelchair, subsequent to the test, without the use of tools.

3.11 Special Light: Doorways in which lifts are installed shall have for use during lift operation a special light providing a minimum of 2 foot-candles of illumination measured on the floor of the bus immediately adjacent to the lift and on the lift when deployed at the vehicle floor level.

### 3.12 Special Service Entrance

3.12.1 Power lift-equipped bodies shall have a special service entrance to accommodate the power lift.

Exception: If the lift is designed to operate within the regular service entrance, and is capable of stowing such that the regular service entrance is not blocked in any way, and that persons entering or exiting the bus are not impeded in any way, a special service entrance shall not be required.

3.12.2 The special service entrance and door shall be located on the right side of the bus and shall be designed so as not to obstruct the regular service entrance.

3.12.3 The opening may extend below the floor

through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and give the same strength as other floor openings.

3.12.4 A drip molding shall be installed above the opening to effectively divert water from the entrance.

3.12.5 Door posts and headers at the entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for special service entrance.

### 3.13 Special Service Entrance Doors

3.13.1 A single door shall be used for the special service entrance. They shall have rub rails.

3.13.2 There shall be a 57" door height opening.

3.13.3 A single door shall be hinged to the forward side of the entrance unless doing so would obstruct the regular service entrance. If the door is hinged to the rearward side of the doorway, the door shall utilize a safety mechanism which will prevent the door from swinging open should the primary door latch fail.

3.13.4 All doors shall have positive fastening devices to hold doors in the "open" position.

3.13.5 All doors shall be weather sealed.

3.13.6 Door materials, panels and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering and other exterior features shall match adjacent sections of the body.

3.13.7 Each door shall have windows set in rubber which are visually similar in size and location to adjacent non-door windows. Glazing shall be of same type and tinting (if applicable) as standard fixed glass in other body locations.

3.13.8 Door(s) shall be equipped with a device that will actuate an audible or flashing signal located in the driver's compartment when door(s) is not securely closed and ignition is in "on" position.

3.13.9 A switch shall be installed so that the lifting mechanism will not operate when the lift platform door(s) is closed.

3.13.10 Special service entrance doors shall be equipped with padding at the top edge of the door opening. Padding shall be at least 3" wide and 1" thick and extend the full width of the door opening.

**See 5 DE Reg. 879 (10/1/01)**

**PROFESSIONAL STANDARDS BOARD  
EDUCATION IMPACT ANALYSIS  
PURSUANT TO 14 DEL. C. SECTION 122(D)**

**390 Delaware Licensure For Teachers Holding National Board Certification For Professional Teaching Standards Certification**

**A. Type Of Regulatory Action Requested**  
Repeal

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

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to repeal regulation 390 Delaware Licensure for Teachers Holding National Board Certification for Professional Teaching Standards Certification concerning the requirements for the issuance and renewal of a license to teachers holding certification from the National Board for Professional Teaching Standards. It is necessary to repeal this regulation as the subject is regulated by regulation 1512 Advanced License, which is in compliance with 14 Del. C. § 1213 and § 1214. Regulation 390 is, therefore, no longer necessary.

**C. Impact Criteria**

1. Will the repeal of the regulation help improve student achievement as measured against state achievement standards? The repealed regulation concerns certification for educators, not student achievement.
2. Will the repeal of the regulation help ensure that all students receive an equitable education? The repealed regulation concerns certification regulations for educators, not equitable education for students.
3. Will the repeal of the regulation help to ensure that all students' health and safety are adequately protected? The repealed regulation concerns certification of educators, not students' health and safety.
4. Will the repeal of the regulation help to ensure that all students' legal rights are respected? The repealed regulation addresses educator certification, not students' legal rights.
5. Will the repealed regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The repeal of the regulation will preserve the authority and flexibility of decision makers at the local board and school level.
6. Will the repealed regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The repeal of the regulations 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 regulation to be repealed rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the repeal of regulation? The repeal of the regulation is designed to reduce the burden placed on school districts.

10. What is the cost to the state and to the local school boards of compliance with the repeal of the regulation? There will be no cost to the state or to local school boards resulting from the repeal of the regulation.

~~**390 Delaware Licensure for Teachers Holding National Board Certification for Professional Teaching Standards Certification**~~

~~1.0 An applicant who holds a current certificate from the National Board for Professional Teaching Standards (NBPTS) shall comply with the application process requirements of 4.0 of regulation 301 General Regulations for Certification of Professional Public School Personnel from the Regulations of the Department of Education. The pre-licensure requirements contained in 301, Sections 2.0, 3.0 and 4.0 of the General Regulations for Certification of Professional Public School Personnel are waived for such an applicant. The Department of Education will determine the appropriate state certificate(s) to be issued based upon the national certifications held by the applicant.~~

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**EDUCATION IMPACT ANALYSIS  
PURSUANT TO 14 DEL. C. SECTION 122(D)**

**1512 Issuance and Renewal of Advanced License**

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

### B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to amend regulation 1512 concerning the requirements for the issuance and renewal of an advanced license. It is necessary to amend this regulation to address the notification to the Department of candidates for this license and to clarify requirements for teachers who do not renew their National Board for Professional Teaching Standards certification. This regulation shall apply to the issuance and renewal of an advanced license as established by 14 Del. C. § 1213 and § 1214.

### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement and acknowledges educators who attain certification from the National Board for Professional Teaching Standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation acknowledges educators who attain certification from the National Board for Professional Teaching Standards.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator licensure, 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 and cooperation 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 amended 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.

### 1512 Issuance and Renewal of Advanced License

**1.0 Content:** This regulation shall apply to the issuance and renewal of an advanced license for educators, pursuant to 14 Del. C. § 1213 and § 1214.

**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.

**“Educator”** means an employee paid under 14 Del. C. § 1305.

**“Exigent circumstances”** means unanticipated circumstances or circumstances beyond the educator's control, including, but not limited to, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.

**“Maintenance of proficiency”** means evidence of valid renewal of National Board for Professional Teaching Standards certification.

**“National Board Certified Teacher”** means an educator who holds National Board for Professional Teaching Standards certification.

**“National Board certification”** means certification of an educator by the National Board for Professional Teaching Standards.

**“Standards Board”** means the Professional Standards Board established pursuant to 14 Del. C., § 104.

**“State”** means State of Delaware.

3.0 In accordance with 14 Del. C § 1213, the Department shall issue, ~~upon application,~~ an advanced license to ~~an educator who receives National Board for Professional Teaching Standards certification.~~ Delaware educators upon receipt of a list of successful candidates provided annually

by the National Board for Professional Teaching Standards. An advanced license is valid for 10 years unless extended pursuant to 14 Del. C. §1216 or revoked for cause, as defined in 14 Del. C. § 1218.

~~3.1 An applicant for an advanced license shall submit the approved application form to the Department. Verification of receipt of National Board certification must be included with the application. Incomplete applications will not be processed. The Department shall issue, upon application, an advanced license to an educator licensed in another jurisdiction who provides verification of receipt of National Board certification.~~

4.0 RESERVED (for equivalent program)

5.0 In accordance with 14 Del. C. § 1214, the Department shall renew an advanced license, valid for an additional 10 years, to an educator who has maintained proficiency through the National Board for Professional Teaching Standards. Proficiency for National Board certification shall be deemed to have been maintained if the educator provides evidence of valid renewal of National Board for Professional Teaching Standards certification.

~~5.1 An applicant for renewal of an advanced license shall submit the approved application form to the Department. Verification of valid renewal of National Board for Professional Teaching Standards must be included with the application. Incomplete applications will not be processed.~~

5.2 An applicant who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board will be issued a continuing license.

6.0 The Department may extend an advanced license for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

7.0 An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the advanced license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an advanced license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an advanced license and criminal prosecution as specified in 14 Del. Code, §1219.

## **DEPARTMENT OF FINANCE**

### **OFFICE OF THE STATE LOTTERY**

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

The Lottery issues this proposed rule amendment pursuant to 29 *Del. C.* §4805(a) and 29 *Del. C.* §10115. The Lottery will accept written comments from November 1, 2003 through November 30, 2003. The Lottery will hold a public hearing on the proposed Video Lottery Regulation amendments on December 4, 2003 at 9:00 a.m. in the second floor conference room at the Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to Hearing Officer Don Johnson, Deputy Director, Delaware Lottery Office, at the same above-listed address. A summary of the proposed amendments is attached.

#### **Summary of Proposed Revisions to the Video Lottery Regulations**

I. Amend **Chapter 2.0-Definitions** as follows: i)delete the word "licensed" from the definition of "agent"/"licensed agent"/"licensed video lottery agent"; ii)delete the definition for "decal"; iii)amend the definition of "license" to include authorizations granted to key employees and video lottery operations employees; iv)add a definition for "MEAL"; v)amend the definition of "terminal"; vi)add a definition for "VLEU".

II. Amend **Chapter 3.0-Licensing of Agents; Business Plans** as follows: i)substitute "VLEU" for "Delaware State Police" in Regulations 3.5 and 3.7; ii)amend Regulation 3.7 to add the words "video lottery operations employees"; iii)amend Regulation 3.10(2) to delete the words "state law enforcement" and substitute "VLEU"; iv)amend Regulation 3.10(3) to provide that ATMs must be within twenty-five feet of any video lottery machine; v)amend Regulation 3.11 to delete the words "or renewed"; vi)delete the word "licensee" from Regulation 3.13.

III. Amend **Chapter 4.0-Licensing of Technology Providers** as follows: i)enact a new Regulation 4.2(11) to require licensed technology providers who propose to contract with the agency or a video lottery agent to provide the Lottery with a copy of the contract proposal; ii)amend Regulations 4.5, 4.6, and 4.9(3) to insert "Delaware State Police VLEU" for the words "State Police"; iii)amend Regulation 4.7 to add the phrase "video lottery operations employee"; iv)amend Regulation 4.9 to delete the word "agent" and insert the word "agency"; v)enact a Regulation 4.13(1) that may require licensed technology providers to provide updated license application information.

IV. Amend **Chapter 5.0-Technology Provider:**

**Contracts; Requirements; Duties** as follows: i)delete the words "extended" and "or games" from Regulation 5.2.1(2); ii)amend Regulation 5.2.1(3) to add a requirement that technology providers maintain software and machines in good working order; iii)add the phrase "CDs, or other equivalent technology" to Regulation 5.2.1(5); iv)delete Regulation 5.4 regarding transportation of machines; v)amend Regulation 5.11 to require licensed technology providers maintain video lottery machine equipment at a Delaware storage facility or warehouse; vi)delete Regulation 5.11(14).

V. Amend **Chapter 6.0-Agents:** Duties as follows: i)amend Regulation 6.2 to clarify that agents must obtain Lottery approval prior to accessing video lottery machines; ii)amend Regulation 6.6 to clarify that the initial placement and movement of video lottery machines requires agency approval; iii)amend Regulation 6.7 to clarify that agents must prohibit play by persons who are barred by law or self-barred from playing video lottery machines; iv)amend Regulation 6.9 to add the word "tokens"; v)amend Regulation 6.11 to provide that agents must ensure that contractors performing check cashing services exercise caution and good judgment; vi)amend Regulation 6.15 to clarify that video lottery games may only be conducted during established and approved hours; vii)amend Regulation 6.21 to delete "365 day" and inserting "one year", and adding a sentence that no person illegally on the premises or self-barred may redeem credits or prizes; viii)amend Regulation 6.22 to require that no agent may shut off power to machines without agency approval; ix)add the phrase "or the VLEU" after "Director" in Regulation 6.28; x)amend Regulation 6.31 to require the agent maintain surveillance tapes according to an agency approved schedule and require the agency approve new closed circuit televisions and surveillance systems; xi)amend Regulation 6.34 to enact new subsections (1)-(5) on the license requirements for agent to notify the agency of the hiring, transfer, and termination of employees.

VI. Amend **Chapter 7.0-Game Requirements** as follows: i)amend Regulation 7.3 to delete the words "extended", "or games", and "from time to time"; ii)amend Regulation 7.6 to provide that persons who are self-barred or illegally on the premises shall not claim a prize, and said policy must be prominently displayed; iii)amend Regulation 7.7 to add the phrase "video lottery machine credits" to the first sentence of the regulation, and add a new sentence providing that players may be required to present sufficient identification; iv)amend Regulation 7.8 to clarify that credit slips or prize claim forms must be redeemed within one year; v)amend Regulation 7.9 to renumber Regulation 7.9 as 7.9.1 and inserting "prize claim" in the first sentence, and enacting a new Regulation 7.9.2 to provide that no person may play credits belonging to another player; vi)amend Regulation 7.10 to provide the minimum requirements for credit slips

and prize claim forms; vii)delete the last sentence in Regulation 7.11; viii)enact a new Regulation 7.16-Self-Excluded Players detailing the procedure for requests for player self-exclusion, the self-exclusion list, the duties of video lottery agent, and player's removal from the self-exclusion list; ix)enact a new Regulation 7.17-Promotional Tournaments detailing the procedure for promotional tournament machines and conducting of promotional tournaments.

VII. Amend **Chapter 8.0-Accounting and Distribution Procedures** as follows: i)revise Regulation 8.2.5 to delete the phrase "Video Lottery Internal Control Procedures" and insert "Minimum Internal Control Standards".

VIII. Amend **Chapter 9.0-Maintenance of Video Lottery Machines** as follows: i)revise Regulation 9.3 to delete the phrase "written maintenance log" or "maintenance log forms" and substitute the phrase "MEAL book", and delete the phrase "indicate the mechanical meter readings" and "substitute "reason for entry".

IX. Amend **Chapter 10.0-Transportation, Registration, and Location of Video Lottery Machines** as follows: i)amend Regulation 10.1 to require approval of the Director or designee of video lottery machine shipments, and to delete the phrase "license number" from 10.1(1)(3); ii)amend Regulation 10.2 to provide that the agency will maintain the information on the installed video lottery machines, to delete the phrases "license number" and "license number of the establishment", to require a technology provider notify the agency if a video lottery machine will not be placed in use, and require agency approval of any storage facility; iii)amend Regulation 10.3 to clarify that agents may not transport video lottery machines without agency approval, and to delete the phrase "license number", and to delete subsection 10.3(6); iv)amend Regulation 10.4 to clarify that agency approval must be obtained prior to shipping video lottery machines out of State, to delete the phrase "license number" from 10.4(1), and to delete 10.4(6); v)delete Regulation 10.5; vi)amend Regulation 10.6 to provide that the agency must approve and be present for the initial installation of any new video lottery machine; vii)enact a new Regulation 10.8 to provide the procedure for submission and approval of project request forms.

X. Amend **Chapter 14.0-Employee License Procedure** as follows: reorder the chapter in its entirety to provide for an employee license procedure, enact a new Regulation 14.1.1-Rehires/Transfers, enact new Regulation 14.7.1-14.7.2 on the license requirements for employees, enact a new Regulation 14.10 on the requirement to prominently display a license, enact a new Regulation 14.11 on license renewal, enact a new Regulation 14.12 on termination/end of employment.

**2.0 Definitions**

The following words shall be accorded these meanings:

**"Agency"** - the Delaware State Lottery Office created pursuant to 29 *Del. C.* chapter 48.

**"Agent"** or **"Licensed Agent"** or **"licensed video lottery agent"** - any person licensed by the Director of the agency to conduct licensed video lottery operations.

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

**"Background Investigation"** - the security, fitness and background checks conducted of an applicant.

**"Business Plan"** - a document containing information regarding video lottery operations as may be required by the Director.

**"Credit Slip"** - the receipt issued from a video lottery machine for payment of credits by an agent.

**"Central System"** - the hardware, software and network components, which link and support all required video lottery machines and the central site.

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

**"Central Site"** - the location where the central video lottery communications control systems shall be located.

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

**"Credit"** - the opportunity provided to a player to play a video game or redeem the credit for cash.

~~**"Decal"** - the stamp which is displayed upon a video lottery machine which has been certified by the agency.~~

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

**"Elector"** - any person who, under 29 *Del. C.* §4821, decides not to become an agent.

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

**"Kind, Type And Number"** - the generic varieties of video lottery machines that may be selected for installation, and the quantities in which they may be installed.

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

or video lottery operations employee.

**"License Application"** - the process by which a person requests licensing for participation in the video lottery operations.

**"Licensee"** - any person authorized by the Director to participate in video lottery operations.

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

**"Maximum Wager Limit"** - the maximum amount that can be wagered on a single play on any single video game event outcome, as determined by the Lottery Director from time to time.

**"MEAL"** - a written machine entry authorization log stored inside the video lottery machine.

**"Net Proceeds"** - the total amount of credits or cash played less the total amount of credits or cash won by the players. "Net proceeds" does not include sums withheld from player winnings for tax liabilities incurred by the players, nor does it include amounts held in reserve for large or progressive prizes yet to be won by players. However, any interest earned on such amounts held in reserve is included in net proceeds.

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

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

**"Player"** - an individual who plays a video lottery machine.

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

**"Request For Proposals And Qualifications"** - a document developed under the direction of the Delaware State Lottery Office for the purpose of soliciting responses from potential technology providers as a means of acquiring bids for goods or services.

**"Service Technician"** - any person who performs service, maintenance and repair operations on video lottery machines.

**"Technology Provider"** - any person or entity, including video lottery manufacturers who propose to contract a video lottery agent or the agency for the provision of goods or services, including management services, related to video lottery operations, the provision of which requires a license pursuant to 29 *Del. C.* chapter 48.



**"Terminal"** - a gaming device linked to the central system as part of the video lottery operations, ~~including video lottery machines, personal computers, communication devices, or other network components.~~

**"Video Game"** - any game played on a video lottery machine, including but not limited to such as a variation of poker, blackjack, pull tabs, instant or line-up games.

**"Video Game Event Outcome"** - the result of a video game achieved by a player at a video lottery machine.

**"Video Lottery"** - any lottery conducted with a video lottery machine or linked video lottery machines with an aggregate progression prize or prizes.

**"Video Lottery Machine"** - any machine in which coins, credits or tokens are deposited in order to play any game of chance in which the results, including options available to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding (i) the use of an electronic credit system making the deposit of bills, coins, or tokens unnecessary, or (ii) the fact that the video lottery machine has employed dual function terminal technology.

**"Video Lottery Operations Employee"** - an individual employee, person or agent of an applicant or licensee who is responsible for the security of video lottery machines, or responsible for handling video lottery machine proceeds, or is otherwise employed in a position that allows direct access to the internal workings of video lottery machines.

**"VLEU"**- the Video Lottery Enforcement Unit of the Delaware State Police.

### 3.0 Licensing of Agents; Business Plans

3.1. Any applicant desiring to obtain a license to act as an agent shall apply to the agency on forms specified by the Director from time to time. Application forms shall require the applicant to provide the following, without limitation:

(1) The applicant's legal name, form of entity (e.g., general or limited partnership, corporation), the names, addresses, employer identification or social security numbers (if applicable) and dates of birth (if applicable) of its directors, officers, partners, owners, and key employees and video lottery operations employees.

(2) A description of the applicant's organizational structure.

(3) With respect to any persons named in subparagraph (1) that are not individuals, the names, addresses, social security numbers, and birth dates of all individuals who are directors, officers, owners, partners, key employees, or video lottery operations employees of any such persons.

(4) The percentages of shares of stock, if any, held by each person named in subparagraph (1) or subparagraph (3) above. The Director may, at his or her discretion, cause periodic reexamination of the percentage of shares held by persons subject to such disclosures under these regulations.

(5) The names of all persons principally involved in the original creation of the applicant's enterprise.

(6) The names, if any, and addresses, social security numbers, and dates of birth of any person who is or was a director, officer, owner, partner, key employee, or video lottery operations employee of the applicant who has been charged with or convicted of a felony, a crime involving gambling, or a crime of moral turpitude.

(7) Certified copies of the applicant's charter, articles of incorporation, partnership agreement, and other documents which constitute or explain the legal organization of the applicant.

(8) The name, address, social security or employer identification number and date of birth of the record owner of the premises or the property upon which the premises are located or, if the applicant is not the sole owner of the premises or property, the information required by subparagraph (1) above with respect to all persons having an ownership interest in the premises or property and copies of all agreements pursuant to which the applicant occupies the premises or property, as well as copies of all documents relating to the premises or property including, without limitation, all mortgages, deeds of trust, bonds, debentures, pledges of corporate stock and voting trust agreements, but excluding easements; utility agreements; subdivision and plot plans; and, for the period prior to three years before the filing of the application, deeds in the chain of title and satisfied mortgages.

(9) The information required by subparagraph (1) above as to any operator of any business conducted by such applicant and any other contractor (which is not a publicly traded entity) utilized by such applicant which has received compensation from such applicant in excess of \$50,000 in any of the three (3) preceding fiscal years together with a copy of all agreements between such applicant and such operator or contractor and a statement of all compensation paid to such operator or contractor during said three-year period.

(10) Copies of the applicant's audited financial statements for the preceding three (3) fiscal years and a copy of internally prepared financial statements for the current fiscal year as at the close of the most recent fiscal quarter.

(11) Copies of the applicant's State and Federal tax returns for a period of three (3) fiscal years.

(12) Copies of the declaration pages of all insurance policies insuring the applicant or the premises.

(13) The information required by subparagraph (1) above as to the ten (10) largest unsecured creditors which are not publicly traded entities or accounting firms or legal firms



of the applicant who are owed more than \$25,000 by the applicant for a period in excess of sixty days.

(14) Disclosure regarding the applicant or any other persons identified in subparagraphs (1) or (3) who were rejected for any gambling or gaming license or permit in any other jurisdiction.

(15) Any and all other information as the Director may require to determine the competence, honesty and integrity of the applicant as required by Title 29 of the Delaware Code.

3.2. The application, as well as other documents submitted to the agency by or on behalf of the applicant for purposes of determining the qualifications of the applicant or agent, shall be sworn to or affirmed before a notary public. If any form or document is signed by an attorney for the applicant, the signature shall certify that the attorney has read the forms or documents and that, to the best of his or her knowledge, information and belief, based on diligent inquiry, the contents of the form or documents so supplied are true.

3.3. Upon request of the agency, the applicant shall supplement the information provided in the application form as deemed necessary by the agency. The applicant shall furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms, tax returns, cancelled checks or other materials required or requested by the agency for purposes of determining the qualifications of the applicant or agent.

3.4. To the extent, if any, that the information supplied in the application or otherwise supplied by the applicant or on the applicant's behalf, becomes inaccurate or incomplete, the applicant shall so notify the agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to correct the inaccuracy or incompleteness of the information.

3.5. The applicant shall cooperate fully with the agency and the ~~Delaware State Police~~ VLEU with respect to its background investigation of the applicant. Among other things, the applicant, upon request, shall make available any and all of its books or records for inspection by the agency or the ~~Delaware State Police~~ VLEU.

3.6. The applicant shall submit with the application a proposed business plan for the conduct of video lottery operations. Such plan shall be submitted in conformity with a separate form specified and supplied by the agency. The plan shall include, without limitation, the following items: a floor plan of the area to be used for video lottery operations; an advertising/marketing plan; the proposed placement of video lottery machines on the premises; the kind, type and number of video lottery machines proposed, provided however that the name of the manufacturer(s) of such machines shall not be included; money control procedures; a security plan; a staffing plan for video lottery operations; accounting and tax compliance procedures; and the method to be utilized for prize payments. The plan shall provide the

details of any progressive jackpot games and shall provide for an escrow account or escrow accounts to be established and maintained in accordance with instructions provided by the agency for the purpose of holding in reserve large or progressive prizes yet to be won by players. The plan shall propose the use of video lottery machines such that a reasonable number of competitor manufacturers would be able to supply such machines. The specification of the kind, type and number of the video lottery machines in the business plans shall make clear whether or not the devices are video versus spinning reel; coin-in/coin-out versus coin-in/credit-out, etc. The plan shall also propose the generic games to be played on the devices (e.g., video poker, keno, bingo, blackjack, line-up games). The plan shall provide for payment for payout from video lottery machines such that the payouts shall not be less than 87% on an annual average basis, and shall otherwise comport with the requirements contained at 29 *Del. C.* §4805(a)(15).

3.7. As soon as the agency has determined that the application is complete, it shall forward same to the ~~Delaware State Police~~ VLEU which shall, as soon as practicable, undertake and complete the background investigation of the applicant, its officers, directors, partners, owners and key employees, video lottery operations employees and report its findings to the agency.

3.8. The Director shall weigh the following factors in his or her evaluation of the application:

(1) Whether the applicant satisfies the requisites of 29 *Del. C.* §4805(b)(13) as that section pertains to the holding of either a horse racing meet or a harness racing meet.

(2) The criminal background, if any, of the applicant, or any of its officers, directors, partners, owners, key employees, and video lottery operations employees. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within 10 years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.

(3) The extent to which, if any, the applicant would be subject to the control or influence of its activities by any person having a financial interest pertaining to the applicant, including a mortgage or other lien against property of the applicant or, who in the opinion of the agency, might otherwise influence its activities. In such case the Director shall consider the character, honesty and integrity of whoever has the ability to control or influence the activities of the applicant.

(4) The degree to which the applicant has demonstrated its ability to finance the proposed video lottery operations, as well as the source of such financing.

(5) The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.

(6) Whether the applicant holds a license as a

technology provider. An agent license shall not be granted to an applicant who is an owner of a technology provider.

(7) Whether the applicant has demonstrated the business ability and experience necessary to satisfactorily conduct the video lottery operations.

(8) The extent to which the applicant has cooperated with the agency and the State Police in connection with the background investigation.

(9) Whether the person, or any of its officers, directors, partners, owners, key employees, or video lottery operations employees are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the lottery.

(10) With respect to any past conduct which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license.

(11) The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the federal, state or local governments.

(12) The adequacy of the applicant's business plan, as it reflects on the applicant's competency or capability to conduct video lottery operations in conformance with the requirements of these regulations.

(13) Any other information before the Director, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competency, financial capability, honesty, integrity, reputation, habits, or associations.

3.9. A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 3.8, that the applicant would be a fit agent and not pose a threat to the public interest, the reputation of the lottery, or the effective control of the lottery.

3.10. The approval of any license or the renewal of a license to an agent is subject to the following conditions:

(1) Operation pursuant to a license issued under these regulations shall signify agreement by the agent to abide by all provisions of the regulations, including those contained in this section.

(2) The agent shall at all times make its premises available for inspection by authorized representatives of the agency or the VLEU state law enforcement personnel, on a 24-hour unannounced basis. The VLEU Law enforcement personnel shall be authorized entry to the premises and access to any video lottery machines or records of the agent without acquiring a warrant.

(3) The agent shall not permit any automated teller machines (ATMs) to be present within twenty-five (25) feet

of any video lottery machine on the premises anywhere on the premises or within 50 feet of the boundary of the premises.

(4) The agent and any entity owned by the agent in which the agent has a controlling ownership interest shall consent in writing to the examination of all accounts, bank accounts, and records under the control of the agent or the owned entity; and, upon request of the agency, shall authorize all third parties in possession or control of the said documents to allow the agency to examine such documents.

(5) To the extent permitted by law, an agent accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication of material or information supplied to the agency in connection with the application for the agent's operations.

(6) An agent shall immediately notify the agency of any proposed or effective change regarding the makeup of the owners, directors, officers, partners, or key employees of the agent.

(7) The agent shall certify by a sworn notarized statement that it has not entered and does not intend to enter into any joint venture, partnership or teaming agreement in order to fulfill its obligations in connection with the video lottery operations; that it is not acting as a distributor of products manufactured by another entity; and that it has not entered and does not intend to enter into any agreement whereunder the proceeds generated by any agreement between the agent and the agency would be shared with one or more other persons. Provided, however, that an agent may enter into a management agreement with a third-party, who is not licensed under these regulations as a technology provider, for the operation of the lottery on the agent's premises provided that: (1) the proposed management agreement is provided to and approved by the agency, and (2) the third-party complies with all these regulations which apply to agents, including without limitation the licensure requirements.

3.11. Any license granted ~~or renewed~~ may not be transferred, assigned or pledged as collateral. A change of ownership which occurs after the Director has issued a license shall automatically terminate the license ninety (90) days thereafter. Provided, however, that the Director may issue a license to the new owner if satisfied, after the submission of an application that the new owner has met the requirements contained in 29 *Del. C.* §4806(a)(1-4), as well as the fitness and background standards contained in such law and these regulations. In the case of a death of an owner, the estate of such owner shall be deemed to have met the requirements of §4806(a)(1-4) for a period of one year following such death without the need for submitting an application, and, thereafter, need only supply such additional information as the Director may request. In the case of a shift in equity positions of owners, or a transfer among

owners, notice shall be given the Director, but the license shall not terminate so long as no new owner is created or results. An agent may also seek approval of a proposed change in ownership prior to the actual change.

3.12. (Deleted).

3.13. If the Director proposes to deny a license application and the agency is subject to the requirements contained in subchapter IV of 29 *Del. C.* chapter 101, the agency shall first give written notice to the applicant ~~or licensee~~ of the intended action, the reasons therefore, and the right to a hearing as provided for in 29 *Del. C.* chapter 101.

3.14. At the time of issuance of the license or thereafter, in the Director's sole discretion, the Director may approve the proposed business plan of the applicant or the agent. If the Director determines that an amendment or amendments to the plan are necessary to increase revenues from the video lottery, protect the public welfare or ensure the security of the video lottery, he or she may amend the plan accordingly. An agent may request an amendment to an approved business plan, which proposed amendment shall be subject to the approval of the Director.

3.15. To the extent provided by law, any information obtained pursuant to this Section 3 shall be held in confidence and not subject to the Delaware Freedom of Information Act, 29 *Del. C.* chapter 100.

#### **4.0 Licensing of Technology Providers**

4.1. As deemed necessary, the Director shall give public notice of the agency's intent to select technology providers of video lottery machines through a request for proposal and qualifications by advertising in a newspaper of general circulation in Delaware and in a prominent trade publication requesting expressions of interest to serve as a technology provider. The licensing of a technology provider shall not serve as the basis of requiring the Director to select the technology provider under the procurement procedures set forth in chapter 69 of title 29 of the Delaware Code.

4.2. Each person desiring to obtain a license from the agency as a technology provider shall submit a license application on a form specified and supplied by the agency. The license application shall, among other things:

(1) Give notice that the applicant will ~~may~~ be required to submit to a background investigation, the cost of which must be borne by the applicant.

(2) Require the applicant to supply specified information and documents related to the applicant's fitness and the background of its owners, partners, directors, officers, key employees, and video lottery operations employees, including but not limited to copies of financial statements, tax returns, insurance policies, and lists of creditors.

(3) Require the applicant to disclose the identity of all customers to whom it has furnished video games or other gambling equipment or technology within the three years

immediately preceding the date of the application.

(4) Require the applicant to list all persons with whom the applicant has a communications protocol agreement.

(5) Require the applicant to disclose whether the applicant, or any of its present or former officers, directors, owners, partners, key employees, or video lottery operations employees, is or has been the subject of an investigation in another jurisdiction, the nature of the investigation, and the outcome, if any, of such investigation.

(6) Provide a description of the means by which the applicant exercises security and financial control over the activities of service technicians in order to insure the integrity of video lottery operations.

(7) Require the applicant to disclose its legal name, form or entity (e.g., general or limited partnership, corporation), the names, addresses, social security numbers and dates of birth of its directors, officers, partners, owners, key employees and video lottery operations employees.

(8) Require the applicant to disclose the names and addresses of individuals who have been authorized by the applicant to engage in dealings with the agency for purposes of representing the interests of the applicant.

(9) Require the applicant to enclose copies of its audited financial statements for the preceding three (3) fiscal years and a copy of internally prepared financial statements for the current fiscal year or at the close of the most recent fiscal quarter.

(10) Require the applicant to provide a description of its engineering and software development resources, technical support capabilities and ability to manufacture and deliver the video lottery machines.

(11) Require persons who are proposing to contract with the agency or a video lottery agent to provide a copy of their contract proposal.

4.3. Upon request, the applicant shall supplement the information provided in the application form as deemed necessary by the Director.

4.4. To the extent, if any, that the information in the application or the supplemental information provided by the applicant becomes inaccurate or incomplete, the applicant shall so notify the agency in writing as soon as it is aware that the information is inaccurate or incomplete, and shall at that time supply the information necessary to make the application or supplementary information accurate and complete.

4.5. The applicant shall cooperate fully with the agency and the Delaware State Police VLEU in any background investigation of the applicant.

4.6. The applicant, upon request of the agency or the Delaware State Police VLEU, shall make any and all of its books and records available for inspection by the agency or the Delaware State Police VLEU. Provided, however, that any information obtained pursuant to this subsection shall, to

the extent provided by law, be held in confidence and not subject to the Delaware Freedom of Information Act.

4.7. As soon as the agency has determined that the application form is complete and that the applicant is otherwise qualified, it shall forward the same to the Delaware State Police VLEU which shall conduct as soon as practicable a background investigation of the applicant, its officers, partners, owners, directors, ~~and~~ key employees, and video lottery operations employees, and report its findings to the agency.

4.8. Notwithstanding any other provision contained herein to the contrary, the Director may determine, upon review of the licensing standards of another state, that such standards are so comprehensive, thorough, and provide similar adequate safeguards, that the license of an applicant in such other state precludes the necessity of a full application and background check. In such case, the Director shall require a limited application and background check, as determined by the Director in his sole discretion, as are necessary to assure that the applicant is fit for the license and does not pose a threat to the public interest of the State or to the reputation of or effective regulation of the video lottery.

4.9. In evaluating applications, the Director shall consider:

(1) Whether the applicant has demonstrated an ability to interface its technical capabilities with the selected central system and that it has the resources, experience and ability necessary to manufacture, deliver, install and service such number of video lottery machines as it may be required to supply under a contract with ~~an agent~~ the agency.

(2) Any past conduct of the applicant, or any of its present or former officers, directors, partners, owners, key employees, or video lottery operations employees which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.

(3) Any findings provided by the Delaware State Police VLEU following its background investigation.

(4) The extent, if any, to which the applicant has failed to comply with any applicable tax laws of the Federal, State or local governments.

(5) The association of the applicant, or any of its officers, directors, owners, partners, key employees, or video lottery operations employees with persons of known criminal background or persons of disreputable character, that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of video lottery

operations.

(6) Any other information supplied in connection with the application, including substantially similar background investigations performed by other agencies or jurisdictions, which relates to the applicant's competence, financial capability, honesty, integrity, reputation, habits, or associations.

(7) The degree to which the applicant has supplied accurate and complete information pursuant to the requirements of these regulations.

4.10. A license shall not be issued to a technology provider if the applicant technology provider has any direct or indirect financial interest in an agent licensee or the real or personal property of an agent licensee.

4.11. A license shall be issued to the applicant if the Director is satisfied, upon consideration of the factors specified in subsection 4.9, that the applicant would be a fit technology provider and not pose a threat to the public interest, the reputation of the lottery or to the effective control of the lottery.

4.12. An applicant for a technology provider's license shall, prior to issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount established by the agency. Any such bond shall be issued by a surety company authorized to transact business in Delaware and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

4.13 The agency, with the assistance of the VLEU, may require licensed technology providers to annually update information submitted with their initial license application.

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

5.1. The Director shall, pursuant to the procedures set forth in chapter 69 of title 29 of the Delaware Code, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such numbers and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the lottery, or convenience of the players, and in accordance with the agents' business plans as approved and amended by the Director. No more than 1,000 video lottery machines shall be located within the confines of an agent's premises unless the Director approves up to an additional 1,500 machines or other number approved by the Director as permitted by law.

5.2.1 All contracts with technology providers who are video lottery machine manufacturers shall include without limitation, provisions to the following effect:

(1) The technology provider shall furnish a person to work with the agency and its consultants to provide

assistance as needed in establishing, planning and executing acceptance tests on the video lottery machines provided by such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when video lottery machines are initially placed at the agent's site;

(2) The technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of one-hundred dollars (\$100) shall be permitted for wagering on a single play of any video game except that the Director pursuant to Regulation 7.3 may authorize ~~extended plays or games~~ on a video lottery machine in excess of the \$100 maximum bet limit;

(3) For testing, examination and analysis purposes, the technology provider shall furnish working models of video lottery machines, associated equipment, and documentation at locations designated by the Director. The technology provider shall maintain the current software and video lottery machines in good working order acceptable to the agency. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the video lottery machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the video lottery machine at the technology provider's expense;

(4) Technology providers shall submit all hardware, software, and test equipment necessary for testing of their video lottery machines, and shall provide the Director with keys and locks subject to the Director's specifications for each approved video lottery machine;

(5) The EPROMs, CDs, or other equivalent technology of each video lottery machine shall be certified to be in compliance with published specifications;

(6) No video lottery machine shall be put into use prior to certification of its model by the Director.

5.2.2 All contracts with technology providers shall include without limitation, provisions to the following effect;

(1) Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director;

(2) Technology providers shall agree to modify their hardware and software as necessary to accommodate video game changes directed by the agency from time to time;

(3) Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts and issued by such companies as the Director shall approve; and

(4) Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.

