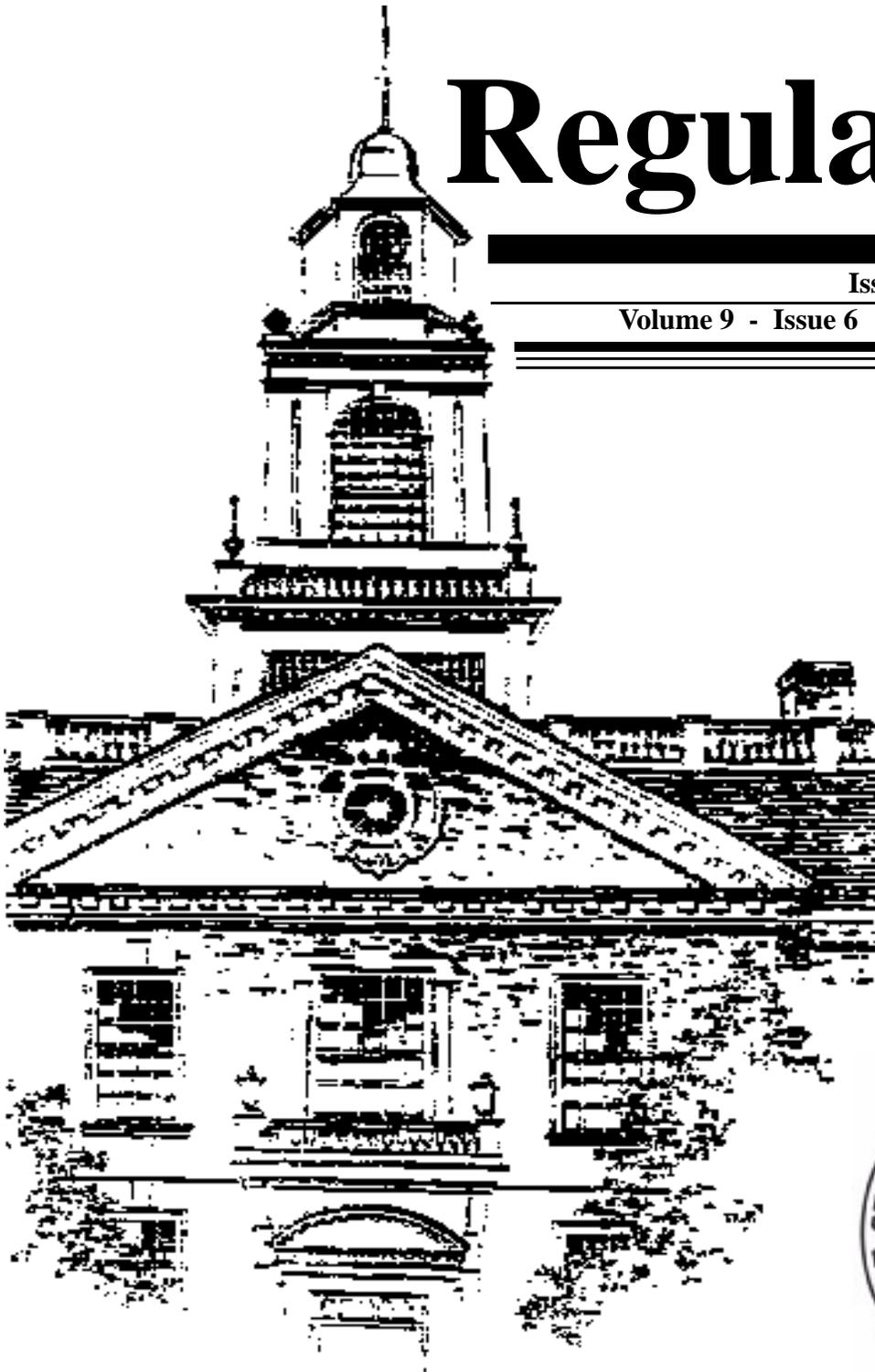


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# Delaware Register of Regulations



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Issue Date: December 1, 2005

Volume 9 - Issue 6

Pages 829 - 1019

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## IN THIS ISSUE:

Regulations:

Proposed

Final

Governor

Executive Orders

Appointments

General Notices

Calendar of Events &

Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before November 15, 2005.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

9 **DE Reg.** 415-420 (09/01/05)

Refers to Volume 9, pages 415-420 of the *Delaware Register* issued on September 1, 2005.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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

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

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

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

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

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

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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
JANUARY 1	DECEMBER 15	4:30 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.
MAY 1	APRIL 15	4:30 P.M.

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# TABLE OF CONTENTS

Cumulative Tables..... 834

## DEPARTMENT OF INSURANCE

### PROPOSED

#### DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

101 Delaware Student Testing Program..... 839  
235 Teacher of the Year Award..... 846  
710 Public School Employees Work Day..... 847

#### PROFESSIONAL STANDARDS BOARD

1516 Standard Certificate..... 849  
1518 Special Institute for Teacher Licensure and  
Certification..... 852

#### DEPARTMENT OF ELECTIONS FOR NEW CASTLE COUNTY

Security and Integrity of the Absentee Voting  
Process ..... 855

#### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

##### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Long Term Care Medicaid, Definitions, Institutionalized  
Spouse and Community Spouse..... 859  
Chronic Renal Disease Program..... 860

##### DIVISION OF PUBLIC HEALTH

4202 Control of Communicable and Other Disease  
Conditions..... 861  
4406 Home Health Agencies (Licensure)..... 880  
4466 Radiation Technologists/Technicians  
(Certification)..... 902

##### DIVISION OF SOCIAL SERVICES

Delaware Temporary Assistance for Needy Families  
(TANF) State Plan Renewal..... 907  
3004.1.1 TANF Joint Custody..... 928  
Refugee Cash Assistance..... 930  
8028.1 Sources of Earned Income..... 930  
Child Care Subsidy Program..... 931

504 Continuing Education for Insurance Agents,  
Brokers, Surplus Lines Brokers and  
Consultants..... 939  
607 Defensive Driving Course Discount (Automobiles  
and Motorcycles)..... 944

### DEPARTMENT OF STATE

#### DIVISION OF PROFESSIONAL REGULATION

1400 Board of Electrical Examiners..... 949  
2500 Board of Pharmacy..... 951  
3700 Board of Examiners of Speech/Language  
Pathologists, Audiologists & Hearing Aid  
Dispensers..... 964

### FINAL

#### DEPARTMENT OF AGRICULTURE NUTRIENT MANAGEMENT

1201 Nutrient Management Certification  
Regulations..... 966

#### DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

396 Private Business and Trade Schools..... 967  
405 Minor Capitol Improvement Program..... 970

#### PROFESSIONAL STANDARDS BOARD

1519 Alternative Routes to Teacher Licensure and  
Certification..... 971

#### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

##### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Pharmaceutical Services Multi-State Pooling Rebate  
Program..... 975  
Long Term Care Nursing Facilities..... 978  
Long Term Care Medicaid..... 996  
DSSM: 20700.4.5 Illness or Hospitalization..... 998

---

# TABLE OF CONTENTS

---

833

## DIVISION OF PUBLIC HEALTH

4462 Public Drinking Water Systems ..... 999

## DIVISION OF SOCIAL SERVICES

DSSM: 1005 Case Record Maintenance and Retention..... 1001

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF WATER RESOURCES

7410 TMDLs for the Naamans Creek Watershed  
7411 TMDLs for Shellpot Creek, Delaware. .... 1002

## DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER

904 Exceptions to Tying Restrictions..... 1004

---

## GOVERNOR

Executive Order No. 76; Regarding Management of Labor Relations and Administrative Proceedings in State Government..... 1006  
Appointments..... 1008

---

## GENERAL NOTICES

## DEPARTMENT OF FINANCE DIVISION OF REVENUE

TIM 2005-02 Legislation Passed During the First Session of the 143rd Delaware General Assembly..... 1012

---

## CALENDAR OF EVENTS/HEARING NOTICES

State Board of Education Monthly Meeting..... 1015  
Dept. of Elections for New Castle County, Notice of Public Comment Period..... 1015  
*Dept. of Health & Social Service, Div. of Medicaid & Medical Assistance, Notices of Public Comment Periods: .....* 1015  
*Div. of Public Health, Communicable Disease Regulations, Notice of Public Hearing.....* 1015  
Home Health Agencies, Notice of Public Hearing ..... 1016  
Radiation Technologists/Technicians, Notice of Public Hearing..... 1016  
*Div. of Social Services, Notice of Public Comment Periods.....* 1016-17  
*Department of Insurance, Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants, Notice of Public Hearing .....* 1018  
Defensive Driving Course Discount, Notice of Public Hearing..... 1018  
Dept. of State, Div. of Professional Regulation Board of Electrical Examiners, Notice of Public Hearing..... 1018  
Board of Pharmacy, Notice of Public Hearing .... 1019  
Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers, Notice of Public Hearing..... 1019

---

## CUMULATIVE TABLES

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

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

### DELAWARE COUNCIL ON POLICE TRAINING

Minimum Standards for Firearms Qualifications.....	9 DE Reg. 488 (Prop.) 9 DE Reg. 768 (Final)
----------------------------------------------------	------------------------------------------------

### DELAWARE RIVER BASIN COMMISSION

Proposed Amendment to the Basin Regulations Water Supply Charges and Comprehensive Plan Relating to Certificates of Entitlement.....	9 DE Reg. 674 (Prop.)
--------------------------------------------------------------------------------------------------------------------------------------	-----------------------

### DEPARTMENT OF ADMINISTRATIVE SERVICES

#### DIVISION OF PROFESSIONAL REGULATION

**Moved to Department of State, 75 Del. Laws, Ch. 88, June 30, 2005.**

#### PUBLIC SERVICE COMMISSION

**Moved to Department of State, 75 Del. Laws, Ch. 88, June 30, 2005.**

### DEPARTMENT OF AGRICULTURE

#### OFFICE OF THE SECRETARY

101 On-Farm Home Food Processing Operations.....	9 DE Reg. 12 (Prop.)
225 Prohibition of Discrimination.....	9 DE Reg. 676 (Prop.)
525 Requirements for Career-Technical Education Programs .....	9 DE Reg. 677 (Prop.)

#### HARNESS RACING COMMISSION

502 Delaware Standardbred Breeders' Fund.....	9 DE Reg. 111 (Final)
Rule 8, Veterinary Practices, Equine Health Medications.....	9 DE Reg. 491 (Prop.)

#### NUTRIENT MANAGEMENT

1201 Nutrient Management Certification Regulations.....	9 DE Reg. 305 (Prop.)
---------------------------------------------------------	-----------------------

### DEPARTMENT OF EDUCATION

#### OFFICE OF THE SECRETARY

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).....	9 DE Reg. 533 (Final)
107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).....	9 DE Reg. 539 (Final)
275 Charter Schools.....	9 DE Reg. 19 (Prop.)
396 Private Business and Trade Schools.....	9 DE Reg. 387 (Final)
405 Minor Capitol Improvement Program.....	9 DE Reg. 493 (Prop.)
716 Maintenance of Local School District Personnel Records.....	9 DE Reg. 27 (Prop.)
727 Credit for Experience for Educators and for Secretarial Staff.....	9 DE Reg. 395 (Final)
727 Credit for Experience for Educators and for Secretarial Staff.....	9 DE Reg. 28 (Prop.)
764 (Previously 364) Credentials for an Interpreter Tutor for the Deaf and Hard of Hearing	9 DE Reg. 396 (Final)
765 (Previously 365) Credentials for a Resident Advisor in the Statewide Programs for	9 DE Reg. 113 (Final)
Autism and for the Deaf and Hard of Hearing.....	9 DE Reg. 115 (Final)
920 Educational Programs for Students with Limited English Proficiency.....	9 DE Reg. 30 (Prop.)
	9 DE Reg. 398 (Final)

---

# CUMULATIVE TABLES

835

930 Supportive Instruction (Homebound).....	9 DE Reg.	34 (Prop.)
	9 DE Reg.	402 (Final)
1006 Delaware Interscholastic Athletic Association (DIAA).....	9 DE Reg.	117 (Final)
1008 DIAA Junior High/Middle School Interscholastic Athletics .....	9 DE Reg.	124 (Final)
1009 DIAA Senior High School Interscholastic Athletics.....	9 DE Reg.	126 (Final)
1105 School Transportation.....	9 DE Reg.	35 (Prop.)
	9 DE Reg.	404 (Final)

## PROFESSIONAL STANDARDS BOARD

310 Certification Administrative Supervisor/Reading Coordinator .....	9 DE Reg.	679 (Prop.)
324 Driver Education and Traffic Safety Education Teacher.....	9 DE Reg.	46 (Prop.)
332 Certification Technology Education Teacher.....	9 DE Reg.	49 (Prop.)
370 Certification Teacher of Autistic/Severely Disabled Children.....	9 DE Reg.	51 (Prop.)
1513 Denial of Licenses.....	9 DE Reg.	138 (Final)
1514 Revocation of Licenses and Certificates.....	9 DE Reg.	553 (Final)
1515 Emergency Certificate.....	9 DE Reg.	555 (Final)
1518 Special Institute for Teacher Licensure and Certification.....	9 DE Reg.	498 (Prop.)
1519 Alternative Routes to Teacher Licensure and Certification.....	9 DE Reg.	501 (Prop.)
1522 Standard Certificate Business Education Teacher.....	9 DE Reg.	504 (Prop.)
1528 Standard Certificate Foreign Language Teacher Comprehensive.....	9 DE Reg.	54 (Prop.)
	9 DE Reg.	558 (Final)
1529 Standard Certificate Foreign Language Teacher Secondary, Repeal of.....	9 DE Reg.	57 (Prop.)
1533 Standard Certificate Foreign Language Teacher Elementary, Repeal of.....	9 DE Reg.	58 (Prop.)
1544 Art Teacher Elementary.....	9 DE Reg.	680 (Prop.)
1545 Art Teacher Secondary.....	9 DE Reg.	680 (Prop.)
1549 Music Teacher Elementary.....	9 DE Reg.	680 (Prop.)
1550 Music Teacher Secondary.....	9 DE Reg.	680 (Prop.)
1552 Physical Education Teacher Elementary.....	9 DE Reg.	680 (Prop.)
1553 Physical Education Teacher Secondary.....	9 DE Reg.	680 (Prop.)
1564 Standard Certificate Driver Education and Traffic Safety Education Teacher.....	9 DE Reg.	545 (Final)
1565 Standard Certificate School-To-Work Transition Teacher.....	9 DE Reg.	136 (Final)
1568 Standard Certificate Technology Education Teacher.....	9 DE Reg.	547 (Final)
1571 Standard Certificate Teacher of Students with Autism or Severe Disabilities.....	9 DE Reg.	550 (Final)
1584 Permits Paraeducators.....	9 DE Reg.	139 (Final)
	9 DE Reg.	232 (Final)

## DEPARTMENT OF FINANCE

### DIVISION OF REVENUE

Abandoned or Unclaimed Property Voluntary Disclosure Agreement and Audit Programs	9 DE Reg.	771 (Final)
-----------------------------------------------------------------------------------	-----------	-------------

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Estate Recovery Program.....	9 DE Reg.	684 (Prop.)
Liens and Adjustments or Recoveries.....	9 DE Reg.	684 (Prop.)
Long Term Care Medicaid.....	9 DE Reg.	521 (Prop.)
Long Term Care Nursing Facilities.....	9 DE Reg.	509 (Prop.)
Medicare Part D Prescription Drug Program.....	9 DE Reg.	319 (Prop.)
	9 DE Reg.	775 (Final)
Pharmaceutical Services, Mail Order Pharmacy Services.....	9 DE Reg.	508 (Prop.)
Pharmaceutical Services, Multi-State Pooling Rebate Program.....	9 DE Reg.	506 (Prop.)
Title XIX Medicaid State Plan Inpatient Hospital Services.....	9 DE Reg.	326 (Prop.)
	9 DE Reg.	783 (Final)

# CUMULATIVE TABLES

**DIVISION OF PUBLIC HEALTH**

4462 Public Drinking Water Systems.....	9 DE Reg. 59 (Prop.)
	9 DE Reg. 306 (Prop.)
4468 Delivery of Hospice Services.....	9 DE Reg. 415 (Final)
4469 Regulations Governing a Detailed Plumbing Code.....	9 DE Reg. 307 (Prop.)
	9 DE Reg. 786 (Final)

**DIVISION OF SOCIAL SERVICES**

Child Care Development Fund State Plan for the period October 1, 2004 through September 30, 2005.....	9 DE Reg. 562 (Final)
Food Stamp Program.....	9 DE Reg. 691 (Prop.)
Food Stamp Program, Sections 9016.2, 9039.1, 9041.1, 9063.1, 9078.1 and 9079.1.....	9 DE Reg. 800 (Final)
Title XIX Medicaid State Plan, Pages 2-7, Attachment 1.2-A, Attachment 1.2-B, Attachment 1.2-C and Attachment 1.2-D.....	9 DE Reg. 802 (Final)

**DSSM:**

1005 Case Record Maintenance and Retention.....	9 DE Reg. 523 (Prop.)
3006.6 Senate Bill 101- 1999 and Employment & Training Activities..	9 DE Reg. 328 (Prop.)
	9 DE Reg. 798 (Final)
4004 .....	9 DE Reg. 168 (Prop.)
	9 DE Reg. 564 (Final)
9059 Income Exclusions.....	9 DE Reg. 60 (Prop.)
	9 DE Reg. 426 (Final)
	9 DE Reg. 477 (Errata)
9074 .....	9 DE Reg. 168 (Prop.)
	9 DE Reg. 564 (Final)
9075 .....	9 DE Reg. 168 (Prop.)
	9 DE Reg. 564 (Final)
9093 Electronic Benefit Transfer (EBT).....	9 DE Reg. 235 (Final)
11000 Child Care Subsidy Program.....	9 DE Reg. 175 (Prop.)
11003 .....	9 DE Reg. 168 (Prop.)
	9 DE Reg. 564 (Final)
14960 Establishing a Cumulative Maximum on Pharmacy Co-Payments.....	9 DE Reg. 164 (Emer.)
	9 DE Reg. 173 (Prop.)
	9 DE Reg. 569 (Final)
15120 .....	9 DE Reg. 168 (Prop.)
	9 DE Reg. 564 (Final)
16230 .....	9 DE Reg. 168 (Prop.)
	9 DE Reg. 564 (Final)
17300 .....	9 DE Reg. 168 (Prop.)
	9 DE Reg. 564 (Final)
20103 Financial Eligibility Determination.....	9 DE Reg. 521 (Prop.)
20200 Excluded Income.....	9 DE Reg. 239 (Final)
20210 .....	9 DE Reg. 168 (Prop.)
	9 DE Reg. 564 (Final)
20310 Reparations.....	9 DE Reg. 239 (Final)
20700.4.5 Illness or Hospitalization.....	9 DE Reg. 522 (Prop.)
20810 Treatment of Couples in Medical Assistance.....	9 DE Reg. 142 (Final)
20910.10, Community Spouse Resource Allowance.....	9 DE Reg. 70 (Prop.)
20950 Initial Eligibility Determinations.....	9 DE Reg. 70 (Prop.)
Child Care Subsidy Program.....	9 DE Reg. 572 (Final)
Pharmaceutical Services Program.....	9 DE Reg. 6 (Emer.)
	9 DE Reg. 73 (Prop.)
State Plan for Child Care Development Fund for the period October 1, 2003 through September 30, 2005.....	9 DE Reg. 167 (Prop.)

---

# CUMULATIVE TABLES

837

Title XIX Medicaid State Plan: Attachment 2.6-A, Page 26a (New Page) and Supplement 13 to Attachment 2.6A;.....	9 DE Reg.	70 (Prop.)
Title XIX Medicaid State Plan, Attachment 3.1-A, Page 5 Addendum, 5a Addendum, 5b Addendum.....	9 DE Reg.	420 (Final)
Title XIX Medicaid State Plan, Establishing a Cumulative Maximum on Pharmacy Copayments.....	9 DE Reg.	164 (Emer.)
	9 DE Reg.	173 (Prop.)
	9 DE Reg.	569 (Final)

## DEPARTMENT OF INSURANCE

607 Defensive Driving Course Discount (Automobiles and Motorcycles).....	9 DE Reg.	524 (Prop.)
702 Required Disclosures for Residential Homeowners.....	9 DE Reg.	438 (Final)
703 Prohibited Practices Related to the Nonrenewal of Residential Homeowners Policies.....	9 DE Reg.	196 (Prop.)
	9 DE Reg.	593 (Final)
907 Records Relating to Consumer Complaints.....	9 DE Reg.	197 (Prop.)
	9 DE Reg.	595 (Final)
1214 Senior Protection In Annuity Transactions.....	9 DE Reg.	693 (Prop.)
1310 Standards for Prompt, Fair and Equitable Settlement of Claims for Health Care Services.....	9 DE Reg.	240 (Final)

## DEPARTMENT OF LABOR

### DIVISION OF EMPLOYMENT AND TRAINING

106 Apprenticeship and Training Regulations.....	9 DE Reg.	199 (Prop.)
	9 DE Reg.	806 (Final)

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR & WASTE MANAGEMENT

1102 Permits.....	9 DE Reg.	207 (Prop.)
1144 Control of Stationary Generator Emissions.....	9 DE Reg.	207 (Prop.)
1125 Requirements for Preconstruction Review.....	9 DE Reg.	246 (Final)
1201 Accidental Release Prevention Regulation.....	9 DE Reg.	696 (Prop.)

### DIVISION OF FISH & WILDLIFE

#### Shellfish:

3210 Horseshoe Crab Reporting Requirements.....	9 DE Reg.	9 (Emer.)
-------------------------------------------------	-----------	-----------

### DIVISION OF WATER RESOURCES

5102 Regulation Governing Beach Protection and the Use of Beaches .....	9 DE Reg.	737 (Prop.)
7203 Regulations Governing the Control of Water Pollution, Section 9.4, Concentrated Animal Feeding Operation.....	9 DE Reg.	440 (Final)
7410 TMDL's for the Naamans Creek Watershed.....	9 DE Reg.	224 (Prop.)
7411 TMDL's for the Shellpot Creek Watershed.....	9 DE Reg.	224 (Prop.)
7412 TMDL's for the Chester River.....	9 DE Reg.	529 (Prop.)
7413 TMDL's for the Choptank River.....	9 DE Reg.	529 (Prop.)
7414 TMDL's for the Marshyhope Creek.....	9 DE Reg.	529 (Prop.)
7415 TMDL's for the Pocomoke River Watersheds.....	9 DE Reg.	529 (Prop.)
Regulations Governing Storm Water Discharges Associated with Industrial Activities.....	9 DE Reg.	329 (Prop.)

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

1100 Board of Dental Examiners.....	9 DE Reg.	77 (Final)
1400 Board of Electrical Examiners.....	9 DE Reg.	260 (Final)
1900 Board of Nursing.....	9 DE Reg.	226 (Prop.)

## CUMULATIVE TABLES

1900 Board of Nursing.....	9 DE Reg.	815 (Final)
2000 Board of Occupational Therapists.....	9 DE Reg.	598 (Final)
2500 Board of Pharmacy.....	9 DE Reg.	85 (Final)
3000 Board of Mental Health and Chemical Dependency Professionals.....	9 DE Reg.	231 (Prop.)
3100 Board of Funeral Services.....	9 DE Reg.	262 (Final)
3500 Board of Examiners of Psychologists.....	9 DE Reg.	373 (Prop.)
	9 DE Reg.	452 (Final)
	9 DE Reg.	487 (Errata)
3600 Board of Registration of Geologists	9 DE Reg.	456 (Final)
3900 Board of Clinical Social Work Examiners.....	9 DE Reg.	265 (Final)
5200 Board of Nursing Home Administrators.....	9 DE Reg.	104 (Final)
<b>OFFICE OF THE STATE BANKING COMMISSIONER</b>		
904 Exceptions to Tying Restrictions.....	9 DE Reg.	532 (Prop.)
<b>PUBLIC SERVICE COMMISSION</b>		
Regulation Docket No. 10, Sale, Resale and Other Provisions of Intrastate Telecommunications Services.....	9 DE Reg.	375 (Prop.)
Regulation Docket No. 45, Development of Regulations for the Facilitation of Competitive Entry into the Telecommunications Local Exchange Servicemarket.....	9 DE Reg.	375 (Prop.)
Regulation Docket No. 50, The Consideration of Rules, Standards, and Indices to Ensure Reliable Electrical Service by Electric Distribution Companies.....	9 DE Reg.	756 (Prop.)
Regulation Docket No. 55, Regarding the Minimum Standards for Service Provided by Public Wastewater Utilities Subject to the Jurisdiction of the Delaware Public Service Commission.....	9 DE Reg.	105 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>		
<b>DIVISION OF PLANNING AND POLICY</b>		
Delaware Bicycle Facility Master Plan.....	9 DE Reg.	607 (Final)
<b>GOVERNOR'S OFFICE</b>		
Appointments.....	9 DE Reg.	47
	9 DE Reg.	268
	9 DE Reg.	459
	9 DE Reg.	620
Executive Order No. 68, Establishing the Health Disparities Task Force.....	9 DE Reg.	144
Executive Order No. 69, Establishing a Committee to Recommend Options for Providing Additional Funding to, and Accelerating the Construction of, Needed Improvements Overseen by the Delaware Department of Transportation.....	9 DE Reg.	145
Executive Order No. 70, State Employees and the Right to Organization and Effective Union Representation.....	9 DE Reg.	458
Executive Order No. 71, Directing the Delaware Emergency Management Agency to Organize Volunteers for Response Efforts Involving Hurricane Katrina and its Aftermath.....	9 DE Reg.	620
Executive Order No. 72, Declaring a State of Emergency Due to Hurricane Katrina and its Aftermath.....	9 DE Reg.	821
Executive Order No. 73, Establishing a Delaware Healthy Mother and Infant Consortium.....	9 DE Reg.	821
Executive Order No. 74, Directing the Delaware Emergency Management Agency to Organize Volunteers for Response Efforts Involving Hurricane Rita and Its Aftermath.....	9 DE Reg.	822
Executive Order No. 75, Establishing the Governor's Mentoring Initiative.....	9 DE Reg.	822

**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 EDUCATION****OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code,  
Section 1220(a) (14 **Del.C.** §1220(a))  
14 **DE Admin. Code** 101

**PUBLIC NOTICE****Educational Impact Analysis Pursuant to 14 Del.C.  
Section 122(D)****101 Delaware Student Testing Program****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

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

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 101 in order to reflect the changes made to 14 **Del.C.** 152 concerning the granting of high school diplomas for the years 2005 through 2008 and beyond. The changes made to 14 **Del.C.** 152 reflect the requirements set by Senate Bill 72 and House Bill 3 from the deliberations of the 143<sup>rd</sup> General Assembly.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation is designed to improve student achievement through motivating students to perform at the higher levels required to receive a diploma.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will assist in helping to ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses academic achievement not health and safety issues.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does dictate the process for awarding diplomas but does preserve some 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 may place additional administrative requirements upon decision makers at the local board and school levels.

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The passage of the amended state law required that the regulations be changed.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be some additional costs due to the changing nature of the diploma requirements.

### 1.0 Definition:

The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades K-10 in the areas of reading, writing and mathematics and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.

### 2.0 Levels of Performance:

There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3, 5, 8 and 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and

11 in social studies and science. In reading, writing and mathematics at grades 3, 5, 8 and 10 and science and social studies at grades 4, 6, 8 and 11 the cut points for Exceeds the Standard and Meets the Standard shall be determined by the Department of Education with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation. Beginning with the 2006 assessments, there shall be the same five levels of performance for students in grades 4, 6, 7 and 9 in reading, mathematics and writing. Said levels are defined and shall be determined as follows:

2.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education.

2.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically

“deficient.” The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

2.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as “very deficient.” The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education.

**7 DE Reg. 51 (7/1/03)**

**8 DE Reg. 425 (9/1/04)**

### **3.0 Other Indicators of Student Performance**

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 **Del.C.** §153(b) when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP. Pursuant to 14 **Del.C.** §153(d)(2) and 153(d)(12), local school districts and charter schools may also consider other indicators of student performance relative to the state content standards when determining if a student may advance to the next grade level without attending summer school. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 **Del.C.** §153(e)(1); student performance on end-of-course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 **Del.C.** §153(a).

3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.

3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee and the State Board of Education.

3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.

3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.

3.3.2 The supervisor of curriculum or instruction for the school district or charter school or his/ her designee shall chair the committee.

3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

**7 DE Reg. 325 (9/1/03)**

### **4.0 Individual Improvement Plan (IIP)**

4.1 The following students are required to have an Individual Improvement Plan:

Students who score below Level 3 Meets the Standard, on the reading portion of the 3rd, 5th or 8th grade Delaware Student Testing Program or the mathematics portion of the 8th grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.

4.1.1 Students assessed on the DSTP in grades 2, 4, 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in reading shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student. Students assessed on the DSTP in grades 6, 7, and 9 who are not progressing satisfactorily toward the standards or who score at Level 1 or Level 2 in mathematics shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver.

4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized

Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.3 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

4.4 Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the student's parent, guardian or Relative Caregiver who must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.5 Disputes initiated by a student's parent or legal guardian or Relative Caregiver concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

**7 DE Reg. 51 (7/1/03)**

**8 DE Reg. 425 (9/1/04)**

### **5.0 Summer School Programs for Students in Grades 3, 5, and 8 as required pursuant to 14 Del.C. §153.**

5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and the student's parent, guardian or Relative Caregiver another district provides services.

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent, guardian or Relative Caregiver, the parent, guardian or Relative Caregiver arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent, guardian or Relative Caregiver shall be responsible for the cost of providing non-public school instruction unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

5.1.4 Where a student has been offered admission into a vocational technical school district or charter school that district or charter school may provide summer school services.

**8 DE Reg. 425 (9/1/04)**

### **6.0 High School Diploma Index as Derived from the 10<sup>th</sup> Grade Assessments Pursuant to 14 Del.C. §152.**

6.1 Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond shall be subject to the diploma index for a distinguished diploma as stated herein.

6.1.1 Beginning in 2002 for the graduating class of 2004, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.

6.1.2 Beginning in 2005 for the graduating class of 2006, the Department shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004 and 2005.

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for writing, .20 for science and .20 for social studies for the graduating class of 2006 and beyond.

6.4 Students shall qualify for a State of Delaware Distinguished High School diploma or a traditional State of Delaware High School diplomas as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 ~~provided that the student has attained a Performance Level 3 or higher in each content area~~ and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.1.1 Beginning with the graduating class of 2006 through and including the graduating class of 2007, "Other Academic Indicators" may be substituted for specific content area DSTP scores. The Other Academic Indicators shall be:

6.4.1.1.1 SAT Verbal score between 544 and 621 representing a Performance Level 4 on the reading portion of the diploma index;

6.4.1.1.2 SAT Verbal score of 622 or higher representing a Performance Level 5 on the reading portion of the diploma index;

6.4.1.1.3 SAT Mathematics score between 547 and 617 representing a Performance Level 4 the mathematics portion of the diploma index;

6.4.1.1.4 SAT Mathematics score of 618 or higher representing a Performance Level 5 on the mathematics portion of the diploma index;

6.4.1.1.5 SAT II Writing score between 554 and 646 representing a Performance Level 4;

6.4.1.1.6 SAT II Writing score of 647 or higher representing a Performance Level 5 on the writing portion of the diploma index;

6.4.1.1.7 Advanced Placement score of 3 representing a Performance Level 4 on the diploma index; and

6.4.1.1.8 Advanced Placement score of 4 or 5 representing a Performance Level 5 on the diploma index.

6.4.1.1.9 Advanced Placement scores may be substituted for specified content areas including, but not limited to, Advanced Placement English Literature and Composition for the reading portion of the diploma index; Advanced Placement English Language and Composition for the writing portion of the diploma index; Advanced Placement Calculus AB, BC or Statistics for the mathematics portion of the diploma index; Advanced Placement Biology, Chemistry, Environment Science, or Physics B and C for the science portion of the diploma index; and Advanced Placement Economics (macro, micro), European History, Government & Politics Comp, Government and Politics U.S., Human Geography, Psychology, U.S. History, or World History for the social studies portion of the diploma index.

6.4.2 A student who does not qualify for a Distinguished diploma based solely on the diploma index may request the high school submit official documentation of the Other Academic Indicators to the Department.

6.4.2.3 A student shall be awarded a Standard traditional State of Delaware Diploma upon attainment of a diploma index greater than or equal to 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.3 A student shall be awarded a Basic State Diploma upon attainment of a diploma index less than 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.5 Parent, Guardian or Relative Caregiver Notification: Within 30 days of receiving student performance levels and/or diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the student's parent, guardian or Relative Caregiver.

**7 DE Reg. 51 (7/1/03)**

**8 DE Reg. 425 (9/1/04)**

### **7.0 Security and Confidentiality:**

In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the certification provided by the Department of Education regarding test security before, during and after test administration.

7.2 Violation of the security or confidentiality of any test required by the **Delaware Code** and the Regulations of the Department of Education shall be prohibited.