5.3 Each video lottery machine certified by the Director shall bear a unique serial number decal and shall conform to the exact specifications of the video lottery machine model tested and certified by the Director.

5.4 ~~(Deleted.) No video lottery machine may be transported out of the State until the decal has been removed and no decal shall be removed from a video lottery machine without prior agency approval.~~

5.5 Technology providers shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.

5.6 A technology provider shall not distribute a video lottery machine for placement in the state unless the video lottery machine has been approved by the agency. Only licensed technology providers may apply for approval of a video lottery machine or associated equipment. The technology provider shall submit two copies of video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code, and any other information requested by the agency for purposes of analyzing and testing the video lottery machine or associated equipment.

5.7. The agency may require that two working models of a video lottery machine be transported to the location designated by the agency for testing, examination, and analysis. The technology provider shall pay all costs of testing, examination, analysis and transportation of such video lottery machine models, which may include the entire dismantling of the video lottery machine and tests which may result in damage or destruction to one or more electronic components of such video lottery machine model. The agency may require that the technology provider provide specialized equipment or the services of an independent technical expert in testing the terminal.

5.8. After each test has been completed, the agency shall provide the video lottery machine technology provider with a report that contains findings, conclusions, and pass/fail results. Prior to approving a particular video lottery machine

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

5.9. The technology provider is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its video lottery machines and associated equipment. The technology provider may not change the assembly or operational functions of any of its video lottery machines approved for placement in Delaware unless a "request for modification to an existing video lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of video lottery machines after modifications have been made.

5.10. Each video lottery machine approved for placement in a licensed agent's place of business shall conform to the exact specifications of the video lottery machine prototype tested and approved by the agency. Any video lottery machine which does not so conform shall be disconnected from the Delaware video lottery system until compliance has been achieved. Each video lottery machine shall at all times operate and be placed in accordance with the provisions of these regulations.

5.11. The following duties are required of all licensed technology providers, without limitation:

(1) Manufacture terminals and associated equipment for placement in Delaware in accordance with the specifications of the agency.

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed Delaware agents.

(3) Maintain and provide an inventory of associated equipment to assure the timely repair and continued, approved operation and play of licensed video lottery machines acquired under the contract for placement in Delaware, provided further that said equipment will be maintained at a Delaware storage facility or warehouse.

(4) Provide an appropriate number of service technicians with the appropriate technical knowledge and training to provide for the service and repair of its licensed video lottery machines and associated equipment so as to assure the continued, approved operation and play of those licensed video lottery machines acquired under contract for placement in Delaware.

(5) Obtain any certification of compliance required under the applicable provisions of rules adopted by the Federal Communications Commission.

(6) Promptly report to the agency any violation or

any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.

(7) Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the video lottery.

(8) Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in or the operation of a video lottery game.

(9) Defend and pay for the defense of all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in video lottery operations.

(10) Maintain all required records.

(11) Lease or sell only those licensed video lottery machines, validation units and associated equipment approved under these regulations.

(12) It shall be the continuing duty of the technology provider licensee to provide the Director with an updated list of the names and addresses of all its employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the repair or maintenance of the video lottery machines, or (2) positions that provide direct access to the video lottery machines. It shall be the continuing duty of the technology provider licensee to provide for the bonding of each of these individuals to ensure against financial loss resulting from wrongful acts on their parts.

(13) It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, video lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.

(14) ~~(Deleted). Provide the agents with the technical ability to distribute the proceeds of the video lottery in accordance with the requirements of these regulations and 29 Del. C. chapter 48.~~

(15) Supervise its employees and their activities to ensure compliance with these rules.

(16) Promptly report to the Lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

(17) Comply with such other requirements as shall be specified by the Director.

**6.0 Agents: Duties**

The following duties are required of all licensed agents:

6.1. Provide a secure location for the placement, operation, and play of all licensed video lottery machines located on the licensed agent's premises.

6.2. Permit no person to tamper with or interfere with the approved operation of any licensed video lottery machine without prior written approval of the agency and the VLEU, unless otherwise directed by the Lottery.

6.3. Assure that telephone lines from the agency's central computer to the licensed video lottery machines located on the licensed agent's premises are at all times connected, and prevent any person from tampering or interfering with the continuous operation of the lines.

6.4. With respect to video lottery operations, contract only with officers, directors, owners, partners, key employees, and suppliers of video lottery equipment and paraphernalia authorized by the agency to participate in video lottery operations within the State of Delaware.

6.5. Ensure that licensed video lottery machines are placed and remain as placed unless the agency authorizes their movement within the sight and control of the agent or a designated employee, through physical presence and by the use of surveillance cameras at all times.

6.6. Ensure that licensed video lottery machines are placed and remain as placed in the specific area of the premises as approved by the lottery. ~~Any relocation of a licensed video lottery machine or machines requires prior approval from the agency.~~ The initial placement and any subsequent relocation of any video lottery machine requires the prior written approval of the agency and the VLEU.

6.7. Monitor video lottery machine play and prevent access to or play by persons who are under the age of twenty-one (21) years or who are intoxicated, or whom the agent has reason to believe are intoxicated, and prohibit play by persons who are barred by law or self-banned from playing any video lottery machine.

6.8. Commit no violations of the laws of this State concerning the sale, dispensing, and consumption on the premises of alcoholic beverages that result in suspension or revocation of an alcoholic beverage license.

6.9. Maintain at all times sufficient tokens, change and cash in denominations accepted by the video machines located in the premises.

6.10. Exercise caution and good judgment in extending credit for video lottery machine play, and comply with all applicable federal and state laws.

6.11. Exercise caution and good judgment in providing cash for checks presented for video lottery machine play. The agent shall also ensure that any contractor who performs check cashing services for the agent also exercises caution and good judgment in providing cash for checks under this Regulation.

6.12. Report promptly all video lottery machine malfunctions to the appropriate technology provider and agency and notify the agency of any technology provider failure to provide service and repair of such terminals and associated equipment.

6.13. Conduct agency approved advertising and promotional activities related to video lottery operations.

6.14. Install, post and display prominently at locations within or about the premises signs, redemption information and other promotional material as may be required by the agency.

6.15. Conduct video lottery operations ~~Permit video lottery games to be played~~ only during those hours established and approved by the Director or designee.

6.16. Assume responsibility for the proper and timely payment to players of credits or tokens awarded.

6.17. Prohibit the possession, use or control of gambling paraphernalia on the premises not directly related to the lottery or horse racing or harness horse racing and prohibit illegal gambling on the premises.

6.18. (Deleted)

6.19. Attend all meetings, seminars, and training sessions required by the agency.

6.20. Supervise its employees and their activities to ensure compliance with these rules.

6.21. Assume responsibility for the proper and immediate redemption of all credits; however, no credits may be redeemed by a person under twenty-one (21) years of age, and no credits submitted for redemption beyond the 365 day one year time limit will be redeemed. No credits or prizes may be redeemed by any person illegally on the agent's premises or persons who have requested that they be self-banned from the agent's premises.

6.22. Provide dedicated power and a proper video lottery machine environment in accordance with the specifications of the agency. The agent shall permit no person to completely shut off power to an operational video lottery machine without the prior approval of the agency.

6.23. Furnish to the Director complete information pertaining to any change in ownership of the agent or the owner of the premises or beneficial owner (other than a change in ownership by an owner of less than twenty (20) percent of the issued and outstanding capital stock of the agent or premises owner if such stock is publicly traded).

6.24. Promptly report to the lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

6.25. Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.

6.26. Hold the Director, the State of Delaware, and employees thereof harmless from and defend and pay for

the defense of any and all claims which may be asserted against the Director, the State or the employees thereof, arising from the participation in the video lottery system, except claims arising from the negligence or willful misconduct of the Director, the State or the employees thereof.

6.27. Maintain all required records.

6.28. Provide at the request of the Director or the VLEU immediate access to the premises and to all records related to any aspect of these regulations, including without limitation the duties imposed by these regulations.

6.29. Keep current on all payments, tax obligations and other obligations to the agency and other licensees with whom video lottery business is conducted. The agent shall pay the players and transfer the net proceeds to the State lottery fund in conformity with the requirements set forth in these regulations and 29 Del. C. chapter 48.

6.30. Ensure that there are no automated teller machines (ATMs) within twenty-five (25) feet of any video lottery machine on the premises.

6.31. Locate all video lottery machines within the viewing range of closed circuit television cameras at all times, including both normal business hours and those periods when video lottery operations are closed. The presence of these cameras is to ensure the integrity of the lottery, the video lottery operations, and the safety of the patrons. Surveillance tapes will be maintained by the agent according to a schedule established by the Director and the VLEU. The installation of any new closed circuit television or repositioning of any CCTV cameras or new surveillance system must be reviewed and approved by the Director and the VLEU before placed in to operation.

6.32. Comply with such other requirements as shall be specified by the Director. The agent shall submit to the Director a description of its system of internal procedures and administrative and accounting controls which shall conform to the rules and regulations of the agency and be otherwise satisfactory to the Director in his or her sole discretion.

6.33. Provide, on a continuing basis, to the Director the names and addresses of all employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the security of the video lottery machines, (2) the handling or transporting of proceeds from the video lottery machines, or (3) positions that provide direct access to video lottery machines. It shall be the continuing duty of the video lottery agent licensee to provide for the bonding of any of the above-mentioned employees to ensure against financial loss resulting from wrongful acts on their parts. Likewise, the agent shall post a bond or irrevocable letter of credit in a manner and in an amount established by the agency. Any such bonds shall be issued by a surety company authorized to transact business in

Delaware and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

6.34. (1) Notify the Director on a continuing basis of any change in officers, partners, directors, key employees, video lottery operations employees, and owners. The video lottery agent shall provide this information to the Lottery and the VLEU on a weekly basis. Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the video lottery agent's license, provided that an agent is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation. The agent must supply the VLEU with the completed ~~Employee Information Form ("EIF")~~ License Application Form ("LAF") and fingerprint cards for each employee before the employee begins employment. Agent employees required to be licensed by the Delaware Lottery laws, 29 Del. C. chapter 48, and these Regulations must have been successfully completed and been issued a valid license under section 14.0 of these Regulations prior to commencement of employment.

(2) The agent must notify the VLEU of the transfer of any employee within the agent's organization on a weekly basis. The Lottery and the VLEU will determine if a new or updated LAF must be submitted for the transferred employee.

(3) The agent must notify the Lottery and the VLEU of the termination of any employee and the reason for the termination on a weekly basis.

(4) The agent must submit to the Lottery and the VLEU on a weekly basis the names of all new employees who will work on the video lottery premises. All employees who do not meet the definition of key employees or video lottery operations employees must file a completed LAF with the VLEU within seven (7) days of commencement of employment.

(5) The agent must obtain advance approval before any temporary employee, consultant, or contractor will be permitted access to secure locations. Any such temporary employee, consultant, or contractor must submit a Request for Temporary Work Approval Form to the VLEU at least forty-eight (48) hours prior to the date of assignment. The Lottery will consider secure areas to include, but not be limited to, access to the inside of a video lottery machine, surveillance rooms, cash vaults, and cash booths.

6.35. As soon as it is known to the agent, file with the Director a copy of any current or proposed agreement and disclose to the Director any other relationship between the agent, its parents, subsidiaries, related entities, partners, owners, directors, officers or key employees for the sale, lease, maintenance, repair or other assignment of the agent's premises, or any other relationship of any vendor,



manufacturer or other person who stands to benefit financially from the possession or use of video lottery machines by such agent. The agent shall file with the Director for approval every contract in excess of \$1,000 which pertains to the agent's video lottery operations. The agent shall notify the Director of any contract with an entity that is subject to the license requirements for vendors or technology providers under 29 *Del. C.* §4805(b)(17) and Chapter 4 of these Regulations.

6.36. Comply with the applicable requirements contained in Title 3, §10048 and §10148 and Title 28, §427 of the Delaware Code. The agent shall file an annual report, due January 15th of each year, which provides sufficient information for the Director to determine whether the agent has satisfied the requirements of this provision.

6.37. Comply with the provisions of the business plans as approved and amended.

6.38. Comply on a continuing basis with the requirements for obtaining or retaining a license under the provisions of these regulations and 29 *Del. C.* chapter 48.

## **7.0 Game Requirements**

7.1. The Director shall authorize such video games to be played on the agent's premises in conformity with approved business plans, as amended.

7.2. Video games shall be based on bills, coins, tokens or credits, worth between \$.01 and \$100.00 each, in conformity with approved business plans as amended.

7.3. The Director, in his or her discretion, may authorize ~~extended plays or games~~ on a video lottery machine ~~from time to time~~ to which the maximum wager limit of \$100.00 shall not apply.

7.4. Each video game shall display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered.

7.5. Each video game shall provide a method for players to view payout tables.

7.6. Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet. In the event a person illegally on the premises or a self-barred person attempts to claim a prize, the video lottery agent will also treat the play of the game as void and the person shall not be entitled to any prize won or a refund of amounts bet. This policy prohibiting persons underage, persons illegally entering the premises, and persons self-barred from winning prizes shall be prominently displayed on the premises of the video lottery agent.

7.7. Agents shall redeem credit slips, tokens, or video lottery machine credits presented by a player in accordance with procedures proposed by the agent and approved by the Director prior to the opening of the premises for video game

play. Such procedures shall be modified at the direction of the Director in his or her sole discretion at any time. Nothing in this subsection (7.7) shall prohibit the use of coin-in/coin-out machines. Players claiming prizes may be required to present sufficient identification as required by the agency.

7.8. Credit slips and prize claim forms may be redeemed by a player at the designated place on the premises where the video game issuing the credit slip or prize claim form is located during the one year hundred and eighty (180) day redeeming period commencing on the date the credit slip or prize claim form was issued.

7.9.1 No credit slip or prize claim shall be redeemed more than one (1) year from the date of issuance. No jackpot from a coin-in/coin-out machine shall be redeemed more than one year from the date on which the jackpot occurred. Funds reserved for the payment of a credit slip or expired unclaimed jackpot shall be treated as net proceeds if unredeemed one year from the date of issuance of the credit slip or occurrence of the winning jackpot. The one-year redemption policy in this regulation shall be prominently displayed on the premises of the video lottery agent.

7.9.2 No person may play or attempt to play credits on a video lottery machine that were won by another player on that machine and inadvertently or accidentally left on the machine by the original player. Any such play of another person's credits shall be treated as void and the person who plays another player's credits that were accidentally left on the machine shall not be entitled to any prize won or a refund. The tracks shall prominently post this policy on the premises. Any unclaimed credits left on a video lottery machine shall revert to the Agency after a one year period.

7.10. No payment for ~~credits~~ a credit slip or a prize claim form for a prize awarded on a video lottery machine may be made unless the credit slip or prize claim form meets the following requirements:

- (1) It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;
- (2) It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;
- (3) It is not counterfeit in whole or in part; and
- (4) It is presented by a person authorized to play.

7.11. Method of Payment - The management of each licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section. ~~No credits may be paid in tokens, chips or merchandise.~~

7.12. Restrictions on Payment - Agents may only redeem credit slips for credits awarded on video lottery machines located on its premises. The agency and the State of Delaware are not liable for the payment of any credits on

any credit slips.

7.13. Redeemed Tickets Defaced - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and payment.

7.14. Liability for Malfunction - The agency and the State of Delaware are not responsible for any video lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.

7.15. Video lottery machines shall not be operated or available for play on Christmas, or after 4:00 a.m. on Easter, or between the hours of 4:00 a.m. and 12:00 p.m. on Sundays, or between the hours of 4:00 a.m. and 8:00 a.m. on any day other than Sunday.

#### 7.16. Self-Excluded Players

(1) A "self-excluded person" means any person whose name is included, at his or her request, on the self-exclusion list maintained by the Lottery Director or Deputy Director.

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

##### 7.16.1 Request for Self-Exclusion

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

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

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

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

i. Name, including any aliases or nicknames;

ii. Date of birth;

iii. Address of current residence.

iv. Telephone number of current residence;

v. Social security number;

vi. A physical description of the person, including height, weight, gender, hair color, eye

color, and any other physical characteristic that may assist in the identification of the person:

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

i. One year;

ii. Five years; or

iii. Lifetime;

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

i. Its processing or enforcement;

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

iii. Permitting a self-excluded person to engage in video lottery play at a video lottery agent's premises while on the list of self-excluded persons; and

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

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

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

E. The type of identification credentials examined containing the signature of the person requesting self-exclusion, and whether said credentials included a

photograph and general physical description of the person; and

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

7.16.2 Self-exclusion list.

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

(2) Each video lottery agent shall maintain its own copy of the self-exclusion list and shall establish procedures to ensure that its copy of the self-exclusion list is updated and that all appropriate employees and agents of the video lottery agent are notified of any addition to or deletion from the list within five (5) business days after the day the notice is mailed by the Lottery or VLEU. The notice mailed by the Lottery/VLEU shall include the name and date of birth of any person whose name shall be removed from self-exclusion list and the following information concerning any person whose name shall be added to the self-exclusion list:

- i. Name, including any aliases or nicknames;
- ii. Date of birth;
- iii. Address of current residence;
- iv. Telephone number of current residence;
- v. Social security number;
- vi. A physical description of the person, including height, weight, gender, hair color, eye color, and any other physical characteristic that may assist in the identification of the person; and
- vii. A copy of the photograph taken by the Lottery or VLEU.

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

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

7.16.3 Duties of Video Lottery Agent

(1) Each video lottery agent shall establish procedures that are designed, to the greatest extent practicable, to:

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

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

Designated representatives of the Lottery and the VLEU.

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

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

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

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

7.16.4 Removal from Self-Exclusion List

(1) Except for those persons choosing a lifetime self-exclusion, any self-excluded person may, upon the expiration of the period of self-exclusion requested pursuant to Video Lottery Regulation 7.17, request removal of his or her name from the self-exclusion list by submitting, in person, a completed request for removal as required in subsection (2) below. The request shall be delivered to the Lottery Office, 1575 McKee Road, Dover, DE. Any person submitting a request for removal from the list shall be required to present valid identification credentials containing his or her signature and a photograph and general physical description.

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

i. The identifying information specified in Video Lottery Regulation 7.17;

ii. The signature of the person requesting

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

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

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

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

#### 7.17 Promotional Tournaments

7.17.1 The Lottery will be solely responsible for the procurement of any modified video lottery terminals ("Promotional Tournament Terminals") to be used by a video lottery agent for promotional tournaments. A Promotional Tournament Terminal will be modified so that at a minimum, it does not contain any bill acceptor, coin acceptor, or hopper. A blank plate must replace the bill acceptor and coin acceptor on the Promotional Tournament Terminal

7.17.2 If a video lottery agent wishes to obtain Promotional Tournament Terminals, the agent must submit a written request to the Lottery. Under 29 Del. C. §4820(b), video lottery agents may have a maximum of thirty (30) video lottery machines used exclusively for promotional tournaments in which players are not required to pay any fee to participate. The request must be on a Promotional Tournament Request Form which will be available from the Lottery. The request must contain: i)the number of promotional tournament terminals requested; ii)a description of the location where the tournament terminal will be stored or installed on the agent's premises; iii)a description of the agent's security plan for the tournament terminals when in storage and when operated for promotional tournaments.

7.17.3 Promotional Tournament Terminals will be leased or purchased by the Lottery and provided to the video lottery agents for use for promotional tournament games.

7.17.4 The video lottery agent may store the

Promotional Tournament Terminals in a secure, locked room when games are not being used for approved promotional tournaments. The locked storage area must be under surveillance at all times. The storage area must be approved by both the Lottery and the VLEU. The agent must control access to the locked storage area. The key to this area will be maintained and controlled by the video lottery agent's security with a sign-in and sign-out log. If a video lottery agent installs Promotional Tournament Terminals on a permanent basis on the gaming floor, the Promotional Tournament Terminals will be subject to the Lottery and VLEU minimum standards for security and the terms of these Video Lottery Regulations. Promotional Tournament Terminals will only be available during scheduled tournaments approved by the Lottery.

7.17.5 All Promotional Tournament Terminals at an agent location shall have the same CPU lock and this lock shall be different from locks used on other VLTs in the State of Delaware. The CPU keys will be maintained by the VLEU, unless the Lottery directs otherwise.

7.17.6 All EPROM chips and programming disks, after the standard review and approval by the independent laboratory designated by the Lottery, must be sent to the VLEU to be certified for use in the promotional tournament games, unless otherwise directed by the Lottery. EPROM chips will be taped when installed in the tournament games under the supervision of the VLEU. The VLEU will be the only persons permitted to access the logic area and chips of the Promotional Tournament Terminals, unless otherwise directed by the Lottery.

7.17.7 Any video lottery agent who wishes to conduct a tournament with the Promotional Tournament Terminals must first obtain the approval of the Lottery. The agent must complete a Promotional Tournament Request Form that will be available from the Lottery. The Tournament Request Form will require, at a minimum, the following: i)the date(s) and time(s) when the tournament will be held; ii)the rules for the tournament; iii)the location of the tournament; iv)security and surveillance arrangements for the tournament. The play area for Promotional Tournament Terminals must comply with the normal game security and surveillance requirements for all other video lottery machines under these Video Lottery Regulations. Approval by the Lottery to conduct promotional tournaments shall also constitute approval for the movement of Promotional Tournament Terminals.

7.17.8 No tournament is approved until the Lottery has reviewed and approved the Promotional Tournament Request Form and distributed copies of the completed form to the appropriate parties.

## **8.0 Accounting and Distribution Procedures**

8.1. The central system provider will provide an accounting mechanism for the video lottery system as a

whole, which mechanism shall achieve compliance with the standards of integrity, security and control established by the agency.

8.2. Each agent and technology provider shall submit to the Director such financial and operating information as the Director shall require from time to time at such times and in such format as the Director shall specify. For purposes of submission of this and other information, each agent shall have a computer on the premises which is suitable for this purpose.

8.2.1 Each agent, unless specifically exempted by the Agency, shall file weekly, monthly, quarterly, and annual reports and statistical data in a format specified by the Director. The data may be used by the Agency to evaluate the financial position and operating performance of individual video lottery agents and to compile information regarding the performance and trends of the video lottery industry in the State of Delaware.

8.2.2 Each agent, unless specifically exempted by the Agency, shall at its own expense, cause its annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant licensed to practice in the State of Delaware.

8.2.3 The annual financial statement shall be prepared on a comparative basis for the current and prior fiscal year, and shall present the video lottery agent's present financial position and results of operations in conformity with generally accepted accounting principles.

8.2.4 The Agency may periodically prescribe a set of standard reporting forms and instructions to be used by each video lottery agent for filing the weekly, monthly, and quarterly reports.

8.2.5 Each video lottery agent and technology provider, unless specifically exempted by the Agency, shall conduct its video lottery operations to meet the minimum requirements set forth in the Agency's Video Lottery Minimum Internal Control Procedures Standards (MICS).

8.3. The agency or its designated agents shall have the right to audit the books and records including without limitation tax returns and IRS withholding and reporting records of any agent and each technology provider. To such end, the agents and technology providers shall fully cooperate with whomever undertakes the audit.

8.4. The agency shall provide licensed technology providers with the protocol documentation data necessary to enable the respective video lottery machines to communicate with the agency's central computer when transmitting the auditing program information and controls approved by the agency.

8.5. The net proceeds of the video lottery operations shall be remitted daily or weekly to the agency at the discretion of the Lottery Director through the electronic transfer of funds to an EFT account segregated and held in

trust for the agency. To the extent, if any, that such daily or weekly remission cannot be achieved due to the unavailability of bank services, the remission shall be made on the first day that such services are available. Agents shall furnish to the agency all information and bank authorizations required to facilitate the timely transfer of monies to the State lottery fund. Agents shall provide the agency thirty (30) days advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

8.6. The agency is not responsible for resolving net proceeds discrepancies which are differences between actual money collected and the amount shown on the accounting meters or billing statement. Further, the agency is not responsible for the loss or theft of money prior to its deposit in the agency's account in the bank.

8.7. Agents shall comply with all prescribed Federal requirements for tax withholding, recording and reporting, including, without limitation, those requirements relating to the transfer of funds withheld from player winnings from the agents to the tax authorities.

8.8. Any discrepancy regarding settlement of accounts will be resolved by the Director as he or she deems appropriate.

## **9.0 Maintenance of Video Lottery Machines**

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

9.2. Each technology provider shall service and maintain its video lottery machines, current software, and associated equipment in the manner and condition required by the agency and in accordance with its contractual arrangements.

9.3. A MEAL book ~~written maintenance log~~ shall be kept within the main cabinet access area in each video lottery machine. Every person, including agency personnel, who gains entry into any internal space of a video lottery machine shall sign the MEAL book log, indicate the time and date of entry, and reason for entry ~~indicate the mechanical meter readings, and list the areas inspected or repaired~~. The MEAL books ~~maintenance log forms~~ shall be retained by agents for a period of three years from the date of the last entry. The MEAL books ~~maintenance logs~~ shall be made available upon request for inspection by the agency.

9.4. Technology providers shall provide the agency or its designee upon request with a master key for access into each locked compartment of each video lottery machine placed in operation (i.e., cash box, main cabinet, logic box).

## **10.0 Transportation, Registration, and Location of Video Lottery Machines**

10.1. No person shall ship or transport a video lottery

machine into the State without first obtaining a written authorization for such transport from the Director or designee. Transporting or shipping into the State means the starting point is outside the State and terminates in the State. Any person shipping a video lottery machine into Delaware shall provide the agency in writing at the time of shipment the following information on forms required by the agency:

- (1) The full name and address, ~~and license number~~ of the person shipping the video lottery machines;
- (2) The method of shipment and the name of the carrier;
- (3) The full name and address, ~~and license number~~ of the person to whom the video lottery machines are being sent and the destination of said terminals, if different from the address;
- (4) The number of video lottery machines in the shipment;
- (5) The serial number of each video lottery machine in the shipment;
- (6) The model number and description of each video lottery machine in the shipment; and
- (7) The expected arrival date of the video lottery machines at their respective destination within Delaware.

10.2. The agency will maintain forms for video lottery machines installed containing the following information ~~agent who receives a video lottery machine shall, upon receipt of said video lottery machine, provide the agency with the following information on forms required by the agency:~~

- (1) The full name and address ~~and license number~~ of the person receiving the video lottery machines;
- (2) The full name and address ~~and license number~~ of the person from whom the video lottery machines were received;
- (3) The serial number of each video lottery machine received;
- (4) The model number and description of each video lottery machine received;
- (5) The manufacturer of each video lottery machine received;
- (6) The location where each video lottery machine will be placed; ~~and the license number of the establishment;~~ and
- (7) The expected date and time of video lottery machine installation.

If the video lottery machine will not be placed in operation, the technology provider ~~owner~~ shall notify the agency of the address where said terminal is to be warehoused or otherwise kept. Prior to use, the storage facility shall be inspected and approved for video lottery machine storage by the Agency and the Delaware State Police VLEU. ~~At the time such video lottery machine is removed from inventory and transported to another location within the State, the agent shall comply with the foregoing~~

~~requirement by providing the required information to the agency.~~

10.3. Transporting of video lottery machines within the State of Delaware shall be accomplished by the technology provider or his designate, with the concurrence of the Director. Video lottery agents are not authorized to transport video lottery machines at any time without agency approval. Any person transporting a video lottery machine from one location to another within the State, ~~other than for repair or servicing purposes~~, shall notify the agency in writing prior to the transportation of said video lottery machine and shall provide the following information on forms required by the agency:

- (1) The full name and address ~~and license number~~ of the person transporting the video lottery machine;
- (2) The reason for transporting the video lottery machine;
- (3) The full name and address ~~and license number~~ of the person where the video lottery machine is currently located;
- (4) The full name and address ~~and license number~~ of the person to whom the terminal is being sent and the destination of the video lottery machine, if different from the address;
- (5) The serial and model numbers of each video lottery machine received;
- (6) ~~(Deleted.) The video lottery machine license number, if affixed;~~
- (7) The manufacturer of the video lottery machine; and
- (8) The expected date and time of video lottery machine installation.

This requirement does not apply to the movement of video lottery machines within the same location.

10.4. Any person shipping video lottery machines out of the State shall first obtain written agency approval ~~notify the agency in writing~~ prior to the shipment and shall provide the agency with the following information on forms required by the agency:

- (1) The full name and address ~~and license number~~ of the person shipping the video lottery machines;
- (2) The method of shipment and the name of the carrier;
- (3) The full name and address of the person to whom the video lottery machines are being sent and the destination of the video lottery machines if different from the address;
- (4) The serial number of each video lottery machine being shipped;
- (5) The model number and description of the video lottery machine being shipped;
- (6) ~~(Deleted.) The video lottery machine license number, if affixed;~~



(7) The name of the manufacturer of the video lottery machine being shipped; and

(8) The expected date and time of the shipment.

10.5. ~~(Deleted). Each video lottery machine placed in operation in Delaware shall have a lottery registration decal, with the video lottery machine registration control number placed thereon, permanently affixed thereon prior to the video lottery machine becoming operational. No person other than authorized agency personnel may affix or remove a registration control number. The placement of the lottery decal represents that the video lottery machine has been registered, inspected, and approved for operation in Delaware. Manufacturers must make video lottery machines and associated equipment available for inspection by the agency. No terminal may be transported out of the State until authorized agency personnel have removed the lottery registration control number.~~

10.6. All video lottery machines located at an agent's premises shall be placed as follows:

(1) In an area which is at all times monitored by the agent, manager or an employee of the licensed agent to prevent access or play of video lottery machines by persons under the age of twenty-one (21);

(2) Initial locations for video lottery machines within an agent's business require prior approval by the agency and shall be accomplished by the technology provider; and

(3) Any relocation of video lottery machines within an agent's business requires prior approval by the agency.

The initial installation of any new video lottery machine at an agent's premises requires the presence of an agency or VLEU representative.

10.7 Section 10 shall not apply to video lottery machines which at no time are or have been located on an agent's premises. Provided, however, that all Section 10 requirements are applicable to video lottery machines prior to their arrival at an agent's premises. Provided, further, that agents shall not transport video lottery machines, without agency approval, regardless of whether they are or have been located on an agent's premises.

#### 10.8 Project Request Forms

10.8.1 A video lottery agent must complete a Project Request Form whenever it seeks approval for the movement of video lottery terminals or for other modifications or changes to video lottery terminals.

10.8.2 A video lottery agent, after conferring with the affected technology provider to confirm the feasibility of the project, must first submit a Project Request Proposal to the Lottery for approval. The Project Request Proposal must be in a letter or on a form provided and approved by the Lottery. A Project Request Proposal must be submitted whenever an agent seeks: i)to move a video lottery machine on the premises; ii)to convert a game theme on a video

lottery machine; iii)to convert the play denomination on a video lottery machine; iv)to change the percentage payout on a video lottery machine; v)to change the EPROM chip on a video lottery machine; vi)to change the jackpot lockup amount on a video lottery machine; vii)to change the configuration of a video lottery machine; viii)to perform a wholesale replacement of parts of a video lottery machine. If the Lottery approves the Project Request Proposal, the Lottery will assign a Project Number and send a confirming letter of approval to the video lottery agent.

10.8.3 After receiving an approval letter for the Proposed Project Request, the video lottery agent or technology provider must obtain a date for the project. The video lottery agent or technology provider must use a Project Request Form approved by the Lottery. The Project Request Form must be fully completed and include the following: 1) a description of type of project proposed; 2) a listing of project location and project start date and time; 3) a listing of project end date and end time; 4) project estimated "go live" date; 5) authorization by the agent's representative; 6) pertinent schedule and any other relevant information related to the request; 7) authorization by a designated representative of the affected technology provider.

10.8.4 The video lottery agent or technology provider will submit the completed Project Request Form to the Lottery's Central System Provider for review and a signed authorization. If approved by the Central System Provider, the Central System Provider will then forward the Project Request Form to the VLEU for review. If the Project Request Form is approved by the VLEU, the Form will then be forwarded to the Lottery Office for review. If the Project Request Form is in order, the Lottery will approve the Project Request Form and provide a signed copy to the video lottery agent, the VLEU, and any other affected parties. At the discretion of the Lottery, a technology provider may be excepted from the requirement of submitting a Project Request Proposal submission for main chip upgrades and simply submit a Project Request Form as described above in these Regulations.

10.8.5 The video lottery agent is responsible for notifying Security and Surveillance of any approved Project and for arranging sufficient staffing to complete the project in a timely manner.

10.8.6 No project is approved until the Lottery has signed the Project Request Form and distributed copies of the completed form to the appropriate parties. The Lottery and the VLEU will strictly enforce the approved start and end time on the Project Request Form. No video lottery agent under any circumstances will be permitted to shut down or otherwise modify any video lottery terminal prior to the approved start time or after the approved end time listed on a Project Request Form without written approval from the Lottery Office.

10.8.7 A video lottery agent must notify the

Lottery Office if any project is cancelled or not completed as originally submitted based on a decision of the video lottery agent. A technology provider must notify the Lottery Office if any project is cancelled or not completed as originally submitted based on a decision of the technology provider.

#### 14.0 Employee License Fingerprinting Procedure

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

(1) The applicant will complete the license application form for a VLT license as required by the Lottery and VLEU.

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

##### 14.1.1 Rehires/Transfers

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

(a) Applicants will be required to follow the procedures in Video Lottery Regulations 14.1-14.8 if twelve (12) months or more have passed since the end of the applicant's former employment.

(b) Applicants will be required to follow the procedures in Video Lottery Regulations 14.1-14.8, except for the fingerprinting requirements, if less than twelve (12) months but more than thirty (30) days have passed since the end of the applicant's prior employment.

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

(2) Transfers. Licensees transferring employment from one licensed entity to another licensed entity under these Video Lottery Regulations will be required to complete a License Application Update Form and submit to a new background investigation.

14.2 A fee is required to be paid for state and federal processing of fingerprint cards and criminal history cards and criminal history records. The fee is set by the State Bureau of Identification and payment is to be made directly to that agency.

14.3 An applicants must complete a fingerprint card and form with the necessary personal information, and sign an Authorization for Release of Information form to release criminal history to the Director or the VLEU. the waiver form to release criminal history to the Director or the Video Lottery Enforcement Unit. At the time of the processing, the applicant must show proof of identification to complete the

criminal history request.

(1) The applicant must contact the VLEU and submit the completed license application form and fingerprint verification/receipt for processing.

(2) Investigators assigned to the VLEU will conduct an investigation to determine the suitability of the applicant.

14.4 Certified copies of the criminal history record will be forwarded to the Director of the Lottery or the Video Lottery Enforcement Unit. ~~The Lottery Director or Video Lottery Enforcement Unit will forward copies of the criminal history to license applicants or licensees. For employees of video lottery agents or technology providers, the Director or the Video Lottery Enforcement Unit will forward copies of the employee's criminal history to the employer's designated contact person upon request.~~

14.5 The State Bureau of Identification shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of ~~Identification~~ Investigation. The State Bureau of Identification shall forward the results of these federal record checks to the attention of ~~the Lottery Director and/or the VLEU~~ Video Lottery Enforcement Unit in a confidential manner.

14.6 A person subject to 29 *Del. C.* §4807A shall have the opportunity to respond to the Lottery Director regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) working days of the person's receipt of the criminal background information from the ~~State Bureau of Identification~~. Lottery.

The determination of suitability for licensure shall be made by the Lottery pursuant to the factors listed in 29 *Del. C.* §4807A regarding an applicant's criminal history. The Lottery will also consider the factors contained in 29 *Del. C.* chapter 48 and these Video Lottery Regulations in considering applications for licensure. The Lottery will consider the truthfulness of the applicant, licensee, or employee in disclosing their criminal history. Under 29 *Del. C.* §4805(a)(16)(17), the Lottery Director shall consider the background of key employees or video lottery operations employees in order to determine if the person's reputation, habits, and associations pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the video lottery. It is specifically provided, pursuant to 29 *Del. C.* §4805(a)(16)(17), that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within ten (10) years prior to applying for a license or at any time thereafter shall be deemed unfit. The Director may determine whether the licensing standards of another state are comprehensive, thorough and provide similar adequate safeguards and, if so, may in the Director's discretion, license an applicant already licensed in such state without the necessity of a full



application and background check. The Delaware State Police shall conduct the security, fitness, and background checks required by §4805(a)(16)(17) and the Video Lottery Regulations. The Director may deny a license application if an applicant fails to provide the required information necessary for the Lottery and the VLEU to determine and evaluate the applicant's background as required by 29 Del. C. §4805(a)(16)(17).

14.7 The Lottery shall communicate the results of the determination of suitability in writing, to the license applicant or licensee within thirty (30) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If the Lottery determines that an applicant has satisfied the licensing requirements of Video Lottery Regulation 14.6, the applicant will be issued a VLT License. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below.

(1) Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 Del. C. §4807A and Video Lottery Regulation 13.3 by submitting a request for a hearing to the Director within ten (10) working days of the receipt of the written notice.