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials in 14 **Del.C.** §170 through §174.

#### 7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within 10 days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be

provided access to all parties involved and/or to any witnesses.

7.4.2.4 The investigator shall report the findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within 10 days of the receipt of all reports and information and records shall be kept of all investigations.

## 8.0 Procedures for Reviewing Questions and Response Sheets from the Delaware Student Testing Program (DSTP)

8.1 School personnel, local school board members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 A student's parent, guardian or Relative Caregiver may request to view the test questions and that student's responses. In order to review the DSTP questions and that student's responses, the student's parent, guardian or Relative Caregiver shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the

review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand-alone writing response, the student's parent, guardian or Relative Caregiver may go to the local school district or charter school to view the test responses.

**4 DE Reg. 464 9/1/00**

**5 DE Reg. 620 (9/1/01)**

**8 DE Reg. 425 (9/1/04)**

## 9.0 Invalidations and Special Exemptions

9.1 Invalidations for students in grades 3, 5, 8 and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies: Invalidations are events or situations that occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for a student. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school building principal or designee shall notify the District Test Coordinator in writing within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report Form.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score and such decision shall be final.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

9.1.2.1 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an intentional

act of the student, the student will be assigned a performance level 1 (well below standard) for that assessment and will be subject to such consequences as may otherwise be imposed pursuant to law for students who score at performance level 1 of the assessment; the assessment test score of any such student shall be reported and counted in the test scores of the student's school for all purposes, including school and district accountability.

9.1.2.2 Whenever the Director of Assessment for the Department of Education determines that a student's assessment test score is invalid as a result of an event which is unforeseen and beyond the control of the student and if the student is unable to participate in a regularly scheduled test make-up, the student shall not be subject to any of the consequences as would otherwise be imposed pursuant to law; the assessment score of any such student shall not be reported or counted in the test scores of the student's school for any purpose, including school and district accountability.

9.2 Special Exemptions for students in grades 3, 5, 8, and 10 for reading, writing and mathematics and grades 4, 6, 8 and 11 for science and social studies: A special exemption may be available when a student's short-term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.

9.2.1 Special exemptions for students who are tested according to the Department of Education's Guidelines for Inclusion of Students with Disabilities and Students with Limited English Proficiency are also available as provided in the Guidelines.

9.2.2 Requests for special exemptions based on physical or mental condition.

9.2.2.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

9.2.2.2 The District Test Coordinator shall submit a completed Request for Special Exemption Form to

the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection will accompany the request.

9.2.2.2.1 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.2.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.3 Request for special exemptions based on emergency.

9.2.3.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

9.2.3.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

9.2.3.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

9.2.3.3.1 The District Test Coordinator shall submit a completed DSTP Request for Special Exemption Form to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which describes the nature of the situation.

9.2.3.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.3.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.4 Consequences of Special Exemptions.

9.2.4.1 Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future test administrations.

9.2.4.2 Students who are granted a special exemption shall be included in the participation rate calculation for school and district accountability pursuant to 14 **DE Admin. Code** 103.2.4 unless their medical condition prevents them from being in school during the testing period.

9.2.4.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 3, 5, or 8 for the testing period to which the exemption applies.

**5 DE Reg. 2115 (5/1/02)**

**8 DE Reg. 425 (9/1/04)**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code,  
Section 1220(a) (14 **Del.C.** 1220(a))  
14 **DE Admin. Code** 235

### PUBLIC NOTICE

**Educational Impact Analysis Pursuant to 14 Del.C.  
Section 122(D)**

#### 235 Teacher of the Year Award

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 **DE Admin. Code** 235 Teacher of the Year Award in order to clarify in 1.4 the required status of a district or charter school nominee for the Teacher of the Year award during their nominated year.

#### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the rules for the Teacher of the Year award not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the rules for the Teacher of the Year award not equitable education issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the rules for the Teacher of the Year award not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the rules for the Teacher of the Year award not students' legal rights.

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost to the State and to the local school boards of compliance with the regulation will remain the same.

This program shall be administered in accordance with 14 **Del.C.** Ch. 89, and the following rules and regulations.

#### 1.0 Qualifications

~~To be considered for the Teacher of the Year award, a person shall have taught, continuously or intermittently, for an accumulative period of three years or more previous to the date of such person's nomination; shall have been~~

~~formally nominated; and be actively teaching in this state at the time of nomination. A nominee shall have met all the requirements for a Standard Certificate for the position held, as approved by the Professional Standards Board, Department of Education and the State Board of Education.~~

To be considered for the Teacher of the Year award a person shall:

1.1 Have taught, continuously or intermittently, for an accumulative period of three years or more in a Delaware public school previous to the date of such person's nomination.

1.2 Have been formally nominated.

1.3 Be actively teaching in their district or charter school in this state at the time of their nomination.

1.4 Continue to actively teach in the nominating district or charter school for the duration of the year of their nomination.

1.4.1 If the nominee chooses to leave the district or charter school during the selection period the district or charter school shall submit another nominee.

1.5 Meet all the requirements for a Standard Certificate for the position held and hold a valid and current license, as approved by the Professional Standards Board, Department of Education and the State Board of Education.

**7 DE Reg. 1178 (3/1/04)**

## **2.0 Nominations**

The following shall apply in preparing nominations in accordance with the requirements of the Act.

2.1 The Department of Education shall meet annually with the district coordinators of the Teacher of the Year Program and the ~~coordinator~~ representative for the charter schools for the purpose of providing them with detailed instructions and proper forms for the presentation of nominees. Each district is invited to nominate one teacher employed by the district and the charter schools are invited to select one nominee to represent all of the charter schools.

2.1.1 Nominees shall be skillful and dedicated teachers, pre-kindergarten through grade 12. Administrative personnel such as principals and guidance counselors are not eligible to be considered for State Teacher of the Year. Nominees for State Teacher of the Year who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 2.2 below shall be disqualified.

2.2 Nominees shall submit a portfolio describing themselves and setting forth their positions on educational issues. Format will be based on the National Teacher of the Year program.

2.3 Following the submission of the portfolios, selected Department of Education staff members and selected former

state and local district Teachers of the Year shall be assigned in pairs to read the portfolios of two nominees and observe those nominees in the classroom based on the criteria stipulated in the Teacher of the Year ~~Nomination Information Document~~ Program Guide that is updated each year. Another group of Department of Education Staff members shall be assigned to read all of the portfolios and rate them based on forms found in the Teacher of the Year ~~Nomination Information Document~~ Program Guide. Based on the numerical ratings from both the portfolio readers and from the observations, three nominees shall be identified as finalists for consideration by a panel of judges.

2.4 The panel of judges shall include: the current State Teacher of the Year; the President of the State Congress of Parents and Teachers; the President of the State Student Council Association; a member of the State Board of Education; a representative of the Chamber of Commerce; the President of the Delaware State Education Association; and the Chair of the Professional Standards Board or, if necessary, their designees.

2.5 The judges shall recommend one person for the Secretary of Education to declare as the State Teacher of the Year.

**3 DE Reg. 104 (7/1/99)**

**7 DE Reg. 1178 (3/1/04)**

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### **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code,  
Section 1220(a) (14 Del.C. 1220(a))  
**14 DE Admin. Code 710**

### **PUBLIC NOTICE**

**Educational Impact Analysis Pursuant to 14 Del.C.  
Section 122(D)**

### **710 Public School Employees Work Day**

**A. Type Of Regulatory Action Required**  
Re-authorization of Existing Regulation

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

The Secretary of Education intends to re-authorize **14 DE Admin. Code 710 Public School Employees Work Day**. As part of the five year cycle of review for all of the Administrative Code for education this regulation has been reviewed and requires re-authorization.

**C. Impact Criteria**

1. Will the re-authorized regulation help improve student achievement as measured against state achievement standards? The re-authorized regulation addresses public school employees work hours not student achievement.

2. Will the re-authorized regulation help ensure that all students receive an equitable education? The re-authorized regulation addresses public school employees work hours not equitable education issues.

3. Will the re-authorized regulation help to ensure that all students' health and safety are adequately protected? The re-authorized regulation addresses public school employees work hours not health and safety issues.

4. Will the re-authorized regulation help to ensure that all students' legal rights are respected? The re-authorized regulation addresses public school employees work hours not students' legal rights.

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

6. Will the re-authorized regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The re-authorized 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 re-authorized will remain in the same entity.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The Delaware Code requires that all of the Administrative Code for education be amended, repealed or re-authorized every five years.

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

additional cost associated with the re-authorization of this regulation.

**1.0 Required Work Hours**

Absent an existing collective bargaining agreement to the contrary, district employees who work less than the specified time shall have their annual salary adjusted accordingly. Upon ratification of a new or extension of an existing collective bargaining agreement, the local district shall establish hours and days worked that are consistent with those specified below. Otherwise, effective July 1, 2001 a workday for public school employees shall be defined as follows:

1.1 Teacher - minimum of 7 1/2 hours, inclusive of 1/2 hour for lunch, plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school. (14 **Del.C.** §1305 defines the number of teacher workdays per year and 14 **Del.C.** §1328 defines the duty free period.)

1.2 Aide/Paraprofessional - minimum of 7 1/2 hours inclusive of 1/2 hour for lunch.

1.3 Custodian - minimum of 8 hours inclusive of 1/2 hour for lunch.

1.4 Administrator - minimum of 7 1/2 hours exclusive of lunch plus the amount of time required for the discharge of such duties and services as may be reasonably expected and required of a member of the professional staff of a public school.

1.5 Food Service Manager - minimum of 7 hours exclusive of lunch.

1.6 Secretary - minimum of 7 1/2 hours exclusive of lunch.

**3 DE Reg. 1077 (2/1/00)**

**4 DE Reg. 1254 (2/1/01)**

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**PROFESSIONAL STANDARDS BOARD**  
Statutory Authority: 14 Delaware Code,  
Section 1220(a) (14 **Del.C.** 1220(a))  
14 **DE Admin. Code** 1516

**PUBLIC NOTICE**

**Educational Impact Analysis Pursuant  
to 14 Del.C. Section 122(D)**

**1516 Standard Certificate**

**A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend **DE Admin. Code** 1516 Standard Certificate. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to align it with changes in statute. The passage of PRAXIS™ II, a test of content knowledge, is now required, where applicable and available, in addition to academic preparation, for the issuance of a Standard Certificate. That requirement, in addition to a revised definition of “educator”, has been added to the regulation.

**C. Impact Criteria**

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

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

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

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

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

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

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

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

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

**1516 Standard Certificate**

**1.0 Content**

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a).

**7 DE Reg. 161 (8/1/03)**

**7 DE Reg. 629 (11/1/03)**

## 2.0 Definitions

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

**"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. Ch. 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.~~ person licensed and certified by the State under 14 Del.C. §1202 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. The term 'educator' does not include substitute teachers.

**"Examination of Content Knowledge"** means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

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

**"Major or its Equivalent"** means a minimum of thirty (30) semester hours of course work in a particular content area.

**"NASDTEC"** means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

**"NCATE"** means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

**"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.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

7 DE Reg. 1742 (6/1/04)

## 3.0 Standard Certificate

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

3.1.3 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in the area of the standard certificate requested; or

~~3.1.4 Graduating from a state approved educator preparation program offered by a regionally accredited college or university, with a major in the area of the Standard Certificate requested, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards. Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or~~

3.1.5 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first standard certificate, satisfactorily completing a minimum of fifteen (15) credits in professional education courses, taken either as part of a degree program or in addition to it, from a regionally accredited college or university, which include:

3.1.5.1 Human Development;

3.1.5.2 Identifying/Teaching

Exceptionalities;

3.1.5.3 Effective Teaching Strategies;

3.1.5.4 Multicultural Education; and

3.1.5.5 Methods of Teaching; and

~~3.2 Graduated 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 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available. A~~ achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on a Praxis II the examination in the area requested.

~~3.3 Achieving a passing score, as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on a Praxis II examination in the area requested.~~

3.4 Meeting the requirements for licensure and holding a ~~A valid and current license or certificate from another state in the area for which a Standard Certificate is sought requested :~~

3.4.3.1 A “valid and current license or 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.

3.4.3.2 The Department shall not act on an application for certification if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation’s resolution.

3.4.3.2.1 “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

3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

3.5 If additional criteria are imposed by a specific Department or Standards Board regulation in the area for which a Standard Certificate is sought, the additional requirements must also be met.

**7 DE Reg. 161 (8/1/03)**

**7 DE Reg. 629 (11/1/03)**

**7 DE Reg. 1004 (2/1/04)**

**7 DE Reg. 1742 (6/1/04)**

~~**4.0 Educators may Hold Certificates in More Than One Area Multiple Certificates**~~

Educators may hold certificates in more than one area.

**7 DE Reg. 161 (8/1/03)**

**7 DE Reg. 629 (11/1/03)**

~~**5.0 An Applicant for a Standard Certificate Shall Submit Application Requirements**~~

An applicant for a Standard Certificate shall submit:

~~5.1 Official transcripts; or and~~

5.2 Official scores on the Praxis II examination; or if applicable and available;

5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or

5.4 An official copy of the out-of-state license or certification, if applicable.

5.5 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.

**7 DE Reg. 161 (8/1/03)**

**7 DE Reg. 629 (11/1/03)**

**7 DE Reg. 1004 (2/1/04)**

**7 DE Reg. 1742 (6/1/04)**

~~**6.0 License Holders Requirements Application Procedures for License Holders**~~

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.

**7 DE Reg. 161 (8/1/03)**

**7 DE Reg. 629 (11/1/03)**

**7 DE Reg. 1742 (6/1/04)**

~~**7.0 Exceptions Effect of Regulation**~~

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 or the Advanced 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 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, 2008.

**7 DE Reg. 161 (8/1/03)**

**7 DE Reg. 629 (11/1/03)**

**7 DE Reg. 1742 (6/1/2004)**

## 8.0 Validity of a Standard Certificate

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 whose license or certificate is revoked 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.

**7 DE Reg. 161 (8/1/03)**

**7 DE Reg. 629 (11/1/03)**

**7 DE Reg. 1004 (2/1/04)**

**7 DE Reg. 1742 (6/1/04)**

## 9.0 Secretary of Education Review

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.

**7 DE Reg. 161 (8/1/03)**

**7 DE Reg. 629 (11/1/03)**

**PROFESSIONAL STANDARDS BOARD**  
 Statutory Authority: 14 Delaware Code,  
 Section 1250-1252 (14 Del.C. 1250-1252)  
 14 DE Admin. Code 1518

## PUBLIC NOTICE

**Educational Impact Analysis Pursuant  
 to 14 Del.C. Section 122(D)**

### **1518 Special Institute for Teacher Licensure and Certification**

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

New Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to adopt regulation 1518 Special Institute for Teacher Licensure and Certification. It is necessary to adopt this regulation to provide regulatory guidance for the implementation of the Special Institute for Teacher Licensure and Certification, pursuant to 14 Del.C. §§1250 through 1252. This regulation concerns the establishment by one or more of Delaware's institutions of higher education of a special institute for teacher licensure and certification for individuals who hold a bachelor's degree in an area other than education to participate in coursework and other experiences necessary to be eligible for teacher licensure and certification in critical needs areas, including special education.

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

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns educator licensure and certification, not student achievement. The regulation will assist well-qualified individuals in becoming qualified to teach in critical needs areas.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that all educators demonstrate high standards for the issuance of an initial license and a standard certificate.

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

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

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

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

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

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

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

### **1518 Special Institute for Teacher Licensure and Certification**

#### **1.0 Content**

This regulation shall apply to the Special Institute for Teacher Licensure and Certification, pursuant to 14 **Del.C.** §§1250 through 1252.

#### **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 person licensed and certified by the State under chapter 12 of 14 **Del.C.** to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board, but does not include substitute teachers.

**“Emergency Certificate”** means a certificate issued to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

**“Examination of Content Knowledge”** means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

**“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, such as PRAXIS™ I and which, for the purposes of this regulation, means a pre-professional skills test.

**“Initial License”** means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

**“Major or Its Equivalent”** means no fewer than thirty (30) credit hours in a content area.

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

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

**“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 Special Institute for Teacher Licensure and Certification**

One or more of Delaware's teacher training institutions may establish a Special Institute for Teacher Licensure and Certification to provide a program for college graduates without a license and/or certificate to become licensed and certified to teach in Delaware public schools. Tuition may not be charged to participants.

3.1 Candidates for admission to a Special Institute for Teacher Licensure and Certification shall:

3.1.1 Hold a bachelor's degree in a field other than Education from a regionally accredited college or university, with a major or its equivalent in a content area that has designated as a critical needs area by the Department.

3.1.2 Have a grade point index in the major field of the bachelor's degree which is two-tenths of a point higher than the grade point index required for students entering regular teacher education programs at the teacher education institution(s).

3.1.3 Pass an examination of general knowledge, such as PRAXIS™ I, or provide an acceptable alternative to the PRAXIS™ I test scores, as set forth in 14 DE Admin. Code 1510.

3.1.4 Must agree to teach at least one (1) year in a Delaware public school for each year funding was received. Such service must be completed within five (5) years of successful completion of the Special Institute for Teacher Licensure and Certification program.

3.1.4.1 Failure to meet the requirement set forth in 3.1.4 above shall result in the individual within sixty (60) days arranging for repayment of a sum equivalent to the tuition which would have been paid for the coursework leading to licensure and certification; or

3.1.4.2 An individual may also satisfy the requirement set forth in 3.1.4 above by providing a notarized statement, accompanied by evidence of unsuccessful applications, that the individual has made a good faith effort to seek employment in at least five (5) Delaware public school districts, but has been unable to secure a teaching position in any of those districts.

3.1.4.3 An individual whose license and certificate have been revoked for cause prior to fulfilling the service set forth in 3.1.4 shall, within sixty (60) days, arrange for repayment of their remaining obligation.

#### **4.0 Format of the Special Institute for Teacher Licensure and Certification**

4.1 A Special Institute for Teacher Licensure and Certification in a secondary content area which corresponds to the major field of study in the bachelor's degree program shall consist of:

4.1.1 One (1) summer of courses in the Special Institute;

4.1.2 One (1) semester of student teaching or one (1) year of supervised, full-time teaching experience in a Delaware public school; and

4.1.3 Additional coursework as set forth by the teacher training institution which constitutes the program of study leading to initial licensure and certification.

4.2 A Special Institute for Teacher Licensure and Certification in elementary or special education shall consist of:

4.2.1 Two (2) summers of courses, one (1) immediately before and one (1) after a student teaching experience or one year of full-time teaching experience;

4.2.2 One (1) semester of student teaching or one (1) year of supervised, full-time teaching experience in a Delaware public school; and

4.2.3 Additional coursework as set forth by the teacher training institution which constitutes a program of study leading to initial licensure and certification.

#### **5.0 Examination of Content Knowledge**

Prior to completion of the Special Institute for Licensure and Certification, participants must successfully pass the appropriate examination of content knowledge, such as the PRAXIS™ II examination, if applicable and available.

#### **6.0 Licensure and Certification of Special Institute Participants**

6.1 The Department shall issue an Initial License of no more than three (3) years duration conditioned on continued enrollment in the Special Institute and an Emergency Certificate to an individual employed to complete the one (1) year of full-time teaching experience in lieu of student teaching.

6.2 Upon successful completion of the Special Institute for Teacher Licensure and Certification program, an individual shall be issued an Initial License valid for the balance of the three (3) year term, and a Standard Certificate.

**DEPARTMENT OF ELECTIONS FOR  
NEW CASTLE COUNTY**

Statutory Authority: 15 Delaware Code,  
Section 5522(b) (15 Del.C. §5522(b))

**PUBLIC NOTICE****Security and Integrity of the Absentee Voting Process**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 15 of the **Delaware Code**, Section 5522 (b), the Department of Elections for New Castle is proposing a regulation to ensure the security and integrity of the procedures set forth in Chapter 55 and that the counting process for absentee ballots is not subject to improper influences.

Any person who wishes to submit written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulation shall submit same to Howard G. Sholl, Jr., Deputy Administrative Director, Department of Elections for New Castle County, 820 N. French Street, Suite 400, Wilmington, Delaware 19801 by December 30, 2005.

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

**Citation:**

- Delaware Code, Title 15, Chapter 55

**Summary of Proposed Regulation**

The proposed regulation establishes standards for protecting and securing voted and un-voted absentee ballots, procedures for processing absentee ballots returned to the Department by mail or by a person, procedures for processing absentee ballots voted in the office, security of the Absentee Ballot Room on the day of the election, procedures for processing the absentee ballots during the tally process, and security of the voted ballots following the tabulation of the votes. These standards and procedures combined with the requirements in Chapter 55 protect the integrity of the absentee ballot process.

**Security and Integrity of the Absentee Voting Process****1.0 Purpose:**

Pursuant to **Delaware Code**, Title 15, §5522 (b) this regulation shall ensure the security and integrity of the absentee procedures set forth in Chapter 55 of Delaware Code, Title 15 and that the counting process for Absentee Ballots is not subject to improper influences.

**2.0 General**

2.1 This regulation applies to members of the Board of Elections for New Castle County, employees of the Department of Elections for New Castle County whether merit, casual/seasonal, or temporary (hired through a third party), Election Officers, absentee judges, and all persons observing the tabulating of Absentee Ballots.

2.2 This regulation applies to general, special and primary elections.

2.3 The Department shall designate a room that locks, or an area where the Department can secure voted and un-voted Absentee Ballots and control access as the Absentee Ballot Room.

2.4 In the absence of the Administrative Director and/or Deputy Administrative Director, the Department's most senior employees of the same political party as the absent Administrative Director and/or Deputy Administrative shall perform the duties of that person or persons as specified in this regulation.

2.5 The Department shall create the various logs required by this regulation.

2.6 The Department shall create an *Absentee Ballot Reconciliation Sheet* for use in accounting for the disposition of voted Absentee Ballots for an Election District and for security of the Carrier Envelope.

2.7 The Department shall establish teams for handling the return of Absentee Ballots, the mailing of Absentee Ballots, and in-person absentee voting. Individuals may serve on more than one team.

2.8 The Department shall train all persons involved in the Absentee Voting process on all relevant tasks. The Department shall document that the training took place, the date of the training, persons who attended the training and the name of the Instructor.

2.9 For the purposes of this regulation, the term tabulation means equipment that counts the votes on a ballot (a tabulator or scanner) or hand counting of ballots.

2.10 The tabulation of Absentee Ballots for an election shall begin at 7 a.m. on the day of the election and shall continue until the polls have closed or tabulation is complete whichever is later.

2.11 No one shall release absentee results to any challenger or observer until after the polls have closed.

2.12 The term "Chapter 55" as used in this regulation refers to **Delaware Code**, Title 15, Chapter 55.

### **3.0 Ballot Security**

3.1 The Department shall store all voted and un-voted ballots in locked containers in the Absentee Ballot Room. The keys to these containers shall be in the custody of the Department's Administrative Director, Deputy Administrative Director and such other person or persons designated in writing by the Administrative Director and Deputy Administrative Director except when locking or unlocking the containers.

3.2 The Department may leave the ballot containers unlocked during business hours. The Department shall keep at least two persons present in the Absentee Ballot Room at all times that the ballot containers are unlocked.

3.3 The Department shall restrict access to the Absentee Ballot Room from the day that Absentee Ballots are first available to the day prior to an election to those persons designated in writing by the Administrative Director and Deputy Administrative Director, persons voting, and persons waiting to vote. Except that, the Administrative Director and/or Deputy Administrative Director may use the Absentee Ballot Room for meetings.

3.4 Department staff or visitors shall not use the Absentee Ballot room to move from one part of the office to another part of office after Absentee Ballots are in the Absentee Ballot Room.

3.5 Persons unlocking and locking the Absentee Ballot Room shall record such actions on the log established for that purpose by the Department.

3.6 Persons unlocking and locking ballot containers shall record such actions on the log established for that purpose by the Department.

3.7 The Absentee Supervisors shall account for each voted Absentee Ballot at least once each week. The Absentee Supervisors shall report the results of this accounting in writing to the Administrative Director and Deputy Administrative Director. The supervisors shall note each discrepancy and corrective action in their report.

3.8 The Board of Elections for New Castle County may appoint an equal number of members from different political parties to inspect the Department's ballot security procedures and practices.

3.9 No one shall write on a returned Ballot Envelope except as provided in this regulation.

### **4.0 Processing Absentee Ballots Returned to the Department**

4.1 In accordance with Chapter 55, voters may return Absentee Ballots mailed to them by mail, in person or by a person designated by the absentee voter.

4.2 The team handling returned ballots shall:

4.2.1 Remove Ballot Envelopes from the Mailing Envelopes and attach by paper clip to the Ballot Envelope any material other than the Ballot Envelope that is in the Mailing Envelope;

4.2.2 Time stamp the back of each returned Ballot Envelope;

4.2.3 Attach a *Post-it Note* (or equivalent product) noting any Ballot Envelope discrepancy to the front of the Ballot Envelope;

4.2.4 Attempt to notify the voter by phone or email of the problem(s) and of the action that the voter can take to correct the problem;

4.2.5 Record the return of each Ballot Envelope in accordance with Department procedures; and

4.2.6 File each returned ballot alphabetically by Election District in the appropriate container.

### **5.0 Processing Absentee Ballots Voted at the Department**

The team handling in-office voting shall:

5.1 Verify the absentee voter's identity and mark the form of identity shown by the voter on the voter's affidavit;

5.2 Instruct the absentee voter in the proper procedure for marking the ballot, putting the ballot into the Ballot Envelope, sealing the Ballot Envelope, and signing the front of the Ballot Envelope;

5.3 Make sure that the absentee voter has put the ballot in the Ballot Envelope, sealed the Ballot Envelope and signed the front of the Ballot Envelope;

5.4 Time stamp the back of each Ballot Envelope;

5.5 Record the return of each Ballot Envelope in accordance with Department procedures; and

5.6 File each returned ballot alphabetically by Election District in the appropriate container.

### **6.0 Absentee Ballot Room Security on Election Day**

6.1 No challenger or observer shall bring into the Absentee Ballot Room a cell phone that is on, a camera, a briefcase, any paper except for a list of voters he/she may challenge, a list of absentee voters or a pad or notebook for taking notes.

6.2 No Department member, Board member, Absentee Judge or another person present in an official capacity shall bring a cell phone that is on into the Absentee Ballot Room.

6.3 No challenger, observer, Department member, Board member or Absentee Judge shall use any writing instrument in the Absentee Voting Room except as provided by the Department.

6.4 Challengers:

6.4.1 For a Primary Election, each candidate on the ballot may authorize in writing two challengers at a time to observe the tabulation process and to make challenges.

6.4.2 For a General Election, each party on the ballot may authorize in writing two challengers at a time to observe the tabulation process and to make challenges.

6.4.3 Challengers have the same authority and responsibilities as provided in **Delaware Code**, Title 15.

6.5 Citizens may observe the tabulation process. If more citizens than the room can accommodate appear to observe the tabulation process, the Department shall restrict the number of observers in order to maintain a safe and orderly environment.

6.6 The Department shall remove all un-voted ballots from the Absentee Room and store them in sealed containers in the Deputy Director's Office.

6.7 The Department shall remove all loose materials from the Absentee Ballot Room.

6.8 The Department shall provide green pens for use by Department staff and Absentee Judges, and red pens for use by challengers and observers.

6.9 The Department shall establish an area where challengers and other persons may observe the tabulation process.

6.10 Challengers and other persons observing the tabulation process shall enter or depart the Absentee Voting Room by the front door unless escorted by the Administrative Director, Deputy Administrative Director or a member of the Board of Elections for New Castle County.

6.11 No person except for an Absentee Judge, an employee of the Department of Elections for New Castle County, a member of the Board of Elections for New Castle County or another State employee acting in an official capacity shall touch an Absentee Ballot during the tabulation process. The Department shall expel any other person who touches or attempts to touch an Absentee Ballot from the Absentee Ballot Room and not permit him/her to return.

6.12 No one shall remove any voted Absentee Ballots from the Absentee Ballot Room except as authorized by this regulation and/or by **Delaware Code**, Title 15.

6.13 The Administrative Director or Deputy Administrative Director may escort members of the media in and around the Absentee Ballot Room.

**7.0 Tabulation Process**

7.1 A person or persons designated by the Department shall announce the ED that the Absentee Judges will process and ask if there are any challenges. If a challenger challenges a voter, the Absentee Judges processing the ED shall hear the challenge and then by majority vote determine whether to count the ballot.

7.2 Challengers shall make challenges before the Absentee Judges open the Ballot Envelope for the person that they are challenging.

7.3 A Challenger may make challenges for reasons stated in Chapter 55, §5513.

7.4 A Department member shall give the Absentee Ballots and a check sheet for an ED to a team of Absentee Judges starting with ED 01-01 and continuing in order and shall record the team to which he/she issued an ED's Absentee Ballots.

7.5 The Department shall assign each team of Absentee Judges a specific tabulator to use for tabulating ballots.

7.6 Each Absentee Judge team shall check the ballots received against the check sheet and report any discrepancies to the Administrative Director, the Deputy Administrative Director or a person or persons designated in writing by the Administrative Director and Deputy Administrative Director.

7.7 The Absentee Judge team shall examine each Ballot Envelope and determine whether to count the ballot in accordance with Chapter 55, §5514.

7.7.1 If the Absentee Judges determine that they shall not count a ballot for a reason set forth in Chapter 55, §5514 (a) before opening the Ballot Envelope, they shall write the word REJECTED, the reason the ballot was rejected and their initials on the Ballot Envelope.

7.7.2 If the Absentee Judges determine that they shall not count a ballot for a reason set forth in Chapter 55, §5514 (a) after opening the Ballot Envelope, they shall put the ballot back into the envelope then write the word REJECTED, the reason the ballot was rejected and their initials on the Ballot Envelope.

7.7.3 If the Absentee Judges know that a person who has voted by Absentee Ballot is dead, they shall write the words REJECTED DEAD and their initials on the Ballot Envelope.

7.8 The Absentee Judges shall then open the remaining Ballot Envelopes, remove the absentee ballots therein and place them face down on the table.

7.8.1 If there are two or more ballots in the Ballot Envelope, the Absentee Judges shall put the ballots back into the Ballot Envelope and write the word REJECTED, the reason that they rejected the ballot and their initials on the Ballot Envelope.

7.8.2 If there is no ballot in the Ballot Envelope, the Absentee Judges shall write the word REJECTED, the reason that they rejected the ballot and their initials on the Ballot Envelope.

7.9 Absentee Judges shall put Ballot Envelopes that have been marked as "REJECTED" into the Carrier Envelope for the ED that they are processing and enter the information about the rejection of the Ballot Envelope on to the appropriate log and/or documentation for the ED.

7.10 The Absentee Judges shall tabulate the remaining ballots.

7.11 If the tabulator or scanner cannot tabulate a ballot or ballots, the Absentee Judges shall tally those ballot or ballots on two *Absentee Vote Tally Sheets*.

7.12 Absentee Judges shall record Write-in votes on the Write-in portion of the *Absentee Vote Tally Sheets* or on a separate *Write-in Vote Tally Sheets* as determined by the Department as most suitable for the election.

7.13 After the Absentee Judges have tabulated all of the Absentee Ballots for an ED, they shall put the ballots, the *Ballot Envelopes* and one copy of the *Absentee Vote Tally Sheet* and *Write-in Vote Tally Sheet* (if used) into the *Carrier Envelope* for the ED. They shall then write security seal number for the seal with which they shall secure the *Carrier Envelope* on the *Absentee Ballot Reconciliation Sheet* and put the *Absentee Ballot Reconciliation Sheet* into the *Carrier Envelope*. The Absentee Judges shall then seal the *Carrier Envelope* with the appropriate security seal and put the *Carrier Envelope* in the appropriate transport device.

7.14 Absentee Judges who processed an ED shall process any other Absentee Ballots that the Department receives for that ED prior to the close of the polls in accordance with the above procedures.

## **8.0 After the Polls are Closed and the Ballots Tabulated**

8.1 The Department shall secure the second copies of the *Absentee Ballot Reconciliation Sheets*, *Absentee Vote Tally Sheets* and *Write-in Vote Tally Sheets* (if used) in sealed and/or locked containers. The Department may use these documents as necessary during the canvass process. If the Department opens any containers holding these documents during the canvass process, the Department shall reseal or lock it/them at the conclusion of the canvass process. The Department shall keep the containers sealed or locked until the February 1 following the election unless a court of competent jurisdiction orders the Department to open one or more of the containers.

8.2 After the close of the polls and the Department has tabulated all of the Absentee Ballots, the Department shall seal the transport devices containing the *Carrier Envelopes* (ballot boxes) and record the seal numbers on a transfer log.

8.3 Upon turning the transport devices over to representatives of Superior Court, the Department shall obtain a signature acknowledging receipt of the transport devices.

8.4 No one shall open a *Carrier Envelope* that the Department has sealed except in the presence of the Administrative Director, Deputy Administrative Director, and a Deputy Attorney General to correct an error. The officials opening the *Carrier Envelope* shall fully explain the circumstance on the *Absentee Ballot Reconciliation Sheet* and shall then reseal *Carrier Envelope* with another security seal.

## **9.0 Coordination with Polling Places**

9.1 The Department shall publish after 12 Noon the day before an election a list of absentee voters that contains the names of everyone to whom it issued an Absentee Ballot. The Department shall also establish a process by which it distributes the portion of the list of absentee voters for an Election District to that Election District before the opening of the Polls on the day of the election.

9.2 The Department shall make available a copy of the list of absentee voters to each major political party and if requested at least five days before the day of the election to any minor political party on the ballot. The Department shall place a copy of the list in the Absentee Ballot Room for use by those observing the Absentee Ballot tabulation.

9.3 Election Officers shall update *Poll Lists* in the polling place with the information on the list of absentee voters.

9.3.1 Election Officers shall not permit persons on the list of absentee voters shown as having returned their Absentee Ballot to vote at the Polling Place.

9.3.2 Election Officers shall not permit persons who have not returned their Absentee Ballots and who appear to vote at their Polling Place to vote at the Polling Place until he/she has received permission for that person to vote from the Absentee Ballot Room.

9.4 The Department shall have at least two well-trained persons answering inquiries about absentee voting from the Polling Place and processing all Absentee Ballots returned on the day of the election.

9.4.1 The Department shall authorize a person whose Absentee Ballot the Department has not received to the Department to vote at their Polling Place.

9.4.2 The Department shall not authorize a person who returned his/her Absentee Ballot to the Department to vote at his/her Polling Place.

9.4.3 The Department shall maintain a log of the name and other pertinent information of every person who

the Department authorized to vote in accordance with paragraph "a" above.

9.4.4 The Department shall compare the names of persons who return their ballots on the day of the election against the names on the log noted above. If the Department receives a ballot for a person that it authorized to vote at his/her Polling Place, Absentee Judges shall write the word "REJECTED", the reason it rejected the ballot and the initials of the persons rejecting the ballot on the Ballot Envelope.

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**10.0 After the Canvass**

10.1 Following the canvass of a Primary Election, the Department shall keep the *Carrier Envelopes* and all Absentee Voting documents in sealed containers for at least 22 months following the date of the election. The Department shall then destroy the *Carrier Envelopes*, the material therein and all other Absentee Voting documents in accordance with Department policy.

10.2 Following the canvass of a General or Special Election, the Department shall keep the *Carrier Envelopes* in sealed transport devices until February 1 next. The Department shall then keep the *Carrier Envelopes* and all Absentee Voting documents in sealed containers for at least 22 months following the date of the election. The Department shall then destroy the *Carrier Envelopes*, the material therein and all other Absentee Voting documents in accordance with Department policy.

10.3 The Department shall audit the General Election Absentee Results for at least 3% of the Election Districts after February 1 in the year following a General Election and report the results to the Board of Elections for New Castle County.

10.4 The Department shall audit the Primary Election Absentee Results for at least 3% of the Election Districts after November 15 in the year of a General Election and report the results to the Board of Elections for New Castle County.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF MEDICAID AND MEDICAL  
ASSISTANCE**

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

**PUBLIC NOTICE****Long Term Care Medicaid**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) / is proposing to amend rules in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance.

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 Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

**Summary of Proposed Changes****Statutory Authority**

1924 (c) of the Social Security Act, *Rules for Treatment of Resources*

**Summary of Proposed Changes**

The proposed expands the terms at DSSM 20910.1 and DSSM 20910.2 to clearly define who is an institutionalized spouse and who is a community spouse. The definition is being expanded to include persons receiving (20910.1) and not receiving (20910.2) Medicaid under any of the Medicaid Long Term Care Programs. The clarifications will assist staff in determining if a spousal calculation needs to be completed. These changes will enable the Social Worker to process the case in a more accurate and timely manner.

## DMMA PROPOSED REGULATION #05-67 REVISIONS:

### 20910.1 Institutionalized Spouse

An individual who is in a medical institution or nursing facility and is married to a spouse who is not in a medical institution or nursing facility and who is not receiving ~~HCBS~~. Medicaid under any of the Long Term Care Medicaid programs such as Home and Community Based Services, Nursing Home Medicaid or Assisted Living Waiver.

### 20910.2 Community Spouse

~~An individual who is married to an institutionalized spouse and who does not receive HCBS~~ An individual who is not receiving Medicaid under any of the Long Term Care Medicaid programs such as Home and Community Based Services, Nursing Home Medicaid or Assisted Living Waiver and is married to an institutionalized spouse.

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### PUBLIC NOTICE

#### Chronic Renal Disease Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) ~~is~~ proposing to amend rules in the Division of Social Services Manual (DSSM) used to determine eligibility for the Chronic Renal Disease Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

## Summary of Proposed Changes

### Statutory Authority

Title 29, Chapter 79, Subchapter II, Sections 7932 – 7935, *The Chronic Renal Diseases Program*

### Background

The Delaware Legislature established the Chronic Renal Disease Program (CRDP) effective 1970 by enacting Title 29, Chapter 79, Subchapter 11, Sections 7932-7935. The purpose of this program is to provide assistance to state residents diagnosed with End Stage Renal Disease (ESRD). The CRDP is not federally funded. CRDP is 100% State funded. Since there are limited funds available, the CRDP should only be utilized as a program of last resort. All third party resources (Medicare, Medicaid, Veteran's Benefits, and Private Insurance) must be considered before CRDP funds are utilized.

The mission of the CRDP is to “improve the quality of life for Delawareans with ESRD by promoting health and well-being, fostering self-sufficiency, and protecting a vulnerable population.”

The Chronic Renal Disease Advisory Board is composed of 11 members who are appointed by the Secretary of Delaware Health and Social Services. The role of this Advisory Board is to consult with the Secretary in the administration of the Chronic Renal Disease Program, as needed. Board members represent hospitals and medical centers, which establish dialysis centers, voluntary agencies interested in kidney diseases, related public agencies, physicians licensed to practice medicine and the general public.

### Summary of Proposed Changes

DSSM 50100.3, 50400, 50700 and 50700.2: The proposal updates the transportation provider information; clarifies the application process; clarifies eligibility standards; and, eliminates the resource test.

## DMMA PROPOSED REGULATION #05-75 REVISIONS:

### 50100.3 Transportation

The CRDP may reimburse for transportation to and from the dialysis unit, transplant hospital, or in exceptional cases, related medical appointments. Once determined eligible, all types of reimbursable transportation will be explored for cost effectiveness.

The types of transportation that may be funded by CRDP are:—mileage reimbursement, DART tickets, and private transportation.

- ~~Mileage Reimbursement — the CRDP may reimburse the client, client's spouse, caregiver, or anyone who consistently transports clients. Round trip mileage must be greater than 10 miles to be eligible.~~
- ~~Delaware Authority for Regional Transit (DART) tickets — the CRDP will purchase DART tickets for client use. A monthly supply of DART tickets is sent to the dialysis social worker for distribution. These tickets are replaced monthly based on the previous month's usage.~~
- ~~Private Transportation Companies — The CRDP may contract with private transportation companies. Transportation may be supplied via company vehicle or by a volunteer who is trained by the Transportation Company.~~

*(Break in Continuity of Sections)*

#### **50400 Application Process**

~~Applicants must be medically and financially eligible to receive coverage. The client or his representative must complete and sign a CRDP application form in person or via the telephone, and mail or fax to the DMMA office. The date the application is received in the DMMA office is the first possible date that benefits may start. The individual must also provide the requested verifications necessary to determine eligibility.~~

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

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

~~At time of application and/or redetermination, each individual must be informed that they are responsible for notifying the CRDP worker of all changes in their circumstances, which could potentially affect their eligibility for the CRDP.~~

*(Break in Continuity of Sections)*

#### **50700 Financial Eligibility**

~~CRDP staff determines financial eligibility. The amount of assistance received from the CRDP is dependent upon the applicant's financial situation. Applicant's/client's income and resources need to must be below 300% of the Federal Poverty Level (FPL). Applicants with a legally married spouse will be considered a household of two. Applicants/clients with income and resources above 300% of the FPL~~

~~may be eligible for an annual medication cost deduction from the applicant's/client's annual income and resources. If, after this deduction, income and resources are below 300% of the FPL, the individual may be eligible.~~

~~Additional factors that may be considered for eligibility include, but are not limited to:~~

- ~~Number of household members financially dependent on applicant/client~~
- ~~Cost of certain medications~~
- ~~Household expenses~~
- ~~Income/resources of applicant/client~~
- ~~Income/resources of any household member that contributes to household expenses.~~

*(Break in Continuity of Sections)*

#### **50700.2 Resources**

~~Resources are items that can be converted to cash to be used for food, clothing or shelter. Some examples of resources include, but are not limited to the following: bank accounts, stocks, bonds, certificates of deposit, money market funds, retirement funds, etc.~~

~~If the individual has the right, authority or power to liquidate his or her share of the property, it is a resource. In addition, the individual must have:~~

- ~~Some form of ownership interest in the property;~~
- ~~A legal right to access the property;~~
- ~~The legal ability to use the property for his/her own support and maintenance.~~

~~There is no resource test.~~

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### **DIVISION OF PUBLIC HEALTH**

**Statutory Authority: 16 Delaware Code, Section 122; 128; 129; 504; 505; 507; 702 and 707 (16 Del.C. §§122, 128, 129, 504, 505, 507, 702, 707) 16 DE Admin. Code 4202**

### **PUBLIC NOTICE**

#### **4202 Control of Communicable and Other Disease Conditions**

These proposed regulations, "Regulations for the Control of Infectious Disease," will replace by revision the current "Regulations for the Control of Communicable and Other Disease Conditions," adopted August 2, 1984 and most recently amended July 10, 2001.

In compliance with the State's Administrative Procedures ACT (APA – Title 29, Chapter 101 of the **Delaware Code**), and under authority of Title 16, Chapters 1, 5 & 7 (sections enumerated above), Delaware Health and Social Services is proposing amendments to the Regulations for the Control of Communicable and Other Disease Conditions and is seeking comments on these amendments. A summary of amendments and amended regulations are attached below. Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulations must submit same to David P. Walton, Office of the Director, Jesse Cooper Building, 417 Federal Street, Dover, Delaware 19901, by January 3, 2006.

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

### Summary of Proposed Changes

- Change the name of the regulation to “Regulations for the Control of Infectious Disease”
- Definitions and language added to make regulation consistent with the Emergency Health Powers Act (EHPA)
- Permits hospitals and laboratories to report notifiable diseases electronically and requires reporting by that method when facilities are authorized to do so
- Authorizes hospitals to report syndromes (symptoms) in addition to diagnosed illnesses
- Removes requirement of DPH to destroy name on reported cases of HIV within 90 days, and makes other HIV reporting changes necessary for compliance with CDC/HRSA guidelines
- Complete revision of quarantine section to make consistent with EHPA
- Removed enforcement and penalty section (enforcement & penalties are in code)
- Changed list of notifiable diseases and list of diseases for which specimens must be sent to the DPH Lab

### 4202 Control of Communicable and Other Disease Conditions

#### 1.0 Applicable Codes

These regulations are adopted by the Department of Health & Social Services pursuant to 16 **Del. C.** §122(1), (2),

(3) (a and j), (4), (5); §128; §129; §151; §503; §504; §505; §507; §508; §702; §706 and 707. These regulations were originally adopted on August 2, 1984 effective September 1, 1984, and subsequently amended.

#### 1.0 Definitions

The following terms shall mean:

**"Carrier"** A person who harbors pathogenic organisms of communicable disease but who does not show clinical evidence of the disease and serves as a potential source of infection.

**"Case"** A person whose body has been invaded by an infectious agent with the result that clinical symptoms have occurred.

**"Child Care Facility"** Any organization or business created for, and having as its major purpose, the daily care and/or education of children under the age of 7 years.

**"Communicable Disease"** ~~means an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment~~ means "Contagious Disease".

**"Contact"** A person or animal that has been in such association with an infected person or animal or a contaminated environment as to have had opportunity to acquire the infection.

**"Contagious Disease"** An infectious disease that can be transmitted from person to person, or animal to person.

**"Designee"** The person named by the Director of the Division of Public Health to assume a specific responsibility.

**"Division"** The Division of Public Health.

**"Division Director"** The Director of the Division of Public Health.

**"Directly Observed Therapy (DOT)"** an adherence-enhancing strategy in which a health care worker or other designated person watches the patient swallow each dose of medication.

**"Epidemic" or "Outbreak"** The occurrence in persons in a community, institution, region, or other defined area of cases of an illness of similar nature clearly in excess of normal expectancy, but not upon declaration of a state of emergency due to such illness of similar nature.

**"Health care provider"** Any person or entity who provides health care services, including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses, paramedics, emergency medical or laboratory

technicians, and ambulance and emergency medical workers.

**"HIV Infection"** repeatedly reactive screening tests for HIV antibody (for example, enzyme immunoassay) with specific antibody identified by the use of supplemental tests such as Western Blot or immunofluorescence assay; or direct identification of virus in host tissues by virus isolation (for example, culture); or HIV antigen detection (for example p24 antigen); or a positive result on any other highly specific licensed test for HIV.

**"Infectious disease"** A disease caused by a living organism or other pathogen, including a fungus, bacillus, parasite, protozoan or virus. An infectious disease may or may not be transmissible from person to person or animal to person.

**"Isolation"** The physical separation and confinement of an individual or group of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals to prevent or limit the transmission of the disease to non-isolated individuals.

**"Medical Examiner"** A physician appointed pursuant to 29 Del.C. §4703 or 7903(a)(3) who is authorized to investigate the causes and circumstances of death.

**"Nosocomial Disease"** A disease occurring in a patient in a health-care facility and in whom it was not present or incubating at the time of admission.

**"Notifiable Disease"** An infectious communicable disease or condition of public health significance required to be reported to the Division of Public Health in accordance with these Rules.

**"Notification"** A written or verbal report as required by any section of these Rules.

**"Outbreak"** - Refer to definition of "Epidemic".

**"Post-Secondary Institution"** Means and includes state universities, private colleges, technical and community colleges, vocational technical schools and hospital nursing schools.

**"Quarantine"** ~~An official order that limits the freedom of movement and actions of persons or animals in order to prevent the spread of notifiable disease or other disease condition. The Division Director or designee shall determine which persons or animals are subject to quarantine and shall issue appropriate instructions~~ The physical separation and confinement of an individual or group of individuals who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of contagious disease from non-quarantined individuals to prevent or limit the transmission of the to disease to non-quarantined individuals.

**"Resistant Organism"** Any organism which traditionally was inactivated or killed by a drug but has, over time, developed mechanisms to render that drug ineffective.

**"Sensitive Situation"** A setting, as judged by the Director of the Division of Public Health or designee in which the presence of a person or animal infected with or suspected of being infected with a notifiable or other communicable disease or condition which may affect the public health would increase significantly the probability of spread of such disease and would, therefore, constitute a public health hazard, but not a public health emergency as defined in Title 20 3132(11) of the **Delaware Code**. Sensitive situations may include, but are not limited to, schools, child-care facilities, hospitals, and other patient-care facilities, food storage, food processing establishments or food outlets.

**"Source of Infection"** The person, animal, object or substance from which an infectious agent passes directly to the host.

**"Suspect"** A person or animal whose medical history and symptoms suggest that he or it may have or may be developing a communicable disease condition.

**"Syndromic Surveillance"** Surveillance using signs and symptoms that precede diagnosis and may signal a sufficient probability of a case or an outbreak to warrant further public health response.

## **2.0 Notifiable Diseases or Conditions to be Reported** **Conditions to be Reported, Timeliness and Manner of Reporting**

### **2.1 Notifiable Diseases Reporting**

The notifiable diseases specified in the Appendices to these regulations are declared as dangerous to the public health. The occurrence or suspected occurrence of these diseases, including those identified after death, shall be reported as defined in Section 3 to the Division of Public Health. ~~Such reports shall be made within 48 hours of recognition except as otherwise provided in these regulations. Reports shall be made by telephone or in writing except for certain specified diseases as indicated by a (T) which shall be reported immediately by telephone. Certain diseases are reportable in number only and are indicated by an (N).~~ The Division of Public Health may list additional diseases and conditions on its reporting forms for which reporting is encouraged but not required.

### **2.2 Timeliness and Content of Notifiable Disease Reports**

**2.2.1** Reports pursuant to this subsection shall be made electronically, telephonically, facsimile, or in writing within 48 hours of recognition to the Division Director or designee, except as otherwise noted in these

regulations or specified in the Appendices to these regulations.

2.2.2 Except as otherwise provided by these regulations, reports of notifiable or other diseases or conditions required to be reported by these regulations shall contain sufficient information to contact person reporting. When available, the following information shall be reported: the name, address, telephone number, date of birth, race, gender, and disease of the person ill or infected, the date of onset of illness; the name, address, and telephone number of the person's health care provider; and any pertinent laboratory information.

### 2.3 Ordinary Skill

Any person who is required to report a disease or other condition under this Section shall use ordinary skill in determining the presence of the reportable disease or condition. If the determination of the disease or condition is disputable and the disease or condition may have potential public health concern or may potentially be an indicator of a public health emergency, the Division Director or designee may request tests through the Division's laboratory or another certified laboratory to help resolve uncertainty.

### 2.4 Privacy Protection

The Division of Public Health is the state's recognized public health authority as defined in HIPAA (45 CFR § 164.501) pursuant to 45 CFR § 164.512 (b). Covered entities may disclose without individual authorization, protected health information to public health authorities. As the recognized public health authority for the State of Delaware, the Division of Public Health is authorized by law to collect or receive protected health information for the purpose of preventing or controlling disease, injury or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions. The information required to be reported represents the minimum necessary to carry out our public health mandates pursuant to 45 CFR § 164.514(d) of the HIPAA Privacy Rule.

### 2.5 Electronic Reporting Systems

The Division may establish a system for electronic reporting to improve the accuracy and timeliness of reporting notifiable diseases. The system shall be technologically designed to ensure data security and compatibility with other state and federal public health reporting systems to the extent feasible. Those authorized to participate in electronic reporting systems must meet minimum standards for compliance and training as determined by the Division.

### 2.6 Syndromic Surveillance Reporting

The Division may establish a state-wide syndromic surveillance system. The system shall be technologically designed to ensure data security and compatibility with other state and federal public health reporting systems to the extent feasible. Those authorized to participate in syndromic surveillance must meet minimum standards for compliance and training as determined by the Division. The Director will establish what syndromes will be reported. The Director may change and/or add reportable syndromes to assure the monitoring of health events of public health importance.

## **3.0 Report of Outbreaks and Potential Causes of a Public Health Emergency**

### 3.1 Outbreaks

A health care provider or any other person identified in Section 4 having knowledge of any outbreak of any notifiable disease or clusters of any illness which may be of public concern, shall report such outbreaks within 24 hours to the Division Director or designee.

### 3.2 Public Health Emergencies

3.2.1 A health care provider or any other person having knowledge of a public health emergency shall immediately report all cases of persons who harbor any illness or health condition, or symptoms of said illness or health condition, that may be potential causes of a public health emergency. The Division Director or designee may declare certain illnesses or health conditions as public health emergencies which shall be reported.

3.2.2 A pharmacist shall report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be potential causes of a public health emergency. Prescription-related events that require a report include, but are not limited to:

3.2.2.1 An unusual increase in the number of prescriptions to treat fever, respiratory or gastrointestinal complaints;

3.2.2.2 An unusual increase in the number of prescriptions for antibiotics or other pharmaceuticals or sales of over-the-counter pharmaceuticals; and

3.2.2.3 Any prescription that treats a disease that is relatively uncommon or may be associated with terrorism.

## **4.0 Reporting of Notifiable Diseases Persons and Institutions Required to Report**

### 4.1 Attending Practitioners

Reports required by Sections 1 and 2 shall be made to the Division Director or designee by any attending practitioner, licensed or otherwise permitted in Delaware to practice medicine, osteopathic medicine, chiropractic, naturopathy, or veterinary medicine, who diagnoses or

~~suspects the existence of any disease on the notifiable disease list or by the medical examiner in cases of unattended deaths.~~

#### 4.1 Health Care Providers

Reports required by Sections 2 and 3 shall be made to the Division Director or designee by any health care provider who diagnoses or suspects the existence of any disease required to be reported or by the medical examiner in cases of unattended deaths.

#### 4.2 Hospitals

4.2.1 The chief administrative officer of each civilian hospital, long-term care facility, or other patient-care facility shall (and the United States military and Veterans Administration Hospitals are requested to) appoint an individual from the staff, hereinafter referred to as "reporting officer," who shall be responsible for reporting cases or suspect cases of diseases on the notifiable disease list in persons admitted to, attended to, or residing in the facility.

~~3.3.2 Such case reports shall be made to the Division Director or designee within 48 hours of recognition or suspicion, except as otherwise provided in these regulations.~~

4.2.2 Reporting of a case or suspect case of a notifiable disease by a hospital fulfills the requirements of the attending practitioner to report; however, it is the responsibility of the attending practitioner to ensure that the report is made pursuant to Section 4.1.

4.2.3 The hospital reporting officer shall also report to the Division Director or designee communicable diseases not specified in Section 2, should the disease occur in a nosocomial disease outbreak situation which may significantly impact the public health. Such reports shall be made within 24 hours of the recognition of such a situation.

4.2.4 Hospitals authorized to report notifiable diseases electronically per Section 2.5 and syndromic surveillance data per Section 2.6, shall use this method of reporting.

#### 4.3 Laboratories

4.3.1 Any person in charge of a clinical or hospital laboratory, or other facilities in which a laboratory examination of any specimen derived from a human body and submitted for microbiologic examination shall share with the Division of Public Health Laboratory specimens or culture results for agents causing certain diseases listed in the Appendices of these regulations. In addition, such laboratories shall report to the Division of Public Health results of laboratory examinations of specimens indicating or suggesting the existence of;

~~4.3.1.1 A notifiable disease to the Division of Public Health within 48 hours of when the results were~~

~~obtained or as soon as possible, except as otherwise provided in these regulations.~~

4.3.1.2 A suspected agent of bioterrorism immediately upon when results were obtained

4.3.1.3 Any other potential agent or specimen that may be the cause of an outbreak or public health emergency immediately upon when results were obtained.

4.3.2 The Director or designee may contact the patient or the potential contacts so identified from laboratory reports only after consulting with the attending practitioner, when the practitioner is known and when said consultation will not delay the timely control of a communicable disease.

~~3.4.3 Laboratories identifying salmonella or shigella organisms in the stool specimens shall forward cultures of these organisms or the stool specimens themselves to the Public Health Laboratory for confirmation and serotyping.~~

4.3.3 Reporting of antibiotic resistant organisms. Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiologic examination yields a non-susceptible species of microorganism identified in Appendix H I by (A), will report the infected person's name, address, date of birth, race, sex, site of isolation, date of isolation and MIC/Zone diameter to the Division of Public Health. In addition, the number of susceptible and non-susceptible isolates of any of these organisms shall be reported monthly to the Division of Public Health.

4.3.4 Laboratories authorized to report notifiable diseases electronically per Section 2.5, shall use this method of reporting.

#### 4.4 Others

In addition to those who are required to report notifiable diseases, the following are requested and authorized to notify the Division Director or designee of the name and address of any person in his or her family, care, employ, class, jurisdiction, custody of control, who is suspected of being afflicted with a notifiable disease although no health care provider, as in Section 4.1 above, has been consulted: every parent, guardian, householder; ~~every nurse~~; every dentist, every midwife, every superintendent, principal, teacher or counselor of a public or private school; every administrator of a public or private institution of higher learning; owner, operator, or teacher of a child-care facility; owner or manager of a dairy, restaurant, or food storage, food-processing establishment or food outlet; superintendent or manager of a public or private camp, home or institution; director or supervisor of a military installation; military or Veterans Administration Hospital, jail, or juvenile detention center.

### 3.5 Confidentiality

~~Information identifying persons or institutions submitted in reports required in Sections 3.1–3.4 shall be held confidential to the extent permitted by law.~~

### 3.6 Information in Reports

~~Information included in reports required in Sections 3.1–3.4 shall contain sufficient information to contact the patient and/or the patient's attending physician. When available, the name, address, telephone number, date of birth, race, gender, and disease of the person ill or infected; the date of onset of illness; the name, address, and telephone number of the attending physician; and any pertinent laboratory information, shall be provided.~~

## 5.0 Investigation of Case

### 5.1 Action to Be Taken

Upon being notified of a case or suspected case of a notifiable disease or an outbreak of a notifiable disease or other disease condition in persons or animals, the Director of the Division or designee may take action as permitted in these Rules, and additionally as deemed necessary to protect the public health. If the nature of the disease and the circumstances warrant, the Director of the Division or designee may make or cause to be made an examination of the patient to verify the diagnosis, make an investigation to determine the source of infection, and take other appropriate action to prevent or control the spread of the disease. These actions may include, but shall not be limited to, confinement on a temporary basis until the patient is no longer infectious, and obligatory medical treatment in order to prevent the spread of disease in the community.

### 5.2 Examination of Patient

Any person suspected of being afflicted with any notifiable disease shall be subject to physical examination and inspection by any designated representative of the Division of Public Health, except that a duly authorized warrant or court order shall be presented to show just cause in instances where the suspect refuses such examination and inspection. Such examination shall include the submission of bodily specimens when deemed necessary by the Division Director or designee.

### 5.3 Sensitive Situations

5.3.1 No person known to be infected with a communicable contagious disease or suspected of being infected with a communicable contagious disease shall engage in sensitive situations as defined in Part II I of these regulations until judged by the Division Director or designee to be either free of such disease or no longer a threat to public health. Such action shall be in accord with accepted public health practice and reasonably calculated to abate the potential public health risk.

5.3.2 When, pursuant to Section 5.3.1, it is necessary to require that a person not engage in a sensitive situation because that person is infected or suspected of being infected with a communicable contagious disease, the Division Director or designee shall provide, in writing, instructions specifying the nature of the restrictions and conditions necessary to terminate the restrictions. These written instructions shall be provided to the person infected or suspected of being infected with a communicable contagious disease and to that person's employer or other such individual responsible for the sensitive situation.

5.3.3 The Division Director or designee shall have the authority to exclude from attendance in a child care facility any child or employee suspected of being infected with a communicable contagious disease that, in the opinion of the Division Director or designee, significantly threatens the public health. In addition, no person shall attend or be employed in a child care facility who has the following symptoms:

5.3.3.1 ~~unusual~~ diarrhea, severe coughing, difficult or rapid breathing, yellowish skin or eyes, pinkeye, or an untreated louse or scabies infestation;

5.3.3.2 fever (100 F by oral thermometer or 101 F by rectal thermometer or higher) accompanied by one of the following: unusual spots or rashes, sore throat or trouble swallowing, infected skin patches, unusually dark tea-colored urine, gray or white stool, headache and stiff neck, vomiting, unusually cranky behavior, or loss of appetite.

5.3.3.3 any other symptoms which, in the opinion of the Division Director or designee suggest the presence of a communicable disease that significantly threatens the public health. Exclusion from a childcare facility in this case shall be effective upon written notification pursuant to Section 5.3.2.

## 5.0 Quarantine

### 5.1 Establishment

~~When quarantine of humans is required for the control of any notifiable disease or other disease or condition, the Division Director or designee shall have the authority to initiate procedures to establish a quarantine.~~

### 5.2 Requirements

5.2.1 ~~The Division Director or designee shall ensure that provisions are made for proper observations of such quarantined persons as frequently as necessary during the quarantine period.~~

5.2.2 ~~Quarantine orders shall be in effect for a time period in accord with accepted public health practice.~~

### 5.3 Transportation

~~5.3.1 Transportation or removal of quarantined persons may be made only with prior approval of the Division Director or designee.~~

~~5.3.2 Transportation or removal of quarantined persons shall be made in accordance with orders issued by the Division Director or designee.~~

~~5.3.3 Quarantine shall be resumed immediately upon arrival of quarantined person at point of destination for the period of time in accord with accepted public health practices.~~

#### **5.4 Disinfection**

~~5.4.1 Concurrent disinfection is required of infectious or potentially infectious secretions or excretions of any quarantined person or animal or of objects contaminated by such secretions or excretions. The collection, storage and disposal, of such contaminated matter and disinfection procedures shall be approved by the Division Director or designee.~~

~~5.4.2 Disinfection shall also be carried out at the termination of the period of quarantine and shall be applied to the quarter vacated. The disinfection procedures shall be as approved by the Division Director or designee.~~

### **6.0 Quarantine and Isolation**

6.1 The Division's authority may exercise the following over persons:

6.1.1 To establish and maintain places of isolation and quarantine;

6.1.2 To isolate and quarantine individuals subject to the procedures enumerated in this section; and

6.1.3 To require isolation or quarantine of any person by the least restrictive means necessary to protect the public health, subject to the other provisions of this section. All reasonable means shall be taken to prevent the transmission of infection among the isolated or quarantined individuals.

#### 6.2 Standard for quarantine or isolation.

6.2.1 Persons shall be isolated or quarantined if it is determined by clear and convincing evidence that the person to be isolated or quarantined poses a significant risk of transmitting a disease to others with serious consequences. A person's refusal to accept medical examination, vaccination or treatment shall constitute prima facie evidence that said person should be quarantined or isolated.

6.2.2 Isolation or quarantine of any person shall be terminated when such person no longer poses a significant risk of transmitting a disease to others with serious consequences.

#### 6.3 Character of isolation and quarantine area

6.3.1 To the extent possible, the premises in which persons are isolated or quarantined shall be maintained in safe and hygienic manners designed to minimize the likelihood of further transmission of infection or other harm to persons subject to isolation or quarantine. Adequate food, clothing, medication and other necessities and competent medical care shall be provided.

6.3.2 Isolated individuals must be confined separately from quarantined individuals.

6.3.3 The health status of isolated and quarantined individuals must be monitored regularly to determine if their status should change. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease, the individual must promptly be moved to isolation.

#### 6.4 Transportation

6.4.1 Transportation or removal of quarantined or isolated persons may be made only with prior approval of the Division Director or designee.

6.4.2 Transportation or removal of quarantined or isolated persons shall be made in accordance with orders issued by the Division Director or designee. Quarantine or isolation shall be resumed immediately upon arrival of quarantined or isolated person at point of destination for the period of time in accord with accepted public health practices.

#### 6.5 Disinfection

6.5.1 Concurrent disinfection is required of infectious or potentially infectious secretions or excretions of any quarantined or isolated person or animal or of objects contaminated by such secretions or excretions. The collection, storage and disposal, of such contaminated matter and disinfection procedures shall be approved by the Division Director or designee.

6.5.2 Disinfection shall also be carried out at the termination of the period of quarantine or isolation and shall be applied to the quarter vacated. The disinfection procedures shall be as approved by the Division Director or designee.

#### 6.6 Control of quarantine and isolation area.

6.6.1 A person subject to isolation or quarantine shall obey the Division's rules and orders, shall not go beyond the isolation or quarantine premises, and shall not put himself or herself in contact with any person not subject to isolation or quarantine other than a physician or other health care provider, public health authority, or person authorized to enter isolation or quarantine premises by the Division's authority. Any person entering isolation or quarantine premises may be isolated or quarantined.

6.6.2 No person, other than a person authorized by the Division, shall enter isolation or quarantine premises. If by reason of an unauthorized entry into an isolation or quarantine premises, the person poses a danger to public health, that person may be subject to isolation or quarantine pursuant to the provisions of this section.

6.7 Procedures for isolation and quarantine. The following procedures shall protect the due process rights of individuals:

6.7.1 The Division shall petition the Superior Court for an order authorizing the isolation or quarantine of an individual or groups of individuals. Said petition shall specify the following:

6.7.1.1 The identity of the individual or group of individuals subject to isolation or quarantine;

6.7.1.2 The premises subject to isolation or quarantine;

6.7.1.3 The date and time at which the Division request isolation or quarantine to commence;

6.7.1.4 The suspected contagious disease, if known;

6.7.1.5 A statement of compliance with the conditions and principles for isolation and quarantine;

6.7.1.6 A statement of the basis upon which isolation or quarantine is justified.

6.7.1.7 A statement of what effort, if any, has been made to give notice of the hearing to the individual or group of individuals to be isolated or quarantined, or the reason supporting the claim that notice should not be required.

6.7.2 Ex parte orders. Before isolating or quarantining a person, the Division shall obtain a written order, which may be an ex parte order, from the Superior Court authorizing such action. An order, which may be an ex parte order, shall be requested as part of a petition filed in compliance with 6.1 through 6.2. The Court shall grant an order, which may be an ex parte order, upon finding by clear and convincing evidence that isolation or quarantine is warranted pursuant to the provisions of this Section. A copy of the authorizing order shall be given to the person ordered to be isolated or quarantined, along with notification that the person has a right to a hearing under subsection (6.7).

6.7.3 Temporary quarantine or isolation pending filing of a petition. Notwithstanding the preceding subsections, the Division may isolate or quarantine a person without first obtaining a written order, which may be an ex parte order, from the Court if a physician determines that any delay in the isolation or quarantine of the person would pose an immediate and severe danger to the public health. Following such isolation or quarantine, the Division shall file a petition within 24 hours. In addition, if the Division

exercises its powers, it must provide a written directive to the individuals or groups under temporary quarantine or isolation indicating the identities of the individuals or groups subject to the directive, the premises subject to isolation or quarantine, the date and time that the directive commences, the suspected contagious disease (if known).