(2) The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within thirty (30) working days of the receipt of the letter of appeal, unless extenuating circumstances require a longer period. Any hearing will be pursuant to the procedures in the Video Lottery Regulations 13.5-13.11, whichever is applicable.

(3) A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

(4) A person determined to be unsuitable for licensure pursuant to these Regulations shall be prohibited from reapplying for licensure for a period of twelve (12) months.

14.7.1 Every license issued by the Lottery shall bear thereon the distinguishing number assigned to the licensee and shall contain the name and photograph of the licensee. The license shall also contain the name of the sponsoring employer, agent, or technology provider.

14.7.2 The Lottery VLT License is the property of the Lottery. The VLT license shall be returned to the Lottery or the VLEU if the Director issues a decision to suspend or revoke a person's license to participate in video lottery operations. A license may be revoked or suspended for violations of 29 Del. C. chapter 48 or these Video Lottery Regulations.

14.8 The Lottery or the Video Lottery Enforcement Unit will communicate the results of suitability in writing regarding an employee to either the video lottery agent or

technology provider employing said individual. The Lottery will provide a copy of the criminal history record to the employee upon request.

14.9 All records pertaining to criminal background checks, pursuant to 29 Del. C. §4807A and copies of suitability determinations of applicants for licensure, shall be maintained in a confidential manner, including, but not limited to the following:

(1) Access to criminal background check records, and letters of reference accompanying out-of-state criminal background checks, and determinations of suitability of applicants shall be limited to the Director and designated personnel;

(2) All such records shall be kept in locked, fireproof cabinets;

(3) No information from such records shall be released without the signed release of the applicant.

14.10 All licensees will prominently display their license while on duty or acting in their official capacity at the approved video lottery facility.

14.11 License renewal.

The Lottery license shall expire and be renewable on the third anniversary of the issuance date. Thirty days prior to expiration, each licensee shall contact the VLEU and submit a new and updated license application form for a background investigation. The background investigation will follow the procedures set forth in Video Lottery Regulations 14.7-14.8

14.12 Terminations/End of Employment

The Lottery license is the property of the Lottery and shall be returned to the Lottery or the VLEU when the licensee's employment is either terminated involuntarily by the employer or terminated at the request of the employee.

14.13 ~~14.10~~ Any person licensed under these Video Lottery Regulations or any employee who has submitted a license application shall notify the VLEU within seven (7) days of any change in his/her criminal history information. Subsequent criminal history shall be sent by the State Bureau of Identification to the Director of the Lottery and/or the Video Lottery Enforcement Unit. This subsequent criminal history information shall be used by the Lottery and the Video Lottery Enforcement Unit in making a determination about the person's continued suitability as a licensee or employee of a video lottery agent or other licensed entity. The licensee or employee shall notify the Video Lottery Enforcement Unit within twenty-four (24) hours of any change in his criminal history information.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,  
Section 4711 (16 Del.C. 4711)

#### Notice of proposed amendments to the Uniform Controlled Substance Act

Under the authority set forth in 16 Del. C., Section 4711, the Secretary of the Department of Health and Social Services proposes amendments to 16 Del. C. §4718 (c) (10). The amendments to this Statute will schedule the pharmaceutically manufactured drug Gamma Hydroxy Butyrate (GHB) in the Delaware Controlled Substances Act following the rescheduling of GHB within the federal schedules of controlled substances by the Attorney General of the United States pursuant to 21 USC §811.

#### Notice Of Public Hearing

The Health Systems Protection Section, Division of Public Health, Department of Health & Social Services, will hold a public hearing to discuss the proposed adoption of the controlled substance scheduling of the pharmaceutically manufactured drug Gamma Hydroxy Butyrate (GHB) to schedule III. This amendment mimics the federal scheduling of this drug. The amendment will place the pharmaceutically manufactured drug GHB in 16 Del. C. 4718 (c) (10)

The public hearing will be held on Thursday, December 4, 2003, at 10:00 a.m., in the 2nd Floor Conference Room, Office of Narcotics and Dangerous Drugs, Emily P. Bissell Hospital Building G, 3000 Newport Gap Pike, Wilmington, Delaware. Information concerning the proposed scheduling of the pharmaceutically manufactured drug GHB is available at the following location:

Office of Narcotics & Dangerous Drugs  
Jesse Cooper Building  
Federal & Water Streets  
P.O. Box 637  
Dover, DE 19903  
(302) 744-4547

Anyone wishing to present his or her oral comments at this public hearing should contact David Walton at (302) 744-4700 by Wednesday, December 3, 2003. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by Friday, December 5, 2003, to:

David Walton, Hearing Officer  
Division of Public Health

P.O. Box 637  
Dover, Delaware 19903-0637

#### Proposed 16 Del. C. Statute Amendments:

#### §4718. Schedule III.

(a) The controlled substances listed in this section are included in Schedule III.

(b) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing limited quantities of any stimulant drugs or any salts, isomers or salts of isomers thereof and 1 or more active medicinal ingredients not having a stimulant effect on the central nervous system and in such combinations, quantity, proportion or concentration that reduce the potential abuse of the substances which have a stimulant effect on the central nervous system:

(c) Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system.

1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

- 2) Chlorhexadol;
- 3) Lysergic acid;
- 4) Lysergic acid amide;
- 5) Methyprylon;
- 6) [Rescheduled];
- 7) Sulfondiethylmethane;
- 8) Sulfonethylmethane;
- 9) Sulfonmethane; and.

10) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug and Cosmetic Act.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) Not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and combinations:

- (1) Boldenone;
- (2) Chlorotestosterone (4-dihydrotestosterone);
- (3) Clostebol;
- (4) Dehydrochlormethyltestosterone;
- (5) Dihydrotestosterone (4-dihydrotestosterone);
- (6) Drostanolone;
- (7) Ethylestrenol;
- (8) Fluoxymesterone;
- (9) Formebolone (formebolone);
- (10) Mesterolone;
- (11) Methandienone;
- (12) Methandranone;
- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nandrolone;
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone;
- (27) Trenbolone; and

(28) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

(g) Clortermine.

(h) Benzphetamine.

(i) Chlorphentermine.

(j) Phendimetrazine.

(k) Ketamine.

(l) The Secretary may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(m) Any anabolic steroid, as listed in subsection (f), which is a combination of estrogen and anabolic steroid and which is expressly intended for administration to hormone-deficient women, shall be exempt from the provisions of this chapter. If any person prescribes, dispenses or distributes an anabolic steroid which is a combination of estrogen and anabolic steroid for use by persons who are not hormone-deficient women, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this chapter. (16 Del. C. 1953, § 4718; 58 Del. Laws, c. 424, § 1; 67 Del. Laws, c. 201, § 1; 70 Del. Laws, c. 81, § 2; 71 Del. Laws, c. 50, § 1; 71 Del. Laws, c. 295, § 1.)

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## **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 107 (31 **Del.C.** 107)

### **Public Notice Medicaid/Medical Assistance Programs Reproposed Regulation Client Cost Sharing for Pharmaceutical Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program issues these reproposed regulations to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to establish the provisions relating to imposing and collecting copayments for pharmaceutical services from Medicaid/Medical Assistance clients.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written

materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by November 30, 2003.

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 Reproposed Regulation – Pharmacy Services Co-payment Policy

On July 1, 2003, DSS published for public comment a proposal to amend its client cost-sharing regulations for pharmacy services. In response to that request, comments were submitted that resulted in changes being made to the original proposal, primarily to add clarifying language regarding collection of copayments. Because of the substantive nature of these additional changes, DSS is now republishing the proposal for public comment pursuant to 29 *Del.C.* §§10115 and 10118. The changes are enumerated below and are derived from (i) comments made by the general public during the public comment period on the original proposal; and from, (ii) clarifications and other improvements noted by DSS staff during subsequent review.

The changes to the regulation are being presented in *italicized* font in order to facilitate review of the proposal in light of the reproposal:

- All clients, other than those specifically excluded, are liable for sharing the cost of Medicaid covered prescription drugs. Medicaid clients are required to pay a specific pharmacy co-pay amount for each prescription filled at a pharmacy participating in the Medicaid program.

- In accordance with 42 CFR §447.54, the pharmacy co-pay amount is based on the Medicaid fee for the drug being dispensed. The co-pay amounts imposed are as follows:

Medicaid Fee	Co-Pay Amount
\$10.00 or less	\$ .50
\$10.01-\$25.00	\$1.00
\$25.01-\$50.00	\$2.00
\$50.01 or more	\$3.00

- Cumulative Maximum [42 CFR §447.54(d)]. Not applicable, there is no maximum.
- In accordance with Social Security Act §1916 and 42 CFR §447.53, copayments are not imposed upon categorically needy individuals for the following:
  - Services furnished to individuals under 21 years of age;
  - Services furnished to pregnant women;

- Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution;
- Emergency services;
- Family Planning services; and,
- Services furnished to individuals receiving hospice care.
- The pharmacy will be advised via the Point-of-Sale System regarding the client's liability for the drug co-pay and the amount of the co-pay. When a client advises a pharmacy of an inability to pay the applicable co-pay amount at the time the prescription is filled, the pharmacy cannot refuse to fill the prescription and must dispense the drug as prescribed [42 CFR §447.53(e)].
- The client will remain liable for reimbursement of the co-pay amount and will be responsible for paying the pharmacy when financially able.
- Medicaid will not pay the co-pay amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client copay amount.

The proposed amendment applies to Medicaid clients and shall be effective on and after *January 1, 2004*.

Specific cost sharing requirements are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

### Summary Of Comments Received With Agency Response

DSS received comments from the following organizations: the Governor's Advisory Council for Exceptional Citizens (GACEC), the Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities (SCPD), the National Association of Chain Drug Stores (NACDS); as well as from the CMS and one individual.

A summary of all the comments from all sources follows:

- House Bill No. 184 would have precluded or limited adoption of Medicaid co-pays if enacted.
- There is a minor error in the co-pay chart on p. 23. The State chart should reflect that a prescription fee equal to or less than \$10.00 correlates with a \$.50 copay.
- The Federal regulation [42 CFR §447.53] recites as follows:
  - No provider may deny services, to an individual who is liable for the services, on account of the individual's inability to pay the cost sharing.
  - The proposed regulations undermine Olmstead implementation because persons in institutions are

exempt from the co-pays while persons in the community must pay them.

- The state should adopt a "cumulative maximum copay" for high pharmacy users [42 CFR §447.54(d)].
- Since pharmacy providers have no way of knowing whether a Medicaid recipient is truly unable to pay a copayment, the Medicaid program should make that decision.
- Repeated refusals to pay the copayment should be grounds for denial of services to the Medicaid recipient.
- The Department should amend the regulations to provide that DMAP will reimburse pharmacy providers for uncollected copayments under a federal waiver of 42 CFR §447.57(a), prohibiting states from reimbursing providers for uncollected cost-sharing.
- Recipients should receive information from the Department about this new copayment and their obligation to pay the copayment.
- Provide that the state will give periodic notice to recipients that they must demonstrate to the state an inability to pay before federal refusal of service provisions can be applied.
- Allow pharmacy providers to treat Medicaid recipients who have past due copayments as they would any other patient who has past due debts.

**Agency Response:** As a consequence of the public comments received and on advice from CMS, DSS is publishing a revision to the proposed regulations. DSS will send Medicaid recipients a letter informing them of this new pharmacy copayment requirement prior to implementation, currently proposed for January 10, 2004.

**DSS PROPOSED REGULATION #03-39a**

**Revision:** HCFA-PM-91-4 (BPD) OMB No.:0938-  
**State/Territory:** DELAWARE

**Citation** 4.18 Recipient Cost Sharing and Similar  
**42 CFR 447.51** Charges  
**through 447.58** (a) Unless a waiver under 42 CFR  
431.55(g) applies deductibles,  
coinsurance rates, and  
copayments do not exceed the  
maximum allowable charges  
under 42 CFR 447.54.  
**1916 (a) and (b)** (b) Except as specified in items 4.18  
**of the Act** (b) (4), (5) and (6) below, respect  
to individuals covered as  
categorically needy or as  
qualified Medicare beneficiaries  
(as defined in section 1905 (p)  
(1) of the Act under the plan:

- (1) No enrollment fee, premium, or similar charge is imposed under the plan.
- (2) No deductible, coinsurance, copayment, or similar charge is imposed under the plan for the following:
  - (i) Services to individuals under age 18, or under--
    - Age 19
    - Age 20
    - Age 21Reasonable categories of individuals who are age 18 or older, but under age 21, to whom charges apply are listed below, if applicable.
  - (ii) Services to pregnant women related to the pregnancy or any other medical condition that may complicate the pregnancy.
  - (iii) All services furnished to pregnant women.
    - Not applicable.Charges apply for services to pregnant women unrelated to the pregnancy.
  - (iv) Services furnished to any individual who is an inpatient in a hospital, long-term care facility, or other medical institution, if the individual is required, as a condition of receiving services in the institution, to spend for medical care costs all but a minimal amount of his or her income required for personal needs.
  - (v) Emergency services if the services meet the requirements in 42 CFR 447.53 (b) (4).
  - (vi) Family planning services and supplies furnished to individuals of childbearing age.

**1916 of the Act,  
P.L. 99-272,  
(Section 9505)**

(vii) Services furnished by a health maintenance organization in which the individual is enrolled.

(viii) Services furnished to an individual receiving hospice care, as defined in section 1905 (o) of the Act.

- (3) Unless a waiver under 42 CFR 431.55 (g) applies, nominal deductible, coinsurance, copayment, or similar charges are imposed for services that are not excluded from such charges under item (b) (2) above.

Not applicable. No such charges are imposed.

(i) For any service, no more than one type of charge is imposed.

(ii) Charges apply to services furnished to the following age groups:

- 18 or older
- 19 or older
- 20 or older
- 21 or older

Charges apply to services furnished to the following reasonable categories of individuals listed below who are 18 years of age or older but under age 21.

(iii) For the categorically needy and qualified Medicare beneficiaries, **ATTACHMENT 4.18-A** specifies the:

- A. Service(s) for which a charge(s) is applied;
- B. Nature of the charge imposed on each service;
- C. Amount(s) of and basis for determining the

charge(s);

D. Method used to collect the charge(s);

E. Basis for determining whether an individual is unable to pay the charge and the means by which such an individual is identified to providers;

F. Procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b); and

G. Cumulative maximum that applies to all deductible, coinsurance or copayment charges imposed on a specified time period.

Not applicable. There is no maximum.

**1916 (c) of the Act** 4.18 (b)(4)  A monthly premium is imposed on pregnant women and infants who are covered under section 1902 (a) (10) (A) (ii) (IX) of the Act and whose income equals or exceeds 150 percent of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (c) of the Act are met. **ATTACHMENT 4.18-D** specifies the method the State uses for determining the premium and the criteria for determining what constitutes undue hardship for waiving payment of premiums by recipients.

**1902 (a) (52)** (5)  For families receiving extended **and 1925 (b)** benefits during a second 6-month **of the**

Actperiod section 1925 of the Act, a monthly premium is imposed *in accordance* with sections 1925 (b) (4) and (5) of the Act.

**ATTACHMENT 4.18-E**  
Specifies the methods and standards the State uses for determining the premium.

**1916 (d) of the Act**

- (6)  A monthly premium, set on a sliding scale, imposed on qualified disabled and working individuals who are covered under section 1902 (a) (10) (E) (ii) of the Act and whose income exceeds 150 percent (but does not exceed 200 percent) of the Federal poverty level applicable to a family of the size involved. The requirements of section 1916 (d) of the Act are met.

**14960 Cost Sharing**

Section 1902(a)(14) of the Social Security Act permits states to require certain recipients to share some of the costs of Medicaid by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments or similar cost sharing charges.

14960.1 Co-Payment Requirement

Effective October 1, 2003, a nominal co-payment will be imposed for generic and brand name prescription drugs as well as over-the-counter drugs prescribed by a practitioner.

**NEW STATE PLAN PAGE**

**Revision: CMS-PM-85-14 (BERC) SEPTEMBER 1985**

**ATTACHMENT 4.18-A  
Page 1  
OMB NO.: 093-0193**

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

A. The following charges are imposed on the categorically needy for services other than those provided under section 1905 (1) through (5) and (7) of the Act:

Service	Type of Charge			Amount and Basis for Determination
	Deductible	Coinsurance	Copayment	
Pharmacy	-0-	-0-	X	This co-pay is effective January 1, 2004 and is based on the nominal ranges specified in 42 CFR 447.54(a)(3), based on the State fee for the service.

**NEW STATE PLAN PAGE**

**Revision: CMS-PM-85-14 (BERC) SEPTEMBER 1985**

**ATTACHMENT 4.18-A  
Page 2  
OMB NO.: 093-0193**

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

- B. The method used to collect cost sharing charges for categorically needy individuals:
  - Providers are responsible for collecting the cost sharing charges from individuals.
  - The agency reimburses providers the full Medicaid rate for services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

The Pharmacy (Pharmacist) Provider will be advised via the Point-of-Sale System regarding the client's liability for the drug co-pay and the amount of the co-pay. When a client advises a pharmacy of an inability to pay the applicable co-pay amount at the time the first prescription is filled, the pharmacy cannot refuse to fill the prescription and must dispense the drug as prescribed.

The client will remain liable for reimbursement of the co-pay amount and will be responsible for paying the pharmacy when financially able. Medicaid will not pay the co-pay amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client copay amount.

## NEW STATE PLAN PAGE

Revision: CMS-PM-85-14  
SEPTEMBER 1985

(BERC)

ATTACHMENT 4.18-A

Page 3

OMB NO.: 093-0193

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

STATE: DELAWARE

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b) are described below:

Exclusions from cost sharing requirements are programmed into the Medicaid Management Information System and the Point-of-Sale (POS) System.

Pharmacy Providers have been informed about applicable service and amount; and, the prohibition of service denial if client is unable to meet the co-pay amount by the following methods: (1) provider manuals, which are distributed to all providers; and (2) provider newsletters.

Copayment requirements are set forth in provider manuals, which are distributed, to all providers. The billing instructions are updated and transmitted to providers via the Provider Newsletter. These instructions have been incorporated in the billing instruction section of the provider manuals, which are given to all providers.

E. Cumulative maximums on charges:

- State policy does not provide maximums.  
 Cumulative maximums have been established as described below:

The co-payment is based upon the cost of the drug as follows:

<u>Medicaid Payment for the Drug</u>	<u>Co-payment</u>
<u>\$10.00 or less</u>	<u>\$.50</u>
<u>\$10.01 to \$25.00</u>	<u>\$1.00</u>
<u>\$25.01 to \$50.00</u>	<u>\$2.00</u>
<u>\$50.01 or more</u>	<u>\$3.00</u>

The co-payment is imposed for each drug that is prescribed and dispensed.

### 14960.2 Exclusions from Co-payment Requirement

The following individuals and services are excluded from the co-payment requirement:

- a. individuals under age 21
- b. pregnant women including the postpartum period
- c. individuals eligible for nursing home care
- d. emergency services
- e. family planning services and supplies
- f. hospice services

### 14960.3 Inability to Pay

The pharmacy provider may not refuse to dispense the prescription(s) subject to the co-payment requirement on account of the individual's inability to pay the co-payment amount. When a recipient indicates that he or she is unable to meet the co-payment requirement, the pharmacy provider must dispense the initial prescription(s). Medicaid reimbursement for the prescription(s) will be the Medicaid fee minus the applicable co-payment amount.

The recipient remains liable for the co-payment amount and is responsible for paying the pharmacy when financially able. The pharmacy provider is permitted to pursue reimbursement of the co-pay from the recipient.



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

Statutory Authority: 7 Delaware Code,  
Chapters 60 and 63 (7 Del.C. Ch. 60 and 63)

**1. Title of the Regulations:**

*Delaware Regulations Governing Hazardous Waste (DRGHW)*

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

**Issues:** In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing to make miscellaneous changes to the DRGHW that correct existing errors, add clarification or enhance the current program.

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

None

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

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 & 63.

**5. Other Regulations That May Be Affected By The Proposal:** None

**6. Notice Of Public Comment:**

The public hearing on the proposed amendments to DRGHW will be held on Wednesday December 10, 2003 beginning at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

**7. Prepared By:**

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

**2003 Amendments to  
Delaware Regulations Governing Hazardous Waste**

**Synopsis**

This synopsis presents a brief description of the 2003 amendments to *Delaware Regulations Governing Hazardous*

*Waste* (DRGHW) and a list of those sections generally affected by the amendments. This summary is provided solely for the convenience of the reader.

These changes incorporate certain RCRA amendments promulgated by U. S. EPA into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its hazardous waste program delegation and remain current with the Federal RCRA hazardous waste program.

The State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

Summaries for the regulatory amendments are listed below and organized by EPA's promulgating Federal Register notice. For additional information, please contact the Solid and Hazardous Waste Management Branch (SHWMB) at (302) 739-3689.

**1. Title: Storage, Treatment, and Disposal of Mixed Waste: Mixed Waste Rule**

Federal Register Reference: 66 FR 27218 – 27266  
(Checklist 191)

Federal Promulgation Date: May 16, 2001

Summary: This amendment was originally proposed by the State during a March 12, 2002 Public Hearing. However, a comment was received at the Hearing regarding a comparison of the EPA amendments with current Nuclear Regulatory Commission (NRC) requirements. After reviewing the comment a response was prepared and mailed to the commenter on April 10, 2002.

The rule promulgated conditional exemptions for: (1) low-level mixed wastes (LLMW) from most RCRA Subtitle C storage and treatment regulations, and (2) LLMW and technologically enhanced naturally occurring and/or accelerator-produced radioactive material (NARM) from most RCRA Subtitle C manifesting, transportation, and disposal regulations when specified conditions are met. With this rule, the EPA and the State intend to provide regulatory flexibility and relief to facilitate the disposal of certain LLMW and eligible NARM.

**Sections of the DRGHW effected by this amendment:**

Adds new subpart N (§§266.210 to 266.360) is added to Part 266.

**2. Title: Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules:**

- A. Mixture and Derived-From Rules
- B. Land Disposal Restrictions

Federal Register Reference: 66 FR 27266 – 27297  
(Checklist 192)  
Federal Promulgation Date: May 16, 2001

Summary: This amendment was originally proposed by the State during a March 12, 2002 Public Hearing but was withdrawn after the SHWMB determined that EPA inadvertently deleted certain regulatory language. On October 3, 2001 EPA promulgated a clarifying revision to the May 16, 2001 Rule that reinserted the deleted language.

The May 16, 2001 Federal Rule contained two revisions:

(A) This rule finalizes the retention of the mixture rule and the derived-from rule with two revisions. The first revision expands the exclusion for mixtures and/or derivatives of wastes listed solely for the ignitability, corrosivity and/or reactivity characteristic. The second revision is a new conditional exemption from the mixture and derived-from rules for mixed wastes.

(B) This rule also corrects an error made by the June 8, 2000 rule (65 FR 36365). The June 8, 2000 rule inadvertently removed the entry for hazardous waste code U048 from 40 CFR part 268, Appendix VII. Note: Delaware did not adopt the EPA error contained in the June 8, 2000 Federal Register. The correct language is being reprinted as part of this amendment without change to provide clarity to the reader.

**Sections of the DRGHW effected by this amendment:**  
Amends §261.3, paragraphs (a), (c), (g), (h), and Part 268, Appendix VII, Table 1.

**3. Title: Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived from Rules**

Federal Register Reference: 66 FR 50332-50334  
(Checklist 194)  
Federal Promulgation Date: October 3, 2001

Summary: This rule clarifies the May 16, 2001 Federal amendment regarding the Mixture and Derived-From Rule. The State originally proposed adopting the May 16, 2001 Federal rule in 2002 but withdrew the proposed amendment due to errors in the Federal promulgation language. The language in this proposed amendment corrects that error.

**Sections of the DRGHW effected by this amendment:**  
Amends §§261.3(a)(2) and 261.3(g)(4).

**4. Title: Amendments to Corrective Action Management Unit Rule**

Federal Register Reference: 67 FR 2962-3029

(Checklist 196)  
Federal Promulgation Date: January 22, 2002

Summary: This change amends the Corrective Action Management Unit (CAMU) rule to facilitate treatment, storage and disposal of hazardous wastes managed for implementing cleanup.

**Sections of the DRGHW effected by this amendment:**  
Amends §260.11(a)(11).

**5. Title: Hazardous Waste Management System; Definition of Solid Waste; Toxicity Characteristic**

Federal Register Reference: 67 FR 11251-11254  
(Checklist 199)  
Federal Promulgation Date: March 13, 2002

Summary: This rule was promulgated in response to vacatur ordered by the United States Court of Appeals for the District of Columbia Circuit in *Association of Battery Recyclers, v. EPA 208 F.3d 1047 (2000)*. The court vacated two parts of the May 26, 1998 Phase IV LDR rule (63 FR 28556) in response to a legal challenge from the Association of Battery Recyclers, the National Mining Association and other trade groups. The first vacated part of the rule required deletion of regulatory language classifying mineral processing characteristic by-products and sludges being reclaimed as solid wastes. The second vacated part disallows the Toxicity Characteristic Leaching Procedure (TCLP) to be used for determining whether manufactured gas plant (MGP) waste is hazardous.

**Sections of the DRGHW effected this change include:**  
Amends §§261.2(c)(3), 261.4(a)(17), and 261.24(a).

**6. Title: Zinc Fertilizers Made From Recycled Hazardous Waste Secondary Materials: Zinc Fertilizer Rule**

Federal Register Reference: 67 FR 48393-48415  
(Checklist 200)  
Federal Promulgation Date: July 24, 2002

Summary: The amendments promulgated by EPA in this rule established a more consistent regulatory framework for the practice of making zinc fertilizer products from recycled hazardous secondary materials. More specifically, it established conditions for excluding hazardous secondary materials used to make zinc fertilizers from the regulatory definition of solid waste. The rule also established new product specifications for contaminants in zinc fertilizers made from those secondary materials.

The majority of the changes included in this Federal

Register Notice are considered less stringent than current Federal program. Therefore, State has chosen to only adopt the portion of this Rule that removes a previous exemption from regulation for zinc fertilizers. This allows the State to be more stringent than the Federal program.

**Sections of the DRGHW effected this change include:**  
Amends §266.20(b); and Amends §268.40 by removing and reserving paragraph (i).

#### **7. Miscellaneous Changes**

Summary: Proposed miscellaneous changes to DRGHW include non-substantive corrections for typographical or grammatical errors.

Proposed miscellaneous changes will also: Add new paragraph to §261.22(a) regarding pH of a solid; Amend §263.102 regarding denial, revocation, termination or modification of hazardous waste transporter permits; Amend §265.195(c) to add requirement for generators accumulating hazardous waste in tanks to maintain written documentation of tank inspections; Amend §273.19 to require small quantity handlers of universal waste to keep written records of shipments of universal waste.

**Sections of the DRGHW effected by this amendment:**  
Amends §§260.10; 261.1(c)(8); 261.22(a)(2) & (3); 263.102; 264.145; 265.195(c); 273.19; 122.20(a)(1).

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF EDUCATION**

14 DE Admin. Code 255

Statutory Authority: 14 Delaware Code  
Section 122(d) (14 **Del.C.** §255)

**Regulatory Implementing Order****255 Definitions of Public School, Private School and Non-Public School****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend regulation 255 Definitions of Public School and Private School to reflect the changes made to the *Delaware Code* as defined in Title 14 2703 A, resulting from Senate Bill 103, by adding the definition of a non-public school. The title of the regulation will also be changed to read Definitions of Public School, Private School and Non-public School.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 22, 2003 in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities and the Governors Advisory Council for Exceptional Citizens concerning the regulation's impact on Childfind obligations. The Department has consistently advised the districts that Childfind duties apply to all children residing in the districts, including children in homeschools. The duty to identify, locate and evaluate

children with disabilities is created by 14 *Del.C.* §3122 and extends to "any" child living within the district.

In addition, federal law requires the State ensure that "all children with disabilities residing in the State..." are identified, located, and evaluated. 34 C.F.R. §125(a). It makes no exception for homeschooled children. Federal regulation §300.220 extends this requirement to local educational agencies. Also, the U.S. Department of Education confirmed when it adopted its regulations that if a State

"does not recognize home schools as private schools, children with disabilities who are home-schooled are still covered by the child find obligations of SEAs and LEAs, and these agencies must insure that home-schooled children with disabilities are located, identified and evaluated, and that FAPE is available if their parents choose to enroll them in public schools." See "Analysis of Comments and Changes," 64 Fed.R. 12602 (March 12, 1999)(comment to §300.450).

In short, the amendment to Regulation 255 does not change the Childfind duty to identify, locate and evaluate homeschooled children with disabilities. The Department plans to send the districts confirmation on this point once the amendment to the regulation becomes effective.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend this regulation in order to reflect the changes made to the *Delaware Code* as defined in Title 14 §2703A, resulting

from Senate Bill 103, by adding the definition of a non-public school.

### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. 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 hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** §255 in the *Regulations of the Department of Education*.

### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 15, 2003. 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 15th day of October 2003.

#### DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

#### **255 Definitions of Public School, ~~and~~ Private School and Non-public School**

1.0 Public School – A public school shall mean a school or Charter School having any or all of grades kindergarten through twelve, supported primarily from public funds and under the supervision of public school administrators. It also shall include the agencies of states and cities which administer the public funds.

2.0 Private School – A private school shall mean a school having any or all of grades kindergarten through twelve, operating under a board of trustees and maintaining a faculty and plant which are properly supervised and shall be interpreted further to include an accredited and/or approved college or university.

3.0 Non-public School - A non-public school shall mean a private school as that term is defined in paragraph 2.0 of this regulation or any homeschool defined in 14 **Del.C.** § 2703A.

## **Regulatory Implementing Order**

### **615 School Attendance**

#### **I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 610 School Attendance in order to clarify the language and to add the phrase "and whenever a student enrolls or re-enrolls in the school during the school year". The addition of this phrase concerning when this policy is explained to students makes this regulation compatible with the regulation on Student Rights and Responsibilities. At the suggestion of the State Board the last sentence has been reworded to add clarity to the statement.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 21, 2003, in the form hereto attached as *Exhibit "A"*. No comments were received.

#### **II. Findings of Facts**

The Secretary finds that it is appropriate to amend this regulation in order to make the language concerning the explanation of this policy to students compatible with the wording in regulation 605 Student Rights and Responsibilities.

#### **III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. 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 hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** §615 in the *Regulations of the Department of Education*.

#### **V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 18, 2003. 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 18<sup>th</sup> day of September 2003.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 18<sup>th</sup> day of September, 2003

**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

**615 School Attendance**

1.0 Each school district shall have an attendance policy that is in accordance with the requirements of [the] Delaware Code and which defines and describes the district's rules concerning attendance for students K-12. [~~Each district shall distribute and explain these policies to every student at the beginning of each school year and whenever a student enrolls or re-enrolls in the school during the school year.]~~ Each district shall distribute and explain these policies to every student at the beginning of each school year. In addition, each district shall distribute and explain these policies to each student enrolling or re-enrolling during the school year.]

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**Regulatory Implementing Order**

**901 Education of Homeless Children and Youth**

**I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend regulation 901 Education of Homeless Children and Youth in order to be consistent with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, of 2001, that ensures educational rights and protections for children and youth experiencing homelessness. The regulation repeats the definition of "Homeless Children and Youths" from the federal statute and includes a process for dispute resolution concerning school selection or enrollment issues as required by the federal statute.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on August 22, 2003, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with

Disabilities and the Governors Advisory Council for Exceptional Citizens concerning the regulation. In response to their first concern, the Department is planning to address the issue of homeless children as defined in the school residency statute in the next legislative session. Concerns two and three referring to sections 4.5.7 and 4.5.9 under the State Level Resolution Process have been addressed by amending the language as recommended. The fourth concern expressed on the issue of transportation cost apportionment has been addressed by adding a new 4.4.3.1 as a reference to the federal statute.

**II. Findings of Facts**

The Secretary finds that it is appropriate to amend this regulation in order to include the revised definition of Homeless Children and Youth from the McKinney-Vento Homeless Education Assistance Improvement Act, of 2001 and to add a process for dispute resolution concerning school selection or enrollment issues as required by the federal statute.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §122, the regulation attached hereto as *Exhibit "B"* is hereby amended. 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 hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** §901 in the *Regulations of the Department of Education*.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 15, 2003. 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<sup>th</sup> day of October 2003.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

**901 Education of Homeless Children and Youth**

1.0 The term "homeless" or "homeless individual" shall include:

1.1 An individual who lacks a fixed, regular, and adequate nighttime residence;

1.2 An individual who has a primary nighttime residence that is:

1.2.1 A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally disabled);

1.2.2 An institution that provides a temporary residence for individuals intended to be institutionalized; or

1.2.3 A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

1.2.4 But does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

2.0 A homeless individual shall be eligible for assistance if the individual complies with state or federal income eligibility requirements applicable to assistance to the homeless.

3.0 All local school districts, in cooperation with each other, shall assure that each child of a homeless individual and each homeless youth have access to a free, appropriate, public education which would be provided to the children of a resident of the State, consistent with school attendance laws.

4.0 After consultation with the parent or guardian of a homeless child, the homeless youth, and/or the applicable social worker, the local school district in which a homeless child or youth resides, as defined in section 1.0 of this policy the new school district, shall determine whether the homeless child or youth shall:

4.1 Be enrolled in the appropriate school in the attendance area of the school district in which the homeless child or youth resides; or

4.2 Be provided a free appropriate public education program with services comparable to services offered to other students in the district, in the shelter or other temporary living accommodation; or

4.3 Continue his/her education in the home school serving the attendance area of residence in the district of origin for the remainder of the school year.

4.3.1 Such a determination shall be made consistent with the homeless child's or youth's best interests, and, where necessary, shall be made in consultation with and with the cooperation of, the homeless child's or youth's district of origin.

5.0 School bus transportation shall be provided consistent with those services offered other students in the State. To that end, school districts shall provide transportation:

5.1 Where it is determined that the homeless child or youth will attend school in the new school district;

5.1.1 Through regularly scheduled school transportation, to the appropriate school serving the attendance area of the new school district in which the homeless child or youth resides.

5.2 Where it is determined that the homeless child or youth will remain in the home school serving the attendance area of residence in the district of origin:

5.2.1 Through regularly scheduled school transportation, from the nearest bus stop to the student's temporary residence, in the attendance area of the district of origin, to the home school.

6.0 School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth. To that end, school districts shall:

6.1 Assist homeless children and youth in meeting the immunization requirements;

6.2 Assist homeless children and youth in matters concerning guardianship;

6.3 Assist homeless children and youth in obtaining birth records as needed; and

6.4 Keep documentation of efforts made by the district in this regard in each student's file.

7.0 School districts shall ensure that the school records of each homeless child or youth shall:

7.1 Be maintained so that such records are available within ten (10) school days to the new school district;

7.2 When there is a request for such records, be transferred in a speedy fashion, employing the use of couriers, if necessary;

7.3 When such records cannot be provided with sufficient speed to ensure continuity of programming, be supplemented by telephonic communication regarding the appropriate placement of and programming for the homeless child or youth.

7.3.1 All shelters and other regularly established temporary living accommodations shall be provided, by the school district in which they are located, signature forms for the release of such information by the district of origin. Couriers should be used to expedite the delivery of such forms to the district of origin.

7.3.2 All such exchanges of records shall be done in a manner which is consistent with the Procedures for the Collection, Maintenance and Disclosure of Student Data.

8.0 Each homeless child shall be provided services comparable to services offered to other students in the school



~~selected according to the provisions of 4.0, including educational services for which the child meets the eligibility criteria, such as compensatory educational programs for the disadvantaged, and educational programs for the disadvantaged, and educational programs for students with disabilities and for students with limited English proficiency; programs in vocational education and programs for the gifted and talented and school meals programs.~~

~~9.0 Dispute resolution shall be through the applicable local boards of education, appealable to the State Board of Education pursuant to 14 Del. C., Section 1058.~~

~~10.0 One person shall be designated by each school district to coordinate services to homeless children and youth, and each district shall report the name of that person to the Department of Education, Office of Coordinator of Education of the Homeless, at the beginning of each fiscal year.~~

1.0 Purpose: Consistent with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.), the intent of this regulation is to ensure the educational rights and protections for children and youth experiencing homelessness.

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

“Department” means the Delaware Department of Education.

“Homeless Children and Youths” as defined by the provisions of the 42 U.S.C. §11434a(2), means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C. §11302(a)(1)); and includes:

Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship or similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

Children and youths who have a primary nighttime residence that is in a private or public place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S.C. §11302(a)(2)(C));

Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and Migratory children (as such term is defined in section 6399 of Title 20, the Elementary and Secondary Education Act of 1965) who

qualify as homeless because the children are living in circumstances described above.

“LEA Homeless Liaison” means the Local Educational Liaison for Homeless Children and Youths designated under 42 U.S.C. §11432(g)(1)(J)(ii).