6.7.4 Speedy hearing. The Court shall grant a hearing within 72 hours of the filing of a petition when an individual has been isolated or quarantined.

6.7.5 Consolidation of claims. The Court may order consolidation of individual claims into a group of claims where:

6.7.5.1 The number of individuals involved or to be affected is so large as to render individual participation impractical;

6.7.5.2 There are questions of law or fact common to the individual claims or rights to be determined;

6.7.5.3 The group claims or rights to be determined are typical of the affected individuals' claims or rights; and

6.7.5.4 The entire group will be adequately represented in the consolidation, giving due regard to the rights of affected individuals.

6.8 Relief for isolated and quarantined persons.

6.8.1 On or after 10 days following a hearing, a person isolated or quarantined pursuant to the provisions of this section may request in writing a Court hearing to contest his or her continued isolation or quarantine. The hearing shall be held within 72 hours of receipt of such request, excluding Saturdays, Sundays and legal holidays. A request for a hearing shall not alter the order of isolation or quarantine. At the hearing, the Division must show by clear and convincing evidence that continuation of the isolation or quarantine is warranted because the person poses a significant risk of transmitting a disease to others with serious consequences.

6.8.2 A person isolated or quarantined pursuant to the provisions of this section may request a hearing in the Superior Court for remedies regarding his or her treatment and the terms and conditions of such quarantine or isolation. Upon receiving a request for either type of hearing, the Court shall fix a date for a hearing. The hearing shall take place within 10 days of the receipt of the request by the Court. The request for a hearing shall not alter the order of isolation or quarantine.

6.8.3 If upon a hearing, the Court finds that the isolation or quarantine of the individual is not warranted under the provisions of this section, then the person shall be immediately released from isolation or quarantine. If the Court finds that the isolation or quarantine of the individual is not in compliance with the provisions of this section, the

Court may then fashion remedies appropriate to the circumstances of the necessity for the isolation or quarantine and in keeping with the provisions of this section.

6.8.4 No person shall be permanently terminated from employment by a Delaware employer as a result of being isolated or quarantined pursuant to this section. However, this paragraph shall not apply to a person who has been quarantined as a result of refusing to comply with an examination, treatment or vaccination program, nor shall it apply to a person whose conduct caused the necessity for the isolation or quarantine.

6.9 Additional due process protections.

6.9.1 A record of proceedings before the Court shall be made and retained for at least 3 years.

6.9.2 The petitioner shall have the right to be represented by counsel or other lawful representative, and the State shall provide counsel to indigent persons against whom proceedings are initiated pursuant to this section.

6.9.3 The manner in which the request for a hearing is filed and acted upon will be in accordance with the existing laws and rules of the Superior Court or any such rules that are developed by the Court, provided that hearings should be held by any means that will allow all necessary persons to participate in the event that a public health emergency makes personal appearances impractical.

**7.0 Control of Specific Communicable Diseases**

**7.1 Vaccine Preventable Diseases**

7.1.1 All preschool children who are enrolled in a child care facility must be age-appropriately vaccinated against diseases prescribed by the Division Director. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation.

7.1.2 Any child entering private school must be age-appropriately vaccinated against diseases prescribed by the Division Director, prior to enrolling in school. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation. This provision pertains to all children between the ages of 2 months and 21 years entering or being admitted to a Delaware private school for the first time including, but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from public schools.

7.1.3 Acceptable documentation of the receipt of immunization as required by Sections 7.1.1 - 7.1.2 shall include either a medical record signed by a physician, or a valid immunization record issued by the State of Delaware or another State, which specifies the vaccine given and the date of administration.

7.1.4 Immunization requirements pursuant to sections 7.1.1 - 7.1.2 shall be waived for:

7.1.4.1 children whose physicians have submitted, in writing, that a specific immunizing agent would be detrimental to that child; and,

7.1.4.2 children whose parents or guardians present a notarized document that immunization is against their religious beliefs.

7.1.5 Child care facilities and private schools (grades K-12) shall maintain on file an immunization record for each child. The facility will also be responsible to report to the Division Director or designee on an annual basis the immunization status of its enrollees.

7.1.6 Parents whose children present immunization records which show that immunizations are lacking will be allowed 14 days (or such time as may be appropriate for a particular vaccination) to complete the required age-appropriate doses of vaccine for their children. In instances where more than 14 days will be necessary to complete the age-appropriate immunization schedule, an extension may be allowed in order to obtain the required immunizations. Extension of the 14-day allowance because of missed appointments to receive needed immunizations shall not be permitted.

7.1.7 When a child's records are lost and the parent states that the child has completed his/her series of immunizations, or a child has been refused admission or continued attendance at a child care facility or private school for lack of acceptable evidence of immunization as specified in this regulation, a written certification must be provided by a health care provider who has administered the necessary age-appropriate immunizations to the child according to the current ACIP immunization schedule.

7.1.8 It is the responsibility of the child care facility or private school to exclude a child prior to admission or from continued attendance who has failed to document required immunizations pursuant to this section.

7.1.9 Upon the occurrence of a case or suspect case of one of the vaccine preventable diseases specified in pursuant to sections 7.1.1 and 7.1.2, any child not immunized against that disease shall be excluded from the premises, until the Division Director or designee has determined that the disease risk to the unimmunized child has passed. Such exclusion shall apply to all those in the facility who are admitted under either medical or religious

exemption as well as to those previously admitted who have not yet received vaccine against the disease which has occurred. If, in the judgment of the Division Director or designee, the continued operation of the facility presents a risk of the spread of disease to the public at large, he/she shall have the authority to close the facility until the risk of disease occurrence has passed.

7.1.10 All full-time students of post-secondary educational institutions and all full and part-time students in such educational institutions if engaged in patient-care related curriculums (included but not limited to nursing, dentistry and medical laboratory technology), shall be required to show evidence of immunity to measles, rubella and mumps prior to enrollment by the following criteria:

7.1.10.1 Measles immunity:

- 7.1.10.1.1 persons born before January 1, 1957; or
- 7.1.10.1.2 physician documented history of measles disease; or
- 7.1.10.1.3 serological confirmation of measles immunity; or
- 7.1.10.1.4 a documented receipt from a physician or health facility that two doses of measles vaccine were administered after 12 months of age.

7.1.10.2 Rubella immunity:

- 7.1.10.2.1 persons born before January 1, 1957; except women who could become pregnant; or
- 7.1.10.2.2 laboratory evidence of antibodies to rubella virus; or
- 7.1.10.2.3 a documented receipt from a physician or health facility that rubella vaccine was administered on or after 12 months of age.

7.1.10.3 Mumps immunity:

- 7.1.10.3.1 persons born before January 1, 1957; or
- 7.1.10.3.2 physician diagnosed history of mumps disease; or
- 7.1.10.3.3 laboratory evidence of immunity; or
- 7.1.10.3.4 a documented receipt from a physician or health facility that mumps vaccine was administered on or after 12 months of age.

7.1.11 Immunization requirements pursuant to section 6.1.10 shall be waived for:

7.1.11.1 A student whose licensed physician certifies that such immunization may be detrimental to the student's health;

7.1.11.2 A student who presents a notarized document that immunization is against their religious beliefs.

7.1.12 The student health service, the admissions office and the office of the university or college registrar are jointly responsible for implementing Section 7.1.10 through notification of immunization requirements, the collection and verification of documented vaccine histories, identification and notification of students not in compliance and imposition of sanctions for non-compliance.

7.1.13 Students who can not show evidence of immunity to measles pursuant to 6.1.10 and who cannot show documented receipt of ever having received measles vaccine shall be permitted to enroll on the condition that 2 doses be administered within 45 days or at the resolution of an existing medical contraindication. Students who cannot show evidence of immunity to rubella and/or mumps or who have had only 1 dose of measles vaccine shall be permitted to enroll on the condition that measles, mumps and rubella immunizations be obtained within 14 days or at the resolution of an existing medical contraindication. However, in implementing these requirements, doses of a measles containing vaccine shall not be given closer than 28 days apart.

7.1.14 The Division Director may maintain a registry of the immunization status of persons vaccinated against any vaccine preventable diseases (hereafter called an "immunization registry").

7.1.14.1 Physicians and other health care providers who give immunizations shall report information about the immunization and the person to whom it was given for addition to the immunization registry in a manner prescribed by the Division Director or designee.

7.1.14.2 The Division Director or designee may disclose information from the immunization registry without a patient's, parent's, or guardian's written release authorizing such disclosure to the following:

7.1.14.2.1 The person immunized, or a parent or legal guardian of the person immunized, or persons delegated in writing by same.

7.1.14.2.2 Employees of public agencies or research institutions, however only when it can be shown that the intended use of the information is consistent with the purposes of this section.

7.1.14.2.3 Health records staff of school districts and child care facilities.

7.1.14.2.4 Persons who are other than public employees who are entrusted with the regular care of those under the care and custody of a state agency including but not limited to operators of day care facilities, group, residential care facilities and adoptive or foster parents.

7.1.14.2.5 Health insurers, however only when the person immunized is a client of the health insurer.

7.1.14.2.6 Health care professionals or their authorized employees who have been given responsibility for the care of the person immunized.

7.1.14.3 If any person authorized in subsection 7.1.14.2 discloses information from the immunization registry for any other purpose, it is an unauthorized release and such person may be subject to civil and criminal penalty.

### 7.2 Ophthalmia Neonatorum

Any physician, nurse, midwife, or other health care provider so permitted to under the law, who attends the birth of an infant in Delaware, shall provide or cause to be provided prophylactic treatment against inflammation of the eyes of the newborn. Said prophylactic treatment shall be provided within 1 hour of birth and consist of (1) 1% silver nitrate in single-dose containers, or (2) a 1-2 centimeter ribbon of sterile ophthalmic ointment containing tetracycline (1%) or erythromycin (0.5%) in single-use tubes, or (3) other treatment recommended for this purpose as published in the most recent edition of the U.S. Preventive Services Task Force, Guide to Clinical Preventive Services.

### 7.3 Sexually Transmitted Diseases (STDs)

7.3.1 Appendix I list STDs regarded to cause significant morbidity and mortality, can be screened, diagnosed and treated, or are of major public health concerns such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as sexually transmitted and reportable pursuant to 16 Del.C. Ch. 7. For the purposes of this section, a suspect is any person; having positive or clinical findings of a STD; or in whom epidemiologic evidence indicates a STD may exist; or is identified as a sexual contact of a STD case, and is provided treatment for the STD on that basis.

#### 7.3.2 Reporting STDs

7.3.2.1 ~~A physician or any other licensed health care provider professional~~ who diagnoses, suspects or treats a reportable STD and every administrator of a health facility or prison in which there is a case of a reportable STD shall report such case to the Division of Public Health. ~~Unless reportable in number only as specified in Appendix I,~~ Reports provided under this rule shall specify the infected person's name, address, date of birth, gender and race as well as the date of onset, name and stage of disease, type and amount of treatment given and the name and address of the submitting licensed health care professional.

7.3.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopic, cultural, serological, or other evidence suggestive of a reportable STD shall notify the Division of Public Health.

~~Unless reportable in number only as specified in Appendix I,~~ Reports provided under this rule shall specify the name, date of birth, race, gender and address of the persons from whom the specimen was obtained, laboratory findings, and the name and address of the physician and that of the processing clinical laboratory.

7.3.2.3 The manner and timing of reports required by this Section 7.3 shall be made in accordance with Section 2 of these regulations unless otherwise specified by these regulations. ~~for STD's designated with the letter "T" in Appendix I shall be made by telephone, fax, or other rapid electronic means within 1 working day. Reports required by this Section for STD's designated with the letter "N" in Appendix I shall be made at the request of the Division of Public Health, in number only, and in demographic categories specified by the Division of Public Health. All other reports required by this Section for STD's listed in Appendix I shall be placed into the United States mail, faxed, telephoned, or otherwise routed to the Division of Public Health within one working day of diagnosis, suspicion, or treatment.~~

7.3.2.4 All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of Title 16 Del.C., §710, and §711. From information received from laboratory notifications, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person from whom a specimen was obtained. However, if delays resulting from informing the physician may enhance the spread of the STD, or otherwise endanger the health of either individuals or the public, the Division of Public Health may contact the person without first informing the attending physician.

7.3.2.5 Any person or facility required to report a STD under this Section shall permit the Division of Public Health to examine records in order to evaluate compliance with this section.

7.4 Human Immunodeficiency Virus (HIV), Acquired Immunodeficiency Syndrome (AIDS)

7.4.1 HIV/AIDS infection is regarded to cause significant morbidity and mortality, can be screened, diagnosed and treated, and is of major public health concern, such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as notifiable and reportable pursuant to 16 Del.C. Ch. 5. Under this provision the following shall be reported:

7.4.1.1 A diagnosis of HIV, according to the Centers for Disease Control and Prevention case definition of HIV

7.4.1.2 A diagnosis of AIDS, according to the Centers for Disease

7.4.1.3 Control and Prevention case definition of AIDS

7.4.1.4 A positive confirmed result of any test approved and indicative of the presence of HIV.

7.4.1.5 All CD4 T-lymphocyte percentage and test results and all viral load detection test results (detectable and undetectable)

7.4.1.6 A perinatal exposure of a newborn to HIV.

#### 6.4.1 Reporting HIV Infection

7.4.2 Reporting of HIV/AIDS and perinatal exposure of newborns to HIV.

7.4.2.1 A physician or any other licensed health care professional health care provider who diagnoses or treats HIV/AIDS and every administrator of a health care facility or prison in which there is an HIV/AIDS infected person or perinatal exposure to HIV shall report such information to the Division of Public Health. Reports provided under this rule shall specify the infected person's name, address, date of birth, gender, mode of transmission and race as well as the date of HIV positive laboratory result, date of perinatal exposure, date of AIDS diagnosis and stage of disease, type and amount of treatment given and the name and address of the submitting licensed health care professional health care provider.

7.4.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields serological or other evidence of HIV/AIDS, including perinatal exposure to HIV, shall notify the Division of Public Health. Reports provided under this rule shall specify the name, date of birth, race, gender and address of the person from whom the specimen was obtained, laboratory findings, including all CD4 T-lymphocyte percentage and test results and all viral load detection test results (detectable and undetectable), and the name and address of the physician health care provider and that of the processing clinical laboratory.

7.4.2.2.1 Reports made on the basis of an HIV test to detect antibodies shall only be made if confirmed with a Western Blot or other confirmatory test.

7.4.2.2.2 All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report HIV/AIDS consistent with 7.4.2.2.

7.4.2.2.3 Any laboratory that examines specimens, or reporting source finding evidence of HIV, shall permit the Division of Public Health to examine

the records of said laboratory, facility, or office in order to evaluate compliance with this section.

6.4.2.3 Reports made on the basis of an HIV test to detect antibodies shall only be made if confirmed with a Western Blot or other confirmatory test.

6.4.2.4 All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report HIV consistent with 6.4.2.2.

6.4.2.5 Reports of HIV infection required by Section 6.4 shall be placed into the United States mail, using a special envelope that will be provided by the Division of Public Health, and routed to the Division within 48 hours of diagnosis or treatment. Any other reporting method must be approved in advance and must be in a time frame acceptable to the Division.

6.4.2.6 Any laboratory that examines specimens, or reporting source finding evidence of HIV, shall permit the Division of Public Health to examine the records of said laboratory, facility, or office in order to evaluate compliance with this section.

7.4.2.3 Reports made on the basis of perinatal HIV exposure shall be made regardless of confirmatory testing.

7.4.2.4 Reports of HIV/AIDS, required by Section 7.4 shall be placed into the United States mail, using a special envelope that will be provided by the Division of Public Health, and routed to the Division within 48 hours of diagnosis or treatment. Any other reporting method must be approved in advance and must be in a time frame acceptable to the Division.

6.4.2.7 As it is the intent of the Division of Public Health to continue the availability of anonymous HIV counseling and testing, and as it is not the practice to collect the name or other identifying information from a person who is anonymously tested for HIV, and therefore no name is available to be reported, nothing in these regulations shall preclude the performance of anonymous HIV testing.

7.4.2.5 As it is the intent of the Division of Public Health to continue the availability of anonymous HIV counseling and testing, and as it is not the practice to collect the name or other identifying information from a person who is anonymously tested for HIV, and therefore no name is available to be reported, nothing in these regulations shall preclude the performance of anonymous HIV testing.

#### 6.4.3 Confidentiality of HIV Reports

#### 7.4.3 Confidentiality of HIV/AIDS Reports

7.4.3.1 The Division of Public Health will evaluate reports of HIV/AIDS for completeness and potential referrals for service. All case reports will be kept in a confidential and in a secure setting. Once this function is completed, the patient's name will be converted to a code

and then destroyed. From that time forward, the code will be used in lieu of the name to determine if the patient has been previously reported. In carrying out this function, the Division shall destroy the name as expeditiously as possible, but not later than 90 days from receipt of the report.

7.4.3.2 The Division of Public Health will evaluate its procedures for HIV/AIDS named-based reporting on a continuous basis after implementation for timeliness, completeness of reporting, and security of confidential information.

7.4.3.3 The Division of Public Health will follow the December 10, 1999 Morbidity and Mortality Weekly Report Recommendations and Reports, "CDC Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome" document as it pertains to patient records and confidentiality, or any subsequent revisions of said document.

7.4.3.4 All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of 16 Del.C. §710, §711 and §1201-4, §1201A-4A. Any person aggrieved by a violation of this Section shall have a right of action in the Superior Court and may recover for each violation:

7.4.3.4.1 Against any person who negligently violates a provision of this regulation, damages of \$1,000 or actual damages, whichever is greater.

7.4.3.4.2 Against any person who intentionally or recklessly violates a provision of this subchapter, damages of \$5,000 or actual damages, whichever is greater.

7.4.3.4.3 Reasonable attorneys' fees.

7.4.3.4.4 Such other relief, including an injunction, as the court may deem appropriate.

7.4.3.4.5 Any action under this regulation is barred unless the action is commenced within 3 years after the cause of action accrues. A cause of action will accrue when the injured party becomes aware of an unauthorized disclosure.

7.4.3.5 From information received from reports of HIV infection, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person on whom the report is made. However, if delays resulting from informing the physician may enhance the spread of HIV, or otherwise endanger the health of any individuals, the Division of Public Health may contact the person without first informing the attending physician.

~~6.4.4 Duty to Disclose the Identity of Sexual or Needle-sharing Partners of HIV Infected Patients~~

7.4.4 Duty to Disclose the Identity of Sexual or Needle sharing Partners of HIV Infected Patients

7.4.4.1 Any physician, or any other licensed health care professional acting on the orders of a physician, (hereafter referred to as provider), health care provider diagnosing or caring for an HIV infected patient shall disclose the identity of the patient's sexual or needle-sharing partner(s) (if known), including spouses to the Division of Public Health so that the partner(s) may be notified of his or her risk of infection, provided that:

a. ~~The patient's condition satisfies the Centers for Disease Control and Prevention definition of AIDS, or has an HIV infection as evidenced by a positive antibody test which is confirmed by Western Blot, or based upon other tests accepted by prevailing medical opinion, the patient is considered to be infected with HIV;~~

7.4.4.1.1 The provider knows of an identifiable partner at risk of infection who may not have been informed of their potential risk; and

7.4.4.1.2 The provider believes there is a significant risk of harm to the partner; and

7.4.4.1.3 Reasonable efforts have been made to counsel the patient pursuant to 16 Del.C. §1202(e), urging the patient to notify the partner, and the patient has refused or is considered to be unlikely to notify the partner.

e. ~~The provider has made reasonable efforts to inform the patient of the intended disclosure and to give the patient the opportunity to express a preference as to whether the partner be notified by the provider, the patient, or the Division.~~

7.4.4.2 Any health care provider diagnosing or caring for an HIV infected patient shall also report to the Division of Public Health relevant facts about a patient that does not pose a threat to an identifiable partner but, in the professional judgment of the provider based upon stated intended acts, the patient may threaten further spread of HIV to the general population. In this instance the conditions specified in Section 7.4.4.1.3, ~~6.4.4.1(d) and 6.4.4.1(e)~~ shall apply. Disclosure shall be for the purpose of providing appropriate counseling to the patient.

7.4.4.3 Procedures for disclosing information pursuant to this section shall be specified by the Division. ~~Such procedures shall (a) include the requirement that, prior to the Division identifying and notifying a partner, reasonable efforts be made by the Division to counsel the patient and urge the patient's voluntary notification of a partner; (b) specify Division employees permitted to receive the disclosed information; and (c) describe the manner in which partners will be notified pursuant to these regulations.~~

~~6.4.4.4 The provider will prepare and maintain contemporaneous records of compliance with each element of these regulations.~~

7.4.4.4 Division shall have the authority to re-ascertain names for previously reported HIV cases and report them as deemed necessary.

## 7.5 Tuberculosis

7.5.1 Any person afflicted with or suspected of being afflicted with tuberculosis disease and in need of hospitalization and unable to pay the cost, shall be hospitalized at public expense wherever and whenever facilities are available and provided that private or third party funds are not available for this purpose.

### 7.5.2 Reporting Tuberculosis

7.5.2.1 Physicians, pharmacists, nurses, hospital administrators, medical examiners, morticians, laboratory administrators, and other health care providers who provide health care services to a person with diagnosed, suspected or treated tuberculosis (TB) shall report such a case to the Division of Public Health specifying the infected person's name, address, date of birth, race, gender, date of onset, site of disease, prescribed anti-TB medications, and, in the case of laboratory administrators, the name and address of the submitting health professional. A report shall be telephoned into the Division of Public Health within two working days of the provision of service or laboratory finding.

7.5.2.2 Any person who is in charge of a clinical or hospital laboratory or other facility in which a laboratory examination of sputa, gastric contents, or any other specimen derived from human body yields microscopic, cultural, serological or other evidence suggestive of tubercle bacilli shall notify the Division of Public Health by telephone within two working days of the occurrence.

7.5.2.3 Any health care provider, who has knowledge about a person with multiple drug-resistant tuberculosis (MDR-TB), even if the confirmed or suspected TB cases had been previously reported, shall report the occurrence to the Division of Public Health within two days of the occurrence.

7.5.2.4 Persons with TB who have demonstrated an inability or an unwillingness to adhere to a prescribed treatment regimen, who refuse medication, or who show other evidence of not taking anti-TB medications as prescribed, shall be reported to the Division of Public Health within two days of the occurrence.

### 7.5.3 Diagnostic Examinations

7.5.3.1 Any persons suspected of having infectious tuberculosis shall have a Mantoux tuberculin skin test, a chest radiograph, and laboratory examinations of

sputum, gastric contents or other body discharges as may be required by the Division Director or designee to determine whether said patient represents an infectious case of tuberculosis.

7.5.3.2 The Division Director or designee shall determine the names of household and other contacts who may be infected with tuberculosis and cause them to be examined for the presence of tuberculosis disease.

### 7.5.4 Clinical Management

7.5.4.1 In addition to fulfilling the reporting requirements of 7.5.2, health care providers shall manage persons with active TB disease by following one of three courses of action:

7.5.4.1.1 they shall immediately refer the client to the Division of Public Health for comprehensive medical and case management services; or

7.5.4.1.2 they shall provide comprehensive assessment, treatment, and follow-up services (including patient education, directly observed therapy and contact investigation) to the client and his/her contacts consistent with current American Thoracic Society and the Centers for Disease Control and Prevention (ATS/CDC) guidelines; or

7.5.4.1.3 they shall initiate appropriate medical treatment and refer the client to the Division of Public Health for coordination of community services and case management including directly observed therapy (DOT).

If the health care provider chooses 7.5.4.1.2 or 7.5.4.1.3 above, then the Division Director or designee may ask the health care provider for information about the care and management of the patient, and the health care provider shall assure that the requested information is communicated.

7.5.4.2 Patients with infectious tuberculosis who are dangerous to public health may be required by the Division Director or designee to be hospitalized, isolated, or otherwise quarantined. Whenever facilities for adequate isolation and treatment of infectious cases are available in the home and patient will accept said isolation, it shall be left to the discretion of the Division Director or designee as to whether these or other facilities shall be used.

## 8.0 Preparation for Burial.

See 16 Del.C. Ch. 31 and Department of Health and Social Services regulations promulgated thereunder, entitled "Regulations Concerning Care and Transportation of the Dead".

**9.0 Disposal of Infectious Articles, Remains**

No person shall dispose of articles, or human or animal remains known or suspected to be capable of infecting others with a communicable disease in such a manner whereby exposure to such infectious agents may occur. See also "Regulations Concerning Care and Transportation of the Dead", Section 10 ("Disposition of Amputated Parts of Human Bodies").

**10.0 Diseased Animals.****10.1 Importation and Sale**

No person shall bring into this state or offer for sale domestic or wild animals infected or suspected to be infected with a disease communicable from animals to man.

**10.2 Notification**

It shall be the duty of persons having custody of care of animals infected or suspected to be infected with a disease transmitted from animals to man to notify the Division Director or designee of the infection.

**11.0 Notification of Emergency Medical Care Providers of Exposure to Communicable Diseases.****11.1 Definitions**

For the purposes of this section, the following definitions shall apply.

**"Emergency medical care provider"** fire fighter, law enforcement officer, paramedic, emergency medical technician, correctional officer, ambulance attendant, or other person who serves as employee or volunteer of an ambulance service and/or provides pre-hospital emergency medical service.

**"Receiving medical facility"** hospital or similar facility that receives a patient attended by an emergency medical care provider for the purposes of continued medical care.

**"Universal precautions"** those precautions, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments, that minimize the risk of transmission of communicable diseases between patients and health care providers. Universal precautions require that all blood, body fluids, secretions, and excretions of care providers use appropriate barrier precautions to prevent exposure to blood and body fluids of all patients at all times.

**11.2 Universal Precautions****11.2.1 Didactic Instruction**

Education and training with respect to universal precautions shall be a mandatory component of any required training and any required continuing education for all emergency medical care providers who have patient contact. Training shall be appropriately tailored to the needs

and educational background of the person(s) being trained. Training shall include, but not be limited to, the following:

11.2.1.1 Mechanisms and routes of transmission of viral, bacterial, rickettsial, fungal, and mycoplasmal human pathogens.

11.2.1.2 Proper techniques of hand washing, including the theory supporting the effectiveness of hand washing, and guidelines for waterless hand cleansing in the field.

11.2.1.3 Proper techniques and circumstances under which barrier methods of protection (personal protective equipment) from contamination by microbial pathogens are to be implemented. The instruction is to include the theory supporting the benefits of these techniques.

11.2.1.4 The proper techniques of disinfection and clean-up of spills of infectious material. This instruction is to include the use of absorbent, liquid, and chemical disinfectants.

11.2.1.5 Instruction regarding the reporting and documentation of exposures to infectious agents and the requirement for employers to have an exposure control plan.

11.2.1.6 The proper disposal of contaminated needles and other sharps. The instruction is to include information about recapping needles and using puncture-resistant, leak-resistant containers.

11.2.1.7 First aid and immediate care of wounds which may be incurred by an emergency medical care provider.

**11.2.2 Practical or Laboratory Instruction**

Practical sessions addressing the field application of the above didactic instruction must be part of the curriculum. The practical sessions shall provide a means of hands-on experience and training in the proper use of personal protective equipment, hand-washing disinfection, clean-up of infectious spills, handling and disposal of contaminated sharps, and the proper completion of reporting forms.

**12.2.3 Approval of Curricula**

Any provider of mandatory education and training and continuing education pursuant to this section must submit a curriculum for approval by the Division of Public Health and shall not utilize curricula that are not regarded by the Division of Public Health to be in substantial compliance with 10.2.1 and 10.2.2.

**11.3 Communicable Diseases****11.3.1 Communicable Disease Defined**

For the purposes of Section 11 only, exposure to patients infected with the following

communicable disease agents shall warrant notification to an emergency medical care provider pursuant to this section:

- Human Immunodeficiency Virus (HIV)
- Hepatitis B Virus
- Hepatitis C Virus
- Meningococcal disease
- Haemophilus influenzae
- Measles
- Tuberculosis
- Uncommon or rare pathogens

### 11.3.2 Infection Defined

For the purposes of Section 11 only, a patient shall be considered infected with a communicable disease when the following conditions are satisfied:

#### 11.3.2.1 Blood-borne pathogens

11.3.2.1.1 HIV - ELISA and western blot (or other confirmatory test accepted by prevailing medical opinion) tests must be positive.

11.3.2.1.2 Hepatitis B - positive for hepatitis B surface antigen.

11.3.2.1.3 Hepatitis C - ~~(1) IgM anti-HAV negative, and (2) IgM anti-Hbe negative or HBsAg negative, and (3) serum aminotransferase level more than two and one half times the upper limit of normal, or anti-HeB positive.~~ Hepatitis C antibody screening test and more specific supplemental test positive.

#### 11.3.2.2 Air-borne pathogens

11.3.2.2.1 Meningococcal disease - compatible clinical findings and laboratory confirmation through isolation of Neisseria meningitides from a normally sterile site.

11.3.2.2.2 Haemophilus influenzae - compatible clinical findings of epiglottitis or meningitis and laboratory confirmation through isolation of Haemophilus influenzae from a normally sterile site or from the epiglottis.

11.3.2.2.3 Measles - compatible clinical findings with or without laboratory confirmation by one of the following methods: (1) presence of the measles virus from a clinical specimen, or (2) four-fold rise in measles antibody level by any standard serologic assay, or (3) positive serologic test for measles IgM antibody.

11.3.2.2.4 Tuberculosis - compatible clinical findings of pulmonary disease and identification of either acid-fast bacilli in sputum or the pathogen by culture.

#### 11.3.2.3 Uncommon or rare pathogens

Infection with uncommon or rare pathogens determined by the Division of Public Health on a case-by-case basis.

### 11.3.3 Exposure Defined

#### 11.3.3.1 Blood-borne pathogens

Exposure of an emergency medical care provider to a patient infected with a blood-borne pathogen as defined in 11.3.2.1 shall include a needle-stick or other penetrating injury with an item contaminated by a patient's blood, plasma, pleural fluid, peritoneal fluid, or any other body fluid or drainage that contains blood or plasma. Contact of these fluids with mucous membranes or non-intact skin of the emergency medical care provider or extensive contact with intact skin shall also constitute exposure.

#### 11.3.3.2 Air-borne pathogens

Exposure of an emergency medical care provider to a patient infected with an air-borne pathogen as defined in 11.3.2.2 shall be as follows:

11.3.3.2.1 Meningococcal disease and Haemophilus influenza - Close contact with an infected patient's oral secretions or sharing the same air space with an infected patient for one hour or longer without the use of an effective barrier such as a mask.

11.3.3.2.2 Measles - Sharing confined air space with an infected patient, regardless of contact time.

11.3.3.2.3 Tuberculosis- Sharing confined air space with an infected patient, regardless of contact time.

#### 11.3.3.3 Uncommon or rare pathogens

The Division of Public Health shall determine definition of exposure to an uncommon or rare pathogen on a case-by-case basis.

#### 11.3.3.4 Ruling on infection and exposure

When requested by the emergency medical care provider or receiving medical facility, the Division of Public Health shall investigate and issue judgment on any differences of opinion regarding infection and exposure as otherwise defined in 11.3.

### 11.4 Request for Notification

11.4.1 Every employer of an emergency medical care provider and every organization which supervises volunteer emergency medical care providers must register the name(s) of a designated officer who shall perform the following duties. The designated officer shall delegate these duties as may be necessary to ensure compliance with these regulations.

11.4.1.1 receive requests for notification from emergency medical care providers;

11.4.1.2 collect facts relating to the circumstances under which the emergency medical care provider may have been exposed;

11.4.1.3 forward requests for notification to receiving medical facilities;

11.4.1.4 report to the emergency medical care provider findings provided by the receiving medical facility; and

11.4.1.5 assist the emergency medical care provider to take medically appropriate action if necessary.

11.4.2 Receiving medical facilities must register with the Division of Public Health the name or office to whom notification requests should be sent by an emergency medical care provider and who is responsible for ensuring compliance with this section.

11.4.3 If an emergency medical care provider desires to be notified under this regulation, the officer designated pursuant to 11.4.1 shall notify the receiving medical facility within 24 hours after the patient is admitted to or treated by the facility on a form that is prescribed or approved by the State Board of Health.

11.5 Notification of Exposure to Air-borne Pathogens

11.5.1 Notwithstanding any requirement of 11.4.3, a receiving medical facility must make notification when an emergency medical care provider has been exposed to an air-borne communicable disease pursuant to 11.3.2.2 and 11.3.3.2. Such notification shall occur as soon as possible but not more than 48 hours after the exposure has been determined and shall apply to any patient upon whom such a determination has been made within 30 days after the patient is admitted to or treated by the receiving medical facility.

11.5.2 To determine if notification is necessary pursuant to this section, a receiving medical facility must review medical records of a patient infected with an air-borne communicable disease to determine if care was provided by an emergency medical care provider. If medical records do not so indicate, the receiving medical facility shall assume that no notification is required.

11.6 Notification of Exposure when Requested

11.6.1 When a request for notification has been made pursuant to 10.4.3, the receiving medical facility shall attempt to determine if the patient is infected with a communicable disease and if the emergency medical care provider has or has not been exposed. Information provided on the request for notification and medical records and findings in possession of the receiving medical facility shall be used to make this determination. If a determination is made within 30 days after the patient is admitted to or treated by the receiving medical facility, the receiving medical facility shall notify the officer designated pursuant to 10.4.1 as soon as possible but not more than 48 hours after the determination. The following information shall be provided in the notification:

11.6.1.1 The date that the patient was attended by the emergency medical care provider;

11.6.1.2 Whether or not the emergency medical care provider was exposed;

11.6.1.3 If the emergency medical care provider was exposed, the communicable disease involved.

11.6.2 If, after expiration of the 30-day period and because of insufficient information, the receiving medical facility has not determined that the emergency medical care provider has or has not been exposed to a communicable disease, the receiving medical care facility shall so notify the officer designated pursuant to Section 11.4.1 as soon as possible but not more than 48 hours after expiration of the 30-day period. The following information shall be provided in the notification:

11.6.2.1 The date that the patient was attended by the emergency medical care provider;

11.6.2.2 That there is insufficient information to determine if an exposure has occurred;

11.6.3 The receiving medical facility shall provide to the Division of Public Health a copy of each form completed pursuant to 11.4 which shall include information about whether or not the patient is infected, and if the emergency medical care provider is considered by the receiving medical facility to have been exposed.

11.7 Manner of Notification

A receiving medical facility must make a good faith effort, which is reasonably calculated based upon the health risks, the need to maintain confidentiality, and the urgency of intervention associated with the exposure, to expeditiously notify the officer designated pursuant to 11.4.1. If notification is by mail, and if, in the judgment of the receiving medical facility the circumstances warrant, the receiving medical facility shall ensure by telephone or other appropriate means that the designated officer of the emergency medical care provider has received notification.

11.8 Transfer of Patients

If, within the 30-day limitation defined in 11.5.1 and 11.6.1 a patient is transferred from a receiving medical facility to a second receiving medical facility, the receiving medical facility must provide the second facility with all requests for notification made by emergency medical care providers for that patient. The second receiving medical facility must make notification to the officer designated pursuant to 11.4.1 if the facility determines within the remaining part of the 30-day period that the patient is infected and shall otherwise comply with these regulations.

11.9 Death of Patient

If, within the 30-day limitation defined in 11.5.1 and 11.6.1, a patient is transferred from a receiving medical facility to a medical examiner, the receiving medical



Babesiosis  
Botulism (T)  
Brucellosis (T)  
Campylobacteriosis  
Chancroid (S)  
Chickenpox (Varicella)  
Chlamydia (S)  
Cholera (toxigenic Vibrio cholerae 01 or 0139) (T)  
Coccidioidomycosis  
Creutzfeldt-Jakob Disease (T)  
Cryptosporidiosis  
Cyclosporiasis  
Cytomegalovirus  
Dengue Fever (T)  
Diphtheria (T)  
Enterhemorrhagic E.coli including but not limited to E.coli 0157:H7 (T)  
Ehrlichiosis  
Encephalitis  
Enterococcus species, Vancomycin resistant (A)  
ESBL resistance (Extended-Spectrum B-lactamases) (A)  
Foodborne Disease Outbreak (T)  
Giardiasis  
Glanders (T)  
Gonorrhea (S)  
Granuloma inguinale (S)  
Guillain-Barre  
Hansen's Disease (Leprosy)  
Hantavirus (T)  
Haemophilus influenzae, invasive  
Hemolytic Uremic Syndrome (T)  
Hepatitis A (T)  
Hepatitis B  
Hepatitis C  
Hepatitis Other  
Herpes, congenital (S)  
Herpes, genital (S)  
Histoplasmosis  
HIV (S)  
Human Papillomavirus (S)  
Influenza  
Influenza Associated Infant Mortality (T)  
Kawasaki Syndrome  
Lead Poisoning  
Legionellosis  
Leptospirosis  
Listeriosis  
Lyme Disease  
Lymphogranuloma venereum (S)  
Malaria  
Measles (T)  
Melioidosis  
Meningitis  
Meningococcal Infections, all types (T)  
Monkey Pox (T)  
Mumps (T)  
Norovirus  
Nosocomial Disease Outbreak (T)  
Pelvic Inflammatory Disease (N. gonorrhea, C. trachomatis, or unspecified) (S)  
Pertussis (T)  
Plague (T)  
Poliomyelitis (T)  
Psittacosis  
Q Fever  
Rabies (man and animal) (T)  
Reye Syndrome  
Rheumatic Fever  
Ricin Toxin (T)  
Rickettsial Disease  
Rocky Mountain Spotted Fever  
Rubella (including congenital which is rapidly reportable)  
Salmonellosis  
Severe Acute Respiratory Syndrome (SARS) (T)  
Shigatoxin Production  
Shigellosis  
Silicosis  
Smallpox (T)  
Staphylococcal Enterotoxin (T)  
Staphylococcal aureus, Methicillin Resistant (MRSA) (A)  
Staphylococcal aureus, Vancomycin Intermediate or Resistant (VISA, VRSA) (T) (A)  
Streptococcal Disease, invasive group A or B (T)  
Streptococcus pneumoniae, invasive (sensitive and resistant) (A)  
Syphilis (S)  
Tetanus (T)  
Toxic Shock Syndrome (Streptococcal or Staphylococcal)  
Toxoplasmosis  
Trichinellosis  
Tuberculosis (T)  
Tularemia (T)  
Typhoid Fever (T)  
Typhus Fever (endemic flea borne, louse borne, tick borne)  
Vaccine Adverse Reaction  
Vibrio, non-cholera  
Viral Hemorrhagic Fevers (T)  
Waterborne Disease Outbreaks (T)  
Yellow Fever (T)  
Yersiniosis

(T) - report by rapid means (telephone, fax or other electronic means)

(S) - sexually transmitted disease, report required within 24 hours

(A) - Drug Resistant Organisms required to be reported within 48 hours

Others - report required within 48 hours

#### **APPENDIX H**

#### **DRUG-RESISTANT ORGANISMS REQUIRED TO BE REPORTED**

Staphylococcus aureus intermediate or resistance to Vancomycin (MIC >8ug/ml)

Streptococcus pneumoniae drug-resistant, invasive disease

#### **APPENDIX II**

#### **Organisms and Samples to be sent to the Division of Public Health Laboratory**

1. Clinical or hospital laboratories, or other facilities, that presumptively identify or are unable to rule out the following organisms shall send an isolate or specimen to the Delaware Public Health Laboratory for testing immediately:

Brucella species

Burkholderia mallei

Burkholderia pseudomallei

Clostridium botulinum

Francisella tularensis

Yersinia pestis

Bacillus anthracis

2. Any environmental sample deemed as credible threats for harboring a toxin or a biological agent of terrorism shall be sent to the Delaware Public Health Laboratory for testing immediately upon identification:

3. Clinical specimens from patients potentially exposed to a chemical agent of terrorism shall be sent to the Public Health Laboratory for testing immediately upon identification.

4. Clinical specimens from suspect human cases of the following infections shall be sent to the Delaware Public Health Laboratory for testing immediately upon identification

Monkeypox

Variola (Smallpox)

Vaccinia

SARS

5. The following isolates from humans shall be sent to the Delaware Public Health Laboratory for testing within 24 hours of identification:

Enterohemorrhagic E. coli, including O157

Haemophilus influenzae, sterile sites

Mycobacterium tuberculosis

Listeria monocytogenes

Neisseria meningitidis, sterile sites

Salmonella species

Shigella species

Streptococcus pneumoniae, sterile sites, Penicillin resistant

Staphylococcus aureus, sterile sites, Methicillin resistant

Staphylococcus aureus, Vancomycin intermediate or resistant (VISA, VRSA)

Vancomycin resistant Enterococci, (VRE) sterile series

Vibrio cholerae and Non-cholerae

#### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3).0 (16 Del.C. §122(3).0)  
16 DE Admin. Code 4406

#### **PUBLIC NOTICE**

#### **4406 Home Health Agencies (Licensure)**

These regulations, "State of Delaware Regulations for Home Health Agencies," replace by revision the current "State of Delaware Regulations for Home Health Agencies" previously adopted on February 15, 1986.

#### **Nature of the Proceedings**

The proposed Delaware Regulations for Home Health Agencies incorporate a myriad changes in the health care delivery system in the last 17 years and the most recent changes prompted by passage of HB 507 in June 2002. Major changes include:

- Requirement that the Home Health Agency office be located in Delaware;
- Requirement of a separate license for each office;
- Establishment of a 90-day probationary license;
- Addition of an "Order to Suspend" a license;
- Time restraint on reissue of a revoked license;

- Addition of Care Management Plan language;
- Definition of and a procedure for change of ownership;
- Involvement of a Registered Nurse for non-skilled patients;
- Requirement for reporting of major adverse incidents.

### **Notice of Public Hearing**

The Office of Health Facilities Licensing and Certification, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware Regulations for Home Health Agencies on February 7, 2006 at 1:00 p.m., in the Public Health Preparedness Training Center, Suite 4F, Blue Hen Corporate Center, 655 S. Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Health Facilities Licensing and  
Certification  
2055 Limestone Road, Suite 200  
Wilmington, DE 19808  
Telephone: (302) 995-8521

Anyone wishing to present his or her comments at this hearing should contact Ms. Vanette Seals at (302) 995-8521 by February 6, 2006. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by February 8, 2006 to:

David P. Walton, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, Delaware 19901

### **4406 Home Health Agencies (Licensure)**

#### **Part 1: ~~General Terms, Conditions and Requirements~~ Definitions, Application and Licensure Actions**

##### **1.0 Definitions**

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

**“Activities of Daily Living”** The tasks for self-care which are performed either independently, with supervision, or with assistance. Activities of daily living include ambulating, transferring, grooming, bathing, dressing, eating, and toileting.

**“Aide”** A non-licensed person (assistant, technician or other designation used) who provides personal care or home health aide services to an individual primarily in their place of residence and (A) has at least one year of practical experience in a hospital, nursing home, or home care setting; or (B) has satisfactorily completed an appropriate home care course which includes the training requirements contained within these regulations; or (C) is a student nurse pursuing a degree in nursing who has completed the clinical practicum portion of their training.

**“Audiologist”** An individual who is licensed to practice audiology pursuant to 24 **Del.C.** Ch. 37 and who offers the services to the public under any title or description of services incorporating the words "audiologist," "hearing clinician," "hearing therapist," "aural rehabilitator" or any other similar title or description of service.

**“Audiology Aide”** An individual who is certified by the Council of Accreditation of Occupational Hearing Conservationists pursuant to 24 **Del.C.** Ch. 37 and who performs services only under the direct supervision of an audiologist licensed in this State.

**“Branch Office”** A separately licensed office within the State which is located within fifty miles of the parent agency and shares administrative/supervisory functions with the parent. The branch maintains patient and employee records while patients and employees are active with the agency.

**“Bylaws”** A set of rules adopted by a home health agency for governing the agency’s operation.

**“Caregivers”** Those individuals employed by or under contract to a home health agency to provide personal care services or health care services to patients.

**“Change of Ownership (CHOW)”** A change in the legal structure by which the agency is owned and operated.

**“Clinical Director”** A physician or a registered nurse who is sufficiently qualified to provide general supervision and direction of the skilled services offered by the home health agency.

**“Companion”** A person who provides social interaction for an individual primarily in her/his place of residence. A companion may not provide hands-on personal care to the individual. A companion may provide such services as cooking, housekeeping, errands, etc.

**“Contractor”** An entity or individual (subcontractor, independent contractor or other designation used) that does not meet the definition of employee, who holds a valid business license and provides services for the agency.

**“Department”** The Delaware Department of Health and Social Services.

**“Dietitian”** An individual who engages in the provision of nutrition services pursuant to 24 Del.C. Ch. 38. The terms nutritionist and dietitian are used interchangeably.

**“Director”** A job-descriptive term used to identify the individual appointed by the governing body to act on its behalf in the overall management of the home health agency. Job titles may include administrator, superintendent, director, executive director, president, vice-president, and executive vice-president. ~~The director shall be one of the following: a physician, a registered nurse, or an individual with training or experience in health services, administration, or public health, and with at least one year of supervisory experience in home health care or related health programs.~~

**Division** means the Delaware Division of Public Health.

**“Governing Body or Other Legal Authority”**

The individual, partnership, agency, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation, and financial liability of the home health agency.

**“Home Health Agency (HHA)”** Any business entity or sub-division thereof, whether public or private, proprietary or not-for-profit, which provides, to an individual primarily in their place of residence, directly or through contract arrangements, to individuals in their home or private residence (excluding residents of hospitals and nursing homes); home care services. Home health agencies shall provide: either (1) multiple services including two or more of the following home health care services, one of which must be either licensed nursing, home health aide services, physical therapy, speech pathology, occupational therapy, or social services; and where at least one of these services is licensed nursing services or home health aide services; or (2) home health aide personal care services exclusively. provided under appropriate supervision. Home health agency does not include any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a registered church or religious denomination.

**“Home Health Aide”** An aide who provides personal care services and who may perform tasks delegated by a licensed nurse as permitted by 24 Del.C. Ch. 19 non-licensed person who (1) has at least one year of practical experience in a hospital, nursing home, or home care setting; or (2) has satisfactorily completed an appropriate home care course which includes the training requirements contained within these regulations; or (3) a student nurse pursuing a degree in nursing who has completed the clinical practicum

portion of their training; and (4) provides personal and health care services to an individual in their place of residence.

**“Home Health Care Services”** Services, provided to an individual primarily in their place of residence, that include but are not limited to: licensed nursing services; physical therapy services; speech therapy services; audiology services; occupational therapy services; nutritional services; social services; or, home health aide services.

**“Homemaker”** A person who performs household chores for an individual in her/his place of residence. Household chores may include but are not necessarily limited to housekeeping, meal preparation, and shopping. A homemaker may not provide hands-on personal care to the individual.

**“Immediate Jeopardy”** A crisis situation in which the health and safety of patients is at risk. It is a deficient practice which indicates an inability to furnish safe care and services.

**“License”** ~~shall mean~~ A license issued by the Department ~~Division~~ of Public Health.

**Licensed Clinical Social Worker** An individual licensed pursuant to 24 Del.C. Ch. 39.

**“Licensed Independent Practitioner”** An advanced practice nurse or physician’s assistant licensed pursuant to 24 Del.C. Ch. 17 and 24 Del.C. Ch. 19.

**“Licensee”** The individual, corporation, or public entity with whom rests the ultimate responsibility for maintaining approved standards for the home health agency.

**“Nurse”** An individual who is currently licensed to practice nursing pursuant to 24 Del.C. Ch. 19.

**“Nursing Services”** The performance of services pursuant to 24 Del.C. Ch. 19.

**“Occupational Therapist”** An individual who is currently licensed as such in this State to practice occupational therapy pursuant to 24 Del.C. Ch. 20 and who offers the services to the public under any title incorporating the words "occupational therapy," "occupational therapist" or any similar title or description of occupational therapy services.

**“Occupational Therapist Assistant”** anyone working under the direction of a registered occupational therapist; and (2) is a graduate of an Occupational Therapy Assistant educational program approved by the American Occupational Therapy Association; and (3) has achieved a satisfactory passing score on the National Examination sponsored by the American Occupational Therapy Association. An individual licensed to assist in the practice of occupational therapy pursuant to 24 Del.C. Ch. 20, under the supervision of an occupational therapist.

**“Office”** The physical location in which the business of the home health agency is conducted and in which the records of personnel, contractors and patients of the agency are stored. The office shall be located in the State of Delaware.

**“Other Therapist”** An individual who performs therapy duties, other than physical, occupational, and speech, and has completed a training program and, where appropriate, is licensed by the State.

**“Parent Agency”** The agency located within the State that develops and maintains administrative/supervisory control of branch offices. The parent agency is separately licensed from the branch(es) and must be located within fifty miles of any branch.

**“Patient”** The individual (client, consumer, or other designation used) receiving home health agency services as defined in this chapter.

**“Patient Service Record”** A written account of all home health aide services provided to a patient by the home health agency, as well as other pertinent information necessary to provide care.

**“Personal Care Aide”** An aide who provides personal care services.

**“Personal Care Services”** The provision of services that do not require the judgment and skills of a licensed nurse or other professional. The services are limited to individual assistance with/or supervision of essential activities of daily living, such as eating, bathing, grooming, dressing and ambulating, supervision of self-administered medication, helping with prescribed exercises, performing incidental household services, reporting changes in patient's condition and completing reports and similar services. Personal care services do not include solely companion or homemaker services. Personal care services shall not be construed to mean the provision of medical, nursing, dental, or mental health services.

**“Physical Therapist”** An individual who is currently licensed as such in this State to practice physical therapy pursuant to 24 Del.C. Ch. 26.

**“Physical Therapist Assistant”** anyone working under the direction of a qualified physical therapist An individual who assists licensed physical therapists pursuant to 24 Del.C. Ch. 26.

**“Physician”** An individual currently licensed to practice medicine, surgery, or osteopathy in this State as such by 24 Del.C. Ch. 17.

**“Plan of Care”** A written plan that specifies scope, frequency and duration of services.

**“Plan of Correction”** A home health agency's written response to findings of regulatory non-compliance. Plans must adhere to the format specified by the licensing

agency, must include acceptable timeframes in which deficiencies will be corrected and must be approved by the licensing agency.

**Practical Nurse** An individual who is currently licensed as such in this State.

**“Professional”** A person currently licensed in the State as a registered nurse, physician, physical therapist, occupational therapist, speech therapist, dentist, dietitian, social worker, respiratory care practitioner or psychologist.

**“Professional Therapy”** Those services provided by a licensed professional in one of the following areas: physical therapy, occupational therapy, speech therapy, audiology, or nutrition.

**Registered Nurse** An individual who is currently licensed as such in this State.

**“Representative”** A person acting on behalf of the patient under Delaware law.

**Services Director** One of the following: a physician, registered nurse, or an alternate professional, who is sufficiently qualified to provide general supervision and direction of the personnel services offered by the home health agency.

**“Skilled Services”** Those services provided directly by a licensed professional for the purpose of promoting, maintaining, or restoring the health of an individual or to minimize the effects of injury, illness, or disability. Skilled services must be ordered by a physician.

**“Social worker”** An individual who has met the requirements of a graduate curriculum, leading to a master's degree, in a school of social work that is accredited by the council on Social Work Education; or who has the documented equivalent in education, training, and/or experience.

**“Speech Therapist”** An individual who is currently licensed as such in this State.

**“Speech/Language Pathologist”** An individual who is currently licensed pursuant to 24 Del.C. Ch. 37 and who offers the services to the public under any title or description of services incorporating the words "speech/language pathologist," "speech pathologist," "language pathologist," "speech and/or language therapist," "speech and/or language correctionist," "speech and/or language clinician," "voice therapist," "communicologist," "aphasiologist" or any other similar title or description of service.

**“Speech Pathology Aide”** An individual who meets minimum qualifications pursuant to 24 Del.C. Ch. 37, which permit a speech pathology aide to assist speech/language pathologists in their professional endeavors, but only while under the direct supervision of a licensed speech/language pathologist.

“Supervision of Services” Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

## 2.0 Licensure Application, Issuance and Renewal Requirements and Procedures

### 2.1 Interpretations General Requirements

2.1.1 Licenses Required. No person, private or public organization, political subdivision, or other governmental agency shall establish, conduct, or maintain in this State any home health agency without first obtaining a license from the Division of Public Health Department. No application shall be approved and no license shall be issued until representatives of the Division of Public Health have conducted an inspection of the home health agency for determination of compliance with these standards.

2.1.2 The term home health agency shall not be used as a part of the name of any agency or organization in this state, unless it has been so classified by the Division of Public Health. A separate license shall be required for each office maintained by a home health agency.

2.1.3 Effective Date and Term of License. A license shall be effective for a twelve-month period following date of issue and shall expire one year following such date; however, a facility which has not been inspected during that year may continue to operate under its existing license until an inspection is made. A license issued under this Act is not assignable or transferable from person to person or from one location to another.

2.1.4 The license and is subject to suspension or revocation at any time for failure to comply with this Act and shall be posted in a conspicuous place on the licensed premises.

2.1.4 Application. A person desiring to obtain a license shall file with the Division of Public Health an application on a form prescribed, prepared, and furnished by the Division. The application must state the geographical area in which the home health agency will provide services. The agency will provide the name and address of each officer, director, and owner of the home health agency having an interest of ten percent or more.

2.1.5 Inspection. Each home health agency for which a license has been issued shall be subject to inspection at any time without prior notice by authorized representatives of the Division of Public Health.

### 2.2 Separate Licenses for Offices Application Process

2.2.1 No separate licenses are required for offices where the parent home health agency is located within the State, however, these offices will be subject to

inspection by the licensing agency. All persons or entities applying for a license shall submit a written statement of intent to the Department describing the services to be offered by the agency and requesting a licensure application from the Department.

2.2.1.1 The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department.

2.2.1.2 Patients shall not be admitted to an agency until a license has been issued.

2.2.1.3 Applicants shall not hold themselves out to the public as being an agency until a license has been issued.

2.2.2 Where a parent agency is located outside the State and has offices located within the State, the office shall be subject to State survey for licensing under these regulations. Applicants shall submit to the Department the following information:

2.2.2.1 The names, addresses and types of facilities owned or managed by the applicant.

2.2.2.2 Identity of:

2.2.2.2.1 Each officer and director of the corporation if the entity is organized as a corporation;

2.2.2.2.2 Each general partner or managing member if the entity is organized as an unincorporated entity;

2.2.2.2.3 The governing body;

2.2.2.2.4 Proof of not-for-profit status if claiming tax-exempt status; and,

2.2.2.2.5 Any officers/directors, partners, or managing members, or members of a governing body who have a financial interest of five percent (5%) or more in a licensee’s operation or related businesses.

2.2.2.3 When both a parent agency and its offices are located outside the State in a jurisdiction with a reciprocal agreement for home health licensure, the agency shall be inspected at the discretion of the Division of Public Health. In the absence of a reciprocal agreement, the agency shall agree to a State survey for licensing the agency’s services to Delaware residents. Disclosure of any officer, director, partner, employee, managing member, or member of the governing body with a felony criminal record;

2.2.2.4 Name of the individual (director/administrator/etc.) who is responsible for the management of the home health agency;

2.2.2.5 Policy and procedure manuals as requested;

2.2.2.6 A list of management personnel, including qualifications;

2.2.2.7 A plan for providing continuing education and training for agency personnel or contractors during the first year of operation; and

2.2.2.8 Any other information required by the Department.

### 2.3 Issuance of Licenses

#### 2.3.1 Probationary license

2.3.1.1 A probationary license shall be granted for a period of ninety (90) calendar days to all home health agencies:

2.3.1.1.1 Which have completed the application process and whose policies and procedures have demonstrated willingness to comply with the rules and regulations pertaining to home health licensure; or

2.3.1.1.2 Which have experienced a change of ownership (CHOW) and have completed the application process demonstrating a willingness to continue to comply with the rules and regulations pertaining to home health licensure.

2.3.1.2 All home health agencies shall have an on-site survey during the first ninety (90) days of operation.

2.3.1.3 A probationary license will permit an agency to establish a patient caseload and hire or contract with caregivers.

2.3.1.4 A probationary license may not be renewed. A home health agency, at the time of an initial on-site survey, must meet the definition of a home health agency as contained within these regulations and must be in operation and caring for patients.

2.3.1.5 Home health agencies which, at the time of an on-site survey, do not meet the definition of a home health agency or which are not in substantial compliance with these regulations will not be granted a license.

#### 2.3.2 Provisional license

2.3.2.1 A provisional license shall be granted, for a period of less than one year, to all home health agencies:

2.3.2.1.1 Which are not in substantial compliance with these rules and regulations; or

2.3.2.1.2 Which fail to renew a license within the timeframe prescribed by these regulations.

2.3.2.2 The Department shall designate the conditions and the time period under which a provisional license is issued.

2.3.2.3 A provisional license may not be renewed unless a Plan of Correction has been approved by the Department and implemented by the home health agency.

2.3.2.4 A license will not be granted after the provisional licensure period to any agency that is not in substantial compliance with these rules and regulations.

#### 2.3.3 License

2.3.3.1 A license shall be granted, for a period of one year (12 months) to all home health agencies which are and remain in substantial compliance with these rules and regulations.

2.3.3.2 A license shall be effective for a twelve-month period following date of issue and shall expire one year following the issue date, unless it is: modified to a provisional, suspended or revoked, or surrendered prior to the expiration date.

2.3.3.3 Existing home health agencies must apply for licensure at least thirty (30) calendar days prior to the expiration date of the license.

2.3.3.4 Home health agencies which have not been inspected/surveyed during a licensure year may apply for and be issued a new license until an inspection/survey is completed.

2.3.3.5 A license may not be issued to a home health agency which is not in substantial compliance with these regulations or whose deficient practices present an immediate threat to the health and safety of its patients.

### **~~3.0 Licensure Revocation or Nonrenewal~~**

#### ~~3.1 Reasons for Action~~

#### ~~2.4 Licensure Action~~

~~2.4.1 Division of Public Health refusals. The Division of Public Health Department may deny an application for, may refuse to renew a license, may issue an order to suspend, may suspend, or may revoke a license issued under this chapter or limit a license of a home health agency, or may suspend admissions for good cause, including but not limited to one of the following reasons:~~

~~2.4.1.1 A violation of this subpart, the act, or of other statutes any of the provisions of these rules and regulations, which threatens the health, safety, and welfare of patients;~~

~~2.4.1.2 Failure of an owner to submit a reasonable timetable for correction of deficiencies;~~

~~2.4.1.3 The existence of a pattern of cyclical deficiencies which extends over a period of two or more years;~~

~~2.4.1.4 Failure, by the holder of a provisional license, to correct deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the Division of Public Health Department;~~

~~2.4.1.5 Fraud or deceit in obtaining or attempting to obtain a license. Conduct or practices detrimental to the welfare of the patients;~~

2.4.1.6 Lending, borrowing, or using the license of another, or in knowingly aiding or abetting the improper granting of a license. Incompetence, negligence, or misconduct in operating the home health agency or in providing services to individuals;

2.4.1.7 Mistreating or abusing individuals cared for by the home health agency;

2.4.1.8 Serious violation of statutes relating to Medical Assistance or Medicare reimbursement for those agencies who participate in those programs; or

2.4.1.9 Refusal to allow the Department access to the agency or records for the purpose of conducting inspections/surveys/investigations as deemed necessary by the Department.

#### 2.4.2 Order to suspend a license

2.4.2.1 The Department may immediately suspend a license upon issuance of a written suspension order if the health, safety, or well being of the patients is in immediate jeopardy or imminent danger. The order shall state the reason(s) for the suspension. Reasons to immediately suspend a license shall include but are not limited to:

2.4.2.1.1 Deficient practices which present a threat to the health and safety of patients.

2.4.2.1.2 Fraud or deceit in obtaining a license.

2.4.2.1.3 Permitting, aiding, abetting or tolerating the commission of any illegal act by the agency or any of its representatives.

2.4.2.1.4 Failure to follow established policies and procedures resulting in abuse, neglect, mistreatment, financial exploitation, an unsafe environment or a violation of **Delaware Code**.

2.4.2.2 Within ten (10) working days of the issuance of the suspension order, the Department shall hold a hearing with the licensee, if requested by the licensee, unless, prior to the hearing, the conditions upon which the suspension were based have been corrected and a new license issued.

2.4.3 Before any license issued under this chapter is suspended (except as authorized by 2.4.2) or revoked or before admissions are suspended:

2.4.3.1 The Department shall give ten (10) calendar days written notice to the holder of the license, during which he may appeal for a hearing before the Secretary of the Department or her/his designee.

2.4.3.2 A licensee desiring a hearing before the Secretary of the Department or her/his designee must submit a written appeal to the Department. The written appeal must be received by the Department within ten (10)

calendar days of the licensee's receipt of the notice of adverse action.

#### 2.4.4 Renewal of license after suspension

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

2.4.5 Application for license after termination of rights to provide services as a home health agency.

2.4.5.1 Termination of rights to provide services as a home health agency occurs secondary to:

2.4.5.1.1 Revocation of a license; or

2.4.5.1.2 Voluntary surrender of a license in avoidance of revocation action.

2.4.5.2 Termination of rights to provide services extends to:

2.4.5.2.1 Agency;

2.4.5.2.2 Owner(s);

2.4.5.2.3 Officers/Directors, partners, managing members, or members of a governing body who have a financial interest of five percent (5%) or more in the home health agency; and

2.4.5.2.4 Corporation officers.

2.4.5.3 The application for license after termination of rights to provide services as a home health agency shall follow the procedure for initial licensure application.

2.4.5.4 In addition to the licensure application, the home health agency must also submit and obtain approval of a detailed plan regarding how the agency intends to correct the deficient practices that lead to the original termination action. Submission of evidence supporting compliance with the plan and cooperation with Department monitoring during probationary and provisional licensure status is required for reinstatement to full licensure status.

2.4.5.5 Upon successful completion of the probationary period, the home health agency will be granted a provisional license for a period no less than one (1) year but no greater than (2) years. The provisional period will be identified by the Department after having considered the circumstances that created the original action for license revocation.

2.4.5.6 A license will be granted to the home health agency after the provisional licensure period if:

2.4.5.6.1 The agency has remained in substantial compliance with these rules and regulations and

2.4.5.6.2 The agency fulfilled the expectations of the detailed plan that was created to address the deficient practices that gave rise to the license termination action.

2.4.5.7 A license will not be granted after the probationary or provisional licensure period to any agency that is not in substantial compliance with these rules and regulations.

2.4.6 Disciplinary action

2.4.6.1 The Department may request the Superior Court to impose a civil penalty of not more than \$10,000 for a violation of these regulations. Each day a violation continues constitutes a separate violation.

2.4.6.2 In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty of not more than \$10,000 for a violation of these regulations. Each day a violation continues constitutes a separate violation.

2.4.6.3 In determining the amount of any civil or administrative penalty imposed, the Court or the Department shall consider the following factors:

2.4.6.3.1 The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health or safety of a patient(s);

2.4.6.3.2 The history of violations committed by the person or the person's affiliate(s), employee(s), or controlling person(s);

2.4.6.3.3 The efforts made by the agency to correct the violation(s);

2.4.6.3.4 The culpability of the person or persons who commit the violation(s);

2.4.6.3.5 Any misrepresentation made to the Department; and

2.4.6.3.6 Any other matter that affects the health, safety or welfare of a patient(s).

2.5 Change of Ownership (CHOW)

2.5.1 A proposed CHOW must be reported to the Department a minimum of thirty (30) calendar days prior to the change. The new agency must complete the steps outlined within these regulations in order to be licensed.

2.5.2 A change of ownership occurs whenever the ultimate legal authority for the responsibility of the agency's operation is transferred.

2.5.3 Transactions constituting a change of ownership include but are not limited to:

2.5.3.1 Transfer of the agency's legal title;

2.5.3.2 Lease of the agency's operations;

2.5.3.3 Dissolution of any partnership that owns, or owns a controlling interest in, the agency;

2.5.3.4 One partnership is replaced by another through the removal, addition, or substitution of a partner;

2.5.3.5 Removal of the general partner, or general partners, if the agency is owned by a limited partnership;

2.5.3.6 Merger of an agency owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are cancelled; or

2.5.3.7 The consolidation of a corporate agency owner with one or more corporations.

2.5.4 Transactions which do not constitute a change of ownership include, but are not limited to, the following:

2.5.4.1 Changes in the membership of a corporate board of directors or board of trustees;

2.5.4.2 Two or more corporations merge and the originally licensed corporation survives;

2.5.4.3 Changes in the membership of a non-profit corporation; or

2.5.4.4 Corporate stock transfers or sales.

2.6 Fees

2.6.1 Fees shall be in accordance with 16 **Del.C.** §122 (3) o.

2.7 Inspection

2.7.1 A representative of the Department shall periodically inspect every home health agency for which a license has been issued under this chapter. Inspections by authorized representatives of the Department may occur at any time and may be scheduled or unannounced.

2.8 Notice to Patients

2.8.1 The home health agency shall notify each patient or the patient's authorized representative, the patient's attending physician (as appropriate), and any third-party payers at least thirty (30) calendar days before the voluntary surrender of its license, or as directed under an order of denial, revocation, or suspension of license issued by the ~~Division of Public Health~~ Department.

2.9 Exclusions from Licensure

2.9.1 Those individuals who contract directly with a patient to provide services for that individual patient. The patient pays the individual contractor for services rendered and neither the patient nor the individual pays an agency on a periodic basis.

2.9.2 Those agencies that provide only durable medical equipment and supplies for in-home use.

2.9.3 Those agencies that provide staff to licensed home health agencies, such as temporary employment/staffing agencies.

2.9.3.1 Temporary employment/staffing agencies may not provide services under direct agreements with patients.

2.9.3.2 Temporary employment/staffing agencies must be contractually bound to perform services under the contracting providers' direction and supervision.