“Secretary” means the Secretary of Education.

“State Coordinator” means the Delaware Coordinator for Education of Homeless Children and Youths designated under 42 U.S.C. §11432(d)(3).

“Unaccompanied Youth” as defined by the provisions of 42 U.S.C. §11434a(6) includes a youth not in the company of a parent or guardian.

3.0 Federal Regulations: Local school districts shall comply with the provisions of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended by the No Child Left Behind Act of 2001 (42 U.S.C. §11431 et. seq.) and any regulations issued pursuant thereto.

4.0 Procedures for the Resolution of Disputes Concerning the Educational Placement of Homeless Children and Youths

4.1 If a dispute arises over school selection or enrollment, the local school district must immediately enroll the homeless student in either the school of origin (as defined in 42 U.S.C. 11432 (g) (3) (G) ) or the school that non-homeless students who live in the attendance area in which the homeless student is actually living are eligible to attend, whichever is sought by the parent, guardian or homeless youth, pending resolution of the dispute.

4.2 The local school shall provide the parent, guardian or homeless youth with a written notice of the school’s decision regarding school selection or enrollment. The notice shall include:

4.2.1 A written explanation of the school’s decision regarding school selection or enrollment;

4.2.2 Contact information for the LEA Homeless Liaison and State Coordinator, with a brief description of their roles;

4.2.3 A simple, detachable form that parents, guardians, or homeless youth can complete and turn [in to into] the school to initiate the dispute resolution process;

4.2.4 Instructions as to how to dispute the school’s decision at the district level;

4.2.5 Notice of the right to enroll immediately in the school of choice pending resolution of the dispute;

4.2.6 Notice that immediate enrollment includes full participation in all school activities for which the student is eligible;

4.2.7 Notice of the right to appeal to the State if the district-level resolution is not satisfactory; and

4.2.8 Time lines for resolving district and State level appeals.

4.3 District Level Dispute Resolution Process



4.3.1 Local school districts shall develop a dispute resolution process at the district level. The dispute resolution process shall be as informal and accessible as possible, but shall allow for impartial and complete review. Parents, guardians, and homeless youth shall be able to initiate the dispute resolution process directly at the school they choose or the school district or LEA Homeless Liaison's office.

4.3.2 Within ten (10) calendar days of the initiation of the district level dispute resolution process; the school district shall inform the parties in writing of its determination, along with notice of the right to appeal to the State if the district level resolution is not satisfactory.

#### 4.4 Inter-district Resolution Process

4.4.1 When inter-district issues arise, [including transportation,] representatives from all involved school districts, the State Coordinator, or his or her designee, and the parent(s), guardian(s) or unaccompanied youth shall meet within ten (10) calendar days of the initiation of the dispute process to attempt to resolve the dispute.

4.4.2 The State Coordinator's role is to facilitate the meeting.

4.4.3 If the parties are unable to resolve the inter-district dispute, it shall be referred to the Secretary within ten (10) calendar days of the meeting. Subsection 4.5.4 through 4.5.9 shall govern the review official's determination. The review official shall consider the entire record of the dispute, including any written statements submitted and shall make a determination based on the child's or youth's best interest, as defined in 42 U.S.C. §11432(g)(3).

**[4.4.3.1 Notwithstanding 4.4.3, where the inter-district dispute is limited solely to the issue of the apportionment of responsibility and costs for providing the child transportation to and from the school of origin, there shall be no referral to the Secretary. Pursuant to 42 USC 11432 (g) (1) (J) (iii) (II), if the school districts are unable to agree upon such a method of appropriation, the responsibility for the costs for transportation shall be shared equally.]**

#### 4.5 State Level Dispute Resolution Process

4.5.1 The State-level dispute resolution process is available for appeals from district-level decisions and inter-district disputes. Appeals may be filed by parents, guardians, homeless youths or school districts. Appeals filed by a local school shall not be accepted.

4.5.2 To initiate the State-level dispute resolution process, the appellant must file a written notice of appeal with the Secretary no later than ten (10) calendar days after receiving written notification of the district level or inter-district decision. The notice of appeal shall state with specificity the grounds of the appeal, and shall be signed by the appellant. Where the appeal is being initiated by a

school district, the superintendent of the district must sign the notice of appeal.

4.5.3 A copy of the notice of appeal shall be delivered by hand or certified mail to all other parties to the proceeding at the time it is sent to the Secretary. A copy of any other paper or document filed with the Secretary or review official shall, at the time of filing, also be provided to all other parties to the proceeding.

4.5.4 Upon receipt of a notice of appeal, the Secretary or his/her designee, shall within five (5) calendar days decide whether to hear the appeal or assign it to an independent and impartial review official and shall so advise the parties.

4.5.5 The local district shall file a certified record of the district or inter-district level dispute proceeding with the Secretary or review official within five (5) calendar days of the date the Secretary notifies the parties that an appeal has been filed. The record shall contain any written decision, any written minutes of the meeting(s) at which the disputed action was taken, all exhibits or documentation presented at the district or inter-district level dispute proceeding, and any other evidence relied on by the District(s) in making its (their) decision.

4.5.6 Appeals are limited to the record. The parties may support their positions in written statements limited to matters in the existing record. In order to be considered, written statements must be filed with the review official no later than twenty (20) calendar days after the appeal is filed.

4.5.7 The review official shall consider the entire record of the dispute, including any written statements submitted in reaching his or her decision. The review official shall overturn the district or inter-district decision only if he or she decides that the district's decision was not supported by substantial evidence or was arbitrary or capacious [or is inconsistent with state and federal law or regulation].

4.5.8 Within thirty (30) calendar days of the receipt of the notice of appeal, the review official shall inform the parties of his or her determination.

4.5.9 The determination of the review official shall be final and is not subject to further appeal [within the Department of Education].

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## **PROFESSIONAL STANDARDS BOARD Regulatory Implementing Order**

### **Regulation 1510 Issuance Of Initial License**

#### **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 regulation 1510 Issuance of Initial License. This regulation applies to the issuance an initial license as established by 14 **Del.C.** §1210. The amendment to this regulation is necessary to clarify the provision of H.B. 68, which allows 91 days of long term teaching experience at one assignment to be used to fulfill the requirements for student teaching and which permits the suspension of a license for failure to pass PRAXIS I.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on August 27, 2003, 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 amend 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 admended 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** §1510 in the *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 2ND DAY of OCTOBER, 2003**

Harold Roberts, Chair	Sharon Brittingham
Heath Chasanov	Patricia Clements
Edward Czerwinski	Karen Gordon

Barbara Grogg	Bruce Harter
Leslie Holden	Carla Lawson
Mary Mirabeau	John Pallace
Karen Schilling Ross	Carol Vukelich
Geraldine A. Williams	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED THIS 16TH DAY OF OCTOBER, 2003**

## 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

## 1510 Issuance of Initial License

1.0 Content: This regulation shall apply to the issuance of an initial license for educators, pursuant to 14 **Del.C.** § 1210.

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

**"Alternative Routes to Licensure and Certification"** means programs approved by the Department of Education to certify or license candidates who hold bachelors degrees with appropriate to the instructional field they desire to teach, but who did not complete a regionally accredited educator preparation program.

**"Composite score"** means a total of an applicant's scores on all three (3) subtests of Praxis I which is equal to, or greater than, the sum of the passing scores on the three subtests.

**"Date of hire"** means the effective date of employment by a school district, charter school, or other employing authority.

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

**"Educator"** means a public school employee who holds a license issued under the provisions of 14 **Del.C.**, Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 **Del.C.** §1203, but does not include substitute teachers.

**"Examination of general knowledge"** means a standardized test which measures general knowledge and

essential skills in mathematics or quantitative and verbal skills, including reading and writing.

**“Exigent circumstances”** means unanticipated circumstances or circumstances beyond the educator’s control, including, but not limited to, expiration of a license during the school year, serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator’s temporarily leaving active service.

**“Jurisdiction”** means a state, territory or country.

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

**“Mentoring”** means activities prescribed by the Department and/or other employing authority in which a holder of an initial license must engage during the three-year term of the initial license.

**“Novice applicant”** means an applicant who has not previously held an initial license in Delaware.

**“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 pursuant to 14 Del.C. §104.

**“Student teaching program”** means a placement within a National Association of State Directors of Teacher Education and Certification or National Council for the Accreditation of Teacher Education approved program offered by a college or university, or such alternatives as deemed appropriate to the program, such as supervised internships or other field based experience recognized as a required component of the regionally accredited educator preparation program. For the purposes of this regulation, student teaching program also means one year of teaching experience within the last year consisting of a minimum of 91 days of long term teaching experience at one assignment during which regular evaluations were conducted, evidencing at least satisfactory performance.

3.0 In accordance with 14 Del. C. § 1210, the Department shall issue an initial license to a novice applicant who submits evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) completion of a student teaching program, or one year of teaching experience consisting of a minimum of 91 days of long term teaching experience at one assignment [~~in the area for which a certificate is sought,~~] or enrollment in an Alternative\_Routes to Licensure and Certification program, and (3) a passing score on an examination of general knowledge, such as PRAXIS I, or such other alternative as may be established by the Standards Board, with the

approval of the State Board. For the purposes of this regulation, a bachelor’s degree for a trades and industry teacher shall be two (2) years of college or technical training, plus six (6) years of trade experience. An initial license shall also be issued to an applicant currently licensed as an educator in another jurisdiction with less than three years of teaching experience or to an applicant who previously held a valid Delaware standard or professional status certificate who has been out of the profession for more than three years. In addition to an initial license, applicants must also apply for a standard certificate in the particular area, subject, or category in which they wish to be employed, and must verify that they possess the prescribed knowledge, skill and/or education to practice in that area, subject, or category. (See 14 DE Admin. Code 1516).

3.1 An applicant for an initial license shall submit the application form, official transcripts, and official scores on an examination of general knowledge to the Department.

3.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope.

3.2 Examination of General Knowledge Requirements

3.2.1 An applicant seeking initial licensure in Delaware shall provide the Department with official test scores for one or more of the following tests of essential skills in reading, writing and mathematics: the PRAXIS I Tests or such alternatives as set forth in 3.2.4 below.

3.2.2 Scores of Examinations of General Knowledge.

3.2.2.1 The following minimum passing scores are required in the areas of reading, writing and mathematics for each of the examinations of essential skills.

3.2.2.1.1 Pre-professional Skills Test Taken between 7/1/83 and 10/22/93: reading - 175, mathematics - 175, writing - 172.

3.2.2.1.2 PRAXIS I - Paper and Pencil Tests (Tests taken on 10/23/93 and thereafter) and computerized pre-professional skills tests taken 1/1/02 and thereafter: reading - 175, mathematics - 174, writing - 173.

3.2.2.1.3 PRAXIS I - Computer Based Tests (Tests taken on 10/23/93 and thereafter): reading - 322, mathematics - 319, writing - 319.

3.2.3 Individuals holding Delaware certificates issued prior to July 1, 1983 are exempt from the testing requirements.

3.2.4 Acceptable alternatives to the PRAXIS I test scores include:

3.2.4.1 Scores from the California Test of Basic Skills (CTBS) shall be accepted in lieu of PPST/ PRAXIS I scores if the test was taken as a condition of meeting certification or licensure requirements in that state and the scores total 123, with a minimum of at least 37 in each category.

3.2.4.2 Scholastic Aptitude Tests (SAT) taken

after 4/1/95 and presented for exemption must meet the scores set forth below due to a re-centering of the SAT.

3.2.4.2.1 A minimum score of 520 on the SAT Mathematics taken prior to 4/1/95, and a minimum score of 540 on the SAT Mathematics test taken thereafter will be accepted as fulfillment of the PRAXIS I Mathematics requirement.

3.2.4.2.2 A minimum score of 480 on the SAT Verbal test taken prior to 4/1/95, and a minimum score of 560 on the SAT verbal test taken thereafter will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3 Graduate Record Examination (GRE) scores presented for exemption must meet the scores set forth below.

3.2.4.3.1 A minimum score of 490 on the Graduate Record Examination (GRE) Verbal test will be accepted as fulfillment of the PRAXIS I reading requirement.

3.2.4.3.2 A minimum score of 540 on the Graduate Record Examination (GRE) Quantitative test will be accepted as fulfillment of the PRAXIS I mathematics requirement.

3.2.4.4 National Teacher Examination (NTE) Core Battery Communications Skills with a minimum score of 670 will be accepted as fulfillment of the PRAXIS I writing requirement.

3.2.5 Any Scholastic Aptitude Test (SAT) scores, Graduate Records Exam (GRE) scores or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS I, shall be submitted within the same timeline as that required for PRAXIS I and scores must pre-date the employment date.

3.2.6 Timeline for Examination of General Knowledge.

3.2.6.1 An applicant for an initial license must pass PRAXIS I or an approved alternative within the period of time from the date of hire to the end of the next, consecutive fiscal year. If proof of passage of Praxis I is not provided by the end of the next consecutive fiscal year, the initial license shall be suspended. Notwithstanding the foregoing, the superintendent of the employing school district or charter school or other employing authority may submit to the Secretary of Education a written request for a one-year extension. The request must document the effectiveness of the applicant.

3.2.6.1.1 An applicant for an initial license who does not achieve a passing score on PRAXIS I, but whose score on PRAXIS I is within 2 points of the passing score on the reading, writing, or mathematics section of PRAXIS I may use a composite score to meet the requirements of passage. Notwithstanding the use of a composite score, an applicant who seeks to teach in the secondary content areas of mathematics or English/language

arts must meet the passing score in that content area.

3.2.6.2 An applicant in a vocational trade and industry area must pass PRAXIS I or an approved alternative within six (6) years of the date of employment or before the expiration of the initial license, whichever is later.

3.2.7 There is no limit on the number of times an individual may take the PPST/PRAXIS I. Once passed, a section need not be taken again.

3.2.7.1 Passing scores in each area (reading, writing, mathematics) may be attained in any testing format.

3.2.8 Submission of Scores of Examination of General Knowledge.

3.2.8.1 Test scores shall be official and sent directly from Educational Testing Service or other test vendor to the Department.

3.2.8.2 Unopened, unaltered envelopes containing PPST/PRAXIS I scores, or scores of acceptable alternatives, sent to the individual may be accepted as official. The Department shall determine whether the scores as presented are acceptable.

3.2.8.3 Direct verification from another State Department of Education shall be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Department. This method will be accepted only when official test scores from Educational Testing Service are not available.

4.0 An initial license is valid for three (3) years, unless revoked, and may not be renewed. Notwithstanding the foregoing, an initial license issued to an applicant in a vocational trade and industry area is valid for up to six (6) years to provide time for completion of specified college level course work required for certification.

4.1 An initial license issued to an applicant who is not currently employed by a school district, charter school, or other employing authority shall be inactive until such time as an applicant is employed by a public school district or charter school. Once employed, the initial license shall be in effect for three (3) years from the date of hire until the last day of the month of issuance three (3) years later, except in the case of the vocational and trade industry areas which shall expire on the last day of the month of issuance six (6) years later.

4.2 During the term of the initial license, license holders are required to participate in mentoring and other prescribed professional development activities offered by the Department and by the school district or charter school or other employing authority in which they are employed.

5.0 Applicants with Foreign Credentials.

5.1 Applicants graduating from foreign institutions shall provide an analysis of the degree equivalency, along with all other required application materials, which shall be reviewed by the Department.

**Regulatory Implementing Order**

6.0 The Department may extend an initial license for a period not to exceed one (1) year, exigent circumstances warranting the necessity of such extension.

6.1 A license holder whose license expires during the school year may have the initial license extended until the last day of the fiscal year upon a request from the district superintendent, charter school administrator, or other employing authority. This extension shall be considered an exigent circumstances and shall not exceed one (1) year in length.

7.0 An educator may take a leave of absence of up to three (3) years with no effect upon the validity or expiration of the initial license.

8.0 An applicant shall disclose his or her criminal conviction history upon application for an initial license. Failure to disclose a criminal conviction history is grounds for denial or revocation of an initial license as specified in 14 **Del.C.** §1219.

9.0 This regulation shall apply to all requests for issuance of an initial license, except as specifically addressed herein.

9.1 Educators whose applications for certification in Delaware were received prior to August 31, 2003, and whose applications and credentials have been reviewed by the Department and resulted in the issuance of ~~an~~ **evaluation or or a** prescription letter shall be required to meet the General Regulations for Certification of Professional Public School Personnel and the Specific Regulations as adopted for certification effective July 1, 1993.

9.2 Educators employed on a Limited Standard Certificate or a Temporary Certificate issued prior to August 31, 2003 shall continue on that certificate until the requirements specified are met or the certificate expires, whichever comes first. In no case shall a Limited Standard or Temporary Certificate be valid after July 1, 2008.

10.0 The Secretary of Education may, at the request of the superintendent of a local school district or charter school administrator or other employing authority, review licensure credentials on an individual basis and grant a license to an applicant who otherwise does not meet the requirements for initial license, but whose effectiveness is documented by the local school district, charter school, or other employing authority.

**Regulation 1514 Revocation Of Licenses And Certificates****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 regulation 1514 Revocation of Licenses. The regulation concerns the requirements for revocation of licenses and certificates of educational personnel. It is necessary to amend this regulation to include educators who hold limited standard, standard, or professional status certificates issued prior to August 31, 2003 who have not yet been issued continuing or advanced licenses under the revised licensure and certification regulations.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on August 27, 2003, 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 amend 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** §1514 in the *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 2nd  
Day Of October, 2003

Harold Roberts, Chair	Sharon Brittingham
Heath Chasanov	Patricia Clements
Edward Czerwinski	Karen Gordon
Barbara Grogg	Bruce Harter
Leslie Holden	Carla Lawson
Mary Mirabeau	John Pallace
Karen Schilling Ross	Carol Vukelich
Geraldine A. Williams	

**For Implementation By The Department Of Education:**

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** This 16th Day Of October, 2003

**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

**1514 Revocation of Licenses [and Certificates]**

1.0 Content: This regulation shall apply to the revocation of an initial license, continuing license and/or advanced license; or a limited standard, standard or professional status certificate issued prior to August 31, 2003 for educators, pursuant to **14 Del. C.** §1218.

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

**“Advanced license”** means a license issued as part of the three-tiered licensure system set forth in **14 Del.C.** §1213 and 1214.

**“Continuing license”** means a license issued as part of the three-tiered license system set forth in **14 Del.C.** §1211 and 1212.

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

**“Dismissal”** means (1) dismissal by a school board or board of directors where the license or certificate holder is employed by a public school district or a charter school for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty; or (2) the license or certificate holder’s voluntary resignation of employment in the face of disciplinary action for immorality; or (3) the license or certificate holder’s conviction of a crime which is evidence

of immorality.

**“Educator”** means a public school employee who holds a license issued under the provisions of **14 Del.C.**, Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to **14 Del.C.**, §1203, but does not include substitute teachers.

**“Immorality”** means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator’s effectiveness by reason of his or her unfitness or otherwise.

**“Initial license”** means a license issued as part of the three-tiered licensure system set forth in **14 Del.C.** §1210.

**“License holder”** or **“licensee”** means any individual who holds an initial license, continuing license and/or advanced license, and until a continuing license is issued, a limited standard, standard, or professional status certificate.

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

**“Standards Board”** means the Professional Standards Board established pursuant to **14 Del.C.** §1205.

**“State”** means the State of Delaware.

3.0 An initial, continuing or advanced license; or a limited standard, standard, or professional status certificate issued prior to August 31, 2003 may be revoked upon the dismissal of the license holder for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, and must be revoked upon a finding that the license or certificate holder made a materially false or misleading statement in his or her license or certificate application.

3.1 Revocation Requested by a School District or Charter School.

3.1.1 When any license or certificate holder is dismissed by a school board, ~~or~~ board of directors, or other employing authority for immorality, the board making such a determination pursuant to **14 Del.C.** shall, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual’s license.

3.1.2 When any license or certificate holder is dismissed by a school board or board of directors or other employing authority for misconduct in office, incompetence, willful neglect of duty or disloyalty, the board making such a determination pursuant to **14 Del.C.** may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual’s license.

3.1.3 When a license or certificate holder employed by a school board or board of directors or other employing authority voluntarily resigns in the face of disciplinary action for immorality and an investigation has been initiated by the school board or board of directors, or other employing authority, the board shall, upon accepting the resignation, give written notice to the Secretary.

3.1.4 Upon receipt of written notification from the school board or board of directors or other employing authority, the Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

3.1.5 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.

### 3.2 Revocation by the Secretary of Education

3.2.1 The Secretary may initiate proceedings to revoke a license or certificate holder's license or certificate when she/he has good reason to believe that any of the following circumstances exist:

3.2.1.1 The license or certificate holder has been convicted of a crime which is evidence of immorality;

3.2.1.2 The license or certificate holder who is not employed by a public school district or charter school or other employing authority has voluntarily resigned his/her employment in the face of an open investigation for immorality; or

3.2.1.3 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.

3.2.2 The Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefor. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

3.2.3 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license or certificate.

### 4.0 Duty of License or Certificate Holder to Report.

4.1 Notwithstanding any other provisions stated herein, a license or certificate holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:

4.1.1 The license or certificate holder is dismissed by a school board, board of directors, or other employing authority for immorality;

4.1.2 The license or certificate holder voluntarily resigns employment in the face of disciplinary action for immorality and/or an open investigation for

immorality;

4.1.3 The license or certificate holder is convicted of a crime which is evidence of immorality; or

4.1.4 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty, disloyalty or falsification of credentials.

4.2 The failure of the license or certificate holder to report any of the above events to the Secretary of Education shall be grounds for revoking a license or certificate.

5.0 When a license or certificate is revoked, all certificates held by the license or certificate holder shall be revoked. Educators are entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

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## Regulatory Implementing Order

### Regulation 1516 Standard Certificate

#### 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 regulation 1516 Standard Certificate. The regulation concerns the requirements for certification of educational personnel. It is necessary to amend this regulation due to changes in statute.

Changes in statute in 2000 and again in 2003 necessitated major changes in the licensure and certification system for educators. All educators must have an initial, continuing, or advanced license, as well as a standard certificate, which delineates the area in which an educator may practice. A standard certificate is issued to an educator who holds a license and who has 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. Educators who have graduated from an educator preparation program offered by a Delaware higher education institution approved by the Department, who have achieved a passing score on a PRAXIS II examination, who have obtained National Board for Professional Teaching Standards certification, or who hold a current and valid certificate from another state in the area in which the standard certificate is sought are granted a standard certificate.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on August 27, 2003, 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 amend 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 §1516 in the *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 2ND DAY OF OCTOBER, 2003

Harold Roberts, Chair	Sharon Brittingham
Heath Chasanov	Patricia Clements
Edward Czerwinski	Karen Gordon
Barbara Grogg	Bruce Harter
Leslie Holden	Carla Lawson
Mary Mirabeau	John Pallace
Karen Schilling Ross	Carol Vukelich
Geraldine A. Williams	

### For Implementation By The Department Of Education:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 16th Day Of October, 2003

### 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

## 1516 Standard Certificate

1.0 Content: This regulation shall apply to the issuance of a standard certificate, pursuant to 14 Del.C. §1220(a).

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

~~"Certified" means holding a certificate in a specific content area at designated grade levels.~~

"Certification" means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

"Department" means the Delaware Department of Education.

"Educator" means a public school employee who holds a license issued under the provisions of 14 Del.C., Chapter 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del.C. §1203, but does not include substitute teachers.

"Examination of content knowledge" means a standardized test which measures knowledge in a specific content area.

"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 pursuant to 14 Del.C. §104.

~~3.0 The Department shall issue a standard certificate to an educator who holds a valid Delaware initial, continuing, or advanced license or limited standard, standard, or professional status certificate who has 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, or has graduated from a Delaware approved program, or holds a valid and current certificate in the area requested from another state. Educators may hold certificates in more than one area.~~

~~3.1 An educator may document the acquisition of 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 by:

3.1.1 ~~Submitting evidence of having graduated from a Delaware approved educator preparation program; or~~

3.1.2 ~~Holding a valid and current certificate from another state; or~~

3.1.3 ~~Achieving a passing score on an examination of content knowledge, such as PRAXIS II. The section is subject to the establishment of passing scores for PRAXIS II examinations by the Department, and their approval by the Professional Standards Board, with concurrence from the State Board of Education; or~~

~~3.1.3.1 National Board for Professional Teaching Standards in the area, subject, or category in which the standard certificate is to be issued will be accepted in lieu of a passing score on PRAXIS II.~~

~~3.1.3.2 In areas, subjects or categories where an examination of content knowledge is neither available nor applicable, the applicant must meet the requirements set forth in the relevant Department regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought.~~

3.0 The Department shall issue a standard certificate to an educator who holds a valid Delaware initial, continuing or advanced license; or limited standard, standard, or professional status certificate issued prior to August 31, 2003, who has:

3.1 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 by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a standard certificate is requested; or

3.1.2 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a standard certificate in the area for which a standard certificate is sought; or

3.2 Graduating from an educator preparation program offered by a Delaware higher education institution approved by the Department pursuant to 14 DE Admin. Code 399, with a major in the area of the standard certificate requested; or

3.3 Achieving a passing score on a Praxis II examination in the area requested. This section is subject to the establishment of passing scores for Praxis II examinations by the Department and their approval by the Standards Board, with concurrence from the State Board; or

3.4 Holding a valid and current certificate from another state in the area for which a standard certificate is sought.

3.4.1 A "valid and current certificate from another state" means a current full or permanent certificate or license issued by another state. It does not include

temporary, emergency or expired certificates or licenses issued from another state.

~~4.0 An applicant for a standard certificate shall submit evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) official transcripts and, if applicable, official scores on the PRAXIS II examination or a notarized copy of the National Board for Professional Teaching Standards Certificate. If applied for simultaneously with application for an initial license, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

4.0 Educators may hold certificates in more than one area.

~~54.0 An applicant for a standard certificate shall submit evidence of (1) receipt of a bachelors degree from a regionally accredited 4-year college or university; (2) official transcripts and, if applicable, official scores on the Praxis II examination, or evidence of passage a notarized copy of the National Board for Professional Teaching Standards Certificate, or an official copy of the out-of-state license or certification, if applicable. If applied for simultaneously with application for an initial license, the applicant shall provide all required documentation for that application in addition to the documentation cited above.~~

65.0 If an applicant holds a valid initial, continuing, or advanced Delaware license; or a limited standard, standard or professional status certificate issued prior to August 31, 2003 and is requesting additional standard certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill and/or education required for the additional standard certificate requested is required.

76.0 This regulation shall apply to all requests for issuance of a standard certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current professional status certificate or standard certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License. The Department shall also recognize a limited standard certificate or temporary certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the [evaluation prescription] letter received with the limited standard or temporary certificate. Requirements must be completed by the expiration date of the limited standard or temporary certificate, but in no case later than December 31, 2009.

87.0 A standard certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's initial, continuing, or advanced license or limited standard, standard, or professional status certificate is revoked in accordance with 14 **DE Admin. Code** 1514. An educator is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.

98.0 The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a standard certificate on an individual basis and grant a standard certificate to an applicant who otherwise does not meet the requirements for a standard certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.

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### Regulatory Implementing Order

#### Regulation 347 Certification Library/Media Specialist

##### 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 regulation 347 Certification Library/Media Specialist. The regulation concerns the requirements for certification of educational personnel. It is necessary to amend this regulation to comply with changes in statute regarding the licensure and certification of educators. The amended regulation is aligned with national standards for library media specialists. The amended regulation will be renumbered 1547 to reflect its movement to the Professional Standards Board portion of the Department of Education regulations.

Changes in statute in 2000 and again in 2003 necessitated major changes in the licensure and

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on August 27, 2003, 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 amend 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** §1547 in the *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 2ND DAY OF OCTOBER, 2003

Harold Roberts, Chair	Sharon Brittingham
Heath Chasanov	Patricia Clements
Edward Czerwinski	Karen Gordon
Barbara Grogg	Bruce Harter
Leslie Holden	Carla Lawson
Mary Mirabeau	John Pallace
Karen Schilling Ross	Carol Vukelich
Geraldine A. Williams	

### For Implementation By The Department Of Education:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** This 16th Day Of October, 2003

### 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

**347 Certification Librarian/Media Specialist (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 15 semester hours of coursework in professional education to include Human Development and Methods of Teaching or;
    - 1.2.2 A valid Standard Delaware teaching license and;
  - 1.3 Specialized Professional Preparation
    - 1.3.1 Completion of a Bachelor's degree in an approved (NCATE/NASDTEC) program in School Library Science or;
    - 1.3.2 Completion of a Master's degree in an approved (NCATE/ NASDTEC/American Library Association) program in School Library Science or;
    - 1.3.3 A minimum of 27 semester hours in Library/Media Education covering the following areas: Foundations in Library Services/Library Trends, Reference Sources, Literature for Children, Literature for Adolescents, Evaluation, Selection, Acquisition of Resources/ Production of Teacher Resources, Cataloging and Classification, Organization and Administration of Library/Media Programs and Services, Technology in the Library (including microcomputer word processing, and on-line/CD-ROM technology), Instructional Design/Curriculum Development for the School Library and;
      - 1.3.3.1 Completion of a Practicum of 12 or more semester hours in a School Library (with experience at both the elementary and secondary levels) or;
      - 1.3.3.2 One year of successful, full-time experience as a School Librarian/Media Specialist, and 6 additional semester hours in Library Science from the areas specified in 1.3.3.
- 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 up to three years at the request of a Delaware public school district to a person who meets the requirements listed below, and who is employed as a School Librarian/Media Specialist to allow for the completion of the requirements for the Standard License as specified in 1.0. The Limited Standard License can be extended for 3 years (at the request of a school district) upon completion and verification of 12 additional semester hours of the coursework specified above in 1.3.3.
    - 2.1.1 Requirements of 1.1 and 1.2 and;
    - 2.1.2 A minimum of 3 years of successful, full-time work experience at the level (elementary, middle, secondary) of assignment and-
    - 2.1.3 A minimum of 6 semester hours in Library Science selected from 1.3.3.

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

**1547 Standard Certificate – Library/Media Specialist**

- 1.0 Content: This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220 (a), for Library/Media Specialist.
- 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 used.
  - “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 Library/Media Specialist 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 Bachelor's degree in any content area from a regionally accredited college/university; and,
  - 3.2 Completion of a Master's degree from a regionally accredited college/university in an American Library Association (ALA) approved program in School Library/Media; or,
  - 3.3 Master's degree from a regionally accredited college/university in any other content area, including a general Media Library Specialist (MLS) degree, and completion of a program in School Library/Media approved by the Department pursuant to 14 DE Admin. Code 399 which meets ALA Standards.

**Regulatory Implementing Order**

**Regulation 380 Certification School Nurse**

**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 regulation 380 Certification School Nurse. The regulation

concerns the requirements for certification of educational personnel. It is necessary to amend this regulation due to changes in statute regarding the licensure and certification of educators. The amended regulation will be renumbered 1580 to reflect its movement to the Professional Standards Board portion of the Department of Education regulations.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on August 27, 2003, 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 amend 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** §1580 in the *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 2ND DAY OF OCTOBER, 2003**

Harold Roberts, Chair	Sharon Brittingham
Heath Chasanov	Patricia Clements
Edward Czerwinski	Karen Gordon
Barbara Grogg	Bruce Harter
Leslie Holden	Carla Lawson
Mary Mirabeau	John Pallace
Karen Schilling Ross	Carol Vukelich
Geraldine A. Williams	

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** This 16th Day Of October, 2003

## 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

## ~~380-Certification School Nurse (Effective July 1, 1993)~~

~~1.0 The following shall be the requirements for the Standard License~~

~~1.1 Bachelor's degree in Education, Nursing, Health Education, Allied Health, Psychology, Counseling or School Nursing from an accredited college/university; and,~~

~~1.2 Registered Nurse, State of Delaware (true copy of current license required) and,~~

~~1.3 Three years clinical nursing experience and,~~

~~1.4 Specialized professional preparation:~~

~~1.4.1A one semester college/university level course in each of the following areas: Human Behavior and Development, Exceptional Children and Sociology.~~

~~1.4.2One course in each area below (university/college level, or Department of Education approved in-service courses for nurses): Community of Public Health, Counseling and Guidance, School Nursing, Physical Assessment, Health Education, Testing/Screening of the School Age Child.~~

~~2.0 Maintenance of License (Renewal)~~

~~2.1 During the 5 year life of the Standard License, 75 clock hours (5 semester hours) of continuing education shall be required, as specified below:~~

~~2.1.1All courses must relate to the field of school nursing.~~

~~2.1.2Six clock hours of CPR training is required within the 75 clock hour requirement.~~

~~2.1.3If content is appropriate, 5 semester hours (5 SH x 15 clock hours/SH = 75 clock hours) of university or college credit, or 3 semester hours (45 clock hours) and 30 clock hours of in-service may be used to meet the 75 clock hours;~~

~~2.1.4All in-service courses taken shall be DOE approved courses for Nurses;~~

~~2.1.5Other types of continuing education courses require prior approval from the Office of Certification;~~

~~2.1.6 Evidence of the 75 clock hours of coursework must be maintained by the individual and submitted to the Office of Certification at the expiration of the Standard License. Failure to meet the appropriate clock hour requirement will result in the issuance of a Limited Standard License.~~

~~3.0 The following shall be required for the Limited Standard License~~

~~3.1 The limited Standard License may be issued for a period of three years at the request of a Delaware public school district by the local district superintendent to a person who meets the requirements listed below, and who is employed as a school nurse to allow for the completion of the requirements for the Standard License as in 1.0:~~

~~3.1.1 Registered Nurse, State of Delaware (true copy of current license) and,~~

~~3.1.2 Three years clinical nursing experience and,~~

~~3.1.3 Specific agreement to complete the requirements specified in 1.1 and 1.4 within the three-year life of this License.~~

~~4.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

### **1580 Standard Certificate -- School Nurse**

1.0 Content: This regulation shall apply to the requirements for a standard certificate for school nurses, pursuant to 14 Del.C., §1220(a).

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.

“Educator” means a public school employee who holds a license issued under the provisions of 14 Del.C., Chapter 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 Del.C. §1203, but does not include substitute teachers. For the purposes of this regulation, school nurses are considered educators.

“License” means a credential which authorizes the holder to engage in the practice for which the license is used. “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 pursuant to 14 Del.C. §104.

3.0 In accordance with 14 Del.C., §1220(a), the Department shall issue a standard certificate as a school nurse to a nurse who holds a valid Delaware initial, continuing, or advanced license; or a limited standard, standard or professional status certificate issued by the Department prior to August 31, 2003 and who meets the following requirements:

3.1 Bachelor's degree in Nursing or School Nursing from an accredited college/university; and,

3.2 Current RN license, recognized by the DE Board of Nursing; and,

3.3 A minimum of three years clinical nursing experience; and

3.4 Valid and current certification in CPR.

4.0 Induction Requirements

4.1 Pursuant to 14 DE Admin. Code 1510, 4.2 and 1511., 3.0, during the term of the initial license as an educator, a school nurse must complete 90 clock hours of training consisting of school nursing, health education, testing/screening, counseling and guidance, and introduction to exceptional children. Failure to meet this requirement will result in the denial of a continuing license. (See DE Admin. Code 1511, 3.0).

5.0 Revocation

5.1 A standard certificate; or a limited standard, standard or professional status certificate as a school nurse issued prior to August 31, 2003 may be revoked in accordance with 14 DE Admin. Code 1514 for:

5.1.1 Making a materially false or misleading statement in a certificate application; or

5.1.2 Revocation of a license issued under 14 Del.C. Chapter 12; or

5.1.3 Failure to maintain a current license as a registered nurse in the State of Delaware; or

5.1.4 Failure to maintain valid and current certification in CPR.

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## **DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY**

Statutory Authority: 29 Delaware Code,  
Sections 4805(a) & 10115  
(29 Del.C. §§4805(a) & 10115)

### **ORDER**

Pursuant to 29 Del.C. §4805(a), the Delaware State Lottery Office hereby issues this Order regarding a proposed amendment to the Lottery Regulations. Following notice and a request for public comments, the Lottery makes the following findings and conclusions:

### Summary Of Evidence And Information Submitted

1. The Lottery posted public notice of the proposed amendment in the Register of Regulations on September 1, 2003 and in two newspapers of general circulation. The Lottery proposed to amend Rule 30(6)(a) pertaining to permitted exemptions to clarify that retailers and license applicants may apply for an exemption to the standards of accessibility.

2. On September 29, 2003, the Lottery received written submissions from Chairperson Rita Landgra of the Delaware State Council for Persons with Disabilities and Chairperson John A. Werner of the Governor's Advisory Council for Exceptional Citizens. Both submissions, almost identical in content, opposed adoption of the proposed Regulation for several reasons including that: i) exemptions should not be granted to new license applicants; ii) legal authority may not authorize the proposed regulation; and, iii) the proposed regulation is inconsistent with the Delaware Equal Accommodations Act, 6 Del.C. chapter 45. The Lottery received no public comments at a hearing held on October 2, 2003.