2.9.3.3 Temporary staff working for a licensed provider must meet the requirements of these regulations.

2.9.4 Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a registered church or religious denomination.

2.9.5 An agency which solely provides services as defined in 16 Del.C. Ch. 94.

2.9.6 An agency that provides companion or homemaker services exclusively and does not provide skilled or personal care services to patients.

3.3 Notice and Hearing Prior to Denial, Suspension, or Revocation of License

3.3.1 Should the Division of Public Health determine to deny, suspend, or revoke a license or place a home health agency on probation, it shall send to the applicant or licensee, by registered mail, a notice setting forth the particular reasons for the determination. The denial, suspension, probation, or revocation shall become final thirty days after the mailing of the notice unless the applicant or licensee, within such thirty-day period, shall give written notice of his desire for a hearing. If the applicant or licensee shall give such notice, he shall be given a hearing before the Division of Public Health or its designee and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside; and a copy of such reasons upon which it is based, shall be sent by registered mail to the applicant or licensee. The decision shall become final thirty days after it is mailed, unless the applicant or licensee, within such thirty-day period, appeals the decision to the appropriate Court of the State.

### 3.4 Provisional Status

3.4.1 The Division of Public Health may issue a provisional license for a period of less than one year in instances where:

3.4.1.1 The home health agency is in existence in Delaware at the time of promulgation of these regulations and requires a reasonable time period during which it may come into compliance with these regulations;

3.4.1.2 The home health agency has failed to demonstrate substantial compliance with the regulations but has indicated, in writing, its willingness to take the necessary corrective action to achieve substantial compliance.

3.4.1.3 The Division of Public Health shall designate the conditions and the time period under which a provisional license is being issued.

3.4.2A provisional license may not be renewed unless the deficiencies have been substantially corrected or a satisfactory Plan for Correction Action is implemented.

## **Part 2 General Requirements for All Home Health Agencies**

### **3.0 General Requirements**

3.1 The home health agency shall neither knowingly admit, nor continue to care for, patients whose needs cannot be met by the program.

3.2 All records maintained by the home health agency shall at all times be open to inspection by the authorized representatives of the Department.

3.3 No policies shall be adopted by the home health agency which are in conflict with these regulations.

#### 4.9 Rights of Patients/Clients

4.9.1 The home health agency must establish written policies regarding the rights and responsibilities of patients, and these policies and procedures are to be made available to patient/family or patient/guardian. The rights of patients shall be consistent with Title 16 and 31 of the Delaware Code and the Division of Public Health Regulations regarding Patient's Rights.

3.4 The home health agency shall establish written policies regarding the rights and responsibilities of patients, and these policies and procedures shall be made available to authorized representatives of the Department.

3.5 The home health agency shall establish policies and procedures that address the handling and documentation of incidents, accidents, and medical emergencies. Reports of these events shall be kept on file at the agency.

4.8 Policies Which Control the Exposure of Patients and Staff to Persons with Communicable Diseases

3.6 The home health agency shall establish policies which control the exposure of patients and staff to persons with communicable diseases and which require reporting of all reportable communicable diseases to the Department.

3.7 A procedure, approved by the Department and including the patients and families right to report concerns/complaints to the Department at a telephone number established for that purpose, shall be established to enable patients and their families or representatives, if any, to have their concerns addressed without fear of reprisal.

3.8 The home health agency shall advise the Department in writing within fifteen (15) calendar days following any change in the designation of the director/

administrator or other administrative personnel within the agency.

3.9 The home health agency may not establish separate offices without first contacting and receiving approval from the Department.

3.10 The home health agency may contract for services to be provided to its patients. Individuals providing services under contract must meet the same requirements as those persons employed directly by the agency.

3.11 The director or clinical director shall be available at all times during the operating hours of the home health agency.

3.12 There shall be a policy describing the procedure to be followed in the event that the home health agency is not able to provide services scheduled for any particular day or time. This policy shall include at a minimum:

3.12.1 The procedure for contacting the patient prior to the missed visit;

3.12.2 The procedure for attempts to find a substitute caregiver; and

3.12.3 Documentation of the missed visit, patient contact, and attempts to find a substitute caregiver.

3.13 The home health agency shall advise the Department in writing at least thirty (30) calendar days prior to any change in office location.

3.14 The home health agency must permit photocopying of any records or other information by, or on behalf of authorized representatives of the Department, as necessary to determine or verify compliance with these regulations.

## **8.0 Governing Authority/Administration**

### **8.1 Written Bylaws for Service/Management**

8.1.1 The governing body or other legal authority shall organize agency services to ensure quality patient care. An organizational chart with a written description of the organization, authorities, responsibilities, accountabilities, and relationships shall be maintained which shall include, but not limited to:

- . A description of each type of home health aide service offered;
- . Policies and procedures pertaining to these services;
- . A description of the system for the maintenance of patient records.

### **8.2 Director**

8.2.1 There shall be a director of the home health agency who shall have responsibility for providing administrative direction to the program at all times and for carrying out the policies and procedures of the agency. The

authority, duties, and responsibilities of the director shall be defined in writing and shall include at least:

8.2.1.1 organizing and administering the home health agency;

8.2.1.2 Operating the agency through authorization of expenditures;

8.2.1.3 Maintaining agency compliance with applicable laws and regulations;

8.2.1.4 Preparing and submitting required reports.

8.2.2 A qualified person shall be authorized to act in the absence of the director.

### **8.3 Supervision on o Home Health Aide Services**

8.3.1 The director shall appoint a qualified employee as a "services director" to provide general supervision and direction of the home health aide services offered by the home health agency. The services director shall be available at all times during operating hours of the home health agency and shall participate in all activities related to the services provided, including the qualifications of personnel as related to their assigned duties. In his absence, he shall appoint a similarly qualified designee.

### **8.4 Written Agreements for Purchase of Services**

8.4.1 The home health agency shall establish a written contractual arrangement for the provision of all services which are not provided directly by the agency. At a minimum, the contract shall:

8.4.1.1 Designate the home health aide services which are to be provided (services provided are to be within the scope and limitation set forth in the plan of treatment and may not be altered in type, amount, frequency, or duration, except in the case of adverse reaction or via mutual agreement, by the home health agency and agency/individual under contract);

8.4.1.2 Describe how the contracted personnel are to be supervised;

8.4.1.3 Describe how home health aide services will be controlled, coordinated, and evaluated by the home health agency;

8.4.1.4 Describe the procedure for submitting progress notes, scheduling of visits, and periodic patient evaluations;

8.4.1.5 Specify the charges for specific home health aide services provided under contract;

8.4.1.6 Specify that only the contracting home health agency shall bill for services provided under these written agreements and collect the applicable deductible or co-insurance payments pertaining to those contracted services;

8.4.1.7 Specify the period of time that the contract shall be in effect and how frequently it shall be

reviewed. The contract shall be reviewed at least annually and renewed when necessary;

8.4.1.8 Insure that personnel and home health aide services contracted meet the requirements specified in these regulations for home health agency personnel and home health aide services, including personnel, qualifications, physical examinations, functions, supervision, orientation, and in-service education;

8.4.1.9 Provide for the acceptance of patients for home health aide services only by the parent agency. Patients may not be admitted for home health aide services by a contracted individual without prior review of the case and acceptance of the patient by the home health agency in accordance with agency policies.

#### 8.5 Written Personnel Policies

8.5.1 The home health agency shall have written policies on qualifications, responsibilities, and requirements for employment for each classification of personnel.

8.5.2 The policies of the home health agency shall, at a minimum, provide for:

8.5.2.1 wage and salary schedules;

8.5.2.2 eligibility for vacation, sick leave, and other fringe benefits;

8.5.2.3 in-service training and orientation of all personnel to the objectives, policies, and functions of the agency;

8.5.2.4 job descriptions for each classification of personnel.

8.5.3 The policies of the home health agency shall be reviewed annually and revised as necessary.

#### 8.6 Staff Training Plan

8.6.1 An inservice educational program shall be provided on an ongoing basis, which shall include an orientation program for staff personnel employed by the agency and a continuing program for the development and improvement of skills of such personnel. The inservice program shall be geared to the needs of the sick, the handicapped, and the aged and include patient care procedures, agency policies, prevention and control of infection, confidentiality of patient information, rights of patients, and other related areas of patient care.

8.6.2 Records of attendance and subjects of programs for the previous year shall be available for review at the time of inspection.

8.7 Policies Which Control the Exposure of Patients and Staff to Persons with Communicable Diseases

8.7.1 Minimum requirements for employee physical examination:

8.7.1.1 Each person, including volunteers, who is involved in the care of patients shall have a screening test for tuberculosis as a prerequisite to employment. Either

a negative intradermal skin test or a chest x-ray showing no evidence of active tuberculosis within the 90 days prior to employment shall satisfy this requirement;

8.7.1.2 A report of this test shall be on file at the agency of employment.

8.7.2 No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the county Health Officer.

8.7.3 The home health agency shall have a written procedure to be followed in the event that a communicable disease episode occurs. It is the responsibility of the agency to:

8.7.3.1 See that necessary precautions are taken;

8.7.3.2 All rules of the Division of Public Health are followed so that there is minimum danger of transmission to the patients under its care. This responsibility includes staff personnel as well as patients.

#### 8.8 Rights of Patients/Clients

8.8.1 The home health agency must establish written policies regarding the rights and responsibilities of patients, and these policies and procedures are to be made available to patient/family or patient/guardian. The rights of patients shall be consistent with Title 16 and 31 of the Delaware Code and the State Division of Public Health Regulations regarding Patient's Rights.

#### 8.9 Program Review and Evaluation

8.9.1 The home health agency shall establish policies and procedures for self-evaluation of its programs.

8.9.2 The home health agency shall review its written policies at least annually, and revise them as necessary. The results of this review shall be presented, in writing, to the governing body.

## 4.0 Governing Authority/Administration/Personnel

### 4.1 Written Bylaws for Service/Management

4.1.1 The governing body or other legal authority shall organize agency services to ensure quality patient care.

4.1.2 There shall be a An organizational chart with a written description of describing the organization, authorities, responsibilities, accountabilities, and relationships. shall be maintained which shall include, but not limited to:

4.1.3 There shall be a A description of each type of service offered;

4.1.4 There shall be written pPolicies and procedures pertaining to each service offered;

4.1.5 There shall be A a description of the system for the maintenance of patient records.

4.1.6 Bylaws shall be reviewed annually by the governing body and so dated. Revisions shall be completed as necessary.

4.2 Professional Advisory Group Director

4.2.1 An advisory group of professionals, to include at least one physician, one registered nurse (preferably with home health and/or public health experience), and representatives from other professional disciplines, shall be established. Included in the foregoing should be at least one member who is neither an owner nor an employee of the home health agency. The advisory group's responsibility is to review and advise annually the agency's policies governing scope of services offered, admission and discharge policies, medical supervision and plans of treatment, emergency care, clinical records, and program evaluations. There shall be a full-time agency director of the home health agency who shall have responsibility for providing administrative direction to the program at all times and for carrying out the policies and procedures of the agency.

4.2.2 The director must have training and experience in health or personal care services administration and at least one (1) year of supervisory or administrative experience in related health or personal care services programs.

4.2.3 The director shall have full authority and responsibility to plan, staff, direct, and implement the programs and manage the affairs of the agency.

4.2.4 The authority, duties and responsibilities of the director shall be defined in writing and shall include at least but not be limited to:

4.2.4.1 organizing and administering the home health agency Interpretation and execution of the policies of the home health agency;

4.2.4.2 operating the agency through authorization of expenditures Program planning, budgeting, management and evaluation;

4.2.4.3 Maintainingence of the agency's compliance with applicable laws and licensure regulations and standards; and

4.2.4.4 Preparation and submission of required reports; and

4.2.4.5 Distribution of a written plan for the delegation of administrative responsibilities and functions in the absence of the director.

4.3.2 A qualified person shall be authorized to act in the absence of the director.

4.3 All home health agency services must be supervised by a registered nurse. Supervision of services must be accomplished and documented at least every ninety (90) calendar days.

4.4 Written Agreements for Purchase of Services

4.5.1 The home health agency shall establish a written contractual arrangement for the provision of all services which are not provided directly by the agency. At a minimum, the contract shall:

4.5.1.1 Designate the services which are to be provided (services provided are to be within the scope and limitation set forth in the plan of treatment and may not be altered in type, amount, frequency, or duration, except in the case of adverse reaction or via mutual agreement, by the home health agency and agency/individual under contract);

4.5.1.2 Describe how the contracted personnel are to be administratively or professionally supervised, or both;

4.5.1.3 Describe how services will be controlled, coordinated, and evaluated by the home health agency;

4.5.1.4 Describe the procedure for submitting clinical and progress notes, scheduling of visits, and periodic patient evaluation;

4.5.1.5 Specify the charges for specific services provided under contract;

4.5.1.6 Specify that only the contracting home health agency shall bill for services provided under these written agreements and collect the applicable deductible or co-insurance payments pertaining to those contracted services;

4.5.1.7 Specify the period of time that the contract shall be in effect and how frequently it shall be reviewed. The contract shall be reviewed at least annually and renewed when necessary;

4.5.1.8 Insure that personnel and services contracted meet the requirements specified in these regulations for home health agency personnel and services, including licensure, personnel, qualifications, physical examinations, functions, supervision, orientation, in-service education, and attendance at case conferences;

4.5.1.9 Provide for the acceptance of patients for home health services only by the parent agency. Patients may not be admitted for home health service by a contracted individual without prior review of the case and acceptance of the patient by the home health agency in accordance with agency policies.

4.4.1 The home health agency maintains responsibility for all services provided to the patient.

4.4.2 The home health agency shall establish a written contractual arrangement with a contractor for the provision of all services which are not provided directly by the agency.

4.4.3 Services provided by the home health agency through arrangements with a contractor agency or

individual shall be set forth in a written contract which clearly specifies:

4.4.3.1 That the patient's contract for care is with the home health agency;

4.4.3.2 The services to be provided by the contractor;

4.4.3.3 The necessity to conform to all home health agency policies;

4.4.3.4 The procedure for submitting clinical and progress notes, scheduling visits, periodic patient evaluation, and determining charges and reimbursement;

4.4.3.5 The procedure for annual assurance of clinical competence of all individuals utilized under contract;

4.4.3.6 The procedure for supervision of services of the contracted individuals;

4.4.3.7 That all payments by the patient for services rendered shall be made directly to the agency or its billing representative and no payments shall be made to or in the name of contractors of the agency;

4.4.3.8 That patients are accepted only by the home health agency. Patients may not be admitted for services by a contracted individual without prior review of the case and acceptance of the patient by the home health agency in accordance with agency policies; and

4.4.3.9 That the written contractual arrangement must contain a renewal clause or be renewed annually.

#### 4.5 Written Personnel Policies

4.5.1 The home health agency shall have written policies on regarding qualifications, responsibilities, and requirements for employment/referral for each job classification of personnel, including licensure where required.

4.6.2 The policies of the home health agency shall, at a minimum, provide for:

4.6.2.1 wage and salary schedules;

4.6.2.2 eligibility for vacation, sick leave, and other fringe benefits;

4.6.2.3 in-service training and orientation of all personnel to the objectives, policies, and functions of the agency;

4.6.2.4 job descriptions for each classification of personnel.

4.5.2 The written policies shall include but not be limited to:

4.5.2.1 Pre-employment/referral requirements;

4.5.2.2 Position descriptions;

4.5.2.3 Orientation policy and procedure for all employees and contractors;

4.5.2.4 Inservice education policy;

4.5.2.5 Annual performance review and competency testing policy and procedure; and

4.5.2.6 Program review and evaluation —self-evaluation of its program.

4.10.1 The home health agency shall establish policies and procedures for self-evaluation of its programs.

4.10.2 The home health agency shall review its written policies at least annually, and revise them as necessary. The results of this review shall be presented, in writing, to the professional advisory group and to the governing body.

4.5.3 The Policies of the home health agency shall be reviewed and dated annually and revised as necessary.

#### 4.6 Employee/Contractor Records

4.6.1 Records of each employee/contractor shall be kept current and available upon request by authorized representatives of the Department.

4.6.2 For individuals utilized via contract with another agency, the home health agency shall obtain, upon request, any records as required by the Department.

4.6.3 For all individuals employed directly, the agency shall maintain individual personnel records which shall contain at least:

4.6.3.1 Written verification of compliance with pre-employment requirements;

4.6.3.2 Documentation of clinical competence;

4.6.3.3 Evidence of current professional licensure, registration, or certification as appropriate;

4.6.3.4 Educational preparation and work history;

4.6.3.5 Written performance evaluations (annually); and

4.6.3.6 A letter of appointment specifying conditions of employment.

4.6.4 For all individual contractors, the agency shall maintain individual records which shall contain at least:

4.6.4.1 Written verification of compliance with requirements at Section 4.7;

4.6.4.2 Documentation of clinical competence;

4.6.4.3 Evidence of current business license, AND current licensure, registration, or certification as appropriate;

4.6.4.4 Educational preparation and work history;

4.6.4.5 Written performance reviews (annually); and

4.6.4.6 A signed contract specifying conditions of referral to potential patients.

4.7 Employment Practices

4.7.1 Home health agencies must comply with special employment practices relating to health care and child care facilities:

4.7.1.1 19 Del.C. §708.

4.7.1.2 11 Del.C. §8563.

4.7.1.3 11 Del.C. §8564.

4.7.1.4 Regulations regarding same as promulgated by the Department of Labor.

4.7.2 Special employment practices relating to home health agencies and private residences:

4.7.2.1 16 Del.C. §1145.

4.7.2.2 16 Del.C. §1146.

4.7.2.3 Regulations regarding same as promulgated by the Department.

4.7.3 Health History

4.7.3.1 All new employees/contractors shall be required to have a physical examination prior to providing care.

4.7.3.1.1 The physical examination must have been completed within 3 months prior to employment/referral.

4.7.3.1.2 A copy of the physical examination shall be maintained in individual files.

4.7.3.2 Minimum requirements for tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services. Testing must be completed within ninety (90) calendar days prior to an employee/contractor/volunteer providing care and annually thereafter.

4.7.3.2.1 No person found to have active TB in an infectious stage shall be permitted to give care or service to patients.

4.7.3.2.2 Any person having a positive skin test but a negative chest X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.

4.7.3.2.3 A report of all TB test results and all attestation statements shall be on file at the home health agency.

4.8.1 Minimum requirements for employee physical examination:

4.8.1.1 Each person, including volunteers, who is involved in the care of patients shall have a screening test for tuberculosis as a prerequisite to employment. Either a negative intradermal skin test or a chest x-ray showing no evidence of active tuberculosis within the 90-days prior to employment shall satisfy this requirement;

4.8.1.2 A report of this test shall be on file at the agency of employment.

4.8.2 No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the County Health Officer.

4.8.3 The home health agency shall have a written procedure to be followed in the event that a communicable disease episode occurs. It is the responsibility of the agency to:

4.8.3.1 See that necessary precautions are taken;

4.8.3.2 All rules of the Division of Public Health are followed so that there is minimum danger of transmission to the patients under its care. This responsibility includes staff personnel as well as patients.

4.8 Staff Development

4.8.1 An orientation/training program should be based on an instruction plan that includes learning objectives, clinical content and minimum acceptable performance standards.

4.8.2 All employees/contractors are required to complete an orientation program which shall include but not be limited to:

4.8.2.1 Organizational structure of the agency;

4.8.2.2 Agency patient care policies and procedures;

4.8.2.3 Philosophy of patient care;

4.8.2.4 Description of patient population and geographic location served;

4.8.2.5 Patient rights;

4.8.2.6 Agency personnel and administrative policies;

4.8.2.7 Job description; and

4.8.2.8 Applicable state regulations governing the delivery of home health care services.

4.8.3 All newly hired/contracted aides shall be required to complete 40 hours of orientation which shall include instruction and supervised practicum and which addresses:

4.8.3.1 Orientation requirements noted above;

4.8.3.2 Personal care services;

4.8.3.3 Principles of good nutrition;

4.8.3.4 Process of growth, development, and aging;

4.8.3.5 Principles of infection control;

4.8.3.6 Observation, reporting, and documentation of patient status;

4.8.3.7 Maintaining a clean, safe, and healthy environment;

4.8.3.8 Maintaining a least restrictive environment;

4.8.3.9 Verbal/non-verbal communication skills;

4.8.3.10 Principles of body mechanics; and

4.8.3.11 The needs of the elderly and persons with disabilities.

4.8.3.12 Aides who experience a break in service with an agency for less than two (2) calendar years will not be expected to repeat the orientation.

4.8.4 Ongoing staff development is required to maintain and improve the skills of the caregiver. Aides shall attend at least twelve (12) hours annually of staff development activities which shall consist of in-service training programs, workshops, or conferences related to home health care or specific needs of patients and which shall include but not be limited to:

4.8.4.1 Instruction in how to assist patients to achieve maximum self-reliance through re-learning and modifying activities of daily living;

4.8.4.2 Principles of good nutrition;

4.8.4.3 Meal planning, food purchasing, and preparation of meals, including special diets;

4.8.4.4 Information on the emotional and physical problems accompanying illness, disability or aging;

4.8.4.5 Principles and practices in maintaining a clean, healthy, pleasant and safe environment that encourages morale building and self-help;

4.8.4.6 Items requiring referral to the home health agency, including changes in the patient's condition or family situation;

4.8.4.7 Observation, reporting, and documentation of patient status;

4.8.4.8 Policies and objectives of the agency;

4.8.4.9 Confidentiality of patient information;

4.8.4.10 Patient rights;

4.8.4.11 Principles of infection control;

4.8.4.12 Verbal/non-verbal communication skills; and

4.8.4.13 Principles of body mechanics.

4.8.5 Documentation of orientation and continuing education must include the date(s), content, and name and title of the person providing the orientation.

4.8.6 It is the responsibility of the home health agency to ensure that employees/contractors are proficient to carry out the care assigned in a safe, effective, and efficient manner.

4.8.7 All aides must pass a competency evaluation test prior to providing care to patients.

4.8.8 The time allotted for training shall be sufficient to foster safe and skillful services to the patient.

4.8.9 Attendance records must be kept for all orientation and continuing education programs.

#### 4.7 Staff Training Plan

4.7.1 An inservice educational program shall be provided on an ongoing basis, which shall include an orientation program for staff personnel employed by the agency and a continuing program for the development and improvement of skills of such personnel. The inservice program shall be geared to the needs of the sick, the handicapped, and the aged and include patient care procedures, agency policies, prevention and control of infection, confidentiality of patient information, rights of patients, and other related areas of patient care.

4.7.2 Records of attendance and subjects of programs for the previous year shall be available for review at the time of inspection.

### **9.0 Patient Care Management**

#### **9.1 Admission, Transfer and Discharge Policies**

9.1.1 The agency shall have written policies covering the scope and limitation of home health aide services. The policies established by the agency shall include conditions for admission, transfer, discharge, and continuing care of clients.

#### **9.2 Patient Plan of Treatment and Review**

9.2.1 A written home health aide care plan shall be developed with the appropriate supervisor for each home care patient. The patient care plan shall include reference to at least the following:

9.2.2.1 types of aide services and frequency of services to be provided, including any diet, procedures, and transportation required;

9.2.2.2 functional limitations of the patient;

9.2.2.3 activities permitted;

9.2.2.4 safety measures required to protect the patient from injury.

#### **9.3 Coordination of Primary Patient Services**

9.3.1 All personnel within the same agency providing services maintain liaison through the home health aide supervisor to assure that their efforts effectively complement one another and support the objective outlined in the plan of treatment.

### **10.0 Patient Services**

#### **10.1 Home Health Aides/Duties. Supervision**

10.1.1 Home health aides are selected, trained, and assigned under appropriate supervision to provide primarily personal care duties for the patient.

#### **10.2 Home Health Aides/Training**

10.2.1 Training Requirements for Home Health Aides. Aides shall be offered a quarterly, structured program of training. The time allotted for training shall be sufficient to foster safe and skillful services to the patient. During the course of a year, the agency training program must include at a minimum:

10.2.1.1 the role of the home health aide as a member of the professional health services team;

10.2.1.2 instruction and supervised practice in personal care services of the sick at home, with major attention being given to personal hygiene and activities of daily living;

10.2.1.3 instruction in how to assist patients to achieve maximum self-reliance through re-learning and modifying activities of daily living;

10.2.1.4 principles of good nutrition;

10.2.1.5 meal planning, food purchasing, and preparation of meals, including special diets;

10.2.1.6 general information on the processes of growth, development, and aging;

10.2.1.7 information on the emotional and physical problems accompanying illness;

10.2.1.8 principles and practices in maintaining a clean, healthy, and safe environment as well as a pleasant one that encourages morale building and self-help;

10.2.1.9 items requiring referral to the nurse or supervisor in the home health agency, including changes in the patient's condition or family situation;

10.2.1.10 record keeping, when applicable;

10.2.1.11 policies and objectives of the agency;

10.2.1.12 information concerning the duties and responsibilities of a home health aide;

10.2.1.13 ethical behavior, confidentiality of information, and patient's rights.

## **5.0 Patient Care Management**

### **5.1 Admission**

5.1.1 The home health agency shall have written policies governing referrals received, admission of patients to agency services, delivery of those services and discharge of patients.

5.1.2 The admission policies shall be discussed with each patient entering the program, and their representative, if any.

5.1.3 The home health agency shall only admit those individuals whose needs can be met by the agency.

5.1.4 There shall be a written agreement between the patient and the home health agency. The agreement shall:

5.1.4.1 Specify the services to be provided by the agency, including but not limited to: scheduled days,

transportation agreements as appropriate, emergency procedures and conditions for discharge and appeal.

5.1.4.2 Specify the procedure to be followed when the agency is not able to keep a scheduled patient visit.

5.1.4.3 Specify financial arrangements which shall minimally include:

5.1.4.3.1 A description of services purchased and the associated cost;

5.1.4.3.2 An acceptable method of payment(s) for these services;

5.1.4.3.3 An outline of the billing procedures; and

5.1.4.3.4 That all payments by the patient for services rendered shall be made directly to the agency or its billing representative and no payments shall be made to or in the name of individual employees/contractors of the agency.

5.1.4.4 Be signed by the patient, if he is able, and representative, if any, and the representative of the home health agency.

5.1.4.5 Be given to the patient and representative, if any, and a copy shall be kept at the agency in the patient record.

5.1.4.6 Be reviewed and updated as necessary to reflect any change in the services or the financial arrangements.

### **5.2 Assessment**

5.2.1 An initial assessment of the patient must be performed by a registered nurse (or other appropriate licensed health care professional for therapy services).

5.2.2 The initial assessment must be performed in the patient's residence prior to or at the time that home health services are initially provided to the patient. The assessment must determine whether the agency has the ability to provide the necessary services in a safe manner.

5.2.3 The assessment shall include, at a minimum, a description of the patient's:

5.2.3.1 Physical condition, including ability to perform activities of daily living and sensory limitations;

5.2.3.2 Social situation, including living arrangements and the availability of family and community support; and

5.2.3.3 Mental status, including any cognitive impairment and known psychiatric, emotional, and behavioral problems.

5.2.4 Patient reassessments and monitoring occur at regular intervals based upon the patient's condition and needs, but no less often than every ninety (90) calendar days. A registered nurse must participate in the reassessment and monitoring of the patient.

5.2.5 A reassessment shall be conducted when the needs of the patient change which indicate a revision to the plan of care is needed.

5.2.6 The initial assessment and reassessments shall become a permanent part of the patient's record.

### 5.3 Plan of Care

5.3.1 The home health agency must provide services in accordance with a written plan of care developed under the supervision of a registered nurse (See Section 10.1 for plan of care requirements for agencies providing skilled services).

5.3.2 A plan of care is developed on admission based upon the initial assessment of the patient.

5.3.3 The plan of care is reviewed no less often than every ninety (90) calendar days and revised as necessary based on the reassessment performed by the registered nurse (or qualified professional of the appropriate discipline).

5.3.4 All personnel and contractors providing services as documented in the plan of care maintain liaison to assure that their efforts effectively complement one another and support the objective(s) outlined in the plan of care.

## **11.0 Patient Service Records**

11.1 Contents. A patient service record is maintained in accordance with accepted standards and contains:

11.1.1 Home health aide services request data to include: data received, patient's name/address/telephone number, relative/contact person (where applicable), living arrangements, personal data age/height/weight/sex, physical data hearing/vision/speech/other impairments, diagnosis/history, home health aide activities, and documentation for scheduling/estimated duration of service;

11.1.2 Home health aide services date to include: date service provided, hours of service provided, home health aides name, types of activities provided, and observations/problems/comments;

11.1.3 A home health aide service discharge statement.

### 11.2 Record Review Period

11.2.1 The plan of treatment should be reviewed by the home health aide's supervisor on a regular basis with a supervisory visit made to the patient at least quarterly. A report of the supervisory visit should be kept with the patient's service record.

### 11.3 Transfer of Records.

11.3.1 Proper mechanisms for the timely transfer of patient service record information upon request from duly authorized persons and organizations.

## **11.4 Storage/Retention**

11.4.1 Records shall be maintained by the agency for a period of at least three years following the date of discharge and shall be safeguarded against loss or unauthorized use.

## **11.5 Protection of Records**

11.5.1 Each agency shall establish policies and procedures to govern the use and removal of records and determine the conditions for release of information in accordance with statutory provisions pertaining to confidentiality. Patient's written consent is required for release of information not authorized by law.

## **5.4 Records and Reports**

5.4.1 There shall be a separate record maintained at the home health agency for each patient which shall contain:

5.4.1.1 Admission record: Including patient's name, birth date, home address, identification numbers, such as social security, Medicaid, Medicare, date of admission; physician's name, address and telephone number; names, addresses and telephone numbers of family members, friends, or other designated people to be contacted in the event of illness or an emergency;

5.4.1.2 Referral Form and Request for Services Form;

5.4.1.3 Assessment (initial and reassessments);

5.4.1.4 Individual plan of care (initial and reviews) and revisions;

5.4.1.5 Progress notes, chronological and timely;

5.4.1.6 Advance health-care directive form that complies with 16 **Del.C.** Ch. 25, a statement that a copy of the advance health-care directive form has been requested, or a statement that none has been signed;

5.4.1.7 A copy of the written agreement between the patient and the home health agency including any updates made to the original reflecting changes in services or arrangements;

5.4.1.8 Written acknowledgment that the patient or the patient's representative has been fully informed of the patient's rights; and

5.4.1.9 A discharge summary.

5.4.2 Aide notes must contain the following information:

5.4.2.1 Date(s) on which service(s) are provided;

5.4.2.2 Hour(s) of service(s) provided;

5.4.2.3 Type(s) of activity provided; and

5.4.2.4 Observations/problems/comments.

5.4.3 All notes written in the patient's record must be signed and dated on the day that the service is rendered.

5.4.4 All notes must be incorporated into the patient's record no less often than weekly.

5.4.5 All patients' records shall be maintained in accordance with professional standards.

5.4.6 All patient records shall be available for review by authorized representatives of the Department and to legally authorized persons; otherwise patient records shall be held confidential. The consent of the patient or her/his representative if the patient is incapable of making decisions shall be obtained before any personal information is released from her/his records as authorized by these regulations or Delaware law.

5.4.7 Computerized patient records must be printed by the agency as requested by authorized representatives of the Department.

5.4.8 The home health agency records shall be retained in a retrievable form until destroyed.

5.4.8.1 Records of adults (18 years of age and older) shall be retained for a minimum of six (6) years after the last date of service before being destroyed.

5.4.8.2 Records of minors (less than 18 years of age) shall be retained for a minimum of six (6) years after the patient reaches eighteen (18) years of age.

5.4.8.3 All records must be disposed of by shredding, burning, or other similar protective measure in order to preserve the patients' rights of confidentiality.

5.4.8.4 Documentation of record destruction must be maintained by the home health agency.

5.4.9 Records shall be protected from loss, damage, and unauthorized use.

5.4.10 All notes and reports in the patient's record shall be legibly written in ink (or typewritten), dated and signed by the recording person with her/his full name and title.

5.4.11 The home health agency must develop acceptable policies for authentication of any computerized records.

5.4.12 The agency must have written policies regarding the use and removal of records and the conditions for release of information. The patient's written consent must be required for release of information not authorized by law.

5.4.13 Report of Major Adverse Incidents

5.4.13.1 The home health agency must report all major adverse incidents involving a patient to the Department in addition to other reporting requirements required by law.

5.4.13.2 A major adverse incident includes but is not limited to:

5.4.13.2.1 Suspected abuse, neglect, mistreatment, financial exploitation, solicitation or harassment;

5.4.13.2.2 An accident that causes injury to a patient;

5.4.13.2.3 A medication error with the potential to result in adverse health outcomes for the patient; or

5.4.13.2.4 The unexpected death of a patient.

5.4.13.3 Major adverse incidents must be reported within five (5) calendar days of occurrence or within five (5) calendar days of the date that the agency first became aware of the incident.

5.5 Discharge

5.5.1 The patient and her/his representative, if any, shall be informed of and participate in discharge planning.

5.5.2 The home health agency shall develop a written plan of discharge which includes a summary of services provided and outlines the services needed by the patient upon discharge.

5.5.3 When discharging a patient who does not wish to be discharged, a minimum of two (2) weeks notice will be provided to permit the patient to obtain an alternate service provider. Exceptions to the two (2) week notice provision would include:

5.5.3.1 The discharge of patients when care goals have been met.

5.5.3.2 The discharge of patients when care needs undergo a change which necessitates transfer to a higher level of care and for whom a new discharge plan needs to be developed.

5.5.3.3 The discharge of patients when there is documented non-compliance with the plan of care or the admission agreement (including, but not limited to, non-payment of justified charges).

5.5.3.4 The discharge of patients when activities or circumstances in the home jeopardize the welfare and safety of the home health agency caregiver.

## **6.0 Patient Rights**

6.1 The home health agency shall establish and implement policies and procedures regarding the rights of patients.

6.2 The home health agency must provide the patient with a written notice of the patient's rights during the initial assessment visit or before initiation of care.

6.3 Each patient shall have the right to:

# PROPOSED REGULATIONS

6.3.1 Be treated with courtesy, consideration, respect, and dignity;

6.3.2 Be encouraged and supported in maintaining one's independence to the extent that conditions and circumstances permit, and to be involved in a program of services designed to promote personal independence;

6.3.3 Self-determination and choice, including the opportunity to participate in developing one's plan of care;

6.3.4 Privacy and confidentiality;

6.3.5 Be protected from abuse, neglect, mistreatment, financial exploitation, solicitation and harassment;

6.3.6 Voice grievances without discrimination or reprisal;

6.3.7 Be fully informed, as evidenced by the patient's written acknowledgment of these rights, and of all rules and regulations regarding patient conduct and responsibilities;

6.3.8 Be fully informed, at the time of admission into the program, of services and activities available and related charges;

6.3.9 Be served by individuals who are properly trained and competent to perform their duties; and

6.3.10 Refuse care and to be informed of possible health consequences of his refusal.

## **7.0 Quality Improvement**

7.1 Each home health agency shall develop and implement a documented ongoing quality improvement program. The program shall include at a minimum:

7.1.1 An internal monitoring process that tracks performance measures;

7.1.2 A review of the program's goals and objectives at least annually;

7.1.3 A review of the grievance/complaint process;

7.1.4 A review of all patient deaths;

7.1.5 A review of all medication errors;

7.1.6 A review of actions taken to address identified issues; and

7.1.7 A process to monitor the satisfaction of the patients or their representatives with the program.

## **8.0 Insurance and Bonding**

8.1 The home health agency shall have appropriate insurance coverage in force to compensate patients for injuries and losses resulting from services provided by the agency.

8.2 The following types and minimum amounts of coverage shall be in force at all times:

8.2.1 Blanket malpractice insurance for all professional employees/contractors:

8.2.1.1 \$1 million per incident; and

8.2.1.2 \$3 million aggregate.

8.2.2 General liability insurance covering personal property damages, bodily injury, libel and slander:

8.2.2.1 \$1 million comprehensive general liability per occurrence; and

8.2.2.2 \$500,000 single limit coverage.

8.2.3 Performance bond of \$50,000 for those agencies utilizing only contractors as caregivers.

## **PART 3 Agencies Providing Exclusively Home Health Aides Services to Patients Consistent with Section (2) of the Home Health Agency Definition Agencies Providing Two or More Home Health Care Services, One of Which Must be Either Licensed Nursing Services or Home Health Aide Services**

### **9.0 Administration**

9.1 Professional Advisory Group

9.1.1 The home health agency must have an advisory group of professionals to include:

9.1.1.1 At least one physician;

9.1.1.2 One registered nurse (preferably with home health or public health experience); and

9.1.1.3 Representatives from other professional disciplines.

9.1.2 One member of the advisory group must be neither an owner nor an employee of the home health agency.

9.1.3 The advisory group is responsible for the annual review of the home health agency policies governing scope of services offered, admission and discharge policies, medical supervision and plans of treatment, emergency care, patient records, and program evaluations. Based upon this review, the advisory group will make recommendations for additions, revisions, or deletions to policies and programs to the governing body.

4.4.1 The director shall appoint a full-time employee as a "services director" to provide general supervision and direction of the professional services offered by the home health agency. The services director shall be available at all times during operating hours of the home health agency and shall participate in all activities related to the professional services provided, including the qualifications of personnel as related to their assigned duties. In his absence, he shall appoint a similarly qualified designee.

9.2 Supervision of Clinical Services

9.2.1 The director shall appoint a full-time employee as the clinical director.

9.2.2 The clinical director shall:

9.2.2.1 Be a physician or a registered nurse with at least one year of home health and administrative/supervisory experience;

9.2.2.2 Be available at all times during operating hours of the home health agency; and

9.2.2.3 Participate in all activities related to the professional services provided, including the qualifications of personnel and contractors as related to their assigned duties.

9.2.3 In the absence of the clinical director, an equally qualified designee must be appointed.

### 9.3 Program Review and Evaluation

9.3.1 The home health agency shall review its written policies at least annually, and revise them as necessary. The results of this review shall be presented, in writing, to the professional advisory group and to the governing body.

## **5.0 Patient Care Management**

### **5.1 Admission, Transfer and Discharge Policies**

5.1.1 The agency shall have written policies covering the scope and limitation of services. The policies established by the agency shall include conditions for admission, transfer, discharge, and continuing care of clients.

### **5.2 Patient Plan of Treatment and Review**

5.2.1 A written patient care plan shall be developed with the appropriate supervisor for each home care patient. The patient care plan shall include reference to at least the following:

5.2.1.1 all pertinent diagnoses;

5.2.1.2 prognosis, including short-term and long-term objectives of treatment;

5.2.1.3 types (such as nursing, other therapeutic, and/or support services) and frequency of services to be provided, including any medication, diet, treatment, procedures, equipment, and transportation required;

5.2.1.4 functional limitations of patient;

5.2.1.5 activities permitted;

5.2.1.6 safety measures required to protect the patient from injury;

5.2.1.7 sociopsychological needs of the patient.

### **5.3 Drug and Treatment Orders**

5.3.1 Drugs, prescription and devices, and treatments shall be administered by agency staff only as ordered by the physician. The nurse or therapist shall

immediately record and sign oral orders and as soon as possible obtain the physician's countersignature.

### **5.4 Coordination of Patient Services**

5.4.1 All personnel within the same agency providing services maintain liaison to assure that their efforts effectively complement one another and support the objective outlined in the plan of treatment.

5.4.2 The clinical record or minutes of case conferences establish that effective interchange, reporting, and coordinated patient evaluation does occur within the same agency.

## **6.0 Multiple Home Health Care Services Agencies Patient Services**

### **6.1 Nursing/Duties, Supervision**

6.1.1 Nursing services shall be provided directly by registered and practical nurses duly licensed in this State and in accordance with the written plan of treatment and acceptable standards of nursing practice and under the supervision of the services director.

6.1.2 Supervision. The home health agency which provides skilled nursing service shall provide such services by and under the supervision of a registered nurse and in accordance with the plan of treatment.

### **6.2 Therapy/Duties, Supervision**

6.2.1 Any therapy services offered by the agency directly or under arrangement are given by or under the supervision of a qualified therapist in accordance with the plan of treatment.

6.2.2 Supervision of Speech Therapy Services. Speech therapy services are provided only by or under supervision of a qualified speech pathologist or audiologist.

### **6.3 Social Services /Duties, Supervision**

6.3.1 Social services, when provided, are given by a qualified social worker and in accordance with the plan of treatment.

### **6.4 Home Health Aide/Duties, Supervision**

6.4.1 Home health aides are selected, trained, and assigned to provide primarily personal care services for the patient under appropriate supervisor.

### **6.5 Home Health Aides/Training**

6.5.1 Training Requirements for Home Health Aides. Aides shall be offered a quarterly, structured program of training. The time allotted for training shall be sufficient to foster safe and skillful services to the patient. During the course of a year, the agency training program must include a minimum:

6.5.1.1 the role of the home health aide as a member of the professional health services team;

6.5.1.2 instruction and supervised practice in personal care services of the sick at home, with major

~~attention being given to personal hygiene and activities of daily living;~~

~~6.5.1.3 instruction in how to assist patients to achieve maximum self-reliance through re-learning and modifying activities of daily living;~~

~~6.5.1.4 principles of good nutrition;~~

~~6.5.1.5 meal planning, food purchasing, and preparation of meals, including special diets;~~

~~6.5.1.6 general information on the processes of growth, development, and aging;~~

~~6.5.1.7 information on the emotional and physical problems accompanying illness;~~

~~6.5.1.8 principles and practices in maintaining a clean, healthy, and safe environment as well as a pleasant one that encourage morale building and self-help;~~

~~6.5.1.9 items requiring referral to the nurse or supervisor in the home health agency, including changes in the patient's condition or family situation;~~

~~6.5.1.10 record keeping, when applicable;~~

~~6.5.1.11 policies and objectives of the agency;~~

~~6.5.1.12 information concerning the duties and responsibilities of a home health aide;~~

~~6.5.1.13 either behavior, confidentiality of information, and patient's rights.~~

## **10.0 Patient Care Management**

### 10.1 Plan of Care

10.1.1 A written patient plan of care shall be established by the physician and developed in consultation with a registered nurse or qualified professional of the appropriate discipline.

10.1.2 The patient plan of care shall include reference to at least the following:

10.1.2.1 All pertinent diagnoses;

10.1.2.2 Prognosis, including short-term and long-term objectives of treatment;

10.1.2.3 Types of services (such as nursing, other therapeutic, or support services), frequency and duration of services to be provided, medications, diet, treatments, procedures, equipment, and transportation required;

10.1.2.4 Functional limitations of the patient;

10.1.2.5 Activities permitted;

10.1.2.6 Safety measures required to protect the patient from injury; and

10.1.2.7 Sociopsychological needs of the patient.

10.1.3 The plan of care must be reviewed by the attending physician and a registered nurse or other qualified professional of the appropriate discipline as often as the

severity of the patient's condition requires, but at least every sixty (60) calendar days.

10.1.4 The home health agency must have policies and procedures describing the method to obtain and incorporate the licensed independent practitioner's orders into the plan of care.

10.1.5 The home health agency shall promptly alert the attending physician to any changes in the patient's condition that suggest a need to alter the plan of care.

10.1.6 The home health agency shall consider benefits versus risks of treatment as well as patient choice and independence in the development and subsequent revisions of the plan of care.

### 10.2 Medication and Treatment Management

10.2.1 Medication shall not be administered to a patient unless prescribed by a licensed practitioner with independent prescriptive authority as provided by Delaware Code.

10.2.2 All home health agencies shall have a drug reference manual/compendium, no more than two (2) years old, which lists drug actions, interactions, and side effects.

10.2.3 All medication administered to patients by the home health agency shall be ordered in writing, dated and signed by the prescribing licensed practitioner. All prescription medications shall be properly labeled in accordance with 24 **Del.C.** §2536. The label shall contain the following information:

10.2.3.1 The prescription number;

10.2.3.2 The date the drugs were originally dispensed to the patient;

10.2.3.3 The patient's full name;

10.2.3.4 The brand or established name and strength of the drug to the extent that it can be measured;

10.2.3.5 The physician's directions as found on the prescription;

10.2.3.6 The physician's name; and

10.2.3.7 The name and address of the dispensing pharmacy or physician.

10.2.4 Appropriately licensed individuals must immediately record, sign, and date verbal orders for medications and treatments. The signature of the licensed practitioner ordering the medications or treatments must be obtained as soon as possible.

10.2.5 Medications and treatments may be self-administered or, when administered by the home health agency, shall be administered in accordance with all State and Federal laws, including the State of Delaware Board of Professional Regulation's requirements. Those patients who, upon admission, are incapable of self-administration or who become incapable of self-administration shall have their medications/treatments administered according to the

requirements of the Board of Professional Regulation, when the medications/treatments are administered by the home health agency.

10.2.6 The home health agency shall maintain a record of all medication and treatments administered to a patient indicating time of day, type of medication/treatment, dose, route of self-administration/administration, by whom given and any reactions noted.

## 10.3 Patient Services

### 10.3.1 Nursing

10.3.1.1 Services are provided by registered and licensed practical nurses.

10.3.1.2 The home health agency must maintain verification of current licensure as required by the Delaware Board of Nursing.

10.3.1.3 Services must be provided in accordance with the written plan of care and acceptable standards of practice.

10.3.1.4 Services are provided under the supervision and direction of the clinical director.

### 10.3.2 Professional therapy

10.3.2.1 Services are provided by, or under the supervision of, the appropriate professional therapist (physical therapy, occupational therapy, speech therapy, audiology, nutrition).

10.3.2.2 The home health agency must maintain verification of current licensure/registration as required by the Delaware Board of Professional Regulation.

10.3.2.3 Services must be provided in accordance with the written plan of care and acceptable standards of practice.

10.3.2.4 Services are provided under the supervision and direction of the clinical director.

### 10.3.3 Social services

10.3.3.1 Social services, when provided, are given by a qualified social worker and in accordance with the plan of care.

### 10.3.4 Home health aide services

10.3.4.1 Services are provided under the supervision and direction of the clinical director or the appropriate qualified professional.

10.3.4.2 On-site professional supervisory visits are required for all patients receiving home health aide services.

10.3.4.2.1 When patients are receiving home health aide services as well as another skilled service, a registered nurse (or another professional therapist) must make an on-site supervisory visit to the patient's home no less frequently than every two (2) weeks.

10.3.4.2.2 When home health aide services are being provided in the absence of a skilled

service, a registered nurse must make an on-site supervisory visit to the patient's home (while the home health aide is providing care) no less frequently than every sixty (60) calendar days.

10.3.5 A home health agency providing more than one service to a single patient is responsible for coordination of those services to assure that the services effectively compliment one another and support the objectives in the plan of care.

## 7.0 Clinical Records/Patient Service Records

7.1 For clients receiving home health aide services exclusively, the home health agency shall meet the requirements of 9.0 Patient Care Management.

7.2 For clients receiving multiple home health care services, the home health agency shall maintain a Clinical Record in accordance with the accepted standards contained within these regulations.

7.3 Contents. The clinical record shall include:

7.3.1 pertinent past and current findings;

7.3.2 plan of treatment;

7.3.3 appropriate identifying information;

7.3.4 name of physician;

7.3.5 drug, dietary, treatment, and activity orders;

7.3.6 signed and dated clinical and progress notes (clinical notes are written the day service is rendered and incorporated no less often than weekly);

7.3.7 copies of summary reports as requested by the physician;

7.3.8 a discharge statement.

### 7.4 Record Review Period

7.4.1 The medical plan of treatment should be reviewed by the attending physician and agency staff as often as the severity of the patient's condition requires, but no less than once every 60 days.

### 7.5 Transfer of Records

7.5.1 Proper mechanisms for the timely transfer of clinical record information upon request from duly authorized persons and organizations.

### 7.6 Storage/Retention

7.6.1 Records shall be maintained by the agency for a period of at least three years following the date of discharge and shall be safeguarded against loss or unauthorized use.

### 7.7 protection of Records

7.7.1 Each agency shall establish policies and procedures to govern the use and removal of records and determine the conditions for release of information in accordance with statutory provisions pertaining to

~~confidentiality. Patient's written consent is required for release of information not authorized by law.~~

10.4 Patient Record

10.4.1 In addition to those requirements outlined in Section 5.4, the separate record maintained at the home health agency for each patient shall contain:

10.4.1.1 Medication orders;

10.4.1.2 Nutrition orders;

10.4.1.3 Treatment orders;

10.4.1.4 Activity orders;

10.4.1.5 Clinical notes, signed and dated on the day services are rendered and incorporated into the record no less often than weekly; and

10.4.1.6 Copies of any summary reports requested by the physician.

10.5 A written summary report for each patient must be sent to the attending physician no less frequently than every sixty (60) calendar days.

**11.0 Severability**

~~11.1 Should any section, sentence, clause, or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby. In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.~~

**DIVISION OF PUBLIC HEALTH**

**Authority on Radiation Protection**

Statutory Authority: 16 Delaware Code,

Section 7406 (16 Del.C. §7406)

16 DE Admin. Code 4466

**PUBLIC NOTICE**

**4466 Radiation Technologists/Technicians (Certification)**

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 November 10, 2003.

**Nature of the Proceedings**

The Authority on Radiation Protection is proposing amendments to the Regulation for the Certification of

Radiation Technologists/Technicians. A summary of those amendments and amended regulations are attached below.

**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 Wednesday, January 4, 2006, at 5:30 p.m. 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  
417 Federal Street  
Dover, Delaware 19901  
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 Tuesday, January 3, 2006. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by close of business Friday, January 6, 2006 to:

David Walton, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

**Summary of Amendments to the Regulation for the Certification of Radiation Technologists/Technicians**

**Credentialing:**

- Specifies minimum age for issuance of certificate as 18 years of age
- Clarifies Temporary Certificate can be issued only once (initial Board exam)
- Specifies conditions for re-testing following exam failure (re-test two times per 12 month period)
- Eliminates specific Test Administration Firm names – uses generic language
- Indicates that the examination process will be administered by the Division of Public Health
- Specifies 30-day grace period following certificate expiration, to renew certificate
- Emphasizes that radiographs are not to be taken by

- a Technician/Technologist whose Permanent Certificate has expired (after 30-day grace period)
- Specifies that renewal of certificate for national credential must include photocopy of national credential membership card or certificate, in good standing (defines "proof" as stated in the original text)
- Specifies that Rad Tech's continuing to take radiographs with expired certificate will subject their employer to citation under the DRCR for registered radiation facilities
- Increases certification renewal fee for all Rad Tech's from \$10 to \$50 every four years

#### **4466 Radiation Technologists/Technicians (Certification)**

This Regulation is approved by the Authority on Radiation Protection on February 17, 1989, 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 ~~November 10, 2003~~ February 10, 2006.

#### **1.0 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.

**6 DE Reg. 99 (7/1/02)**

#### **2.0 Title of Regulation**

This regulation shall be known as the "Radiation Technologist/Technician Certification Regulation".

**6 DE Reg. 99 (7/1/02)**

#### **3.0 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.

**6 DE Reg. 99 (7/1/02)**

#### **4.0 Definitions**

4.1 As used in this regulation:

"**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.

"**ARRT**" means 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.

"**Authority**" means the Authority on Radiation Protection as specified by 16 **Del.C.** §7404.

"**CCI**" means Cardiovascular Credentialing International. A national certifying body that credentials technologists in invasive cardiovascular procedures.

"**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".

"**Temporary Certificate**" 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.

"**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".

"**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.

"**CODA**" means Commission on Dental Accreditation.

"Dental Assistant" means an individual, other than a "Licensed Practitioner", who applies radiation to humans for diagnostic purposes in dentistry.

"**DANB**" means Dental Assisting National Board which provides national ~~registration~~ credentialing for dental assistants.

"**Fee**" means the money [see schedule A] an individual must pay:

to apply for and to take the certification examination

for Re-certification - to reinstate an expired certificate for Renewal - to renew a valid certificate

"**JRCERT**" means Joint Review Committee on Education in Radiologic Technology

"**JRCECT**" means Joint Review Committee on Education in Cardiovascular Technology

"**Licensed Practitioner**" means an individual licensed to practice medicine, dentistry, dental hygiene, podiatry, chiropractic, or osteopathy in this State.

"**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.

"**NMTCB**" means Nuclear Medicine Technologist Certification Board which provides national certification of Nuclear Medicine Technologists.

"**Nuclear Medicine Technologist**" means an individual, other than a Licensed Practitioner, who uses radiopharmaceutical agents on humans for diagnostic and/or therapeutic purposes.

"**Radiation Technician**" means any individual who has not graduated from a approved program in radiation technology, but has passed an Authority approved examination.

"**Radiation Technologist**" means any individual who has successfully completed a JRCERT/JRCCVT approved program in radiation technology and/or has passed a national certification examination in his/her field of specialization.

"**Radiation Technology**" means the use of a radioactive substance or equipment emitting ionizing radiation on humans for diagnostic or therapeutic purposes.

"**Radiation Therapist**" means an individual, other than a Licensed Practitioner, who exposes humans to ionizing radiation for therapeutic purposes.

"**Source of Radiation**" means a radioactive material, or any device or equipment emitting or capable of producing ionizing radiation.

"**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)).

**6 DE Reg. 99 (7/1/02)**

**7 DE Reg. 639 (11/1/03)**

## 5.0 Legal Titles

5.1 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.

5.1.1 The Authority shall establish certification requirements for Radiation Technologists/Technicians; i.e., Dental Assistant, Dental Radiation Technician, Medical

Radiographer, Logic Technologist, Medical Radiation Technician, Nuclear Medicine Technologist, and Radiation Therapist and Cardiovascular Radiologic Technologist. Individuals holding these certificates shall be recognized by such title(s).

5.1.2 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.

5.1.3 Holders of a certificate (legal title) under this regulation shall display the official certificate or a verified copy in each place of regular employment.

**6 DE Reg. 99 (7/1/02)**

## 6.0 Credentialing Process

### 6.1 Classification of Credentials

6.1.1 Certificate (Section 7.1)

6.1.2 Temporary Certificate (Section 7.2)

### 6.2 Application

6.2.1 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.

6.2.2 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.

6.2.3 The application shall be valid for a period of six (6) months.

6.2.4 ~~Appropriate professional associations include:~~

- ~~•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~~

The Agency shall issue a certificate to all applicants holding a current national credential from an Authority-recognized, national voluntary credentialing body (see Schedule C).

### 6.3 Examinations

6.3.1 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 Experior Assessments, Inc. by test administration companies under contract.~~ The fee for examination shall accompany the application request.

6.3.2 The Authority may accept, in lieu of an examination, a current credential by a recognized national voluntary credentialing body, (see ~~Section 6.3.4~~ 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.

6.3.3 An examinee who fails to pass the certification examination may be ~~re-examined~~ tested two times per calendar year, provided the prescribed application and examination fees for each re-examination are paid.

6.3.4 List of National Credentialing Organizations Acceptable for Delaware Certification

6.3.4.1 American Registry of Radiologic Technologists (ARRT)

6.3.4.2 Dental Assisting National Board (DANB)

6.3.4.3 Nuclear Medicine Technologist Certification Board (NMTCB)

6.3.4.4 Cardiovascular Credentialing International (CCI)

**6 DE Reg. 99 (7/1/02)**

**7 DE Reg. 639 (11/1/03)**

## **7.0 Issuing Credentials**

7.1 The Agency may issue a permanent Certificate ~~or Temporary Certificate~~ to each applicant who has successfully met the requirements under Section 6.20, is at least 18 years of age, 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 6.3.1 and 6.3.2 above]. The initial permanent 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.

7.2 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~~ national credential. Only one 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 ~~The~~ Temporary Certificate shall grant the same rights as the

credential for which the applicant is awaiting examination. Such ~~Temporary Certificate~~ credential may not be renewed by the Agency without the approval of the Authority and only for just cause.

7.2.1 The Temporary Certificate shall expire:

7.2.1.1 on the date of notification of the results of the certification examination; or,

7.2.1.2 on the certification examination date if the applicant does not take the examination; or,

7.2.1.3 in any case, after a maximum of ~~365~~ 90 days from the date of issue.

7.3 Renewal of Permanent Certificate. A valid permanent 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.

7.3.1 Applicants for renewal of certificates based on national credentials must provide proof that the national credentials are currently valid. A photocopy of the national credential membership card or certificate in good standing is the proof required.

7.4 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~~ expires is not permitted to take radiographs until the expired certificate is renewed. A grace period of 30 days following the expiration date of a permanent certificate is granted to allow the affected individual to renew the expired certificate.

7.5 A Radiation Technologist/Technician whose permanent certificate has lapsed for ~~more than 180 days shall:~~ 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.

7.6 A Radiation Technologist/Technician whose permanent certificate has lapsed for more than 180 days shall:

7.56.1 Apply for re-certification

7.56.2 Apply to take the appropriate certification examination or show proof of currently valid national credentials

7.56.3 Pay the re-certification and re-examination fees

7.67 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. Failure to comply with this requirement will subject the technician/technologist's employer to citation under the Delaware Radiation

Control Regulations addressing Radiation Machine or Radioactive Material Facility Registration.

**6 DE Reg. 99 (7/1/02)**

## 8.0 Limitations of Credentials

8.1 Nothing in the provisions of this regulation relating to Radiation Technology shall limit, enlarge, or affect the practice of Licensed Practitioners herein defined.

8.2 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.

8.3 A certificate, registration or license issued by another state will not be accepted as a valid equivalent Radiation Technologist/Technician certification by the Authority.

**6 DE Reg. 99 (7/1/02)**

## 9.0 Appeals, Enforcements and Penalties

9.1 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:

9.1.1 The certificate holder or applicant:

9.1.1.1 has been found guilty of fraud or deceit in procuring or attempting to procure a certificate to practice radiation technology; or

9.1.1.2 has been convicted of a felony; or

9.1.1.3 has been convicted of a crime involving moral turpitude or gross immorality; or

9.1.1.4 is unfit or incompetent by reason of gross negligence; or

9.1.1.5 is addicted to the use of habit-forming drugs and not currently under treatment for the addiction; or

9.1.1.6 has a physical or mental condition that prohibits the certificate holder from performing the essential functions of the practice authorized by the certificate; or

9.1.1.7 has a certificate to practice as a registered technologist that has been suspended or revoked in any jurisdiction; or

9.1.1.8 is guilty of unprofessional conduct, or the willful neglect of a patient.

9.2 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 9.1:

9.2.1 Permanently revoke a certificate to practice

9.2.2 Suspend a certificate until the certificate holder provides proof that the conditions in response to which the suspension was issued no longer exist.

9.2.3 Censure a certificate

9.2.4 Issue a letter of reprimand

9.2.5 Refuse a certificate (Applicant)

9.2.6 Refuse to renew a certificate

9.3 Procedure

9.3.1 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.

9.3.2 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.

9.3.3 In all proceedings herein:

9.3.3.1 The alleged violator may be represented by counsel who shall have the right of examination and cross-examination.

9.3.3.2 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.

9.3.3.3 Testimony before the Authority shall be under oath. Any member of the Authority shall have power to administer oaths for this purpose.

9.3.3.4 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.

9.3.3.5 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.

9.3.3.6 The decision of the Authority will be sent to the alleged violator by certified mail.

9.3.3.7 Any final order of the Authority may be appealed to the Superior Court.

9.3.3.8 All findings of the original action, hearing, appeal and conclusions will be held in file at the Agency.

9.3.3.9 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.

9.4 Judicial Review by Superior Court

9.4.1 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).

9.5 Unlawful Practice of Radiation Technology

9.5.1 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.

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
<u>Cardiovascular Radiologic Technologist</u>	<u>\$10.00</u>	<u>Per National Board</u>	<u>\$50.00 for 4 years</u>

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

**SCHEDULE C**

**LIST OF NATIONAL CREDENTIALING ORGANIZATIONS ACCEPTABLE FOR DELAWARE CERTIFICATION**

- American Registry of Radiologic Technologists (ARRT)
- Dental Assisting National Board (DANB)
- Nuclear Medicine Technologist Certification Board (NMTCB)
- Cardiovascular Credentialing International (CCI)

**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE**

**Delaware Temporary Assistance for Needy Families (TANF) State Plan Renewal**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing 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). Copies of the entire plan and all attachments are available upon request via mail or fax.

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 Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005. Comments may also be faxed to (302) 255-4454. Additionally, Delaware's TANF State Plan can be viewed on the Department's website at:

<http://www.dhss.delaware.gov/dhss/index.html>.

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

### Summary of Proposed Changes

#### Title of Notice

Delaware TANF State Plan for Federal Fiscal Years 2006 – 2008

#### Background

The State Plan outlines the provisions under which the State will administer the TANF program for Federal Fiscal Years 2006-2008. Under Section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), the State is required to submit the TANF State Plan to the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) biennially in order to receive certification to be eligible for continued Federal TANF funding. In order to continue to receive TANF funding, Delaware must file for renewal with the DHHS by December 31, 2005.

One of the requirements of the grant application is that the public submit comment on the plan and its design of services. All comments received during the comment period will receive consideration for the development of the TANF State Plan.

#### Summary of Proposed Changes

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.

DSS is not making any program “changes” but added information about the new E&T system and made minor updates to the language on pages 3, 4, 6, 7, 24, and 32.

#### DSS PROPOSED REGULATION #05-72

##### 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 waiver expired on September 30, 2002.

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 closely watching the progress of federal TANF reauthorization and 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 Corporation (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 original 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.
- This State Plan is being published in the Delaware Register and on the Delaware web site.

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.
  - increasing the earnings potential of TANF individuals through a State Earned Income Tax Credit for 2006.

- 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 supports 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 had a multi-year contract with Abt Associates to evaluate TANF. We measured:

- 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 was 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~~ teamed 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, child care 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 (EBIA) of up to \$5,000.00, including interest.
  - Families will contribute directly to their EBIA's.
  - 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**; and 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 which 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. Recognizing that Delaware's exemptions from time-limits are broader than those prescribed by the current TANF legislation, we are prepared to provide some benefits utilizing state MOE funding if this later becomes necessary in order to remain within TANF's time limit requirements.

**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.

### **Statewideness**

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 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 family 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 (s)he 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 obtaining 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 and 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 meet with the Social Services Advisory Council to discuss TANF and other Social Services and Child Support programs. Minutes of Social Services Advisory Council meetings in 2005, along with information on current Council members, are attached. (**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. Delaware will use state MOE funds for benefits we provide to unmarried non-graduate teen parents who are working, rather than in an educational or training activity.

### **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.
- Work-related activities that assist in obtaining or maintaining employment or improve work performance.

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.

The State implemented a new Employment and Training Management Information System (ETMIS) July 2005 that was incorporated into the existing Delaware Client Information System (DCIS). This new ETMIS can track referrals, hours of participation, and sanctions. The ETMIS provides greater accountability and tracking of participants to ensure the highest possible work participation rates. While an excellent management evaluation tool, it will also provide Delaware with the ability to determine where changes need to be made to ensure the success of the individuals in meeting program goals.

### **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-five 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.

Recognizing that Delaware's hourly requirements for participation in work and work-related activities are broader than those prescribed by the current TANF legislation, we are prepared to provide some benefits utilizing state MOE funding if this later becomes necessary in order to continue to meet TANF work participation requirements.

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 his/her 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 30 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 includes 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 the Division of Substance Abuse and Mental Health (DSAMH), Delaware's TANF program offers assessment and non-medical treatment services for all substance abusers identified through this and other methods. DSAMH and the Division of Medicaid and Medical Assistance (DMMA) 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 or a DSS renewal form. The redetermination could be completing a paper form or participating in an automated interactive interview. 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 week from counting toward the Delaware lifetime time limit when the countable income of the family is below the need standard. Beginning in May 2005, Delaware exempts months in which a person works twenty-five hours or more 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 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 that 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-five (25) 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. Delaware will comply with federal requirements so that no family receives more than sixty (60) months of TANF paid through federal TANF block grant.

### **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 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.

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 programs, 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 the Medical Center of Delaware.

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. AAAP 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.

The goals for the Division of Public Health teen pregnancy prevention are mirrored in the ‘Responsible Sexual Behavior’ section of the Healthy Delaware 2010 guidebook. They include:

- a. By 2010, increase the proportion of teens who abstain from sexual intercourse or use condoms if currently sexually active from 79% to 85%.
- b. By 2004, implement an evidence-based media campaign to promote responsible sexual behavior
- c. By 2010, maintain the proportion of youth that report remaining abstinent before age 13 at 90%
- d. By 2005, reduce the birth rate for teenagers aged 15 through 17 from 39.2 to 33.3 per 1,000.

Goals a. and c. are measured through the Youth Risk Behavior Survey administered every two years by the Department of Education. Goal b. has been satisfied by the implementation of an ongoing teen pregnancy prevention media campaign managed by the Alliance for Adolescent

Pregnancy Prevention through Christiana Health Care under contract by DPH. Goal d. is measured by the Delaware Health Statistics Center.

DSS will see that TANF families receive education about the benefits of marriage and planning to have children when they can be best supported by both parents within the financial management component of their training. Our goal is to reduce the out of wedlock birth rate by 1% each year beginning with FFY 2004.

### **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 SB 346 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 to 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 17 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

Delaware intends to meet the participation rate requirements set forth in the TANF legislation. Recognizing that Delaware's hourly requirements for participation in work and work-related activities are broader than those prescribed by the current TANF legislation, we are prepared to provide some benefits utilizing state MOE funding if this later becomes necessary in order to continue to meet TANF

work participation requirements. Delaware will comply with federal requirements.

### 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.

As a 1975 fill-the-gap state, Delaware has opted to continue to use fill-the-gap for the issuance of child support disregard and child support supplemental payments to TANF clients. 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 December, 2005. The implementation date for the provisions of this plan is October 1, 2005. Any subsequent amendments to this Plan will be indicated by amending the page of the Plan that describes the program or function being changed.