### Findings of Fact and Conclusions

3. The public was given notice and an opportunity to provide the Lottery with comments on the proposed Regulations. The evidence received by the Lottery is summarized in paragraphs #2.

4. The proposed amendments were promulgated by the Lottery Office in accord with its statutory duties and authority as set forth in 29 Del.C. §4805(a). The Lottery has considered the written comments received from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens in opposition to the proposed regulation. While the Lottery does not question the legality of the proposed regulation, the written comments from the public require further consideration by this agency. The Lottery will therefore withdraw the proposed regulation at this time for further study of the issue.

5. The effective date of this Order shall be ten (10) days from the date of publication of the Order in the Register of Regulations on November 1, 2003.

**IT IS SO ORDERED** this 3rd day of October, 2003.

### 30.0 Non-Discrimination on the Basis of Disability in Delaware Lottery Programs

#### (1) Definitions

a) **“Accessible”** means complying with the technical requirements found in the ADA Accessibility Guidelines (ADAAG).

b) **“Accessible Route”** means a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

c) **“ADA”** means the Americans with Disabilities Act (42 United States Code. §§12101-12213 and 47 United States Code §225 and §611).

d) **“Director”** means the Director of the State Lottery Office.

e) **“Entrance”** means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

f) **“Facility”** means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

g) **“Lottery Program”** means on-line and instant games offered to the public through retailer licensees.

h) **“Lottery”** or **“State Lottery Office”** means the lottery established by the Delaware State Lottery Law, Chapter 348, Volume 59, of the Laws of Delaware.

i) **“Lottery Retailer”** or **“Retailer”** means a business entity housed in a specific retail facility that is under license with the Delaware Lottery to provide lottery related services.

j) **“Inspection Report”** means a completed survey of the retailer or applicant facility that identifies barriers to program accessibility, if any and suggest possible solutions.

k) **“Service Site”** means an area within a lottery retailer facility where a customer can purchase a lottery related product. This is usually the cashier's station. qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

l) **“Technically Infeasible”** means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

#### (2) Purpose

a) The Americans with Disabilities Act (P.L. 101-336, U.S.C. §§ 12131-12134), known as the ADA, prohibits discrimination on the basis of disability in the delivery of programs offered by entities of state or local government. The purpose of this regulation is to ensure that the Delaware Lottery is in compliance with the ADA by ensuring that people with disabilities have access to Delaware Lottery programs.

b) In defining the scope or extent of any duty imposed by these regulations including compliance with the standard of accessibility defined in paragraph 3(b), higher or more comprehensive obligations established by otherwise applicable federal, state or local enactment may be considered.

### (3) General Requirements

a) Prohibition of discrimination. No lottery retailer shall discriminate against any individual on the basis of a disability in the full and equal enjoyment of lottery related goods, services, facilities, privileges, advantages, or accommodations of any lottery licensed facility.

b) Standard of accessibility. Each Retailer is required to meet a standard of accessibility that enables people with disabilities, including those who use wheelchairs, to enter the lottery licensed facility and participate in the lottery program. An accessible route must be provided comprised of the following accessible elements:

1) Parking if parking is provided to the general public;

2) Exterior route connecting parking (or a public way if no parking is provided) to an accessible entrance;

3) Entrance;

4) Interior Route connecting the entrance to a service site.

c) Each element shall meet the design standards set forth in the ADA Accessibility Guidelines (ADAAG) published in the Federal Register on July 26, 1991.

### (4) New License Applicants

a) License applicants. The State Lottery Office shall inspect the site of applicants for compliance with this regulation prior to granting a license. The State Lottery Office will not grant a license to an applicant who is not in compliance with this regulation.

b) Inspection reports. The State Lottery Office, prior to granting a license, shall provide lottery applicants with an Inspection Report that shall identify barrier removal actions, if any, necessary to provide program accessibility. The identified actions must be completed prior to the granting of a license.

### (5) Current Retailers

a) The State Lottery Office shall inspect the site of each lottery retailer for compliance with this regulation.

b) Inspection reports. The State Lottery Office shall provide to all current retailers an Inspection Report that

shall identify barrier removal actions necessary to provide program accessibility. The identified actions must be completed within 90 days of receipt of the Inspection Report.

c) Extensions. The Director may grant an extension of up to 90 days to allow a current retailer to complete barrier removal actions identified in the Inspection Report.

(i) Any request for an extension must be in writing, and shall include specific reasons for an extension and supporting documentation.

(ii) The Director shall grant an extension only upon showing of good cause.

### (6) Permitted exemptions

a) The following exemptions to the requirements of this rule may be granted by the Director. The Director shall review the circumstances and supporting documentation provided by the retailer or applicant to determine if the ~~retailer's~~ request for an exemption should be granted. The Director shall determine the type and scope of documentation to be required for each exemption classification. All decisions made by the Director shall be final; any retailer whose request for an exemption is denied by the Director shall be required to satisfy the requirements of this rule as a condition for maintaining its eligibility for a Lottery retailer contract.

b) Historic properties. To the extent a historic building is exempt under federal law, and if barrier removal would threaten or destroy the historic significance of the structure, this rule shall not apply to a qualified historic building or facility that is listed in or is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act or is designated as historic under State or Local law.

c) Legal impediment to barrier removal. Any law, act, ordinance, state regulation, ruling or decision which prohibits the lottery retailer from removing a structural impediment or from making a required improvement to the facility may be the basis for an exemption to this rule. A lottery retailer requesting an exemption for a legal impediment will not be required to formally seek a zoning variance to establish such impediment, but will be required to document that they have applied for and have been refused whatever permit(s) are necessary to remove the identified barrier(s).

d) Landlord refusal. An exemption may be granted based on the refusal of a landlord to grant permission to a Lottery retailer to make improvements required by the Lottery under this rule or based on the refusal of a landlord to pay for improvements required by the Lottery under this rule. The exemption shall only apply to the retailer's current term, and does not include any possible renewal periods under the lease. To request such an exemption, the retailer must submit documentation to the Director that the retailer requested the Landlord's permission and financial



participation to make the required structural improvements, that such request was denied by the landlord, and the reasons for the denial. In making a decision on the exemption request, the Director shall take into consideration, but not be limited to, the sufficiency of the reasons provided by the landlord for denying the retailer's request.

e) **Undue financial hardship.** A limited exemption may be granted if a retailer can demonstrate that the cost of removing a structural barrier or of making the required structural modification(s) to the retailer's facility is an undue financial hardship in that the cost of making such a change(s) exceeds 25% of the retailer's compensation from the Lottery for the prior calendar year (An annualized sales figure based upon the retailer's most current 13-week sales period shall be used for those retailer locations with less than a full year's history of sales.) Under the terms of this limited exemption, a retailer would be required to annually make those improvements and modifications that can be financed within an amount that is approximately equal to 25% of the total compensation earned from the Lottery in the prior calendar year. This requirement would continue on a year-to-year basis until all the improvements and modifications required by this rule have been completed. A retailer shall provide all supporting documentation requested by the Director to substantiate the, cost estimates of making the required improvements to the retailer's location.

f) **Technical Infeasibility.** A permanent exemption may be granted if a retailer can demonstrate that the removal of architectural barriers identified in the inspection report is not possible due to technical infeasibility. If such a claim is made, the Lottery may have the barrier removal action evaluated by a person knowledgeable in accessibility codes and construction to determine the merits of the claim.

g) **Alternative methods.** Where an exemption is granted in accordance with the provisions of this subchapter, the lottery retailer shall make the lottery related goods and services available through alternative methods. Examples of alternative methods include, but are not limited to:

- 1) Providing curbside service;
- 2) Directing by signage to the nearest accessible lottery retailer.

(7) **Complaints Relating to Non-Accessibility**

a) An aggrieved party may file an accessibility complaint with the Lottery Director or designee for review. Complaints must be in writing and, where possible, submitted on an ADA complaint form. As soon as practical, but not later than 30 days after the filing of a complaint, each complaint will be investigated. After the completion of the investigation, if the agency determines that the lottery retailer is not in compliance with this regulation, a letter of non-compliance will be issued to the lottery retailer with a copy to the complainant. If the lottery retailer is determined

to be in compliance, a letter so stating will be mailed to the retailer and complainant. Regardless of whether a complaint has been filed, the agency will issue a letter of noncompliance within 30 days after the completion of an onsite inspection of the lottery retailer facility if the agency determines that the lottery retailer is not in compliance with this regulation.

b) If the letter of non-compliance shows deficiencies in the accessibility of the retailer facility, the lottery retailer shall submit a plan to the agency within 30 days of the issuance of the letter of non-compliance. The plan shall describe in detail how the lottery retailer will achieve compliance with this regulation. Compliance shall be accomplished within 90 days of the letter of non-compliance. The Lottery may, upon request, grant the lottery retailer additional time to submit the plan for good cause.

c) Within 20 days of the submission of the plan to the agency, the Lottery shall notify the lottery retailer of the agency's acceptance or rejection of the plan. If the plan is rejected, the notification shall contain the reasons for rejection of the plan and the corrections needed to make the plan acceptable to the Lottery. If the retailer agrees to make the required corrections, the Lottery shall accept the plan as modified.

d) If a retailer fails to submit a plan within 30 days of issuance of the letter of noncompliance and has not requested an extension of time to submit a plan, the Lottery may proceed to initiate termination proceedings.

e) If approved, the plan must be completely implemented within 60 days of the agency's notice of approval. The Lottery may, upon request, grant the lottery retailer additional time for good cause. Notice of any extension will also be sent to the complainant, if applicable. Any such extension will commence immediately upon expiration of the first 60 day period.

f) If the corrective action taken by the lottery retailer corrects the deficiencies specified in the letter of noncompliance as originally issued or as later revised or reissued or if the onsite inspection of the lottery retailer facility reveals compliance with this regulation, the Lottery will issue a notice of compliance. Until this notice is issued, a complaint will be considered pending.

g) Failure to make the identified modifications in compliance with the accessibility standards and within the required time period will result in the initiation of proceedings to suspend or revoke the lottery license by the agency.

h) A license will be suspended if the Lottery determines that the lottery retailer has made significant progress toward correcting deficiencies listed in the compliance report, but has not completed implementation of the approved compliance plan. If the Lottery determines that the lottery retailer has not made a good faith effort to correct



the deficiencies listed in the compliance report, this inaction will result in the revocation of the lottery license for that lottery licensed facility.

i) While proceedings to suspend or revoke a lottery retailer's license are pending pursuant to this regulation, and until a notice of compliance is issued pursuant to subsection (c) of this section, the Lottery shall withhold incentive payments from the lottery retailer. In addition, if a license is revoked pursuant to this regulation, and incentive payments and other privileges have been withheld from the affected retailer pending review of the complaint, the lottery retailer forfeits any claim to such incentive payments or other privileges.

(8) Request for Hearings a) If the Lottery proposes the denial of an application for a license or the suspension or revocation of a lottery retailer's license pursuant to this regulation, the agency shall give the applicant or lottery retailer written notice of the time and place of the administrative hearing not later than 30 days before the date of the hearing.

b) All relevant rules of evidence and time limits established in these rules shall apply to hearings conducted under this regulation.

(9) Non-Exclusivity of Remedies

a) Remedies established by these regulations are not intended to supplant, restrict or otherwise impair resort to remedies otherwise available under law, including those authorized by the ADA and Del. Code Ann., title 6, ch. 45 (1993).

**See 3 DE Reg. 951 (1/1/00)**

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

Statutory Authority: 16 Delaware Code,  
Section 7406 (16 Del.C. §7406)

These regulations, "**Regulation for the Certification of Radiation Technologists/Technicians**," replace by revision the current "Regulation for the Certification of Radiation Technologists/Technicians" previously adopted on February 27, 1989 and most recently amended July 11, 2002.

The amendments to these regulations define certification requirements for technicians and technologists operating radiation machines, or administering radioactive materials in the healing arts in Delaware.

**Notice Of Public Hearing**

The Authority on Radiation Protection will hold a public hearing to discuss the proposed changes to the

Regulation for the Certification of Radiation Technologists/Technicians. This public hearing will be held on Monday, September 22, 2003, at 5:00 pm in the Pritchett Conference Room, Delaware Hospital for the Chronically Ill on DuPont Highway, in Smyrna, Delaware.

Copies of the proposed regulations along with a listing of substantial changes are available for review by contacting:

Office of Radiation Control  
Jesse Cooper Building  
P.O. Box 637  
Federal and Water Streets  
Dover, Delaware 19903  
Telephone: (302) 744-4546

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by close of business Friday, September 19, 2003. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by close of business September 30, 2003 to:

David Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, DE 19903-0637

**Proposed Regulation for the Certification of Radiation Technologists/Technicians**

This Regulation is approved by the Authority on Radiation Protection on June 13, 2002, pursuant to 16 Del. C. §7406(c). Radiation Technologists/Technicians are "users of ionizing radiation" and, therefore, subject to certification by the Authority on Radiation Protection. This Regulation is effective [~~July 11, 2002~~ **November 10, 2003**].

**SECTION I FINDINGS**

The Authority hereby finds and declares that the citizens of the State of Delaware are entitled to the maximum protection practicable from the harmful effects of excessive and improper exposure to ionizing radiation; that the protection can be increased by requiring appropriate education and training of individuals operating medical and dental equipment and sources emitting ionizing radiation; and that it is therefore necessary to establish certification standards in radiation protection principles for these operators and to provide for their appropriate examination and certification.

**See 6 DE Reg. 99 (7/1/02)**

## SECTION II TITLE OF REGULATION

This regulation shall be known as the "Radiation Technologist/Technician Certification Regulation".

See 6 DE Reg. 99 (7/1/02)

## SECTION III SEVERABILITY

If any provision or application of any provision of these Regulations is held invalid, that invalidity shall not affect other provisions or applications of these Regulations.

See 6 DE Reg. 99 (7/1/02)

## SECTION IV DEFINITIONS

As used in this regulation:

A. "Agency" means the administrative agent of the Authority on Radiation Protection; i.e., the Office of Radiation Control, Division of Public Health, Department of Health and Social Services.

B. "ARRT: American Registry of Radiologic Technologists." A national certifying body that credentials through a national test graduates of JRCERT approved radiologic technology programs. The ARRT also provides the State Limited Scope Licensing Examination to be used by individuals who do not meet the national registry requirements.

C. "Authority" means the Authority on Radiation Protection as specified by 16 Del. C. §7404.

D. "CCI: Cardiovascular Credentialing International." A national certifying body that credentials technologists in invasive cardiovascular procedures.

Ð E. "Certificate" means a document issued by the Agency recognizing the successful completion of an Authority approved Certification Exam. The "Certificate" allows for the practice of radiation technology as specified by the level of examination the individual has passed. Other credentials include "Temporary".

1. Temporary - means a certificate issued by the Agency as a temporary authorization to practice Radiation Technology to any applicant who has complied with the provisions of this regulation and is scheduled for the next available examination.

E. F. "Certification Examination" means any examination satisfactory to the Authority that is used to determine the competency of Radiation Technologists/Technicians in the "principles and practice of radiation protection".

F. G. "CIS: Cardiovascular Invasive Procedure Specialist" means any individual, other than a licensed practitioner who has trained to perform procedures in a catheterization lab or special procedures lab that require the use of radiation.

G. H. "CODA": Commission on Dental Accreditation.

G. I. "Dental Assistant" means an individual, other than a "Licensed Practitioner", who applies radiation to humans for diagnostic purposes in dentistry.

H. J. "DANB: Dental Assisting National Board" which provides national registration for dental assistants.

I. K. "Fee" means the money [see schedule A] an individual must pay:

1. to apply for and to take the certification examination
2. for recertification - to reinstate an expired certificate
3. for renewal - to renew a valid certificate

J. L. "JRCERT: Joint Review Committee on Education in Radiologic Technology"

M. JRCECT: Joint Review Committee on Education in Cardiovascular Technology

K. N. "Licensed Practitioner" means an individual licensed to practice medicine, dentistry, dental hygiene, podiatry, chiropractic, or osteopathy in this State.

L. O. "Medical Radiographer" means an individual, other than a Licensed Practitioner, who exposes humans to ionizing radiation for diagnostic purposes in medicine, podiatry, chiropractic, or osteopathy.

M. P. "NMTCB: Nuclear Medicine Technologist Certification Board" which provides national certification of Nuclear Medicine Technologists.

N. Q. "Nuclear Medicine Technologist" means an individual, other than a Licensed Practitioner, who uses radiopharmaceutical agents on humans for diagnostic and/or therapeutic purposes.

O. R. "Radiation Technician" means any individual who has not graduated from an approved program in radiation technology, but has passed an Authority approved examination.

P. S. "Radiation Technologist" means any individual who has successfully completed a JRCERT approved program in radiation technology and/or has passed a national certification examination in his/her field of specialization.

Q. T. "Radiation Technology" means the use of a radioactive substance or equipment emitting ionizing radiation on humans for diagnostic or therapeutic purposes.

R. U. "Radiation Therapist" means an individual, other than a Licensed Practitioner, who exposes humans to ionizing radiation for therapeutic purposes.

S. V. "Source of Radiation" means a radioactive material, or any device or equipment emitting or capable of producing ionizing radiation.

T. W. "User of Ionizing Radiation" means an individual who supervises the application of ionizing radiation and/or applies ionizing radiation to human beings

for diagnostic, therapeutic and/or research purposes (16 Del.C. §7403(9)).

**See 6 DE Reg. 99 (7/1/02)**

### SECTION V LEGAL TITLES

No individual, other than a Licensed Practitioner or Certified Radiation Technologist/Technician, shall use a Source of Radiation on humans for diagnostic, therapeutic and/or research purposes.

A. The Authority shall establish certification requirements for Radiation Technologists/Technicians; i.e., Dental Assistant, Medical Radiographer, Nuclear Medicine Technologist, and Radiation Therapist. Individuals holding these certificates shall be recognized by such title(s).

B. Any individual certified under this regulation is authorized to use a source of radiation on humans for diagnostic or therapeutic purposes under the supervision of a Licensed Practitioner, and in accordance with the Delaware Radiation Control Regulations.

C. Holders of a certificate (legal title) under this regulation shall display the official certificate or a verified copy in each place of regular employment.

**See 6 DE Reg. 99 (7/1/02)**

### SECTION VI CREDENTIALING PROCESS

#### A. Classification of Credentials

1. Certificate (Section VII A)
2. Temporary Certificate (Section VII B)

#### B. Application

1. The Agency shall accept an application for credentialing from any Radiation Technologist/Technician who is at least 18 years of age or who is currently enrolled in and attending an educational program in radiation technology and who pays a non-refundable application and examination fee (if applicable) established by rule of the Authority.

2. One or more booklets on basic radiation protection and terminology, examination specifications, and requirements for certification and examination shall be prepared and distributed under the supervision of the Authority on Radiation Protection in consultation with appropriate professional associations (see Schedule B). Upon acceptance of the application and examination fee, a copy of the booklet shall be sent to all applicants.

3. The application shall be valid for a period of six (6) months.

#### C. Examinations

1. The examination process shall be administered by the Authority on Radiation Protection or its designee, the ARRT (American Registry of Radiologic Technologists), the CCI (Cardiovascular Credentialing International) or

Exterior Assessments, Inc. The fee for examination shall accompany the application request.

2. The Authority may accept, in lieu of an examination, a current credential by a recognized national voluntary credentialing body, (See Schedule C) issued on the basis of an examination consistent with the requirements established by the Authority, provided that the radiation protection standards to which that body adheres are at least as stringent as those established by the Authority.

3. An examinee who fails to pass the certification examination may be re-examined, provided the prescribed application and examination fees for each re-examination are paid.

**See 6 DE Reg. 99 (7/1/02)**

### SECTION VII ISSUING CREDENTIALS

A. The Agency may issue a Certificate or Temporary Certificate to each applicant who has successfully met the requirements under Section VI, Subsection B, and has paid the prescribed fees. Furthermore, the Certificate shall be issued on verifying that the applicant has passed a certification examination acceptable to the Authority [see C.1. and C.2. above]. The initial Certificate shall expire after a period of four (4) years from date of issue. Certificates based on national credentials will automatically terminate if the national credentials are permitted to lapse.

B. Temporary Certificate. The Agency may issue a Temporary Certificate to any person whose certification or re-certification may be pending and when issuance is justified by special circumstances. A Temporary Certificate may be issued if the Agency finds that it will not violate the purpose of this regulation or endanger the public health and safety. A Temporary Certificate shall grant the same rights as the credential for which the applicant is awaiting examination. Such credential may not be renewed by the Agency without the approval of the Authority and only for just cause.

The Temporary Certificate shall expire:

1. on the date of notification of the results of the certification examination; or,
2. on the certification examination date if the applicant does not take the examination; or,
3. in any case, after a maximum of 365 days from the date of issue.

C. A valid certificate may be renewed by the Agency for a period of four (4) years upon payment of a renewal fee (see Schedule A) established by the Authority.

1. Applicants for renewal of certificates based on national credentials must provide proof that the national credentials are currently valid.

D. A Radiation Technologist/Technician whose certificate has lapsed for a period of less than 180 days shall apply for re-certification provided that he/she presents

evidence of having previously passed a Certification Examination approved by the Authority and pays the re-certification fee

A Radiation Technologist/Technician whose certificate has lapsed for more than 180 days shall:

1. Apply for re-certification
2. Apply to take the appropriate certification examination or show proof of currently valid national credentials
3. Pay the re-certification and re-examination fees

A radiation technologist/technician who has allowed his/her certificate to expire shall not expose humans to ionizing radiation until and unless he/she is re-certified .

**See 6 DE Reg. 99 (7/1/02)**

### SECTION VIII LIMITATIONS OF CREDENTIALS

A. Nothing in the provisions of this regulation relating to Radiation Technology shall limit, enlarge, or affect the practice of Licensed Practitioners herein defined.

B. The requirement for certification shall not apply to a resident physician, dentist, dental hygienist or to a student enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, or radiation technology who applies ionizing radiation to humans in such an educational program while under the supervision of a certified Radiation Technologist.

C. A certificate, registration or license issued by another state will not be accepted as a valid equivalent Radiation Technologist/Technician certification by the Authority.

**See 6 DE Reg. 99 (7/1/02)**

### SECTION IX APPEALS, ENFORCEMENTS AND PENALTIES

#### A. OFFENSES

The following is a list of offenses which are grounds for disciplinary actions of a certified Radiation Technologist or certified Radiation Technician and are the basis for refusal of an application for certification:

The certificate holder or applicant:

1. has been found guilty of fraud or deceit in procuring or attempting to procure a certificate to practice radiation technology; or
2. has been convicted of a felony; or
3. has been convicted of a crime involving moral turpitude or gross immorality; or
4. is unfit or incompetent by reason of gross negligence; or
5. is addicted to the use of habit-forming drugs and not currently under treatment for the addiction; or

6. has a physical or mental condition that prohibits the certificate holder from performing the essential functions of the practice authorized by the certificate; or

7. has a certificate to practice as a registered technologist that has been suspended or revoked in any jurisdiction; or

8. is guilty of unprofessional conduct, or the willful neglect of a patient.

#### B. DISCIPLINARY SANCTIONS

The Authority on Radiation Protection may impose any of the following sanctions singly or in combination when it finds a certificate holder or an applicant is guilty of any offense described in Section A:

1. Permanently revoke a certificate to practice
2. Suspend a certificate until the certificate holder provides proof that the conditions in response to which the suspension was issued no longer exist.
3. Censure a certificate
4. Issue a letter of reprimand
5. Refuse a certificate (Applicant)
6. Refuse to renew a certificate

#### C. PROCEDURE

##### 1. THE AUTHORITY

a. The Agency may, upon complaint or upon its own initiative, investigate whether a certificate holder or applicant has engaged in activities specified in this section as grounds for disciplinary action. The Agency shall file a complaint with the Authority seeking to impose sanctions against the alleged violator.

b. The Authority shall notify the alleged violator of the complaint and offer the alleged violator the opportunity for a hearing, which must be requested within 30 days of the date of notification. If the alleged violator does not timely request a hearing, the proposed sanctions shall become final. If the alleged violator makes a timely request for a hearing, the Authority shall schedule the hearing and give the alleged violator at least 15 days notice prior to the date fixed for the hearing.

c. In all proceedings herein:

- 1) The alleged violator may be represented by counsel who shall have the right of examination and cross-examination.
- 2) The alleged violator and the Agency may subpoena witnesses. Subpoenas shall be issued by the Chairman or Vice Chairman of the Authority upon written request.
- 3) Testimony before the Authority shall be under oath. Any member of the Authority shall have power to administer oaths for this purpose.
- 4) A stenographic record of the hearing shall be made by a qualified court reporter. At the request and expense of either party such record shall be transcribed with a copy to the other party.

5) The decision of the Authority shall be based upon a preponderance of the evidence. If the charges are supported by such evidence, the Authority may refuse to issue, or may revoke or may suspend a certificate, or otherwise discipline a certificate holder as outlined in these regulations.

6) The decision of the Authority will be sent to the alleged violator by certified mail.

7) Any final order of the Authority may be appealed to the Superior Court.

8) All findings of the original action, hearing, appeal and conclusions will be held in file at the Agency.

9) The Agency shall notify the employer of the alleged violator of any final order of the Authority regarding any action taken against the certification of that employee by registered, return receipt mail.

**D. JUDICIAL REVIEW BY SUPERIOR COURT**

Any final order entered in any proceeding by the Authority shall be subject to judicial review by the Delaware Superior Court per 16 Del. C. §7412(c).

**E. UNLAWFUL PRACTICE OF RADIATION TECHNOLOGY**

No person shall practice or offer to practice radiation technology or claim to be a registered or certified radiation worker in Delaware, or shall use any title, abbreviation, sign, card, or device to indicate that such person is certified pursuant to this regulation unless such person is actually certified by the Authority on Radiation Protection.

**See 6 DE Reg. 99 (7/1/02)**

**SCHEDULE A  
Credential Fees**

Certificate Category	Application	Examination	Renewal
Dental Assisting	Included in examination fee per testing organization	Per Testing Organization	\$10.00 for 4 years

Medical Radiation Technician	\$10.00	Per Testing Organization	\$10.00 for 4 years
Medical Radiation Technologist	\$10.00	Per National Board	\$10.00 for 4 years
Nuclear Medicine	\$10.00	Per National Board	\$10.00 for 4 years
Radiation Therapy	\$10.00	Per National Board	\$10.00 for 4 years

**See 6 DE Reg. 99 (7/1/02)**

**SCHEDULE B**

- Delaware Professional Associations
  - Dental Assistants Association
  - Dental Hygienists Association
  - Medical Society of Delaware
  - Society of Nuclear Medicine Technologists Section
  - Delaware Society of Radiology Professionals
  - Dental Society of Delaware
- See 6 DE Reg. 99 (7/1/02)**

**SCHEDULE C**

List Of National Credentialing Organizations Acceptable For Delaware Certification

1. American Registry of Radiologic Technologists
  2. Dental Assisting National Board
  3. Nuclear Medicine Technologist Certification Board
  4. Cardiovascular Credentialing International (CCI)
- See 6 DE Reg. 99 (7/1/02)**

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 107 (31 Del.C. §107)

**Nature Of The Proceedings:**

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend the Division of Social Services Provider Manual and the Title XIX Medicaid State Plan to revise and clarify the criteria and reimbursement methodology for Prescribed Pediatric Extended Care (PPEC) 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 September 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 31, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary Of Comments Received With Agency Response**

The Delaware Developmental Disabilities Council (DDDC), and the State Council for Persons with Disabilities

(SCPD) offered the following comments, which are summarized below:

- First, there is a categorical utilization cap of 12 hours/day, 5 days/week. We question whether the Division of Social Services (DSS) may impose such a cap.
- Second, the regulations contain inconsistent level of care standards.
- Third, the employment justification in §1.5 could be expanded. The reasons why a parent is unavailable to care for the child [§3.4.3] may typically include attendance at school. Clarifying that attendance at school or vocational training justifies parental absence from the home also supports the DSS TANF program which often requires participation in job training courses.
- Fourth, §1.2.2 requires the Department of Education (DOE) to complete an individualized education plan (IEP). The DOE does not prepare IEPs. Districts prepare IEPs.
- Fifth, the references to "cognitive impairments" and "cognitive intact" in §§1.2.2 and 1.2.3 are problematic. Section 1.2.3 suggests that children ages 3-21 may qualify for PPEC services only if they lack cognitive impairments, the opposite of §1.2.2.
- Sixth, the ostensible authorization for some children up to age 21 in §1.2.3 is contradicted by the categorical cap ("children over age 6") in §1.2.7. It is unclear if "over age 6" means a child who has had a sixth birthday or a child who is age 7.
- Seventh, the proposed age limitations may violate the Age Discrimination Act. The regulations are codified at 42 CFR Part 90. If PPEC is a CMS-approved EPSDT service, it should not be limited by age. It should be available to the class of medically qualifying children up to age 21.
- Eighth, the references to the CCADP program and the Social Security Administration (SSA) are inapt. The CCADP and Supplemental Security Income (SSI) program eligibility standards are different than service eligibility standards for PPEC.
- Ninth, §4.4.1 contemplates parental contributions to PPEC services. We are not aware of any other EPSDT services (apart from transportation and proposed prescription co-pay) which require parental contributions. Moreover, since such contribution is not required for nursing home care, this policy may violate the ADA as interpreted by Olmstead.

**Agency Response:** Although services in a PPEC setting are limited by the hours that such facilities operate, there is no absolute cap on necessary medical services should a recipient need them outside of this setting.

Also, school districts complete IEP's and DSS will

make that change. Most children over age six are in school and would be getting the equivalent of PPEC Services paid for by Medicaid in the school setting. Medicaid cannot duplicate the services that the school is providing. This provision allows Medicaid expenditures to be efficient and effective.

The reference to parental contributions is a direction the State intends to pursue though a waiver to collect a co-payment for services based on family income. The State currently excludes parental income for many eligible children.

#### Findings Of Fact:

The Department finds that the proposed changes as set forth in the September 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the criteria and reimbursement methodology of the Prescribed Pediatric Extended Care Program is adopted and shall be final effective November 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 10/15/2003

#### DSS FINAL ORDER REGULATIONS #03-38a

#### PROVIDER MANUAL REVISIONS:

#### **822 Prescribed Pediatric Extended Care (PPEC) Provider Specific Policy**

#### 1.0 Overview

##### 1.1 General Information

1.1.1 Prescribed Pediatric Extended Care (PPEC) is a package of comprehensive nursing, nutritional assessment, developmental assessment, speech, physical and occupational therapy services provided in an outpatient setting, as ordered by an attending physician. These services are provided no more than twelve hours per day, five days per week.

1.1.2 The Center for Medicare and Medicaid Services (CMS) approval of PPEC as an EPSDT-related treatment service was obtained in May 1990 for services provided on or after October 1, 1989.

1.1.3 PPEC services are primarily provided for infants and children ages 0-36 months old, who are severely disabled and require a level of care consistent with an acute care in-patient hospitalization, a skilled nursing facility, or private duty nursing being authorized for continuous 8 hour shifts.

1.1.4 PPEC services are provided as an alternative to more expensive institutionalization or as an

alternative to community/home care for children who are determined to be in medical need of services.

1.1.5 PPEC services may be provided when parent(s) are employed and required medical care is not available in home or daycare. Hours of employment must be documented. Documented parental inability to care for child, or an inability to access needed medical care will be considered in determining eligibility for PPEC services.

1.2 Service Limitations

1.2.1 PPEC services are generally limited to eligible recipients who are under age 3.

1.2.2 Special exceptions for children age 3-5 with cognitive impairments can only be considered after a thorough Individual Education Plan (IEP) has been completed by the [Department of Education school district] and confirming documentation from the school district that an appropriate facility with required services is not available.

1.2.3 Special exceptions for children age [3-5], who are cognitively intact and age eligible for school services (as determined and documented by the school district, child watch, or other appropriate authority [are as] not eligible for the 3-21 year old program) will be considered for PPEC services.

1.2.4 Before and after school services are not PPEC level services. When medical documentation demonstrates a need for continuous nursing supervision the child and family will be evaluated on a case by case review. If continuous nursing supervision is required, it may be paid for under the Level I eligibility criteria with hourly rate (TBD).

1.2.5 Admission to PPEC for observational purposes will not be approved or reimbursed by Delaware Medical Program (DMAP).

1.2.6 Admission to the PPEC for skilled assessment and monitoring will only be considered short term (less than 2-4 weeks) under limited special circumstances. Appropriate circumstances may include:

A. Skilled assessment and monitoring is needed on a continuous basis (8 hours or greater) and cannot be accomplished by intermittent nursing visits or visits to the physicians' office.

B. Continuous clinic/health data is required to treat an unstable condition, i.e., frequent adjustments to the treatment plan as a result of the monitoring such as medication titration.

C. The child is frequently admitted to acute care or emergency care and an effective treatment plan has not been developed in an alternative setting/care level.

1.2.7 PPEC services are not covered for children over age 6.

**2.0 Qualified Providers**

2.1 Standards

2.1.1 State licensing standards have been established specifically relating to PPEC Centers (PPECCs). To participate in the ~~Delaware Medical Assistance Program~~ DMAP, an entity must be professionally licensed as a PPECC by the State's Office of Health Facilities, Licensing and Certification.

**3.0 Services**

3.1 ~~Limitations~~ Request for Services

3.1.1 All ~~Prior authorization~~ of PPEC services must be prior authorized. ~~will be required.~~ Each request is reviewed on an individual basis, using policies established by the DMAP, including billing and documentation of billing all primary insurance. (Refer to the Services Requiring Prior Authorization section in the General Policy for details) ~~Two pieces of documentation will be needed to authorize these services. These are:~~

3.2 Special Physician Documentation Requirements

~~3.1.1.1~~ 3.2.1 A letter from The attending practitioner shall request a referral to evaluate for payment of PPEC services by submitting a letter to the Medical Evaluation Team (MET) that documents: ~~physician containing the following information:~~

~~3.1.1.1.1~~ 3.2.1.1 Name of patient

~~3.1.1.1.2~~ 3.2.1.2 Patient's Medicaid ID number

~~3.1.1.1.3~~ 3.2.1.3 Date of birth

3.2.1.4 Detailed medical history that documents the need for PPEC services

~~3.1.1.1.4~~ 3.2.1.4 Detailed medical history that documents the need for PPEC services

~~3.1.1.1.5~~ 3.2.1.5 Documentation that the child would require inpatient hospital or nursing home care in the absence of PPEC services

~~3.1.1.1.6~~ 3.2.1.6 Estimated amount and duration of required services, (e.g., the number of days per week and the number of weeks/months, the patient is expected to need these services.

~~3.1.1.1.7~~ 3.2.1.7 If home health services or private duty nurse services are ordered concurrently with PPEC, medical justification for the combination of services is required

~~3.1.1.1.8~~ 3.2.1.8 The doctor may recommend the name and address of the PPEC organization who will provide the care

~~3.1.1.2~~ A letter from the PPEC providing the following information:

~~3.1.1.2.1~~ 3.1.1.2.1 Name of patient

~~3.1.1.2.2~~ 3.1.1.2.2 Patient's Medicaid ID number

~~3.1.1.2.3~~ 3.1.1.2.3 Evaluation of the expected level of care needed including the scoring sheet used to determine level of care

~~3.1.1.3~~ 3.1.1.3 Requests for prior authorization must

be sent to:

Division of Social Services  
Robscott Building  
Medicaid Prior Authorization Unit  
153 Chestnut Hill Road  
Newark, DE 19713

~~3.2~~ 3.3] Parental Documentation Requirements

~~3.2.1~~ 3.3.1] Parents shall provide documentation that the child is severely disabled, meeting Delaware's Children's Community Alternative Disability Program eligibility requirements or child is disabled under the Social Security Administration regulations. If parents do not have access to needed documentation, the parents must sign a medical release to obtain medical documentation deemed necessary by MET to determine medical eligibility. Failure to do so will result in denial of PPEC services.

~~3.2.2~~ 3.3.2] Parents shall provide a copy of the most recent Individual Family Service Plan (IFSP) if completed and available for children age 0 up to age 3. For children age 3-5, parents shall provide an IEP when appropriate. Parents must sign a release for MET to obtain information.

~~3.3~~ 3.4] Prior Authorization Addresses

~~3.3.1~~ 3.4.1] All information for prior authorization must be sent (letter or fax) to one of the following addresses:

Division of Social Services  
Medical Evaluation Team  
Robscott Bldg., Suite 3A  
153 Chestnut Hill Road  
Newark, DE 19713  
Fax Number: (302) 368-6977

Or

Georgetown State Service Center  
546 S. Bedford St.  
Georgetown, DE 19947  
Fax Number: (302) 856-5517

~~3.4~~ 3.5] Service Levels

~~3.4.1~~ 3.5.1] DMAP's Medical Evaluation Team will evaluate the child and complete a PPEC Scoring sheet to determine the reimbursable PPEC level of care. (Refer to Appendix A)

~~3.4.2~~ 3.5.2] Levels of care are determined by the intensity of the child's daily needs. A scoring system to document these needs has been developed by the DMAP in consultation with the PPEC providers. This—The scoring system, illustrated in Appendix A, is used to assign the level of care.

3.1.2 The DMAP recognizes as a reimbursable medical service four of the five established levels of care.

Level 1 is not currently a reimbursable service, and has no corresponding procedure code. Procedure/Revenue codes for covered services are found in Appendix B.

~~3.4.3~~ 3.5.3] Level I Eligibility criteria:

- Child is not eligible at Level 2 or higher level; and
- The child has a medical condition() that prevents him/her from being accepted by traditional day care; and
- The service is prescribed by a physician; and
- There is no parent or legal guardian available to care for the child.

~~3.4.4~~ 3.5.4] The Prescribed Pediatric Extended Care Reimbursement Sheet will not be used for Level I Eligibles.

~~3.4.5~~ 3.5.5] The DMAP recognizes as a reimbursable medical service three established levels of care. Procedure/Revenue codes for covered services are found in Appendix C.

~~3.4.6~~ 3.5.6] See DMAP General Policy Manual for Provider Appeal Procedures.

#### 4.0 Reimbursement

##### 4.1 Methodology

4.1.1 PPEC providers are reimbursed a proportioned of their charges; to be determined by DMAP prospective rate representing their reasonable costs and the acuity level of the client.

4.1.2 PPEC providers will not be reimbursed for Level I service if they fail to submit a valid annual Statement of Reimbursement Costs (Cost report).

##### 4.2 Acuity Levels

4.2.1 Clients served by PPEC providers will be assigned levels of acuity according to the resources required for their care. Reimbursement rates will reflect the various acuity levels.

##### 4.3 Units of Service

4.3.1 Per Diem:PPEC reimbursement may be in daily units (per diem), if the client requires a full day (8-12 hours) of service.

4.3.2 Per Diem - Half Day:PPEC reimbursement rates may be paid in half day units (per diem), if the client requires a minimum of 4 consecutive hours of service.

##### 4.3.3 Hourly rates (TBD)

##### 4.4 Sliding Fee Scale

4.4.1 To determine percentage of cost of care paid by parents refer to Appendix D [(To Be Determined)].



**DSS FINAL ORDER REGULATIONS #03-38b****STATE PLAN REVISIONS:****ATTACHMENT 4.19-B****Page 7**

**Prescribed Pediatric Extended Care Centers (PPECCs)** will be reimbursed at a ~~negotiated~~ range of ~~daily~~ rates depending on the level of care needed by each child. Existing rates cannot be increased except on an annual basis after approval from the State agency. The State agency will limit approved increases to the Centers for Medicare and Medicaid Services (CMS) medical care inflator appropriate for the service.

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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 107 (31 Del.C. §107)

**Nature Of The Proceedings:**

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Food Stamp Program policy in the Division of Social Services Manual (DSSM) as it relates to rehabilitated drug felons. 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 September 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 30, 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary Of Proposed Change**

The State of Delaware is electing to opt out under 21 U.S.C. §862a so that rehabilitated drug felons can receive food stamp benefits if they are participating in, completed, or certified out of a drug treatment program approved by Delaware Health and Social Services, as follows:

- Individuals convicted of a drug felony for distribution (trafficking) of a controlled substance continue

to be permanently barred from receiving food stamps.

- Individuals convicted of a drug felony for the possession or use of a controlled substance can receive food stamps if they have met certain conditions including substance abuse treatment.

These individuals will be required to submit to quarterly random drug testing with a clean drug test result to continue to participate in the food stamp program.

Citation: 142<sup>nd</sup> General Assembly - House Bill 263, Eligibility for Food Stamp Program

**Summary Of Comments Received With Agency Response**

The Delaware Developmental Disabilities Council (DDDC), the State Council for Persons with Disabilities (SCPD), and the Food Bank of Delaware (FBD) submitted comments.

A summary of the comments received from all sources follows:

The period of disqualification for persons who fail to supply drug tests results could be clarified. It could be interpreted to mean that a person failing to return drug test results is either 1) ineligible only until he submits negative test results; or 2) ineligible for one year at which time he can provide negative test result and resume eligibility.

**Agency Response:** To clarify the disqualification period for individuals who fail a drug test and those who do not send in a drug test, the “period of ineligibility” sentence has been moved and added to the “individuals who return an unclean drug test” sentence (indicated by bracketed bold text). This should clarify that a person who returns a failed test cannot get food stamps for one year and that before getting food stamps again must provide a clean drug test.

- House Bill 263 removes individuals convicted of distribution from this Bill’s benefits. Perhaps in the future, this population will be revisited for benefit reinstatement.
- In accordance with HB 263, if an individual’s drug test is not free of any controlled substance during the drug testing period, then that individual’s eligibility for benefits would be terminated for a year. However, how would this provision apply to the use of methadone by a person actively participating in a drug treatment program, *as prescribed by the drug treatment program?*

**Agency Response:** DSS has been working with the Division of Substance Abuse and Mental Health (DSAMH).

The division met with representatives from many of the treatment centers to discuss ways to minimize the cost of the drug test that the law clearly states must be at the individual's own cost. The treatment centers agreed to only charge the cost of the test itself. If a person is actively in treatment and has a monthly test done, DSS can use the most recent test if he/she is randomly selected to submit one for DSS. Clients who must report regularly to a probation officer can get their drug tests done for free. While we have tried to minimize the cost, some individuals will have to pay something.

In addition, DSS is working with DSAMH to have the treatment centers indicate when someone is receiving methadone for treatment purposes so he/she will not get disqualified. DSS is not going to randomly select the names of individuals who have entered treatment for the first 90 days of treatment for random drug tests. This will give the individuals time to become drug-free.

#### Findings Of Fact:

The Department finds that the proposed changes as set forth in the September 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Food Stamp Program as it relates to rehabilitated drug felons is adopted and shall be final effective November 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 10/15/03

#### DSS FINAL ORDER REGULATIONS #03-36

#### REVISIONS:

##### 2027 Disqualification of Individuals Convicted of Drug Related Offenses

###### For Cash Assistance:

Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession, use or distribution of controlled substances shall not be eligible for cash assistance ~~or benefits under the food stamp program.~~

This provision does not apply to individuals convicted of such offenses which occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

###### ~~For Cash Assistance:~~

Determine income, resources, and deductions according to DSSM 4003.2 if the individual is a parent payee. Exclude the income and resources of the individual if the person is a

non-parent payee.

For Food Stamps:

Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of distribution of controlled substances shall not be eligible for benefits under the food stamp program.

Individuals convicted under Federal or State law of any offense which is classified as a felony that has the element of possession or use of controlled substances shall not be eligible for benefits under the food stamp program unless they meet the following conditions:

1. Is currently participating in a substance abuse treatment program approved by DHSS; or

2. Is currently enrolled in a substance abuse treatment program approved by DHSS subject to a waiting list to receive available treatment, and the individual remains enrolled in the treatment program and enters the treatment program at the first available opportunity; or

3. Has satisfactorily completed a substance abuse program approved by DHSS; or

4. Is determined by a treatment provider licensee by DHSS not to need substance abuse treatment according to DHSS' guidelines; and

5. Is complying with, or has already complied with all obligations imposed by the Court, including any substance abuse treatment obligations.

Individuals who regain eligibility for food stamps due to meeting the above conditions will be required to submit to quarterly random drug testing at the individual's own cost.

Individuals who return a clean drug test result free of controlled substances will continue to be eligible to get food stamps, if otherwise eligible.

Individuals who return an unclean drug test result, which shows the use of controlled substances, will be disqualified from receiving food stamps for one year. [The period of ineligibility will remain in effect until the end of the one year. The individual must return a clean drug test result free of controlled substances before getting benefits again.]

Individuals who fail to return a drug test result will be ineligible to receive food stamps until a clean drug test result is provided.

Such ineligible individuals will not be considered part of the household except that the income and resources of such individuals shall be considered to be income and resources of the household.

Determine the income, resources and deductions of these disqualified individuals according to 9076.1. ~~Intentional Program Violation, Felony Drug Conviction or Fleeing Felon Disqualifications, or Work Requirement Sanctions.~~

This provision does not apply to individuals convicted

of such offenses that occurred prior to August 22, 1996, the date of enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 107 (31 Del.C. §107)

**Nature Of The Proceedings:**

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193). 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 September 2003 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by September 2003 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No comments were received during the public comment period.

**Findings Of Fact:**

The Department finds that the proposed changes as set forth in the September 2003 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to renew Delaware's TANF State Plan is adopted and shall be final effective November 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 10/16/03

**DSS FINAL ORDER REGULATION #03-35****RENEWAL:****DELAWARE STATE PLAN FOR TANF**

This new State Plan is submitted to renew Delaware's eligibility status for the Temporary Assistance for Needy Families (TANF) program provided for in the enactment of

the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), (P.L. 104-193).

Delaware has been operating its TANF program under Section 1115 waivers from the Social Security Act, as approved on December 12, 1995, and amended on September 27, 1996.

~~The current authorization of the TANF waiver[s] terminated on September 30, 2002. TANF is authorized to continue through December 31, 2002. Delaware has prepared this State Plan renewal with much unknown information. Enactment of either the House or Senate Finance Committee Reauthorization Bill would make many changes in TANF, but Delaware cannot build such changes into this Plan without knowing which of the many conflicting provisions will prevail. In addition, one provision that Delaware has reviewed with particular interest is the authority provided to states by Section 711 of the Senate Finance Bill, to continue to operate TANF using section 1115 waiver provisions. Enactment of this proposal would permit Delaware to continue to operate TANF using the Delaware provisions that DHSS agreed were inconsistent with TANF based on our 1999 Waiver Inconsistency Certification.~~

~~Although our rate of caseload decline has flattened somewhat recently due to the economic downturn, we are certain that this temporary slow-down will be short-lived. Delaware's TANF program requires immediate work from caretakers in time-limited families; those who cannot secure unsubsidized employment immediately are placed in a Work for Your Welfare component.~~

~~Since the Senate Bill would permit our waivers to continue, and Delaware is unable at this time to plan what alternative provisions might be required by enactment of reauthorization legislation, we have opted to continue operating Delaware's TANF program as is currently designed with minor changes to be in compliance with certain TANF requirements. In making this decision, Delaware has carefully considered any potential risks to our ability to meet TANF participation rates and have formulated contingency plans that will ensure we avoid participation rate penalties. Delaware's contingency plans include the potential for temporary movement of some families who are performing work services that would not count as participation under current TANF rules, into segregated or separate state programs using maintenance of effort (MOE) funding.~~

The current short-term reauthorization of TANF leaves much unknown about the future of the program, and Delaware is unwilling to make major changes to our TANF program without full knowledge of new federal requirements. Enactment of either the House or Senate Finance Committee Reauthorization Bill would make many changes in TANF, but Delaware cannot build such changes

into this Plan without knowing which of the many conflicting provisions will prevail.

Delaware's TANF program requires immediate work from caretakers in time-limited families; those who cannot secure unsubsidized employment immediately are placed in a Work for Your Welfare component.

Since Delaware is unable at this time to plan what alternative provisions might be required by enactment of long-term reauthorization legislation, we have opted to continue operating Delaware's TANF program as it is currently designed with minor changes to be in compliance with certain TANF requirements.

Delaware ~~is plans~~ to closely watching the progress of federal TANF reauthorization and ~~to~~ will submit any needed Amendments to this State Plan as quickly as possible after new legislative requirements become known.

### Goals, Results And Public Involvement

#### Goals

The goal of Delaware's TANF Program is to provide a welfare system based on a philosophy of mutual responsibility. In working toward that goal, the State will strive to place individuals in private or public sector unsubsidized employment that enables them to enter and maintain meaningful jobs and interrupts the intergenerational welfare dependency cycle. To that end, TANF creates positive incentives for families to become employed, and expects families to accept responsibility to become self-supporting.

Five key principles form the foundation of TANF:

1. Work should pay more than welfare.
2. Welfare recipients must exercise personal responsibility in exchange for benefits.
3. Welfare should be transitional, not a way of life.
4. Both parents are responsible for supporting their children; and
5. The formation and maintenance of two-parent families should be encouraged, and teenage pregnancy and unwed motherhood should be discouraged.

#### Involvement of Local Governments, the Public, and Private Sector Organizations

Welfare Reform in Delaware has a long history of active involvement and partnership between and among state and local governments and the private sector. Over a multi-year period, Delaware has engaged government, the public and the private sector in dialog about the welfare system and ways to change it.

Since its introduction in January of 1995, in the form of a waiver request, all sectors have had the opportunity to influence Delaware's welfare reform program in a series of public meetings and forums.

A collaborative partnership among the Department of Health and Social Services (DHSS), Department of Labor (DOL), and the Delaware Economic Development Office (DEDO) worked to develop Delaware's original TANF program; and the Delaware Transit Corp (DTC) has joined these components in planning any changes required.

From 1995 to the present, the TANF collaborative team has involved other stakeholders in a number of ways. Community partner involvement runs the gambit from support letters for TANF-related grants, to participating in the resultant project planning and implementation, to membership on an initiative's advisory/oversight council. Partnerships include the City of Wilmington's HOPE VI subsidized housing project; the Delaware Ecumenical Council on Children and Families' rural outreach project; the Division of Vocational Rehabilitation's employment efforts with people with disabilities; the National Corps/VISTA welfare-to-work mentoring program; and the Division of Substance Abuse and Mental Health's Youth Offender Re-entry initiative. Presentations on TANF are ongoing by request to the various Section 8 and Public Housing entities; to non-profits such as the First State Community Action Agency and the Latin American Community Center; and to local churches, healthcare centers, childcare providers, schools and youth centers (e.g., Boys & Girls Club).

The Social Services Advisory Council, consisting of educators, health professionals, religious leaders, representatives of community-based organizations, advocates, and government leaders, all appointed by the Governor, continues to provide advice on improving the delivery of Delaware's social programs. In addition, the Division of Social Services has regularly conducted focus groups with clients in all counties of the States, most recently in 2000 and 2001.

The requirement for a 45-day public comment period was accomplished by making the plan available for public review and comment through the following means:

- The State Plan was published in the Delaware Register on October 1, 2002;
- The State Plan was published on the Delaware web site at <http://www.state.de.us/dhss/dhss.htm> on September 15, 2002; and
- Stakeholder groups as represented by the Social Services Advisory Council, the TANF Employer Committee, and TANF program contractors were provided with individual copies of the Plan.

Delaware is proud to say that the administration addressed and continues to build on the themes the public identified not only in TANF but in many other areas of public policy that support low income families, including the Administration's economic development, education, and family policies. A brief summary of where public policies intersect with welfare system change include:

- easing transition from welfare to work by:

- passing through to TANF recipients a portion of the child support collected
- enhancing child support collection strategies and achieving record child support collections
- changing the way the welfare system budgets income so that families go off assistance only after achieving income at 75 percent of the federal poverty level
- increasing Delaware's investment in child care so that there is no subsidized child care waiting list for eligible working families with income up to 200% of the federal poverty level
- Increasing the income threshold below which individuals are not required to file personal income tax returns to \$15,449 for married couples and \$9,399 for single individuals; increasing the personal credit from \$100 to \$110; and reducing the tax rate for all individuals, other than the top tax bracket, by .4 percentage points
- increasing the State minimum wage to \$6.15 an hour as of September, 2000.
- ensuring access to health care for Delaware families through:
  - providing Medicaid coverage to uninsured adults as well as all children in families with income at or below 100 percent of the federal poverty level
  - providing medical coverage for uninsured children in families with income up to 200% of the federal poverty level, through the Delaware Healthy Children Program (DHCP)
  - providing transitional Medicaid for two years for families with children who exit welfare, at incomes up to 185% of poverty.
- improving education for children by:
  - expanding access to the Early Childhood Education Program (ECAP)
  - providing extra instructional time for low-achieving students
  - operating the Parents as Teachers program statewide
  - operating the Mentoring for Students program for students who need an adult role model
  - implementing a comprehensive program to ensure safe, disciplined schools
  - raising academic standards and graduation requirements and pushing for school choice and charter schools
- recruiting, through the Delaware Economic Development Office (DEDO), new companies and maintaining existing employers with good jobs that provide career opportunities
- strengthening Delaware's families by:
  - helping many thousands of welfare recipients go to work, and providing continuing support to working families
  - initiating voluntary paternity establishment
  - providing transportation support for job seekers and new workers
  - establishing more effective welfare to work programs with a work first approach to employment and training services, while providing opportunities for educational advancement
  - enabling families with both parents to receive benefits and services
  - participating with community-based organizations and the faith community to support targeted, fragile populations.
  - discouraging teen pregnancy through the Alliance on Adolescent Pregnancy Prevention
  - extending home visits to all first time parents following a child's birth
  - cracking down on domestic violence to protect vulnerable women and children
  - enforcing the Sexual Predator Act to protect vulnerable youth and prevent teen pregnancy.

**Results to be Measured and Methods for Measuring Progress**

Delaware has committed to evaluate its welfare system. The State has a multi-year contract with Abt Associates to evaluate TANF. We continued to measure:

- the number of individuals working;
- the number of individuals sanctioned;
- the caseload size; and
- the number of months of receipt of TANF.

Recent reports by the evaluator include:

- *The ABC Evaluation - A Better Chance for Welfare Recipients? What the Public Thinks*, March, 1999;
- *The ABC Evaluation - Enrollment of Families in Delaware's A Better Chance Program: A Report on the First Three Years*, March, 1999
- *The ABC Evaluation - Carrying and Using the Stick: Financial Sanctions in Delaware's A Better Chance Program*, May, 1999.
- *Will Welfare Reform Influence Marriage and Fertility? Early Evidence from the ABC Demonstration*, June, 1999.
- *The ABC Evaluation - Verifying School Attendance of Welfare Recipients' Children*, June 2000
- *The ABC Evaluation - Impacts of Welfare Reform on Child Maltreatment*, August 2000
- A report, *Turning the Corner -- ABC at 4 Years*, November 2000

- The *DABC Evaluation How Have They Fared? Outcomes After Four Years for the Earliest DABC Clients, August 2001*
- The *DABC Evaluation Institutional Aspects of Welfare Reform in Delaware, August 2001*

These reports can be located at <http://www.abtassoc.com/reports/welfare-download.html>. Note that at one time, Delaware's TANF program was known as A Better Chance or ABC.

Delaware is also one of four states participating in a Welfare Reform and Family Formation research project designed to provide an increased understanding of how changes in welfare policies have affected childbearing, marriage, and other family structure factors. Abt Associates is teaming with a University of California research team in analyzing random assignment data collected in Delaware.

### Ensuring Accountability

TANF is administered by the Division of Social Services (DSS), State of Delaware Department of Health and Social Services. While DHSS is the lead agency, program administration is accomplished through a partnership of DSS, Department of Labor (DOL), Delaware Economic Development Office (DEDO), and the Delaware Transit Corp (DTC).

Delaware completed a massive automation enhancement effort, to incorporate new technology in a complete redesign of DCIS. DCIS II is a large-scale, client/server, interactive eligibility determination and benefit issuance system. DCIS II automates: client registration, application entry, eligibility determination, benefit calculation, benefit issuance and work programs for more than 100 variations of cash, Medicaid and food stamp programs, administered by the Delaware Division of Social Services. DCIS II provides automated program support and supports the information needs at the state and local office level. DCIS II also incorporates program changes required by P.L. 104-193.

The most recent enhancements to DCIS II provide for on-line real-time communications between DSS workers and Employment Connection contractors. DSS now provides automated referral of non-exempted individuals to contractors, contractor staff are now able to send automated alerts to DSS workers, and contractors and DSS workers are able to share case notes about participants. In addition, contractors now directly enter hours of work participation into the system, facilitating the computation of grants for Work for Your Welfare participants.

Delaware is participating in the income and eligibility verification system (IEVS) required by section 1137 of the Social Security Act.

In addition, the State operates a fraud control program and will disqualify individuals found to have committed an

intentional program violation based on findings of administrative disqualification hearings and findings of prosecution or court actions. Delaware has adopted the penalties for intentional program violations used by the Food Stamp Program; 12 months for the first offense and 24 months for a second instance. An individual committing a third offense is permanently disqualified.

### Needy Families

#### Definition of Needy Families

For program purposes, needy families are a child and or child(ren) and caretaker relatives whose combined income and financial resources are not equal to or higher than the standards established by the State. The following sections describe these standards and how they are applied to applicants and recipients.

#### Income and Resource Rules for Determining Need

For purposes of determining need Delaware will continue to utilize the already established income and resource rules of the TANF program. The following specific features of Delaware's TANF program shall continue to apply:

- The equity value of a primary automobile up to \$4,650 is excluded in determining the household resources.
- The cash value of a life insurance policy will be excluded.
- In addition to the current resource limit, families will be allowed to establish Special Education and Business Investment Accounts (SEBIA) of up to \$5,000.00, including interest.
  - Families will contribute directly to their SEBIAs.
  - Funds in such accounts will not be considered as a resource. Withdrawals from such accounts must be for approved purposes, as defined in TANF. If funds are withdrawn for non-approved purposes, the money will be counted as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include, but are not limited to: dependent care expenses, security deposit for an apartment or house, or vehicle repair costs.
- Financial Assistance received from school grants, scholarships, vocational rehabilitation payments, JTPA payments, educational loans, and other loans that are expected to be repaid will not be counted as income for TANF program purposes. Also, other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses will be excluded.

- Earnings of dependent children, regardless of student status, will be disregarded in determining the family's eligibility and the amount of TANF benefits.
- A one-time bonus payment of \$50.00 will be paid from TANF funds to eligible teens who graduate from high school by age 19. This bonus, which will be paid directly to the high school graduate, will be disregarded as income.

### Income Tests to Determine Eligibility

There are two income tests to determine financial eligibility. The first test is a gross income test, and the second is a net income test.

- Comparing the family's income to 185% of the applicable standard of need is the gross income test. Both applicants and recipients must pass this income test.
- The other income test compares a family's income, after applying certain disregards, to the applicable standard. This is a net income test.
  - For applicants, defined as families who have not received assistance in at least one of the four months immediately preceding the application, the net income is compared to the payment standard.
  - For recipients, defined as families who have received assistance in at least one of the four months preceding the application or are current recipients, the net income is compared to the standard of need.
  - A family's income must be less than the gross and net income limits to be financially eligible for TANF. Once eligibility is established, the grant amount is determined.
  - Gross income is the total of the earned and unearned income.
    - Wages and self-employment income are examples of earned income.
    - Social Security benefits, child support, and stepparent income are examples of unearned income. Stepparent income will be included if the child's natural parent lives in the home.

Exhibit 1 contains the calculation steps for TANF applicants.

#### **Exhibit 1: Determining Applicant Eligibility for TANF Benefits**

Step 1) The gross income will be compared to 185% of the applicable TANF standard of need. Assistance will be denied if the income exceeds 185% of the applicable TANF standard of need.

Step 2) the standard work deduction (\$90.00) and child care expenses will be subtracted from each wage earner's earnings. The applicant's net earned income will be added to unearned income to determine the net family income. The net income will be compared to the payment standard. Assistance will be denied if the income exceeds the payment standard.

If the income is less than the payment standard;

Step 3) The standard work deduction (\$90.00), child care, and the 30 plus 1/3 disregard (if applicable) will be subtracted from each earner's earned income. This net earned income will be added to the unearned income to calculate the family's net income. The net income will be subtracted from the applicable standard of need to obtain the deficit. The deficit will be multiplied by 50%; the number calculated is the remainder. The grant is either the remainder or the payment standard whichever is less.

Exhibit 2 provides the calculations for TANF recipients.

#### **Exhibit 2: Determining Recipient Eligibility for TANF Benefits**

Step 1) The gross income will be compared to 185% of the applicable TANF standard of need. Assistance will be denied if the income exceeds 185% of the applicable TANF standard of need;

Step 2) The standard work deduction (\$90.00), child care, and the 30 plus 1/3 disregard (if applicable) will be subtracted from each earner's earned income. The net earned income will be added to unearned income to calculate the family's net income. Assistance will be denied if the income exceeds the standard of need.

If the income is less than the standard of need;

Step 3) The net income will be subtracted from the applicable standard of need; the number calculated is the deficit. The deficit will be multiplied by 50%; the number calculated is the remainder. The grant is either the remainder or the payment standard whichever is less.

The TANF standards apply to all benefits and services provided to needy families except for Emergency Assistance, discussed on page twelve (12) and **Attachment A**; child care, described on pages three (3), twelve (12), and twenty-four (24). Delaware has established separate need standards for these programs.

#### **Fill-the-Gap Budgeting**

Fill the Gap budgeting will be used for recipient families to determine continued eligibility and the amount of TANF benefits, so that families can retain more of their

income. By having a standard of need which is greater than the payment standard a "gap" is created. The difference between the family's income and the need standard is called the deficit. The state pays a percentage of the deficit up to a maximum benefit level or payment standard.

- Three standards will be used in financial eligibility calculations: 185% of the standard of need, the need standard and the payment standard. 185% of the standard of need will be used in the gross income test.
- The standard of need used is 75% of the Federal Poverty level. This includes allowances for food, clothes, utilities, personal items, and household supplies.

### **Diversion Assistance Program**

Delaware operates a Diversion Assistance program intended to help a family through a financial problem that jeopardizes employment and which, if not solved, could result in the family needing regular ongoing assistance. The Diversion Assistance payment will not exceed \$1,500 or the financial need resulting from the crisis, whichever is less. Diversion Assistance, which is available to both applicant and recipient families, is not a supplement to regular assistance but is in place of it.

Eligibility requirements for Diversion Assistance are as follows:

- the parent must be living with his/her natural or adopted children;
- the family has not received a Diversion Assistance payment in the past 12 months;
- the Diversion Assistance amount will alleviate the crisis;
- the parent is currently employed but having a problem which jeopardizes the employment or has been promised a job but needs help in order to accept the job;
- the family's income would qualify the family for TANF as a recipient household. (When calculating eligibility for Diversion Assistance the family is given the \$30 plus 1/3 disregard, if applicable and the family's net income is compared to the Standard of Need.);
- the family's resources would qualify for TANF.

The Diversion Assistance payment may be used for items and/or services such as but not limited to:

- transportation (such as vehicle repairs, tires, insurance, driver's license fee, gas);

- clothing such as uniforms or other specialized clothing and footwear or other employment-related apparel;
- tools and equipment;
- medical expenses not covered by Medicaid (e.g. eye glasses);
- union dues, special fees, licenses or certificates;
- up-front costs of employment such as agency fees and testing fees;
- unpaid child care expenses which, if they remain unpaid, preclude the provision of future child care;
- relocation expenses for verified employment in another county or state. These expenses may include moving equipment rental, gas, and lodging for the days of the move and the first month's rent, rental and utility deposit.

Diversion Assistance payments will be made to a third party vendor, not the parent. When the parent receives Diversion assistance (s)he agrees to forego TANF cash assistance as follows:

- \$0 through \$500.99 for 1 month;
- \$501 through \$1,000.99 for 2 months;
- \$1,001 through \$1,500 for 3 months.

The once a year limitation on Diversion Assistance and the period of ineligibility can be eliminated when good cause exists. Good cause exists when circumstances beyond the client's control make re-application for Diversion Assistance for TANF necessary. Examples of good cause are the employer lays off the parent or a serious illness forces the parent to stop working.

The family is eligible for TANF related Medicaid in the month in which the Diversion Assistance payment is made. The family would remain eligible for Section 1931 Medicaid (TANF related Medicaid) until the family's income exceeds the Standard of Need. If the family's income exceeds the standard of need because of increased earnings or loss of the \$30 plus 1/3 disregard and the parent is working, the family may be eligible for Transitional Medicaid.

Diversion Assistance does not count as income in the child care programs, and families receiving Diversion Assistance may also be eligible to receive child care under Delaware's working poor child care program if their income does not exceed 200 percent of the federal poverty level. Receipt of Diversion Assistance would not bar receipt of Food Stamp benefits, and Food Stamp applications will be actively solicited from individuals requesting diversion assistance.

Diversion Assistance does not count against the time limit on receipt of assistance.

The family will not have to assign child support to the state. Child support received by the parent or the Division of



Child Support Enforcement (DCSE) will belong to the family. DCSE will not use child support to offset or reimburse the Diversion Assistance.

Diversion Assistance is not intended to replace TANF's Emergency Assistance Program or Supportive Services payments, which will continue. The TANF Emergency Assistance Program provides identical benefits that were provided under Delaware's State Plan in effect on August 21, 1996. (See Attachment A) Rather, Diversion Assistance expands the opportunities to access as well as the value of services to support employment.

### **Eligibility For Assistance Under The TANF Program**

#### **Conditions of Eligibility**

If the income tests described above are met, a family will be eligible to receive TANF assistance subject to the following conditions.

#### *Relationship/Living Arrangements*

A child must be living in the home of any relative by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child or of the spouse of any person named in the above group even though the marriage is terminated by death or divorce.

The caretaker of a teen parent who is not a parent must demonstrate valid circumstances why the teen is not living with a parent and must agree to be a party to the Contract of Mutual Responsibility and fulfill the same responsibilities thereunder as a parent.

#### *Fugitive Felons; Individuals Convicted of Drug Related Felonies*

Fugitive felons and parole violators are ineligible for TANF assistance. In addition, as of August 22, 1996, individuals convicted of drug related felonies are permanently barred from the date of conviction.

#### *Family Cap Provision*

No additional cash benefits will be issued due to the birth of a child, if the birth occurs more than ten (10) calendar months after the date of application for benefits under TANF.

The family cap will not apply:

- when the additional child was conceived as a result of incest or sexual assault,
- to children who do not reside with their parents
- to children born prior to the period identified above who return or enter the household
- to a child that was conceived in a month the assistance unit (i.e. the entire family) was not receiving TANF, but this does not apply in cases that close due to being sanctioned.

The family cap will apply to children who are the firstborn of minors included in a TANF grant, except that the family cap does not apply to firstborn children of minors where the child was born prior to March 1997, the date that Delaware began its TANF program.

The additional child(ren) is included in the standard of need for purposes of determining eligibility; and the income and resources of the child, including child support, is included in determining the family's income and resources. However, the child(ren) is not included in determining the payment standard for the family.

- The additional child(ren) is considered a recipient for all other purposes, including categorical Medicaid coverage, TANF child care, and Food Stamp benefits.
- Child support received for capped children is passed directly through to the family.

#### *Denial of Benefits to Babies Born and Residing with Unmarried Teen Parents.*

Cash assistance is not provided to babies born on and after January 1, 1999 to unmarried minor teen parents. This applies to both applicants and recipients. For all other purposes, these babies will be considered TANF recipients. They may also be eligible to receive Food Stamps, Medicaid and child care as well as vouchers for the baby's needs. This provision applies as long as the teen parent resides in the home with the baby, is unmarried or less than eighteen (18) years of age.

#### *Denial of Benefits for Fraudulent Misrepresentation to Obtain Assistance in Two States*

Any individual who misrepresents residence to receive TANF, Medicaid, or Food Stamp benefits in two states shall be subject to a ten-year bar if convicted in a state or federal court.

#### *Treatment of Eligible Non-Citizens*

Qualified non-citizens who enter the United States before August 22, 1996 shall be eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

Qualified aliens entering the United States on or after August 22, 1996, who are exempt from benefit restrictions as specified in Federal law, are eligible to receive the same benefits and services and shall be subject to the same conditions and requirements as all other applicants and recipients.

Qualified non-citizens who enter the United States on or after August 22, 1996 are, after five years, eligible to receive the same benefits and services and shall be subject to the

same conditions and requirements as all other applicants and recipients.

### Program Type

Depending on circumstances, families are placed in either the Time-Limited TANF program or the Non Time-limited TANF program.

Delaware's Time-Limited TANF Program has a work first approach. Participants are expected to meet immediate work requirements in order to receive benefits.

Effective October 1, 1998, Delaware began funding its two-parent program with state only funds. The eligibility requirements, services and benefits for this state funded two-parent program are the same as the single parent Time-Limited program

Time-limits for Delaware's Time-Limited TANF Program and the interactions between time-limits and work requirements are described in the sections entitled, Work: Time Limits and Work, and TANF Benefits to Needy Families: Time Limits.

Families with the following status will receive benefits in the Non Time-limited program:

- Families that the agency has determined are unemployable, either because a parent is too physically or mentally disabled to work in an unsubsidized work setting or because the parent is needed in the home to care for a child or another adult disabled to that extent;
- Families headed by a non-needy, non-parent caretaker;
- Families headed by a non-eligible non-citizen parent who is not eligible to receive TANF benefits.
- Families where the agency has determined that the adult caretaker is temporarily unemployable, and
- Families in which the adult files a claim or has a claim being adjudicated for SSI or disability insurance under OASDI. In this case, the family must sign an agreement to repay cash benefits received under the Non Time-limited TANF program from the proceeds of the first SSI/DI check received. The amount repaid will not exceed the amount of the retroactive SSI/DI benefit.

Contract of Mutual Responsibility requirements and sanctions for noncompliance apply to families in the Non Time-limited TANF program.

### Contract of Mutual Responsibility

The caretaker of children in the TANF program enters into a Contract of Mutual Responsibility with the Division of Social Services (DSS) of the Department of Health and Social Services (DHSS). Applicants and recipients have a face-to-face interview. During this interview, the DSS

worker explains to the recipient the Contract of Mutual Responsibility (CMR) and those elements specific to the client.

The Contract lists the responsibilities of the family and the supports the State will provide. The family's responsibilities include, but are not limited to: employment-related activities, school attendance and immunization requirements for children, family planning, parenting education classes, and substance abuse treatment requirements. The State provides supports to families including but not limited to: employment-related activities, training activities, child care, Medicaid, and other services identified during the development of the Contract of Mutual Responsibility.

The Contract is designed to be individualized to the specific needs and situation of each family. Therefore, the exact requirements within the Contract may vary from family to family. This document can be revised as the needs and the situation of the family evolve.

Services related to these CMR requirements will be available to the participant. If the services specified in the CMR are not reasonably available to the individual, the participant will not be sanctioned for failure to comply and the Contract will be modified to reflect that the service is currently unavailable.

It is mandatory that all caretakers enter into a Contract of Mutual Responsibility. Contracts are completed for families in the Time Limited TANF Program and the Non Time-limited TANF program as well as for teen parents. Both caretakers in an assistance unit and non-needy caretaker payees are required to develop and comply with CMRs. Other family members within the assistance unit may be required to comply with provisions of the Contract, and are subject to sanction for non-compliance.

If the caretaker is a non-needy caretaker relative, the individual would not be required to participate in employment-related activities but will be required to participate in other Contract activities.

If a caretaker objects to certain aspects of the Contract, the caretaker needs to present these objections up front, at the time of the initial Contract. If good cause can be demonstrated, the Contract can be amended to rectify the objections.

When staff has reason to believe that the family needs other services to become employed or to increase work hours and wages, these services will be identified and specified in the Contract of Mutual responsibility.

The fiscal sanction for not cooperating, without good cause, in development of the Contract will be an initial \$50.00 reduction in benefits. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed. The sanction will end with demonstrated compliance.

**Individuals from Another State**

All families meeting the status eligibility requirements set forth above shall be eligible for TANF benefits using Delaware rules, regardless of how long they have been residents of the State.

**Statewide**

All definitions and determinations of need shall be applied on a statewide basis.

**Protection of Privacy of Assisted Families**

31 Delaware Code, Chapter 11, Section 1101 provides that public assistance information and records may be used only for purposes directly connected with the administration of public assistance programs. Thus, all information gathered regarding individuals for public assistance purposes is considered confidential and will be safeguarded by DSS. By safeguarding public assistance information, DSS protects its clients from being identified as a special group based on financial needs and protects their right to privacy.

General information regarding expenditures, numbers of clients served, and other statistical information is a matter of public record and may be made available to any interested party. Other than the exceptions noted below, DSS will not release any information regarding a particular individual without the individual's written consent.

- DSS Financial Services Regional Operations Managers have the authority to disclose the address of a recipient to a Federal, State or local law enforcement officer at the officer's request if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient:
  - is fleeing to avoid prosecution; or
  - is a fleeing felon (or in the case of New Jersey is fleeing from conviction of a high misdemeanor); or
  - is violating a condition of probation or parole; or;
  - has information that is necessary for the officer to conduct his or her official duties; and
  - the location or apprehension of the recipient is within such official duties.
- If a law enforcement officer requests information that does not meet the guidelines indicated above, a subpoena from a court of law is required before the information can be released.
- DSS is required to report to the Division of Family Services in situations where it believes a home is unsuitable because of neglect, abuse or exploitation of a child.
  - A Court Appointed Special Advocate (CASA) is given permission to inspect and/or copy any records relating to the child and his or her fam-

ily guardian without their consent. The CASA has the authority to interview all parties having significant information relating to the child. The CASA must also be notified of any staffing, investigations or proceedings regarding the child, so that they may participate and represent the child.

- If information is released under the procedures applying to CASA, pertinent details of the reasons for the release shall be documented and written notification of this release shall be sent to the last known address of the individual to whom the record refers.
- DSS has the authority to disclose information concerning applicants and recipients provided it pertains to:

1 An investigation, prosecution, or criminal or civil proceeding conducted in connection with public assistance programs.

2 the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. The agency must assure DSS that such information will remain confidential and will be used only to pursue services for the individual. Other means tested programs include the Supplemental Security Income Program, School Lunch and Breakfast Program, the Energy Assistance Program, and the Low Income Housing Program.

- Other agencies (such as Family and Children Services of Delaware, Inc. Catholic Social Services, Legal Aid, etc.) must provide written permission from the recipient before public assistance information may be released.
- Other governmental agencies may obtain lists of recipients from DSS if the information will be used to perform services for DSS, and the agency can assure DSS that the lists will remain confidential.

**APPEALS PROCESS**

DSS will provide timely and adequate notice for actions taken which affect eligibility or benefit level. Adequate notice means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance may be continued if a hearing is requested.

Timely notice means a notice which is mailed no later than 10 days before the date of action (i.e. 10 days before the intended change would be effective). When DSS learns of

facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through secondary sources, notice of a grant adjustment is timely if mailed at least five days before the action would become effective.

An opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim for assistance is denied or is not acted upon with reasonable promptness and to any applicant or recipient who is aggrieved by any Agency action.

To be considered by the Agency, a request for a hearing must be a clear expression in writing by the appellant or his/her representative to the effect that (s)he wants the opportunity to present his/her case to higher authority. The freedom to make such a request will not be limited or interfered with in any way and the Division will assist the appellant in submitting and processing his/her request. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients, unless the reason for an individual appeal is incorrect grant computation.

## WORK

### Goals for Work

Delaware's TANF program is based on the belief that assistance provided is transitional and should not become a way of life. The State maintains that the way for persons to avoid dependency on welfare is for them to find and maintain employment. Thus the primary goal of TANF is to help recipients find private sector work and to help them keep such work by providing them with necessary supports.

To assist families in attaining and maintaining employment, the State will engage the efforts of the Departments of Health and Social Services, Labor and Economic Development and Delaware's private sector to provide job readiness and placement opportunities, health and child care, the EITC, and family services. In turn, TANF recipients who have the capacity to work will be required to accept work, to keep their children in school, to cooperate with child support, to bear the costs of additional children they conceive while on welfare, and to leave the welfare rolls after a defined time period.

### State Agencies Involved

Delaware Health & Social Services, Labor, and Economic Development have a unique partnership. All three agencies are responsible for moving welfare clients to work. These three agencies have collaborated in developing Delaware's TANF program, in public information, in implementation, and continue to collaborate in managing the initiative.

The Delaware Transit Corporation (DTC) in the Department of Transportation has joined the TANF collaborative team, and has assisted to develop a statewide transportation system plan for TANF, using vans and other vehicle sources.

Minutes for the TANF collaboration team for the previous six months are included as **Attachment B**.

In May 2001, the Business Planning Committee, a subcommittee of the TANF collaborative team that deals with transportation initiatives, sponsored a transportation forum in each of the three counties. The purpose of the forums was to bring together businessmen, community leaders and other stake holders to develop and advance innovative, non-traditional solutions to varying transportation problems faced by each county.

Transportation forum highlights were a panel discussion by the lead agencies that shared some "points of pride" in the program and gaps and needs in transportation, Best Practices Ideas and Transportation Information, Employer Recognition of Innovative Success Solutions and brainstorming sessions to identify transportation issues and to gather ideas for further development. Each forum was designed to highlight transportation problems that were county specific. Sussex County Government, represented by the Sussex County Administrator, was particularly effective in explaining the population growth, the economic growth and the problems created by their largely rural area.

As a result of the forums, the Business Planning Committee has been able to identify some cross-cutting themes statewide as well as county specific. They have also been able to identify ideas that need further development and which will be used as the Committee continues to find innovative solutions to transportation problems. One overriding theme from the forums was the lack of knowledge of the current transportation options available. This has led to the production of a transportation video which highlights all the options available to assist individuals as they move from dependency to self-sufficiency.

Another special partnership is that between the Division of Social Services and the Division of Child Support Enforcement. Both agencies are part of Delaware Health and Social Services. This close linkage has enabled them to partner throughout TANF development and implementation.

### Involvement of Community, Education, Business, Religious, Local Government and Non-Profit Organizations to Provide Work

As noted in the discussion on page 2, every sector has been actively involved in the development of Delaware's TANF program and continues to be involved.

A TANF Employer Committee, consisting of representatives of both the public and private sector, assists in placing welfare recipients in unsubsidized jobs and provides advice on direction, policy, and implementation of

welfare-to-work efforts. This committee was established through HB 251. A major accomplishment of the Employer Committee in conjunction with DEDO and the Department of Education was the development of a program, Career Soft Skills Essentials for employers, which is now posted on the internet at [www.delawareworkforce.com](http://www.delawareworkforce.com). The committee regularly advises the collaborative team about TANF employment issues. Minutes of committee meetings for the prior year are included as **Attachment C**.

To further promote employer interest in hiring TANF recipients, the Departments of Labor and Economic Development meet with members of the business community at regularly scheduled events like monthly Chamber of Commerce meetings as well as at special events. For example, to roll out Career Soft Skills Essentials, DEDO hosted two conferences to link employers with trainers.

The Social Services Advisory Council is established by executive order. The Governor appoints council members to advise the directors of both the Division of Social Services and the Division of Child Support Enforcement on matters related to public assistance and child support services. Council members represent the community, advocates, non-profit providers, educators, and interested citizens.

DSS and DCSE management regularly meets with the Social Services Advisory Council to discuss TANF and other Social Services and Child Support programs. Minutes of Social Services Advisory Council meetings for February, March, and April, 2002, along with information on current Council members, are attached. The Council and DSS will resume regular monthly meetings after the summer. (**Attachment D**)

Client specific focus groups were also conducted by the Director of DSS in 2000 and 2001. The 2000 focus groups, held in different locations throughout the state from May through November, asked recipients a series of questions about the TANF program, to ascertain their knowledge of various program requirements, and their experiences obtaining assistance from DSS workers and contractors. The 2001 client focus groups were held from June through October. They asked a series of questions about client work and sanction experiences, and ascertained information about specific services that had been of assistance and obstacles that clients had to overcome to obtain and retain employment. (**Attachment E**)

Based on these focus groups, there seemed to be a solid majority opinion that people understood the rules, that sanctions are appropriate, and that some people do need a push to get motivated to get back into the job market. However, clients did wish for more flexibility for individual circumstances, and requested more assistance with transportation and in juggling schedules so that program requirements could be met.

Special interest groups such as One Church, One Family and New Pathways have chosen to focus their resources on

welfare families and provided mentoring support to welfare families.

### **Role of Public and Private Contractors in Delivery of Services**

Delaware has contracted with private for-profit and non-profit providers and the local community college network to provide job readiness, job placement and retention services to welfare clients since 1986. These contractual arrangements continue under TANF. Contractors include community and faith-based social services agencies and organizations offering specialized services.

A number of community providers across the state provide academic remediation to TANF recipients.

### **Who Must Participate**

All adult caretakers and other adults in the time-limited assistance unit who are not exempt must participate in TANF employment and training related activities. The two exemptions are: 1) a parent caring for a child under 13 weeks of age; and 2) an individual determined unemployable by a health care professional.

Teen parents are required to attend elementary, secondary, post-secondary, vocational, or training school, participate in a GED program or work.

### **Services to Move Families to Work**

Delaware's goal is to place the adult recipient in unsubsidized employment as quickly as possible. To accomplish this goal, the current menu of services includes:

- Work readiness/Life skills
- Job search/Job placement
- Job retention
- Work Experience/OJT
- Education, including vocational education, as described in SB 101, effective July 2, 1999
- Provide financial management training.

Non-exempt TANF participants will participate in the job search program, consisting of job readiness classes and supervised job search activity. Unsuccessful job search participants can be placed in another job search sequence or another work-related activity such as an alternative work experience, OJT, remediation or a skills training program.

Clients must keep appointments with Employment and Training staff, cooperate in the development of the employment activities included in their Contract of Mutual Responsibility, and participate in employment and training activities. The penalty for non-compliance with any of the above client responsibilities will be subject to sanctions as described in "Sanctions: Failure to Comply with the Contract and Imposition of Sanctions" on page 29.

**Work**

Until January 1, 2000, one-parent families in the Time-Limited Temporary Program were required to immediately engage in meaningful job search and comply with conditions set forth in their Contract of Mutual Responsibility including work, education, and training activities. Failure to comply with the work requirements resulted in the imposition of an employment and training sanction. Recipients who were unable to locate private sector jobs despite good faith efforts to do so, were eligible to receive Work For Your Welfare payments, for participating in a workfare job, for a maximum of two more years.

Effective January 1, 2000, families initially applying for or reapplying for benefits can only receive benefits if they are employed or immediately participate in a Work For Your Welfare position. Failure to comply with the work requirements contained in their Contract of Mutual Responsibility results in the imposition of an employment and training sanction.

Single parent households are required to participate in Work for Your Welfare up to 30 hours per week, determined by dividing TANF and Food Stamp benefits by the minimum wage. If the hours determined by dividing the grants by the minimum wage exceed 30 hours per week, participants are to complete no more than 30 hours maximum participation hours. In addition to participating in Work For Your Welfare, individuals must participate in 10 hours of job search, education or a vocational activity per week.

Participants who fail to complete the hours required by dividing their grant by the minimum wage will have their grant adjusted. For each hour not worked, participants will have the grant adjusted downward by the amount of the minimum hourly wage. Participants who fail to complete the 10 hours of job search, education or a vocational activity per week are subject to employment and training sanctions.

In two parent households, one parent must participate in Work For Your Welfare and the second parent must participate in a work-related activity, including child care. The requirements for parents in two-parent households are unchanged.

The January 1, 2000 change in the work requirements for one-parent families means that, to receive Time-Limited TANF benefits in Delaware, both one-parent and two-parent families must either be employed or participate in a Work For Your Welfare position with supplementary activities as required. Delaware's requirement for immediate work activities exceeds the federal TANF mandate.

An individual enrolled in the TANF Time-Limited Program who, in accordance with the requirements in their Contract of Mutual Responsibility, participates in unsubsidized employment of at least twenty hours per week is not required to participate in Work for Your Welfare. Individuals participating in a combination of such employment and education of at least twenty (20) hours per

week are also not required to participate in Work For Your Welfare. TANF Contracts of Mutual Responsibility are designed to fit individual circumstances. It is possible for an individual enrolled in the TANF Time-Limited Program who is engaged in at least twenty (20) hours of combined work and allowable education activities to meet work requirements, if their Contract of Mutual Responsibility contains such an activity agreement.

Time limits for Delaware's Time-Limited TANF Program are described in the section entitled, TANF Benefits to Needy Families: Time Limits.

**Protecting Current Workers from Displacement**

Regarding the Work for Your Welfare program, DSS conforms to Section (a)(5) of the Federal Unemployment Tax Act which requires that a job offered cannot be available as a result of a strike or labor dispute, that the job cannot require the employee to join or prohibit the employee from joining a labor organization, and that program participants are not used to displace regular workers.

In addition DSS ensures that no participants, including but not limited to those placed in either a Work For Your Welfare placement or a community work experience program, displace regular paid employees of any of the organizations providing either the placement or the community work experience. Such assurance complies with State law contained in 31 Delaware Code, Chapter 9, Section 905(b). This assurance also complies with Section 407(f) of TANF, which requires that DSS will not use federal funds under TANF to place individuals in a work activity when:

- any individual is on a layoff from the same or a substantially equivalent job;
- the employer has terminated any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy created with an adult receiving TANF benefits.

In addition, DSS has established a grievance procedure, in conformance with Section 407(f)(3) of TANF, for resolving complaints for any alleged violation of nondisplacement requirements. Employees or their representatives who believe that their jobs are being displaced or infringed upon shall present their complaint to the employment contractor with authority over the placement. If the contractor is unable to resolve the problem within 15 days, the employee or representative may file a formal grievance in writing to the DSS Director's Office, who will hear a formal grievance. The employee will have an opportunity to: present their grievance on the record; present evidence; bring witnesses and cross examine witnesses; be represented by counsel; and receive a written decision.

Grievance hearings will be scheduled within thirty calendar days of receipt of the formal grievance, and a written decision will be issued within 30 days of the hearing. If either party is dissatisfied with the State's written decision, they may appeal the decision to the U.S. Department of Labor within 20 days of receipt of the written decision. The procedures for appeal, which must be sent to the Office of Administrative Law Judges, in the U.S. Department of Labor, will be provided in writing with the decision.

### Supportive Services

Delaware recognizes the importance of available child care in helping recipients participate in work-related activities, and securing and retaining unsubsidized employment. To that end, the financial resources provided for child care have been significantly increased from the FY95 child care funding level to the current request for funding.

Supportive Services, such as child care, and TANF provided assistance with other work-related expenses, such as eye examinations and corrective lenses, dental, and physicals not covered by Medicaid, transportation, fees, training, and work-related equipment, uniforms, shoes, and supplies will be available where possible. Services are provided by voucher or directly. In addition, TANF will, on a case by case basis, pay fees to purchase certificates, licenses, or testing needed to obtain employment. Medical services are not part of these supportive services. DSS will determine when such services are necessary for a TANF recipient to participate. The services shall include:

- Support provided by contractors to retain employment for one (1) year
- Health care for Delaware citizens through:
  - providing Medicaid coverage to uninsured adults with income at or below 100 percent of the federal poverty level
  - providing medical coverage for uninsured children in families with income up to 200% of the federal poverty level, through the Delaware Healthy Children program
  - providing transitional Medicaid via 1931d program effective October 1, 2002, for two years for families with children who exit welfare, at incomes up to 185% of poverty.
- Subsidized child care for families who leave TANF to go to work for a period of two years, as long as family income remains below 200 percent of the federal poverty level. In addition, to help individuals retain unsubsidized employment beyond two (2) years, Delaware also provides subsidized child care to other low income working families until the family's income exceeds 200 percent of the federal poverty level.

- Job search programs and other assistance from the Department of Labor to find a job; and
- ongoing job retention assistance.

### Additional Targeted Support

#### *Family Development Profile*

The Family Development Profile is used by Delaware to identify possible social, familial, and emotional barriers to self-sufficiency, insofar as they impact an individual's ability to obtain and retain employment. Participants who complete the Profile answer questions about their self-esteem and health, and relationships with family members and other individuals. The Profile is currently being enhanced to provide the capacity to identify mental health problems.

DSS workers report that the Profile frequently surfaces major domestic issues which participants need to resolve. By utilizing the Profile, workers are able to refer participants for assistance in resolving domestic violence and other abuse situations. Further efforts to assist individuals to resolve domestic violence and other abuse situations are described in a later section: PARENTAL RESPONSIBILITY: Addressing Problems of Statutory Rape and Domestic Violence.

#### *Substance Abuse*

As part of the application and redetermination processes, workers ask clients a series of questions, called the CAGE questions, to identify substance abusers for referral to appropriate services. Through the Bridge Program and referrals to DSAMH, Delaware's TANF program offers assessment and non-medical treatment services for all substance abusers identified through this and other methods. DSAMH and Medicaid will ensure that if medical treatment services are needed they are paid from other than TANF funds.

#### *Supporting Teens*

Delaware is targeting youth by providing special services. Through the Department of Education, Delaware provides a family literacy program which includes parenting skills training and other services to teen parents and their children to prevent repeat pregnancies.

Beginning with FY 1999 funds were allocated for Delaware's Teen Pregnancy Prevention Initiative, Teen Hope, to support activities for at-risk teens in six School Based Health Centers (SBHCs) and one community site. The program, utilizing the Transtheoretical Behavior Change Model, helps youth develop skills to make better sexual and health related decisions. Initial programs have been very successful. In addition, wellness centers located in 27 high schools provide medical, health and counseling services to high school students.

Several other initiatives are being operated. The AmeriCorp Grant partnership grant with DHSS as lead was awarded in 1999. Under this grant, Planned Parenthood is managing an effort to have AmeriCorp members provide a responsible adult presence and a structured environment for youth to learn, as a strategy to prevent teen pregnancy, in the lives of at-risk teens in selected target areas. The Abstinence Education Grant currently provides mini-grants to agencies providing skills building community programs for teens.

Delaware has undertaken, through an Alliance on Adolescent Pregnancy Prevention (AAPP), a grassroots community and media outreach campaign to convince teenagers to postpone sexual activity and to avoid becoming or making someone else pregnant. AAPP works directly with parents in this initiative to improve communication between parents and children around sexuality and pregnancy prevention. In addition, AAPP provides preventive education and distributes information on preventing teen pregnancy, utilizing a number of kinds of interventions. For example, two full-time community educators visit schools, community centers, churches, and camps; and provide workshops/training to parents and children around sexuality and teen pregnancy prevention. AAPP also maintains a resource center for the community and lends or gives away brochures, videos, curriculum, posters, books, and other communications about teen pregnancy prevention and sexuality.

The Wise Guys initiative is an adolescent male responsibility program that uses an established Wise Guys curriculum over a ten-week period. The program, operating in six high school based health centers, promotes character development and prevention of adolescent pregnancy by teaching young males self-responsibility in several areas.

Delaware's teen pregnancy prevention campaign also uses billboards to convey the message, and statewide conferences to provide assistance implementing prevention activities.

Delaware's TANF program provides a positive incentive to teenagers to graduate high school by age 19 by awarding a one-time \$50 bonus. Additionally, TANF requires teenage mothers currently on welfare to live with their parent(s) or a responsible adult, stay in school, immunize their children and participate in parenting education.

Services to teens are also discussed in the Section entitled Parental Responsibility Efforts to Reduce Out-Of-Wedlock Births.

#### **Delivery of Services Across State**

Delivery of services will be consistent across the State.

### **TANF BENEFITS TO NEEDY FAMILIES**

#### **Computing the Benefit**

Eligibility will be determined prospectively. After establishing eligibility, benefits will be computed

prospectively. Income per time period will be converted to a monthly income figure by utilizing the following conversion factors:

Weekly	4.33
Bi-weekly	2.16
Semi-monthly	2.00

Example: Given a weekly income of \$85, multiply by 4.33 to arrive at a monthly income of \$368.05.

The benefit amount will be determined by using prospective budgeting and the best estimate of earned and unearned income for the assistance unit. The payment will not be changed until the next eligibility determination, unless the recipient reports a change that would result in an increase in the benefit or there is a significant change in circumstances as defined below.

A significant change is defined as any of the following:

- change in household size;
- new source of employment;
- loss of unsubsidized employment or a change in employment status from full time to part time which was beyond the recipient's control;
- an increase of forty (40) hours or more in unsubsidized employment per month;
- receipt of a new source of unearned income; or
- increases or decreases in existing sources of unearned income totaling \$50.00 or more per month.

The recipient needs to verify all changes in circumstances.

Example: An applicant applies in May. The applicant is employed. The applicant is working 20 hours per week and earns \$5.65 per hour. The best estimate of wages is calculated by multiplying 20 hours times \$5.65 (\$113.00 per week), then multiplying the weekly figure by 4.33 to determine the monthly income of \$485.90.

#### **Redeterminations**

At least one redetermination is required every six (6) months. TANF emphasizes work and work related activity. Mandating face-to-face redeterminations might undermine that goal. Therefore, mail-in redeterminations, with a telephone interview are used as an option to encourage recipients to continue participating in employment and training activities or to keep working.

When a redetermination is due, the recipient must complete a new DSS application form (FORM 100). A redetermination is complete when all eligibility factors are



examined and a decision regarding continuing eligibility is reached.

The assistance case will be closed if a recipient fails, without good cause, to complete the redetermination review. Likewise, the assistance case of a recipient who fails, without good cause, to provide requested information necessary to establish continued eligibility will be closed.

As part of the verification process for continuing eligibility, the person will provide verification that s/he has carried out the elements of the individual Contract of Mutual Responsibility.

### **Time Limits**

Under TANF, cash benefits are time-limited for households headed by employable adults age 18 or older who are included in the grant. Prior to January 1, 2000, Delaware limited receipt of TANF, for families in the Time-Limited Program, to twenty-four (24) cumulative months. During the time-limited period, employable adults received full benefits if they met the requirements of their Contract of Mutual Responsibility, including employment-related activities.

After the first 24 month cumulative period ended, families headed by employable adults could continue to receive cash benefits for an additional 24 cumulative months only as long as the adults participated in a Work For Your Welfare work experience program or they were working and family income was below the need standard of 75 percent of the Federal Poverty Level.

Effective January 1, 2000 the time limit for receipt of TANF cash benefits is thirty-six (36) cumulative months.

During the time-limited period, employable adult recipients receive full cash benefits only as long as they meet the requirements of their Contract of Mutual Responsibility, including participation in employment-related activities. The ultimate goal of this time-limited period is to support the employable adult's search for and placement in an unsubsidized job. Time limits will not apply when Delaware's unemployment rate substantially exceeds the national average or is greater than 7.5 percent.

Individuals found eligible for TANF prior to January 1, 2000 will still have a forty-eight (48) month time limit even if they reapply for benefits on or after January 1, 2000.

DSS will track the time remaining before a family's time limits expire and notify families on a quarterly basis of the time they have remaining before the time limits expire. At least two (2) months prior to the end of the 36 or 48 cumulative months in which a family has received assistance, DSS will remind the family that assistance will end and notify the family of the right to apply for an extension.

Extensions will be provided only to those families who can demonstrate that:

- the agency substantially failed to provide the services specified in the individual's Contract of Mutual Responsibility; the related extension will correspond to the time period for which services were not provided; or
- despite their best efforts to find and keep employment, no suitable unsubsidized employment was available in the local economy to the employable adult caretaker; the maximum extension under such circumstances will be 12 months.

Extensions may also be granted where other unique circumstances exist. Extensions will not be granted if the adult caretaker received and rejected offers of employment, quit a job without good cause, or was fired for cause or if the adult caretaker did not make a good faith effort to comply with the terms of the Contract of Mutual Responsibility.

Retroactively, starting October 1, 1995, Delaware exempted months in which a person worked twenty hours or more per from counting toward the Delaware lifetime time limit when the countable income of the family is below the need standard. So that families who have not reached the State's 36/48 month time limit won't reach the Federal 60 month time limit, benefits for these families are provided under a segregated program using State MOE funding, beginning October 1, 1999. However, both the federal and Delaware time clocks continue to run for individuals who meet their work participation requirements by participating, as permitted under the waiver, in a combination of employment and education for at least twenty (20) hours a week; and for individuals who meet their work participation requirements by participating in education for at least twenty (20) hours a week.

After the time limit has been reached, benefits will be provided to families who have been granted an extension only for a maximum period of 12 months and only in the Work For Your Welfare component. Thus, for Time-Limited families, unless the caretaker is employed at least twenty (20) hours per week, the maximum period for receipt of benefits to families enrolled in the Time-Limited TANF Program will be sixty (60) cumulative months for families with a forty-eight (48) cumulative time limit and forty-eight (48) months for families with a thirty-six (36) month time limit.

### **Sanctions: Failure to Comply with the Contract and the Imposition of Sanctions**

The Contract of Mutual Responsibility encompasses three broad categories of requirements: 1) enhanced family functioning; 2) self-sufficiency; and 3) teen responsibility requirements.

1) Enhanced family functioning requirements of the Contract include, but are not limited to, acquiring family planning information and attending parenting education

sessions, ensuring that children are immunized, and participating in substance abuse assessment and treatment. Sanction for non-compliance with these requirements is an initial \$50 which will increase by \$50 every month until there is compliance with the requirement. The initial \$50 reduction will be imposed whether the family fails to comply with one, or more than one requirement. Clients will have to comply with all requirements before the sanction can end.

2) Self-sufficiency requirements of the Contract of Mutual Responsibility are employment and training, work-related activities, and ensuring school attendance requirements for dependent children under age 16.

- The sanction for non-compliance with these requirements is a 1/3 reduction of the benefit for the first occurrence, 2/3 reduction for the second occurrence and a total and permanent loss of the benefit for the third occurrence for work related activities. A third occurrence of the penalty for a child under 16 not attending school is loss of all cash benefits but is curable when the parent demonstrates compliance. The duration of the first and second sanctions will each be two months or until the person complies. If, at the end of the two month period, there is no demonstrated compliance, the sanction will increase to the next level.
- Clients will have to demonstrate compliance with all self-sufficiency requirements before all benefits are restored.
- For the purpose of determining that the individual's failure to comply has ended, the individual must participate in the activity to which s/he was previously assigned, or an activity designed by the Employment and Training provider to lead to full participation, for a period of up to two weeks before ending the sanction.
- The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits. The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:
  - for a first offense, a 1/3 reduction in TANF, to be imposed for a period of two months;
  - for a second offense, a 2/3 reduction in TANF, to be imposed for a period of two months;
  - for a third offense, a permanent loss of all cash benefits.
- For dependent children under age 16, including teen parents, the sanction will not be imposed if the parent of the teen is working with school officials or other agencies to remediate the situation.

3) Teen responsibility requirements include maintaining satisfactory school attendance, or participation

in alternative activities such as training or employment, for dependent children 16 years of age and older. The sanction for non-compliance with these requirements is to remove the needs of the teen from the TANF benefit and to remove the needs of the caretaker if the caretaker does not work to remedy the situation. Complying with the requirements ends the sanction.

Failing to comply with both the enhanced family functioning and self-sufficiency requirements will result in combined penalties. For example, both a \$50 reduction and a 1/3 reduction to the benefit could be assessed for first failures to comply in two areas. Demonstrated compliance will not excuse penalties for the period of noncompliance. Sanctions will be imposed for the full period of noncompliance.

#### **Benefit Delivery: Direct Payments and Vouchers**

Currently, Delaware uses check issuance as the payment method for TANF.

Delaware directly pays for center-based child care authorized for TANF participants, where the center agrees to accept the Delaware child care reimbursement rate. Some caretakers, however, receive vouchers to self-arrange and pay for their child care. Delaware will reimburse these caretakers, up to the rates published in the Child Care and Development Fund (CCDF) plan, for the cost of child care provided by licensed and license-exempt child care providers.

#### **STAFF TRAINING**

TANF training has been incorporated into the Cash Grant training which is required for all new financial services staff. APHSA training has now been incorporated into Interviewing and Coaching training which is required for all new staff.

#### **PARENTAL RESPONSIBILITY**

Adults and minor parent(s) are required to comply with parenting expectations outlined in the Contract of Mutual Responsibility.

#### **Cooperation with Child Support Enforcement**

Participants in TANF must cooperate with the Division of Child Support Enforcement as a condition of eligibility. In addition, all families are required to provide sufficient information to permit Delaware to obtain child support on behalf of the family. Exceptions can be made when the caretaker demonstrates that pursuit of child support would create a danger to the caretaker or the child(ren). It is the responsibility of the client to provide documentation to verify such a good cause claim.

Failure of a caretaker, without good cause, to cooperate with and provide information to the DCSE to permit the State to pursue the collection of child support on behalf of dependent children will result in a full family sanction, until compliance. Applicants who fail to provide information so that Delaware may pursue child support collections will be denied. To cure the child support sanction, the caretaker will provide sufficient information to permit Delaware to pursue child support collections on behalf of the needy children in the family.

When a child lives with both the natural father and the mother but paternity has not been legally established, the parents will be referred to the Division of Child Support Enforcement (DCSE) for a voluntary acknowledgment of paternity. If the alleged father is unwilling to complete the voluntary acknowledgment of paternity, DSS will consider the child deprived of the care and support of his/her father. The case will be referred to DCSE for follow up on establishing paternity.

When a child lives with the natural father but paternity has not been legally established, the father will complete a declaration of natural relationship document and will provide acceptable verification of relationship.

When a child lives with a relative of the natural father but paternity has not been legally established, the relative must complete a declaration of natural relationship document and provide acceptable verification of relationship.

In Delaware, DCSE determines non-cooperation with child support requirements. In addition, effective January 1, 1999 DCSE began making the determination of good cause.

### **Distribution of Child Support Collections to TANF Recipients**

Delaware, a fill-the-gap state in 1975, uses fill-the-gap to make sure that families do not experience a net loss of income due to the State retaining Child Support paid by absent parents. A portion of Child Support payments is not counted in calculating the grant.

### **Efforts to Reduce Out-of-Wedlock Births**

Delaware believes that the number of out-of-wedlock births to teens must be reduced significantly to eliminate poverty and dependency. A study by Doble Research Associates commissioned by the Governor's Family Council, in June, 1998, concluded that Delaware's efforts to reduce teen pregnancy, including establishing more after-school program, strongly enforcing child-support enforcement and the Sexual Predator Act, and making teen mothers ineligible for cash assistance, are solidly supported by public opinion. We are undertaking a number of statewide initiatives to reduce adolescent pregnancy. Many of these initiatives are being coordinated through the activities of the Alliance for Adolescent Pregnancy

Prevention (AAPP). Ventures include the provision of adolescent health services through school-based health centers and improving teen utilization of our family planning centers.

The AAPP is a statewide public and private partnership charged with the development and implementation of a comprehensive plan to prevent adolescent pregnancy in Delaware. The organizational structure of the Alliance includes a 12 member advisory board appointed by the Governor and a statewide membership of over 200 schools, agencies, organizations, churches, and individuals concerned with teen pregnancy. Staff and program support for the Alliance is provided through a contract from the Division of Public Health (DPH) to Christiana Care.

Since its inception, the AAPP has awarded mini-grants to non-profit youth organizations to provide community based teen pregnancy programs; implemented a statewide media campaign to increase community awareness; and worked with existing coalitions to establish teen pregnancy prevention programs. AAPP plans and activities include:

- statewide leadership to develop a visible, viable structure for mobilizing resources needed to impact the problem;
- data development to develop a methodology to monitor rates in real time;
- public relations efforts to increase community awareness and involvement; and
- identifying barriers to teen utilization of family planning services and developing solutions

The Division of Public Health has the lead responsibility in Delaware to implement initiatives to reduce teen pregnancy. Using the strategies and recommendations presented by AAPP, DPH activities include school based health centers, family planning clinics, parenting education, and the peer leadership program. The "teen friendly" services provided at Department of Public Health Units located at State Service Centers have resulted in a significant increase in use. In addition, all clients seen in Sexually Transmitted Disease Clinic sites receive counseling on family planning, as well as pregnancy prevention supplies.

Based on a report by Adolescent Health Survey Research (AHSR), which used a survey and focus groups with youth and their parents conducted early in 1999 to identify top strategies in pregnancy prevention, Delaware implemented a number of initiatives to prevent subsequent births, including:

- Smart Start, an enhanced prenatal program that attempts to decrease low birth weight babies, infant mortality, and maternal mortality, through social service, nutritional, and nursing support to at-risk pregnant women;

- Placing information on our combined Food Stamp/cash assistance/MA applications for the following telephone numbers: Planned Parenthood, AAPP and Delaware Helpline, to obtain information on pregnancy prevention/family planning.

In addition, family planning and reproductive health services are provided to adults in eight public health locations in Delaware; and similar services are provided to adults by Planned Parenthood of Delaware in five locations in the state. Minority populations are targeted through family planning and reproductive health services available at three Federally Qualified Health Centers in Delaware; and family planning and reproductive health services are available to Delaware State University students through the DSU health center.

These Delaware initiatives to reduce out-of-wedlock births are complemented and strengthened by the policies of TANF which:

- Require adults and minor parent(s) to obtain family planning information from the provider of their choice;
- Provide for a fiscal sanction of an initial \$50 reduction in benefits for failure, without good cause, to obtain family planning information. This reduction will increase each month by \$50.00, either until there is compliance or the case is closed. The sanction will end when the adult and/or minor parent(s) obtains the family planning information at the provider of their choice;
- Eliminate benefit increases for children conceived while a caretaker is receiving TANF, and apply this family cap to children who are the firstborn of minors included in a TANF grant where the children are born after March 1, 1997; and
- Treat two parent families the same as single parent families.

#### **Initiatives to Promote Two-Parent Families**

To provide broad-based support for working families, Delaware was one of the first States to recognize that the special eligibility requirements that applied to two-parent families contributed both to the non-formation and the break up of two-parent households. The six-quarter work history requirement was particularly responsible for non-marriage of teen parents, who had not yet worked enough to meet this qualification. The denial of benefits to two-parent families if one of the parents was working at least 100 hours a month also contributed to the low work rate of two-parent families which were receiving AFDC.

When Delaware eliminated these special deprivation requirements as part of our welfare reform waiver, the numbers of two-parent families receiving TANF soared, and

we believe that, without the TANF change, many of these households would have applied for and been found eligible for benefits as single mother families. These never formed two-parent households would have had profound effects on the ability of the family to exit welfare and on the future success of the children. We have found that the average length of stay on TANF is much lower for two-parent families, reflecting the greater incidence of retained employment when two adults are able to engage in work and share child care duties.

Delaware has always allowed taxpayers to file separately and applied the progressive rate structure to each spouse's income separately, which avoided most tax increases resulting from marriage. However, a marriage penalty could still result from uneven standard deduction amounts. By increasing the standard deduction amount for married taxpayers to exactly twice the single standard deduction beginning January 1, 2000, enactment of HB 411 has effectively eliminated the income tax "marriage penalty" in the State of Delaware

#### **Addressing Problems of Statutory Rape and Domestic Violence**

##### *Statutory Rape*

The Sexual Predator Act of 1996 imposes more severe criminal sanctions on adult males who are significantly older than their victims and holds them financially accountable when children are born as a result of violations of this law.

The legislation requires a cooperative agreement as part of a multi-faceted effort to combat teenage pregnancy and reform welfare. Specifically, the law requires the Attorney General's Office, the Department of Health and Social Services, the Department of Services to Children Youth and Their Families, the Department of Public Instruction and law enforcement agencies statewide to establish a cooperative agreement specifying the various roles of the agencies involved. The Memorandum of Understanding establishing the cooperative agreement, executed on December 10, 1996, and SB346 are provided as **Attachment F**.

##### *Victims of Domestic Violence*

As required under the optional Certification of Standards and Procedures to Ensure that a State Will Screen for and Identify Domestic Violence, DSS will refer identified victims of domestic violence to appropriate services such as shelters and counseling and to Family Court. Under the Protection from Abuse Act (PFA), 10 Delaware Code, Chapter 9, Sections 1041-1048 (**Attachment G**), Family Court has the power and authority to expeditiously adjudicate all matters related to domestic violence including court ordered restraints, custody, property and financial resources.

Through this strong domestic violence Law, Delaware is clearly committed to assisting victims of domestic violence overcome circumstances which put them in physical, emotional and/or financial jeopardy; and to assist them in seeking redress and a safe environment for themselves and their families. The Law is a strong deterrent to domestic violence, according to a study by the National Center for State Courts, released on December 2, 1996. The study reported that 86 percent of those who sought protection under the Law, which permits individuals in danger of serious physical abuse to obtain a protection order, were no longer being physically abused.

In addition, using our Family Development Profile, caseworkers ask a series of screening questions designed to identify victims of domestic violence. (See Attachment H) So that we are certain that workers can use this tool to effectively identify domestic violence issues, beginning 1998 all staff members at each of Delaware's 14 field sites receive a full day of Domestic Violence Training, focused on the impact of domestic violence on clients and their ability to abide by the conditions of the Contract of Mutual Responsibility. As part of this training, staff learn how to recognize and assist women who are victims of domestic violence. DSS has continued this training on an ongoing basis and now provides the training not only to field staff but to all staff.

We believe that our methodology of resolving domestic violence situations as quickly as possible, as provided for under a strong statute, is the most appropriate and best course of action to assist current victims and to prevent future violence where possible.

Delaware certifies that the Family Development Profile establishes a procedure that screens for domestic violence and that, pursuant to a determination of good cause, program requirements may be waived if it is determined that compliance would make it more difficult for individuals to escape violence. However, decisions to waive compliance with TANF requirements will be made on an individual, case by case basis, and will not endorse an individual's failure to behave proactively to ameliorate destructive domestic violence situations. For our program to work, domestic violence victims must take actions to recover their lives, using the relief provided by the domestic violence statute and the other resources Delaware makes available.

#### **TRIBES**

Delaware has no federally recognized tribes.

#### **ADMINISTRATION**

##### **Structure of Agency**

The Department of Health and Social Services is the cabinet level agency designated by the State as responsible

for Delaware's public assistance programs as allowed under Title IV-A of the Social Security Act. Within the Department, the Division of Social Services administers these programs. (Organizational chart included as Attachment I to State Plan.)

##### **Administrative Spending**

Delaware will comply with federal requirements.

##### **Compliance With Participation Rates**

In order that federal TANF funds are spent in accordance with the law (P.L. 104-193), Delaware will ensure compliance with the mandatory work and participation rate provisions of the law (as modified by this State Plan which includes our previously approved waivers, described in the *Waiver Inconsistency Certification*, submitted to the U.S. Department of Health and Human Services on September 27, 1999.)

Delaware intends to meet the participation rate requirements set forth in the TANF legislation. If the waiver is extended, as is proposed by the reauthorization legislation approved by the Senate Finance Committee, we will continue to operate in accordance with participation requirements in the waiver. If the waiver is not extended we will make necessary changes to ensure that we meet federal participation mandates. In either situation, Delaware will ensure that federal TANF funds are expended for groups of TANF clients engaged in work, using federally acceptable work activities.

##### **Maintenance of Effort**

Delaware is aware of and intends to fully comply with the requirements of the law (P.L. 104-193) to maintain a prescribed level of historic state expenditures. Delaware will ensure that expenditures of state funds for benefits and services ("Qualified State Expenditures" as defined in the law) for TANF participants (either in the Part A federally funded program or non-Part A state funded program) who are TANF eligibles will equal or exceed the required annual spending level.

Delaware has opted to continue the issuance of child support disregard and child support supplemental payments to TANF clients under our fill-the-gap waiver. Delaware considers these payments to be "cash assistance" to eligible families and therefore to be within the definition of "Qualified State Expenditures".

Financial eligibility criteria for MOE-funded assistance or services are the same as for other TANF assistance or services, except that MOE claimed for child care under the provisions of section 263.3 will follow the financial eligibility criteria established in the CCDF State Plan and associated State regulations.

**Implementation Date and Plan Submittal Date**

The plan is submitted for certification of completeness on October 1, 2002. The implementation date for the provisions of this plan is October 1, 2002. Any subsequent amendments to this Plan will be indicated by amending the page of the Plan that describes the program or function being changed.

See 6 DE Reg. 442 (10/1/02)

**DEPARTMENT OF INSURANCE**

18 DE Admin. Code 1406

Statutory Authority: 18 Delaware Code,  
Sections 311, 2304(16), and 2312  
(18 Del.C. §§ 311, 2304(16) and 2312)

**ORDER**

A public hearing was held on September 25, 2003 to receive comments on proposed Regulation 1406 relating to the governance of third party administrators as a result of the passage of Senate Bill 71 by the Delaware General Assembly. By my order of August 14, 2003, F.L. Peter Stone, Deputy Insurance Commissioner, was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearings and publication of proposed Regulation 1406 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law.

**Summary Of The Evidence And The Information Submitted**

I have reviewed the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated October 9, 2003 and incorporate it herein by reference. Thirteen documents were admitted into evidence as exhibits. Twelve persons attended the public hearing. The public comment was in favor of the regulation with comment directed at particular provisions of the proposed regulation.

Third party administrators ("TPA" or "TPAs") are persons or entities who generally contract with health insurers to provide defined services that may range from simple bookkeeping or bill paying to the adjustment and/or settlement of claims covered by the insurer but administered by the TPA. In Delaware, prior to the passage of SB 71, TPAs were not subject to the regulatory authority of any state agency. The purpose of SB 71 was to provide a mechanism whereby the Insurance Commissioner could establish regulatory control over TPAs within the framework provided by the National Association of Insurance Commissioners' ("NAIC") proposed model Third Party

Administrator Statute (April 2002 version).

Christiana Care and representatives of the pharmacy industry testified that the §2.8 of the proposed regulation improperly included entities as insurers who were not, in fact, insurers. That point was underscored by the written submissions received from the pharmaceutical industry.

The State Council for Persons with Disabilities and the Delaware Developmental Disabilities Council submitted identical written statements arguing that §5.2 of the Regulation with respect to the exemption of the Commissioner's records from subpoena or discovery goes beyond the scope of the legislation. The two councils also recommended that under §16.4 the remedies for fine or suspension should be discretionary and not mutually exclusive. Rita Marocco of NAI-DE referenced that point in her public comment. Deputy Attorney General Michael J. Rich, counsel for the Delaware Insurance Department, pointed out that §16.4 of the proposed regulation was designed to provide a fine as an alternate sanction where the violation warranted a sanction but was not of the severity that would result in harm to the subscribers or a finding of financial distress or insolvency to warrant suspension or revocation.

The National Association of Chain Drug Stores suggested additional areas that it recommended be grounds for denial, suspension or revocation under §16.2 of the proposed regulation. However, those suggestions related, in large part, to areas of concern that come under the jurisdiction of other agencies or that exceed the scope of SB 71. The Pharmaceutical Care Management Association suggested that the bond requirement of §12.7 be the lesser of \$100,000 or 10% of the aggregate total amount of self-funded coverage rather than the greater of the two as set forth in the proposed regulation.

No written or oral comments were submitted or received in opposition to the proposed regulation prior to or on October 2, 2003, the date upon which the record with respect to the proposed regulation was closed.

**Findings Of Fact With Respect To The Evidence And Information**

I find that the hearing officer's FINDINGS OF FACT are well grounded in the record and are incorporated into this order. I further find that his proposed changes to the regulation as published on September 1, 2003 are technical and non-substantive. The proposed changes are designed to improve the clarity of the regulation and promote uniform interpretation of its terms and are such that re-publication is not required under 29 Del.C. §10113(b)(4).

Based on the record in this docket, I find as follows:

1. SB 71 and the written and oral testimony submitted in support of the proposed regulation, along with the adoption of the same or similar provisions in many other

states, support a factual finding that Regulation 1406 be adopted in Delaware.

2. Based on the evidence submitted, §2.8 should not include the term “a pharmacy benefits manager” as part of the final text and that the deletion of that phase in §2.8 will be consistent with §§2.1 and 7.4 of the regulation.

3. SB 71 contains the following language: “The Commissioner shall promulgate regulations which shall provide for the registration, licensing, and regulation of third party administrators and enforcement of applicable Title 18 provisions to third party administrators.” To the extent SB 71 also requires that third party administrators be subject to the registration, examination, and assessment provisions of Title 18, the provisions of 18 **Del.C.** §§321, 322 would apply. Accordingly, I find that §5.2 with respect to the confidentiality of records obtained by the Delaware Insurance Department and the exemption of such records from subpoena or other discovery requests is consistent with existing Delaware law and the exclusion of examination or investigatory materials submitted to the Department under §5.2 does not constitute an extension of regulatory authority beyond the scope of the law.

4. In spite of the testimony supporting an amendment to §16.4 to allow a contemporaneous fine in addition to suspension or revocation of a license, I find that such a change would not necessarily be consistent with the provisions of §16. I have the authority under §16 to suspend or revoke the certificate of any TPA that fails to meet its legal obligations to subscribers or fails to maintain a sufficient level of financial solvency to allow it to continue doing business in this state. Should a TPA fail to meet those standards, it would be in the public interest to suspend or revoke the license and to assure that that its assets were used for the benefit of the subscribers as opposed to fines or other penalties that would inure to the State. Imposing a fine in lieu of suspension or revocation under §16.4 would be appropriate where the TPA may have violated an applicable law or regulation but is not in the kind of financial jeopardy that would warrant suspension or revocation. In such a case, the imposition of a fine would constitute a lower level of sanction under circumstances where benefits to subscribers would not be jeopardized.

5. I do not agree that the bond requirement of §12.7 be the lesser of \$100,000 or 10% of the aggregate total amount of self-funded coverage rather than the greater of the two as set forth in the proposed regulation. There is no evidence to suggest that the proposed change comports with the NAIC model or that the proposed change has been adopted by any other state. In order to best protect the public and to assure consistency with other states in the implementation of this regulatory scheme, I find that §12.7 should remain unchanged.

6. The word “statute” appears in §3.1 and should be changed to the word “regulation.”

7. I find that the proposed changes to §§2.8 and 3.1 are technical in nature and not substantive and that such changes do not require a republication or rehearing of the proposed regulation as would otherwise be required by 29 **Del.C.** §10118(c)

#### **Decision And Effective Date**

I hereby adopt Regulation 1406 as modified by the changes approved above and as incorporated in the copy of the final regulation attached hereto to be effective on January 1, 2004.

#### **Text And Citation**

The text of proposed Regulation 1406 appears in the Register of Regulations Vol. 7, Issue 3, pages 300 *et seq.*, September 1, 2003 subject to the modifications approved hereby.

Donna Lee H. Williams, Insurance Commissioner  
October 14, 2003

#### **Regulation 1406 Third Party Administrators**

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##### **1.0 Scope and Authority**

This Regulation is adopted by the Commissioner pursuant to the authority granted by 18 *Del. C.* §§ 102, 74 *Del. Laws* Ch. 157, and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 *Del. C.* Chapter 101.

**2.0 Definitions**

For purposes of this Regulation:

2.1 **“Administrator”** or **“third party administrator”** or **“TPA”** means a person

2.1.1 who directly or indirectly underwrites, collects charges or premiums from, or denies, modifies, adjusts or settles claims on residents of this state in connection with health and/or pharmacy benefits coverage offered or provided by an insurer, except any of the following:

2.1.1.1 An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of such employer;

2.1.1.2 A union on behalf of its members;

2.1.1.3 An insurer that is authorized to transact insurance in this state pursuant to Title 18;

2.1.1.4 An insurance producer licensed to sell health and/or pharmacy benefits coverage in this state, whose activities are limited exclusively to the sale of insurance;

2.1.1.5 A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

2.1.1.6 A trust and its trustees, agents and employees acting pursuant to such trust established in conformity with 29 U.S.C. Section 186;

2.1.1.7 A trust exempt from taxation under Section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to such trust, or a custodian and the custodian’s agents or employees acting pursuant to a custodian account which meets the requirements of Section 401(f) of the Internal Revenue Code;

2.1.1.8 A credit union or a financial institution that is subject to supervision or examination by federal or state banking authorities, or a mortgage lender, to the extent they collect and remit premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments;

2.1.1.9 A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection;

2.1.1.10 A person who adjusts or settles claims in the normal course of that person’s practice or employment as an attorney at law and who does not collect charges or premiums in connection with health and/or pharmacy health benefits coverage;

2.1.1.11 An adjuster licensed by this state whose activities are limited to adjustment of claims;

2.1.1.12 A person licensed as a managing general agent in this state, whose activities are limited exclusively to the scope of activities conveyed under such license;

2.1.1.13 An administrator who is affiliated

with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator’s books and records to the insurance Commissioner, upon a request from the insurance Commissioner. For purposes of this paragraph, “insurer” shall have the same meaning as set forth in section 2.8 of this regulation; or

2.1.1.14 A person, firm or entity whose business is solely limited to the payment of money, claims or bills at the direction of an insurer and who does not adjust or settle claims on residents of this state in connection with health coverage offered or provided by an insurer.

2.2 **“Affiliate or affiliated”** means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

2.3 **“Commissioner”** means the Insurance Commissioner of Delaware.

2.4 **“Control”** (including the terms **“controlling,” “controlled by”** and **“under common control with”**) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by 18 *Del. C.* Chapter 50 that control does not exist in fact. The Commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

2.5 **“GAAP”** means United States generally accepted accounting principles consistently applied.

2.6 **“Home state”** means the District of Columbia and any state or territory of the United States in which an administrator is incorporated, or maintains its principal place of business. If neither the state in which the administrator is incorporated, nor the state in which it maintains its principal place of business has adopted this Regulation, or a substantially similar law governing administrators, the administrator may declare another state, in which it conducts business, to be its “home state.”

2.7 **“Insurance producer”** means a person who sells, solicits or negotiates a contract of insurance as those terms are defined in this Regulation.



2.8 **“Insurer”** means a person undertaking to provide health and/or pharmacy benefits coverage or self-funded coverage under a governmental plan or church plan in this state. For the purposes of this Regulation, insurer includes an employer, a licensed insurance company, a prepaid hospital or medical care plan, a health maintenance organization, a managed care organization, a health service corporation, ~~fa pharmacy benefits manager~~ or a multiple employer welfare arrangements (MEWAs).

2.9 **“Negotiate”** means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

2.10 **“Nonresident administrator”** means a person who is applying for licensure or is licensed in any state other than the administrator’s home state.

2.11 **“Person”** means an individual or a business entity.

2.12 **“Sell”** means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

2.13 **“Solicit”** means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

2.14 **“Underwrites”** or **“underwriting”** means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan; the overall planning and coordinating of a benefits program.

2.15 **“Uniform Application”** means the current version of the NAIC Uniform Application for Third Party Administrators.

### **3.0 Requirement for Written Agreement**

3.1 No administrator shall act as such without a written agreement between the administrator and the insurer, and the written agreement shall be retained as part of the official records of both the insurer and the administrator for the duration of the agreement and for five (5) years thereafter. The agreement shall contain all provisions required by this ~~statute~~ **regulation**, except insofar as those requirements do not apply to the functions performed by the administrator.

3.2 The written agreement shall include a statement of duties that the administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance for which the administrator is to be authorized to administer. The agreement shall make provision with respect to underwriting or other standards pertaining to the business underwritten by the insurer.

3.3 The insurer or administrator may, with written notice, terminate the written agreement for cause as provided

in the agreement. The insurer may suspend the underwriting authority of the administrator during the pendency of any dispute regarding the cause for termination of the written agreement. The insurer shall fulfill any lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the administrator.

### **4.0 Payment to Administrator**

If an insurer utilizes the services of an administrator, the payment to the administrator of any premiums or charges for insurance by or on behalf of the insured party shall be deemed to have been received by the insurer, and the payment of return premiums or claim payments forwarded by the insurer to the administrator shall not be deemed to have been paid to the insured party or claimant until the payments are received by the insured party or claimant. Nothing in this section limits any right of the insurer against the administrator resulting from the failure of the administrator to make payments to the insurer, insured parties or claimants.

### **5.0 Maintenance of Information**

5.1 An administrator shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and shall be maintained for a period of not less than five (5) years from the date of their creation.

5.2 The Commissioner shall have access to books and records maintained by an administrator for the purposes of examination, audit and inspection. Any documents, materials or other information in the possession or control of the Commissioner that are furnished by an administrator, insurer, insurance producer or an employee or agent thereof acting on behalf of the administrator, insurer or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law, shall not be subject to the provisions of 29 *Del. C.* Chapter 100, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use such documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner’s official duties, in which case the rules of the court having jurisdiction over the case shall govern the production and admissibility of such documents.

5.3 Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to § 5.2.

5.4 In order to assist in the performance of his or her duties, the Commissioner:

5.4.1 May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to § 5.2 with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information; and

5.4.2 May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

5.5 No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in § 5.4.

5.6 Nothing in this Regulation shall prohibit the Commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to 29 Del. C. Chapter 100 to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

5.7 The insurer shall own the records generated by the administrator pertaining to the insurer; however, the administrator shall retain the right to continuing access to books and records to permit the administrator to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

5.8 In the event the insurer and the administrator cancel their agreement; notwithstanding the provisions of § 5.1, the administrator may, by written agreement with the insurer, transfer all records to a new administrator rather than retain them for five (5) years. In such cases, the new administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior administrator as required in § 5.1.

## **6.0 Approval of Advertising**

An administrator may use only advertising pertaining to the business underwritten by an insurer that has been approved in writing by the insurer in advance of its use.

## **7.0 Responsibilities of the Insurer**

7.1 If an insurer utilizes the services of an administrator, the insurer shall be responsible for determining the benefits, premium rates, underwriting criteria and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in the written agreement between the administrator and the insurer.

7.2 It is the sole responsibility of the insurer to provide for competent administration of its programs.

7.3 In cases where an administrator administers benefits for more than one hundred certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least one such review shall be an on-site audit of the operations of the administrator.

7.4 For purposes of this section, "insurer" means a licensed insurance company, prepaid hospital or medical care plan, a health maintenance organization or a multiple employer welfare arrangements (MEWAs).

## **8.0 Premium Collection and Payment of Claims**

8.1 All insurance charges or premiums collected by an administrator on behalf of or for an insurer, and the return of premiums received from that insurer, shall be held by the administrator in a fiduciary capacity. The funds shall be immediately remitted to the person entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the administrator in a federally or state insured financial institution. The written agreement between the administrator and the insurer shall provide for the administrator to periodically render an accounting to the insurer detailing all transactions performed by the administrator pertaining to the business underwritten by the insurer.

8.2 If charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more insurers, the administrator shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each insurer. The administrator shall keep copies of all the records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to the deposits and withdrawals.

8.3 The administrator shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from the account shall be made as provided in the written agreement between the administrator and the insurer. The written agreement shall address, but not be limited to, the following:

8.3.1 Remittance to an insurer entitled to remittance;

8.3.2 Deposit in an account maintained in the name of the insurer;

8.3.3 Transfer to and deposit in a claims-paying account, with claims to be paid as provided for in § 8.4;

8.3.4 Payment to a group policyholder for remittance to the insurer entitled to such remittance;

8.3.5 Payment to the administrator of its commissions, fees or charges; and

8.3.6 Remittance of return premium to the person or persons entitled to such return premium.

8.4 All claims paid by the administrator from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of and as authorized by the insurer.

## **9.0 Compensation to the Administrator**

9.1 An administrator shall not enter into an agreement or understanding with an insurer in which the effect is to make the amount of the administrator's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the insurer's obligations. This provision shall not prohibit an administrator from receiving performance-based compensation for providing hospital or other auditing services.

9.2 This section shall not prevent the compensation of an administrator from being based on premiums or charges collected or the number of claims paid or processed.

## **10.0 Notice to Covered Individuals; Disclosure of Charges and Fees**

10.1 When the services of an administrator are utilized, the administrator shall provide a written notice approved by the insurer to covered individuals advising them of the identity of, and relationship among, the administrator, the policyholder and the insurer.

10.2 When an administrator collects funds, the reason for collection of each item shall be identified to the insured party and each item shall be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the insurer.

10.3 The administrator shall disclose to the insurer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance.

## **11.0 Delivery of Materials to Covered Individuals**

Any policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the administrator for delivery to insured parties or covered individuals shall be delivered by the administrator promptly after receipt of instructions from the insurer to deliver them.

## **12.0 Home State Certificate of Authority/License**

12.1 A person shall apply to be an administrator in its home state, upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state, prior to performing any function of an administrator in this state.

12.2 The Uniform Application shall include or be accompanied by the following information and documents:

12.2.1 All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all amendments to such documents;

12.2.2 The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

12.2.3 NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant; including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant;The bylaws, rules, regulations or similar documents regulating the internal affairs of the applicant;

12.2.4 Audited annual financial statements or reports for the two (2) most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two (2) fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included. The applicant shall also include such other information as the Commissioner may require in order to review the current financial condition of the applicant;

12.2.5 A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping and underwriting; and

12.2.6 Such other pertinent information as may be required by the Commissioner.

12.3 An administrator licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons utilizing the services of the administrator.

12.4 An administrator licensed or applying for licensure under this section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

12.5 The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the administrator, or any individual responsible for the conduct of affairs of the administrator is not competent, trustworthy, financially responsible or of good personal and business reputation, or has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in § 15 exists with respect to the administrator.

12.6 A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended or revoked by the Commissioner, for so long as the administrator continues in business in this state and remains in compliance with this Regulation.

12.7 An administrator licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this state. The Commissioner shall report any such changes to the national producer database or its successor.

12.8 An administrator licensed or applying for a home state certificate of authority/license that administers or will administer governmental or church self-insured plans in its home state or any other state shall maintain a surety bond for the use and benefit of the home state Commissioner and the insurance regulatory authority of any additional state in which the administrator is authorized to conduct business and cover individuals and persons who have remitted premiums or insurance charges or other monies to the administrator in the course of the administrator's business in the greater of the following amounts:

12.8.1 \$100,000; or

12.8.2 Ten percent (10%) of the aggregate total amount of self-funded coverage under church plans or governmental plans handled in the administrator's home state and all additional states in which the administrator is authorized to conduct business.

### **13.0 Registration Requirement**

A person who directly or indirectly underwrites, collects

or charges premiums from, or adjusts or settles claims on residents of this state, in connection with health and/or pharmacy benefits coverage provided by a self-funded plan other than a governmental or church plan shall register with the Commissioner annually, verifying its status as herein described.

### **14.0 Nonresident Administrator Certificate of Authority**

14.1 Unless an administrator has obtained a home state certificate of authority or license in this state under § 12, any administrator who performs administrator duties in this state shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application, accompanied by a letter of certification. In lieu of requiring an administrator to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

14.2 An administrator shall not be eligible for a Nonresident Administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted this Regulation or a substantially similar law governing administrators.

14.3 Except as provided in §§ 14.2 and 14.8, the Commissioner shall issue to the administrator a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

14.4 Unless notified by the Commissioner that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, each nonresident administrator shall annually file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year.

14.5 At the time of filing the statement required under § 14.4 or, if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, on an annual date determined by the Commissioner, the nonresident administrator shall pay a filing fee as required by the Commissioner.

14.6 An administrator licensed or applying for licensure under this section shall produce its accounts, records and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

14.7 A nonresident administrator is not required to hold a nonresident administrator certificate of authority or license in this state if the administrator's duties in this state are limited to the administration of a group policy or plan of insurance and no more than a total of 100 lives for all plan residents in this state.

14.8 The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the administrator, the nonresident administrator cannot satisfy the requirements of this Regulation, or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. In such an event, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident administrator until such time, if at all, that the Commissioner determines that the administrator can satisfy the requirements of this Regulation and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license.

### **15.0 Annual Report, Fees and Expenses**

15.1 Each administrator licensed under § 12 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year, or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the administrator. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:

15.1.1 amounts shown on the consolidated audited financial report shall be shown on the worksheet;

15.1.2 amounts for each entity shall be stated separately, and

15.1.3 explanations of consolidating and eliminating entries shall be included.

15.2 The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

15.3 At the time of filing its annual report, the administrator shall pay a filing fee as set by § 17.

15.4 The Commissioner shall review the most recently filed annual report of each administrator on or

before September 1 of each year. Upon completion of its review, the Commissioner shall either:

15.4.1 Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in that annual report and financial statements; or

15.4.2 Update any electronic database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicating that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report.

15.5 An administrator shall be subject to assessment for all fees, costs, experts and related expenditures with respect to any examination, arbitration or enforcement action undertaken by the Commissioner pursuant to Title 18.

### **16.0 Grounds for Denial, Suspension or Revocation of Certificate of Authority**

16.1 The certificate of authority or license of an administrator shall be denied, suspended or revoked if the Commissioner finds that the administrator:

16.1.1 Is in an unsound financial condition;

16.1.2 Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or

16.1.3 Has failed to pay any judgment rendered against it in this state within sixty days after the judgment has become final.

16.2 The Commissioner may deny, suspend or revoke the certificate of authority or license of an administrator if the Commissioner finds that the administrator:

16.2.1 Has violated any lawful rule or order of the Commissioner or any applicable law of this state;

16.2.2 Has refused to be examined or to produce its accounts, records and files for examination, or if any individual responsible for the conduct of affairs of the administrator, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities or voting interest of the administrator; and any other person who exercises control or influence over the affairs of the administrator; has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the

Commissioner:

16.2.3 Has, without just cause, refused to pay clean claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the administrator to secure full payment or settlement of such claims;

16.2.4 At any time fails to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

16.2.5 Or any of the individuals responsible for the conduct of its affairs, including members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly ten percent (10%) or more of its voting stock, voting securities or voting interest; and any other person who exercises control or influence over its affairs; has been convicted of, or has entered a plea of guilty or *nolo contendere* to, a felony without regard to whether adjudication was withheld;

16.2.6 Is under suspension or revocation in another state; or

16.2.7 Has failed to timely file its annual report pursuant to § 15, if a resident administrator, or its statement and filing fee, as applicable, pursuant to §§ 14.4 and 14.5, if a nonresident administrator.

16.3 The Commissioner may, in his or her discretion and without advance notice or hearing, immediately suspend the certificate of authority or license of an administrator if the Commissioner finds that one or more of the following circumstances exist:

16.3.1 The administrator is insolvent or impaired;

16.3.2 A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the administrator has been commenced in any state; or

16.3.3 The financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

16.4 If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the administrator.

## **17.0 Fees**

17.1 The following fees shall be applicable for filings and matters arising under this Regulation:

For filing application for

initial certificate of authority in Delaware or for the registration of a foreign home state certificate including all documents submitted

as part of such application 500.00

Issuance of a certificate of authority\$100.00

Reinstatement \$100.00

Amendment of certificate \$100.00

Duplicate or replacement certificate\$500.00

17.2 For any other fee, cost or charge, the provisions of 18 *Del. C.* § 701 are incorporated by reference and are applicable to matters arising under this Regulation.

17.3 The provisions of 18 *Del. C.* Chapter 3 shall be applicable to examinations required by this Regulation.

## **18.0 Severability**

If any section or portion of a section of this Regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of this Regulation or the applicability of the provision to other persons or circumstances shall not be affected.

## **19.0 Effective Date**

This Regulation shall become effective on January 1, 2004.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2003

Donna Lee H. Williams, Commissioner

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER FORTY-EIGHT**

**RE: Amendment to Executive Order Number Eleven**

WHEREAS, it is desirable that the Governor should have as much flexibility as possible in determining how many members should sit on the Violence Against Women Act Implementation Committee,

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER ON THIS 4<sup>TH</sup> DAY OF SEPTEMBER, 2003:

Paragraph 3 of Executive Order No. 11, dated February 1, 2001, is hereby deleted in its entirety, and replaced with the following:

“3. The Committee shall be comprised of individuals who shall be appointed by the Governor and serve at the pleasure of the Governor.”

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor  
Secretary of State

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER FORTY-NINE**

**RE: Creation of Community Notification  
Working Group**

WHEREAS, the Community Notification Task Force, created by statute to oversee major revisions in Delaware's sex offender community notification system, issued its final report in January, 2003; and

WHEREAS, the task force commended Delaware's law enforcement community for diligent implementation of the sex offender community notification system changes dictated by the General Assembly and the Governor; and

WHEREAS, the task force also noted some areas that

would require continued monitoring, and others that needed examination but were beyond the task force's limited scope of operation; and

WHEREAS, it is in the best interests of Delaware families that Delaware's sex offender community notification system be as accurate and accessible as possible;

IT IS THEREFORE ORDERED, ON THIS 4th DAY OF SEPTEMBER, 2003:

1. The Community Notification Working Group (the "Working Group") is hereby created.

2. The Working Group shall consist of representatives of relevant state agencies appointed by the Governor, one representative from the Child Protection Accountability Commission, one representative appointed by the Speaker of the House of Representatives, one representative appointed by the President Pro Tem of the State Senate, and two public members to be appointed by the Governor. The Governor shall appoint the chair of the Working Group.

3. The Working Group shall make recommendations to the Governor and General Assembly on the following issues:

a. Registration of sex offenders who have committed their offenses in other states;

b. Possible separate listing of registered juveniles on the state's Sex Offender Registry Web Site;

c. Improvements in enforcement of reporting compliance;

d. Refinement of tier definitions in order to ensure that placement in a particular tier accurately reflects the degree of risk that an individual presents to the community;

e. Possible expansion of information made available on the Sex Offender Registry Web Site;

f. Possible treatment models for child sexual abuse offenders.

4. The Working Group shall make its recommendations by April 30, 2004.

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor  
Secretary of State

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER FIFTY**

**RE: Governor's Commission on Community-Based  
Alternatives for Individuals with Disabilities**

WHEREAS, Delaware is committed to community-based alternatives for individuals with disabilities, and recognizes that such services advance the best interests of Delawareans; and

WHEREAS, Delaware seeks to ensure that its community-based programs effectively foster independence and participation in the community for Delawareans with disabilities; and

WHEREAS, Delaware seeks to ensure that all of its citizens, including those with disabilities, have the ability to live close to family and friends, live independently, engage in productive employment, and participate in community life; and

WHEREAS, the best way to achieve the aforementioned goals is for the public and private entities representing Delaware's disabilities community and those who serve that community to help chart the state's progress toward those goals;

I, RUTH ANN MINNER, HEREBY ORDER ON THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2003:

1. The Governor's Commission on Community-Based Alternatives for Individuals with Disabilities is hereby created.

2. The Commission shall consist of 19 members, who shall be selected as follows:

1. Two members of the House of Representatives (one selected by each caucus);
2. Two members of the Senate (one selected by each caucus);
3. The Secretary of the Department of Health and Social Services;
4. The Director of the Delaware State Housing Authority;
5. The Director of the Delaware Transit Corporation;
6. The Director of the University of Delaware's Center for Disabilities Studies;
7. The Chair of the State Council for Persons with Disabilities;

8. The Director of the Division of Services for Aging and Adults with Physical Disabilities;

9. The Director of the Division of Developmental Disabilities Services;

10. The Director of the Division of Substance Abuse and Mental Health;

11. The Director of the Division of Vocational Rehabilitation;

12. A representative from the provider community;

13. A representative from one of the Governor's Advisory Councils within the Department of Health and Social Services;

14. A representative from the community at large; and

15. Three representatives from the consumer advocacy agencies.

3. The chair(s) of the Commission and organizational representatives shall be selected by the Governor, and shall serve at the pleasure of the Governor.

4. The Commission shall have the following responsibilities:

a. Ensuring maximum cooperation between government agencies that serve the disabilities community, and between public and private sector entities that serve the disabilities community;

b. Providing recommendations to the Governor and Secretary of the Department of Health and Social Services to refine the state's plans and other reports/surveys dealing with community alternatives to provide services to qualified individuals with disabilities in the most integrated settings;

c. Supplementing such plans and reports to comprehensively assess existing need and resources;

d. Providing recommendations to the Governor and General Assembly with respect to funding prioritization among projects designed to provide services to individuals with disabilities; and

e. Monitoring the state's progress toward implementing existing plans to provide services to individuals with disabilities.

5. The Commission shall meet on at least a quarterly basis, and shall provide a written report to the Governor on its actions following each quarterly meeting. The Commission shall also provide an annual report to the General Assembly on its activities.

6. The Commission shall establish by-laws to govern its activities, and may create sub-committees to address specific subjects within the Commission's purview.

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State



**DEPARTMENT OF INSURANCE****Domestic/Foreign Insurers Bulletin No. 16****Aids Information Brochure 18 Del.C. §7403**

Issued: September 29, 2003

Under 18 **Del.C.** §7403, no insurer shall request or require that an applicant submit to a HIV test for insurance unless, among other things, the insurer first provides the applicant with written information provided by the Department of Health and Social Services, such as the brochure “HIV and AIDS” published by the American Red Cross, or its successor or a similar brochure. The Department of Insurance has recently learned that the Red Cross brochure referred to in 18 **Del.C.** §7403 is no longer in print and available for public distribution.

While an insurer is free, under 18 **Del.C.** §7403, to choose an alternate similar brochure, the purpose of this bulletin is to provide guidance with respect to an acceptable substitute public brochure or bulletin that may be used by insurers without the need to seek a legislative change to the statute. A brochure titled “HIV Infection and AIDS: An Overview” dated June 2003 has been published by the National Institute of Allergy and Infectious Diseases of the National Institutes of Health of the U.S. Department of Health and Human Services. That brochure has been approved by the Delaware Department of Health and Social Services as appropriate for informational purposes. While this bulletin does not require that an insurer use that particular brochure, the use of that brochure or successor brochure from the U. S. Department of Health and Human Services will meet the “similar brochure” standard enunciated in 18 **Del.C.** §7403(a)(3). A copy of the brochure is attached to this bulletin and the website link is <http://www.niaid.nih.gov/factsheets/hivinf.htm>.

Donna Lee H. Williams  
Insurance Commissioner

September 29, 2003

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS IN OPTOMETRY**

**PUBLIC NOTICE**

The Board issues this proposed rule amendment pursuant to 24 **Del.C.** §2104(a)(1) and 29 **Del.C.** §10115. The Board will accept written comments from November 1, 2003 through November 30, 2003. The Board will hold a public hearing on the proposed amendment on December 4, 2003 at 6:30 p.m. in the second floor conference room in the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467. Written comments should be submitted to Jane Youmans, Administrative Specialist, Division of Professional Regulation, at the same above-listed address.

The Board proposes to amend Rule 3.1.2 to clarify that the Board may approve the start of an internship as of the date an applicant has in good faith submitted all licensure materials and the Board is unable to review said materials due to an insufficient number of statutorily appointed members.

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**BOARD OF PROFESSIONAL LAND SURVEYORS**

**PUBLIC NOTICE**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2706, the Delaware Board of Professional Land Surveyors proposes to revise its Rules and Regulations. The proposed revision adds a new section to the Rules and Regulation to clarify the Minimum Standards issues relating to Martgage Inspection Plans.

A public hearing will be held on the proposed Rules and Regulations on November 20, 2003 at 9:30 a.m., in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Celine Walton at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Celine Walton at the above address or by calling her at (302) 744-4520.

**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PHARMACY**

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** §2509, the Delaware Board of Pharmacy (Board) proposes to modify Regulation 11.0 as it relates to emergency use medication, labeling, consultant pharmacist duties, and drug disposal in nursing homes. There were technical and substantive errors in the changes published September 1, 2003 and they are being republished with the corrections to the following sections: 11.2.5, 11.2.6, 11.4.1, 11.5.2, 11.5.3.2

A public hearing will be held on December 8, 2003 at 9:30 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. Written comments can be submitted at any time prior to the public hearing in care of David Dryden, Executive Director, at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained by calling (302)739-4798.

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**PUBLIC SERVICE COMMISSION**

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. **All such materials shall be filed with the Commission on or before November 30, 2003.** Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before November 30, 2003.

In addition, the Commission will conduct a public hearing concerning the proposed changes on December 9, 2003, beginning at 1:00 PM. The public hearing will be held at the Commission's Dover office, located at the address set forth in the preceding paragraph. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

The proposed regulations and the materials submitted in connection with these proceedings will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The proposed regulations may also be reviewed, by appointment, at the Office of the Division of the Public Advocate located at the Carvel State Office Building, 4<sup>th</sup> Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the

Commission's website: [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to participate in these proceedings, or to review these revised regulations, should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone (including Telecommunications Relay Service or Text Telephone), or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. Persons with questions concerning these revised regulations may also contact the Commission by either Text Telephone ("TT") or by regular telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to [andrea.maucher@state.de.us](mailto:andrea.maucher@state.de.us).

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## **STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, November 21, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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## **DEPARTMENT OF FINANCE OFFICE OF THE STATE LOTTERY**

The Lottery issues this proposed rule amendment pursuant to 29 *Del. C.* §4805(a) and 29 *Del. C.* §10115. The Lottery will accept written comments from November 1, 2003 through November 30, 2003. The Lottery will hold a public hearing on the proposed Video Lottery Regulation amendments on December 4, 2003 at 9:00 a.m. in the second floor conference room at the Delaware Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to Hearing Officer Don Johnson, Deputy Director, Delaware Lottery Office, at the same above-listed address. A summary of the proposed amendments is attached.

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

### **Notice of proposed amendments to the Uniform Controlled Substance Act**

#### **Notice Of Public Hearing**

The Health Systems Protection Section, Division of

Public Health, Department of Health & Social Services, will hold a public hearing to discuss the proposed adoption of the controlled substance scheduling of the pharmaceutically manufactured drug Gamma Hydroxy Butyrate (GHB) to schedule III. This amendment mimics the federal scheduling of this drug. The amendment will place the pharmaceutically manufactured drug GHB in 16 *Del. C.* 4718 (c) (10)

The public hearing will be held on Thursday, December 4, 2003, at 10:00 a.m., in the 2nd Floor Conference Room, Office of Narcotics and Dangerous Drugs, Emily P. Bissell Hospital Building G, 3000 Newport Gap Pike, Wilmington, Delaware. Information concerning the proposed scheduling of the pharmaceutically manufactured drug GHB is available at the following location:

Office of Narcotics & Dangerous Drugs  
Jesse Cooper Building  
Federal & Water Streets  
P.O. Box 637  
Dover, DE 19903  
(302) 744-4547

Anyone wishing to present his or her oral comments at this public hearing should contact David Walton at (302) 744-4700 by Wednesday, December 3, 2003. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by Friday, December 5, 2003, to:

David Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

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## **DIVISION OF SOCIAL SERVICES**

### **Public Notice**

#### **Medicaid/Medical Assistance Programs**

#### **Reproposed Regulation**

#### **Client Cost Sharing for Pharmaceutical Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program issues these reproposed regulations to amend the

Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) to establish the provisions relating to imposing and collecting copayments for pharmaceutical services from Medicaid/Medical Assistance clients.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by November 30, 2003.

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

**Title of the Regulations:**

*Delaware Regulations Governing Hazardous Waste (DRGHW)*

**Brief Synopsis Of The Subject, Substance And Issues:** In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing to make miscellaneous changes to the DRGHW that correct existing errors, add clarification or enhance the current program.

**Notice Of Public Comment:**

The public hearing on the proposed amendments to DRGHW will be held on Wednesday December 10, 2003 beginning at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

**Prepared By:**

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

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