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## DIVISION OF SOCIAL SERVICES

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

## PUBLIC NOTICE

### Temporary Assistance for Needy Families (TANF) – Joint Custody

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services

(DSS) is proposing to amend the Division of Social Services Manual (DSSM) as it relates to Joint Custody and TANF.

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 Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

### **Summary of Proposed Regulation**

#### **Citation**

Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996

#### **Background**

There are often situations when two parties want to receive TANF benefits for the same child at the same time. In most circumstances, the party that has physical custody and cares for the child most of the time will be able to receive the TANF benefits. When the parties have joint custody or shared custody, determining which party can receive those benefits is more difficult.

#### **Summary of Proposal**

DSSM 3004.1.1, *Joint Custody*: Adds specific language to describe the criteria and procedures for determining which party receives TANF when two parties have joint custody or shared custody.

#### **DSS PROPOSED REGULATION #05-68**

#### **NEW:**

##### **DSSM 3004.1.1 Joint Custody**

The home exists even if the responsible caretaker relative or child is temporarily absent per DSSM 3023.4, 3023.5, and 3023.6 for TANF purposes. Joint custody cases can complicate deciding if a child is eligible for TANF and with which specified relative.

The Division of Social Services uses the following terms and definitions. (Note: The court system may use similar terms having different definitions.)

Joint Custody-Two parties are given the control to make major life decisions for a child. Joint custody exists when two parties are given, by court decree, the responsibility for making the major decisions in a child's life. (This is not meant to be an exhaustive list but a guide. There may be other decisions that fall into this category.) Major life decisions revolve around:

- Religious upbringing;
- Medical treatment options; and
- Education.
  
- Primary Residence- The physical home/location of the child the majority of the time. The court may indicate which party should maintain a primary residence for the child. This decision is often with one party but can sometimes be an equal split between the adults seeking custody. A court decree indicating that one party has the primary residence does not automatically mean only that party is permitted to apply for and receive TANF for that child.
- Day-to-Day Care and Control- The person(s) who provide the care for the child the majority of the time. These care decisions do not necessarily rise to the level of major life decisions but they are the ones that the responsible adult makes on a daily basis.

The Division of Social Services provides that in joint custody situations, the first party to apply for and have eligibility determined for TANF can receive it for that child. This is permitted, whether or not the party in the joint custody case has the primary residence of the child. We allow this situation because the child will have just one parent providing the day-to-day care or no parent providing the day-to-day care at any given time. This only applies in joint custody cases.

When both parties in the joint custody arrangement wish to receive TANF:

- Determine with whom the child resides most of the time; and
- Determine who maintains the day-to-day care and control of the child.

The party with whom the child resides most of the time and the party who maintains the daily care and control of the child will be able to receive TANF for that child. If both parties have equal time and decision making for the child

each month, then the party that applies first will be able to receive the TANF benefits.

## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Refugee Cash Assistance

#### Self-Employment Income Standard Deduction

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) to implement a simplified way to calculate self-employment income.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

#### Summary of Proposed Change

##### Citation

45 CFR §400.56, *Refugee Resettlement Program, Structure*

##### Background

Determining self-employment income is complicated and error prone. Current food stamp rules do not allow certain business costs that the Internal Revenue Service (IRS) allows for tax purposes. Gathering the correct information from tax records can be cumbersome for staff. Verification of gross proceeds is fairly easy to obtain but verifying the costs of doing business is not.

#### Summary of Proposed Change

DSSM 8028.1, Sources of Income: The previous regulation that was adopted to implement the self-employment standard deduction (October 2005 issue of the Delaware Register) did not include Refugee Cash Assistance (RCA). This notice corrects the omission.

#### DSS PROPOSED REGULATION #05-70 REVISIONS:

##### 8028.1 Sources of Earned Income

1. Wages - Gross earnings paid to the employee before deductions for taxes, FICA, insurance, etc. are counted. Sick pay or vacation pay is considered as a wage as long as it is paid as a wage. If sick pay is paid through an insurance company as disability pay, it is considered unearned income.

NOTE: Earnings paid to employees under contract are averaged over the number of months covered by the contract.

EXAMPLE: A teacher is under contract for a full calendar year, but may choose to collect his pay during the school year. His wages for public assistance purposes are budgeted over the full year.

2. Self employment - Gross earned income from self employment is determined by subtracting business expenses (supplies, equipment, etc.) from gross proceeds. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the standard allowance for work connected expenses (See DSSM 8028.2 and DSSM 8028.3).

~~Self employed persons must submit evidence of gross proceeds and business expenses or income tax statements to verify earnings.~~

3. Farming — Farming is defined as raising crops, livestock, or poultry for profit. Gross earned income from farming is determined by subtracting the farmer's operating expenses from sales. Produce grown for home consumption is not considered income.

4. Room and Board Income — [See DSSM 8030 for treatment of cash payments for shared living expenses.] Income from the operation of a rooming and/or boarding home is considered earned income. The following disregards are deducted from gross proceeds as operating expenses. These expenses are deducted before any earned income disregards are subtracted from income.

Roomers only — subtract \$10.00 per month per person. (A roomer is a person who rents living space in the home.)

~~Boarders only—subtract \$30.00 per month per person. (A boarder is a person who purchases meals provided in the home, but does not live there.)~~

~~Roomers and Boarders—subtract \$46.00 per month per person. (A roomer and boarder does both.)~~

~~EXAMPLE: An individual operates a rooming and boarding home. She has three (3) roomers who each pay \$60.00 per month and two (2) roomers and boarders who each pay \$100.00 per month.~~

~~\$180.00—Payment from roomers \$60 x 3  
30.00—Disregards for roomers \$10 x 3  
\$150.00~~

~~\$200.00—Payment from roomers and boarders (\$100 x 2)  
92.00  
\$108.00—Disregard for roomers and boarders (\$46 x 2)~~

~~\$150.00  
+108.00~~

~~\$258.00—Total gross income from roomers and boarders (Earned income disregards appropriate to the category of assistance are subtracted in the budgeting process. See DSSM 8028.2.)~~

### **Self-Employment Standard Deduction for Producing Income**

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all their business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

The self-employment standard deduction will be reviewed annually to determine if an adjustment in the percentage amount is needed

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## **DIVISION OF SOCIAL SERVICES**

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

### **PUBLIC NOTICE**

#### **Child Care Subsidy Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

#### **Summary of Provisions**

##### **Statutory Basis**

- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; and,
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981 establishes child care under the Social Services Block Grant (part of Categories 31 and 41).

##### **Summary of Changes**

DSS is proposing to amend several sections in the Division of Social Services Manual (DSSM) to clarify and

update existing Child Care Subsidy Program policy. This includes updating, revising, clarifying, (and deleting where necessary) the following policy sections due, in part, to the integration of the previous Child Care Management system into the current DCIS II Child Care eligibility system:

1) DSSM 11003.6, *Income Limits*; DSSM 11003.7, *Income Eligible Child Care*; DSSM 11004.7.1, *Child Care Fee Scale and Determination of Fee*; and, DSSM 11006.4, *Provider Reimbursement*. Additionally, DSSM 11006.4.6, *Reimbursement* is combined with DSSM 11006.4.

2) Further clarifications were made in DSSM 11002.9, *Definitions and Explanation of Terms*; DSSM 11003.9.1, *Income*; and, DSSM 11003.9.2, *Whose Income to Count*. Sections 11002.9 and 11003.9.1 redefine employment/wages to include the standard as minimum wage or an equivalent. DSSM 11004.4.2 is a new section added to update and explain the Purchase of Care Plus (POC+) program. This change reflects the agency's desire to offer POC+ to all clients who wish to participate in POC+.

These changes provide consistency with DSS programs and underscore the Division's mission of self-sufficiency.

**DSS PROPOSED REGULATIONS #05-71a**

**REVISIONS:**

**11003.6 Income Limits**

To be eligible for child care services, a family is to have gross income equal to or less than 200 percent of the current federal poverty level for a family of equal size. This income requirement typically applies to all income eligible child care programs. Refer to Appendix I for current income limits the most current Cost of Living Adjustment Administrative Notice for current rates.

**Income Limits Per Family Size**

Family Size	Monthly Income
1	\$1,552
2	\$2,082
3	\$2,612
4	\$3,142
5	\$3,672
6	\$4,202
7	\$4,732
8	\$5,262

Each Additional Child \$530

**11003.7 Income Eligible Child Care**

~~A-~~ DSS provides child care to families who are financially eligible to receive care because the family's gross income is equal to or under 200 percent of the federal poverty level and they have ~~one or more of the following~~ a needs for care as outlined below. These families are considered income eligible. DSS has two funding streams, CCDF and SSBG, that cover income eligible individuals.

~~1-~~ a low-income (200 percent or less of the federal poverty level) parent/caretaker needs child care in order to ~~accept employment or remain employed and would be at risk of becoming eligible for TANF if child care were not provided (At-Risk Child Care, Category 31); or~~

~~2-~~ a low-income (200 percent or less of the federal poverty level) parent/caretaker needs child care in order to ~~work, attend a job training program, or participate in an educational program, or is receiving or needs to receive protective services (CCDBG Child Care, Category 31); or~~

~~3-~~ a parent/caretaker needs child care to ~~work or participate in education or training; searches one month for employment after losing a job; because the child or the parent/caretaker or other adult household member has special needs; because they care for a protective child who is active with the Division of Family Services or the parent/caretaker is homeless. (SSBG Child Care, Category 31).~~

~~B-~~ DSS programmed the DCIS II Child Care Sub system to identify the need and include all the ~~above~~ child care needs into one category, Category 31. ~~Therefore, Case Managers will only have to consider whether parents/caretakers meet just one of the above needs to include them in a Category 31 funding stream. However,~~ DSS also programmed the DCIS II Child Care Sub system so that it could make the policy distinctions needed to make payments from the appropriate funding source for each child in care. Though Case Managers will not have to make these distinctions, it is helpful to know them.

They are:

~~1-~~ At-Risk Child Care will only include parents/caretakers who need child care to accept a job or to keep a job.

~~It will include parents/caretakers who have the need for child care because of a special needs child or a protective child, but it will always coincide with the parent/caretaker's need to accept or keep a job.~~

~~2.1.~~ CCDBG CCDF Child Care will include:

a. parents/caretakers who need child care to accept or keep a job, and/or

b. participate in education or training as outlined in section 11003.7.4 and 11003.7.5, or

c. children who receive or need to receive protective services.

d. parents/caretakers who are homeless and need care to accept or keep a job or participate in education or training as outlined in section 11003.7.4 and 11003.7.5.

It will also include parents/caretakers who need care because of a special needs child. It will always coincide with the parent/caretaker's need to work or participate in education or training. It will not include parents/caretakers who have a special need or other adult household member who has a special need.

3.2. SSBG Child Care will include:

- a. parents/caretakers who need child care to accept or keep a job,
- b. parents/caretakers who need child care to participate in education or training as outlined in section 11003.7.4 and 11003.7.5.
- c. parents/caretakers whose only need is a special need child or special needs adult household member,
- d. children who need protective services, or
- e. parents/caretakers who are homeless.

*(Break in Continuity of Sections)*

**11004.7.1 Child Care Parent Fee Scale and Determination of Fee**

The assessed child care parent fee is based on family size, family income as a percentage of the poverty scale and the cost of care. The current child care fee scale used to determine the child care parent fee is ~~attached as Appendix III located in Administrative Notices as the Child Care Sliding Fee Scale Appendix III of the Cost of Living Adjustment Notice.~~

To arrive at the actual fee, look at ~~this scale~~ the current Child Care Sliding Fee Scale (noted above) and use the following steps.

A. Determine the family size as outlined in section 11003.9.3.

B. From the family size column, determine the income range of the parent/caretaker.

C. At the top of the income ranges are percentages from 0% to 36% all the way up to 190% to 200%. These are the percentages of the federal poverty scale as it relates to family income by family size. It means that a family's income can range between 0% to 36% all the way up to 190% to 200% of the federal poverty scale. Find the appropriate percentage column for your family.

D. Finally, based on family size and income at that appropriate percentage range, look at the percentages below (these are ranges from 1% to 80%). This is the percentage of the cost of care that this family will pay per child based on the percentage of their income as it relates to the federal poverty level.

Families with income between: 0% and 36% of poverty, pay 1% of the cost of care

Poverty percentage ranges based on income	Percentage of the cost of care paid
0% and 36%	1%
36% and 45%	5%
45% and 55%	7%
55% and 65%	8%
65% and 75%	10%
75% and 85%	12%
85% and 95%	14%
95% and 100%	16%
100% and 105%	21%
105% and 115%	23%
115% and 120%	25%
120% and 125%	30%
125% and 135%	32%
135% and 145%	44%
145% and 155%	46%
155% and 160%	48%
160% and 170%	50%
170% and 180%	60%
180% and 190%	70%
190% and 200%	80%

E. Finally, based upon the type of care (i.e., home, center, etc.) a parent/caretaker selects, multiply the percentage of the cost of care by the cost for that type of care. This is the parent fee the parent/caretaker will pay.

This is a per child fee. If more than one child is in care, repeat the calculations for each child, then combine all the per child fees to arrive at the total fee.

EXAMPLE: Based upon income and family size, a parent is to pay seven percent of the cost of care for a three year old child in a contracted child care center. If the cost of care for a child over two in a center is \$12.40 per day, multiply \$12.40 by .07, giving the parent a fee of .87 cents per day for that child.

NOTE: ~~This is a per child fee. If more than one child is in care, repeat the calculations for each child, then combine all the per child fees to arrive at the total fee.~~ Use the same rules for determining family size for the child care fee scale as done for determining family size for income. Include all of the family's children under age 18 in the family size even if not all will need child care services. In other words, the people whose needs and income are included together are

counted together to comprise the definition of family size. Review Section 11003.9.3 for further guidance.

DSS programmed the CCMIS DCIS II Child Care Sub system to do the actual child care parent fee calculation. As long as the appropriate information is entered (the appropriate family size, adults, and children) on the CHILD CARE CASE PARTICIPANT screen, the casehead by type (either a PAR for parent or CAR for caretaker) is identified, and the appropriate income and category information is entered, the CCMIS will calculate the child care fee.

**NOTE:** Include all of the family's children under 18 in the family size even if not all will need child care services. The child care parent fee which initially shows in the CCMIS DCIS II Child Care Sub system is the fee for a full day of child care actual amount of care that is authorized. The actual fee may differ depending on the amount of care authorized, i.e. full day, half day, day and a half, or two days. The actual fee the parent/caretaker pays for that child is also indicated on the authorization form.

**INCOME POVERTY RANGE** 0% -36% 36% -45% 45% -55%  
55% -65% 65% -75% 75% -85% 85% -95% 95% -100% 100% -  
105% 105% -115% 115% -120% 120% -125% 125% -135%  
135% -145% 145% -200%

**FAMILY SIZE** 1% 5% 7% 8% 10% 12% 14% 16% 21% 23% 25%  
30% 32% 44% 46% 48

1 ~~\$ 0.00 \$ 242.01 \$ 302.01 \$ 369.01 \$ 436.01 \$ 503.01 \$ 570.01 \$ 637.01 \$ 671.01 \$ 705.01 \$ 772.01 \$ 805.01 \$ 839.01 \$ 906.01 \$ 973.01~~  
~~\$242.00 \$ 302.00 \$ 369.00 \$ 436.00 \$ 503.00 \$ 570.00 \$ 637.00 \$ 671.00 \$ 705.00 \$ 772.00 \$ 805.00 \$ 839.00 \$ 906.00 \$ 973.00 \$1,040.00~~

2 ~~\$ 0.00 \$ 326.01 \$ 407.01 \$ 498.01 \$ 588.01 \$ 679.01 \$ 769.01 \$ 860.01 \$ 905.01 \$ 950.01 \$1,041.01 \$1,086.01 \$1,131.01 \$1,222.01 \$1,312.01~~  
~~\$326.00 \$ 407.00 \$ 498.00 \$ 588.00 \$ 679.00 \$ 769.00 \$ 860.00 \$ 905.00 \$ 950.00 \$1,041.00 \$1,086.00 \$1,131.00 \$1,222.00 \$1,312.00 \$1,402.00~~

3 ~~\$ 0.00 \$ 410.01 \$ 512.01 \$ 626.01 \$ 740.01 \$ 854.01 \$ 967.01 \$1,081.01 \$1,138.01 \$1,195.01 \$1,309.01 \$1,366.01 \$1,423.01 \$1,536.01 \$1,650.01~~  
~~\$410.00 \$ 512.00 \$ 626.00 \$ 740.00 \$ 854.00 \$ 967.00 \$1,081.00 \$1,138.00 \$1,195.00 \$1,309.00 \$1,366.00 \$1,423.00 \$1,536.00 \$1,650.00 \$1,764.00~~

4 ~~\$ 0.00 \$ 494.01 \$ 617.01 \$ 754.01 \$ 891.01 \$1,028.01 \$1,165.01 \$1,302.01 \$1,371.01 \$1,440.01 \$1,577.01 \$1,645.01 \$1,714.01 \$1,851.01 \$1,988.01~~  
~~\$494.00 \$ 617.00 \$ 754.00 \$ 891.00 \$1,028.00 \$1,165.00 \$1,302.00 \$1,371.00 \$1,440.00 \$1,577.00 \$1,645.00 \$1,714.00 \$1,851.00 \$1,988.00 \$2,125.00~~

5 ~~\$ 0.00 \$ 578.01 \$ 722.01 \$ 883.01 \$1,043.01 \$1,204.01 \$1,364.01 \$1,525.01 \$1,605.01 \$1,685.01 \$1,846.01 \$1,926.01 \$2,006.01 \$2,167.01 \$2,327.01~~  
~~\$578.00 \$ 722.00 \$ 883.00 \$1,043.00 \$1,204.00 \$1,364.00 \$1,525.00 \$1,605.00 \$1,685.00 \$1,846.00 \$1,926.00 \$2,006.00 \$2,167.00 \$2,327.00 \$2,487.00~~

6 ~~\$ 0.00 \$ 662.01 \$ 827.01 \$1,011.01 \$1,195.01 \$1,379.01 \$1,562.01 \$1,746.01 \$1,838.01 \$1,930.01 \$2,114.01 \$2,206.01 \$2,298.01 \$2,481.01 \$2,665.01~~  
~~\$662.00 \$ 827.00 \$1,011.00 \$1,195.00 \$1,379.00 \$1,562.00 \$1,746.00 \$1,838.00 \$1,930.00 \$2,114.00 \$2,206.00 \$2,298.00 \$2,481.00 \$2,665.00 \$2,849.00~~

7 ~~\$ 0.00 \$ 746.01 \$ 932.01 \$1,139.01 \$1,346.01 \$1,553.01 \$1,760.01 \$1,967.01 \$2,071.01 \$2,175.01 \$2,382.01 \$2,485.01 \$2,589.01 \$2,796.01 \$3,003.01~~  
~~\$746.00 \$ 932.00 \$1,139.00 \$1,346.00 \$1,553.00 \$1,760.00 \$1,967.00 \$2,071.00 \$2,175.00 \$2,382.00 \$2,485.00 \$2,589.00 \$2,796.00 \$3,003.00 \$3,210.00~~

8 ~~\$ 0.00 \$ 830.01 \$1,037.01 \$1,268.01 \$1,498.01 \$1,729.01 \$1,959.01 \$2,190.01 \$2,305.01 \$2,420.01 \$2,651.01 \$2,766.01 \$2,881.01 \$3,112.01 \$3,342.01~~  
~~\$830.00 \$1,037.00 \$1,268.00 \$1,498.00 \$1,729.00 \$1,959.00 \$2,190.00 \$2,305.00 \$2,420.00 \$2,651.00 \$2,766.00 \$2,881.00 \$3,112.00 \$3,342.00 \$3,572.00~~

*(Break in Continuity of Sections)*

**11006.4 Provider Reimbursement**

Reimbursement is monthly as indicated on the Day Care Contract (Compensation, Method of Payment, and Collection of Fee sections). Complete records must be retained by the provider for a period of three years, listing each child's daily attendance, accurately stating the number of authorized days present by type, and the number of absent days. These records will be monitored on a regular basis.

Payment will be made only for the number of days and type of authorization indicated on individual Form 618d and in accordance with absent day policy. Reimbursement rates differ for children under the age of two and children two years of age and older.

# PROPOSED REGULATIONS

**FFY 2005 CHILD CARE PROVIDER RATES**

**NEW CASTLE COUNTY**

**LICENSED HOMECENTERS** **IN-HOME/RELATIVES**

<b>Regular</b>	<b>Special Needs</b>	<b>Regular</b>	<b>Special Needs</b>
0	\$ 105.00	\$ 110.25	\$ 140.00
1	\$ 100.00	\$ 100.00	\$ 117.00
2 to 5	\$ 77.35	\$ 81.20	\$ 86.25
6 & over	\$ 77.35	\$ 81.20	\$ 81.40

**KENT & SUSSEX COUNTIES**

**LICENSED HOMECENTERS** **IN-HOME/RELATIVES**

<b>Regular</b>	<b>Special Needs</b>	<b>Regular</b>	<b>Special Needs</b>
0	\$ 75.00	\$ 78.75	\$ 95.00
1	\$ 75.00	\$ 78.75	\$ 95.00

1	\$ 75.00	\$ 78.75	\$ 80.00	\$ 84.00	\$ 75.00
2 to 5	\$ 61.20	\$ 64.25	\$ 65.00	\$ 68.25	\$ 45.90
6 & over	\$ 61.20	\$ 64.25	\$ 65.00	\$ 68.25	\$ 45.90

**CHILD CARE INCOME LIMITS — EFFECTIVE 10/01/2004**

**FAMILY SIZE INCOME**

1	\$ 1,552.00
2	\$ 2,082.00
3	\$ 2,612.00
4	\$ 3,142.00
5	\$ 3,672.00
6	\$ 4,202.00
7	\$ 4,732.00
8	\$ 5,262.00
Additional person add	\$ 530.00

<b>FFY 2006 CHILD CARE PROVIDER RATES</b>						
<b>NEW CASTLE COUNTY</b>						
	<u>LICENSED HOMES</u>		<u>CENTERS</u>		<u>IN-HOME/RELATIVES</u>	
	<u>Regular</u>	<u>Special Needs</u>	<u>Regular</u>	<u>Special Needs</u>	<u>Regular</u>	<u>Special Needs</u>
0	\$ 110.00	\$ 115.50	\$ 145.00	\$ 152.25	\$ 105.00	\$ 110.25
1	\$ 105.00	\$ 110.25	\$ 122.00	\$ 128.10	\$ 100.00	\$ 105.00
2 to 5	\$ 82.35	\$ 86.45	\$ 104.60	\$ 109.85	\$ 58.00	\$ 60.90
6 & over	\$ 84.30	\$ 88.50	\$ 104.60	\$ 109.85	\$ 58.00	\$ 60.90
<b>KENT COUNTY</b>						
	<u>LICENSED HOMES</u>		<u>CENTERS</u>		<u>IN-HOME/RELATIVES</u>	
	<u>Regular</u>	<u>Special Needs</u>	<u>Regular</u>	<u>Special Needs</u>	<u>Regular</u>	<u>Special Needs</u>
0	\$ 80.00	\$ 84.00	\$ 97.50	\$ 102.40	\$ 75.00	\$ 78.75
1	\$ 75.00	\$ 78.75	\$ 85.00	\$ 89.25	\$ 75.00	\$ 78.75
2 to 5	\$ 66.20	\$ 69.50	\$ 70.00	\$ 73.50	\$ 45.90	\$ 48.20
6 & over	\$ 68.15	\$ 71.55	\$ 71.95	\$ 75.55	\$ 45.90	\$ 48.20
<b>SUSSEX COUNTY</b>						
	<u>LICENSED HOMES</u>		<u>CENTERS</u>		<u>IN-HOME/RELATIVES</u>	
	<u>Regular</u>	<u>Special Needs</u>	<u>Regular</u>	<u>Special Needs</u>	<u>Regular</u>	<u>Special Needs</u>
0	\$ 75.50	\$ 79.30	\$ 97.50	\$ 102.40	\$ 75.00	\$ 78.75
1	\$ 75.00	\$ 78.75	\$ 85.00	\$ 89.25	\$ 75.00	\$ 78.75
2 to 5	\$ 66.20	\$ 69.30	\$ 70.00	\$ 73.50	\$ 45.90	\$ 48.20
6 & over	\$ 68.15	\$ 71.53	\$ 71.95	\$ 75.55	\$ 45.90	\$ 48.20

**PROPOSED REGULATIONS**

<b>CHILD CARE INCOME LIMITS - EFFECTIVE 10/01/2005</b>		
<b>FAMILY SIZE</b>		<b>INCOME</b>
<u>1</u>		\$ 1,596.00
<u>2</u>		\$ 2,140.00
<u>3</u>		\$ 2,682.00
<u>4</u>		\$ 3,226.00
<u>5</u>		\$ 3,770.00
<u>6</u>		\$ 4,312.00
<u>7</u>		\$ 4,856.00
<u>8</u>		\$ 5,400.00
Additional person add		\$ 544.00

**11006.4.6 Reimbursement**

Payment will be made only for the number of days and type of authorization indicated on individual Form 618d and in accordance with absent day policy. Reimbursement rates differ for children under the age of two and children two years of age and older.

**FFY 2005 CHILD CARE PROVIDER RATES**

**NEW CASTLE COUNTY**

**LICENSED HOMECENTERS IN HOME/  
RELATIVES**

Regular Special Needs Regular Special Needs Regular Special Needs

0	\$ 105.00	\$ 110.25	\$ 140.00	\$ 147.00
	<del>105.00</del>	<del>110.25</del>		
1	\$ 100.00	\$ 105.00	\$ 117.00	\$ 122.85
	<del>100.00</del>	<del>105.00</del>		
2 to 5	\$ 77.35	\$ 81.20	\$ 86.25	\$ 90.55
	<del>58.00</del>	<del>60.90</del>		
6 & over	\$ 77.35	\$ 81.20	\$ 81.40	\$ 85.45
	<del>58.00</del>	<del>60.90</del>		

**KENT & SUSSEX COUNTIES**

**LICENSED HOMECENTERS IN HOME/  
RELATIVES**

Regular Special Needs Regular Special Needs Regular Special Needs

0	\$ 75.00	\$ 78.75	\$ 95.00	\$ 99.75
	<del>75.00</del>	<del>78.75</del>		
1	\$ 75.00	\$ 78.75	\$ 80.00	\$ 84.00
	<del>75.00</del>	<del>78.75</del>		
2 to 5	\$ 61.20	\$ 64.25	\$ 65.00	\$ 68.25
	<del>45.90</del>	<del>48.20</del>		
6 & over	\$ 61.20	\$ 64.25	\$ 65.00	\$ 68.25
	<del>45.90</del>			

**DSS PROPOSED REGULATIONS #05-71b  
REVISIONS:**

**11002.9 Definitions And Explanation Of Terms**

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

*(Break in Continuity of Sections)*

K. Child Care Parent Fee - The amount the parent/caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s) and children, or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type of care requested.

*(Break in Continuity of Sections)*

Q. Employment - Either part-time or full time work for which the parent/caretaker receives ~~income~~ wages equal to minimum wage or an equivalent. It also includes periods of up to one month of continued child care services when parents/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.

*(Break in Continuity of Sections)*

R. Family Size - The total number of persons whose needs and income are considered together. This will always include the parent(s) (natural, legal, adoptive, step, and unmarried partners with a child in common) and all their dependent children under 18 living in the home.

*(Break in Continuity of Sections)*

AT. Purchase of Care Plus (POC+) – Care option that allows providers to charge for ~~fee paying~~ most DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives the

DSS rate, the DSS determined child care parent fee, if applicable, and any additional provider-determined co-pay.

*(Break in Continuity of Sections)*

**11003.9.1 Income**

**A. Countable income**

All sources of income, earned (such as wages) and unearned (such as child support, social security pensions, etc.) are countable income when determining a family's monthly gross income. Monthly gross income typically includes the following:

1. Money from wages or salary, such as total money earnings from work performed as an employee, including wages, salary, Armed Forces pay, commissions, tips, piece rate payments and cash bonuses earned before deductions are made for taxes, bonds, pensions, union dues, etc. Wages need to be equal to minimum wage or an equivalent.

Gross income from farm or non-farm self-employment is determined by subtracting the self-employment standard deduction for producing income as described below. The individual's personal expenses (lunch, transportation, income tax, etc.) are not deducted as business expenses but are deducted by using the TANF standard allowance for work connected expenses. In the case of unusual situations (such as parent/caretaker just beginning business), refer to DSSM 9056 and 9074.

**Self-Employment Standard Deduction for Producing Income**

The cost for producing income is a standard deduction of the gross income. This standard deduction is a percentage of the gross income determined annually and listed in the Cost-of-Living Adjustment (COLA) notice each October.

The standard deduction is considered the cost to produce income. The gross income test is applied after the standard deduction. The earned income deductions are then applied to the net self-employment income and any other earned income in the household.

The standard deduction applies to all self-employed households with costs to produce income. To receive the standard deduction, the self-employed household must provide and verify they have business costs to produce income. The verifications can include, but are not limited to, tax records, ledgers, business records, receipts, check receipts, and business statements. The self-employed household does not have to verify all its business costs to receive the standard deduction.

Self-employed households not claiming or verifying any costs to produce income will not receive the standard deduction.

2. Social Security pensions, Supplemental Security Income, Veteran's benefits, public assistance payments, net rental income, unemployment compensation, workers compensation, pensions, annuities, alimony, adoption assistance, disability benefits, military allotments, Rail Road Retirement, and child support.

**B. Disregarded Income**

Monies received from the following sources **are not** counted:

1. per capita payments to, or funds held in trust for, any individual in satisfaction of a ~~judgement~~ judgment of Indian Claims Commission or the Court of Claims;

2. payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under ESM 21(a) of the Act;

3. money received from the sale of property such as stocks, bonds, a house or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds are counted as income from self-employment);

4. withdrawal of bank deposits;

5. money borrowed or given as gifts;

6. capital gains;

7. the value of USDA donated foods and Food Stamp Act of 1964 as amended;

8. the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act, as amended;

9. any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

10. loans or grants such as scholarships obtained and used under conditions that preclude their use for current living costs;

11. any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education under the Higher Education Act;

12. home produce utilized for household consumption;

13. all of the earned income of a minor or minor parent (under 18) who is a full-time student or a part-time student who is working but is not a full-time employee (such as high school students who are employed full-time during summer);

14. all payments derived from participation in projects under the Food Stamp Employment & Training (FS E&T) program or other job training programs;

15. all Vista income; and

16. all income derived as a Census taker.

Resources (such as cars, homes, savings accounts, life insurance, etc.) are not considered when determining financial eligibility or the parent fee.

#### 9 DE Reg. 564 (10/01/05)

#### 11003.9.2 Whose Income to Count

In all Categories, count all income attributable to the parent(s) and children included in the family size according to section 11003.9.1 as family income. Family size as used here means those persons whose needs and income are considered together as defined in section 11003.9.3. A person who acts as a child's caretaker (as defined in Section 11002.9) is not included in the definition of family. In this instance, any income attributable to the child or children is the income which is counted.

Income of active DFS referrals/cases is excluded. Active DFS referrals/cases do not need to meet financial eligibility.

#### 11003.9.3 Family Size

The people whose **needs** and **income** are considered together comprise the definition of family size. Family size is the basis upon which DSS looks at income to determine a family's financial eligibility and the child care parent fee. Therefore, knowing who to include in the determination of family size is an important part in deciding financial eligibility. Rules to follow when considering family size are relationship and whose income is counted.

In all instances, the people counted together for family size when determining financial eligibility are the same people counted for family size when determining the family's child care parent fee.

A. Family size is defined as Pparents (natural, legal, adoptive, ~~or~~ step, and unmarried partners with a child in common) and their children under 18 living in the home, will always be included together in the ~~make-up~~ determination of family size.

EXAMPLE 1: Ms. Brown, a single mother, lives together with her two year old daughter. She is applying for child care as a Category 31, income eligible case. Mrs. Brown and her daughter are a family size of two.

EXAMPLE 2: Susan Jones and Mark Evans live together as unmarried partners. Susan has a one year old child from a previous relationship. She applies for Category ~~43~~ 31 child care. Susan and her child are a family size of two. Mark is not counted. His income is not considered

since he is not the father of the child and there is no child in common between Susan Jones and Mark Evans. (NOTE: If Mark Evans admits to being the natural parent of the child, his income is counted and this is a family of three.)

EXAMPLE 3: Ms. Johnson, a single parent, has three children ages 13, 10, and 5. She works and needs child care for her youngest child who attends preschool. She is applying for Category 31 child care. Even though she needs care for only one child, her family size is a family size of four when looking at financial eligibility.

EXAMPLE 4: Ms. Green cares for her three year old niece. Ms. Green works and needs child care. Since Ms. Green is the aunt and not the parent of the child, she is considered a caretaker. Therefore, Ms. Green's income is not counted and she is not included in the family composition. Ms. Green's niece is considered a family size of one and any income attributable to the niece is countable income.

EXAMPLE 5: Mom and step-dad live with mom's two children, ages two and five, from a previous marriage. Mom and step-dad both work and need child care. Mom, step-dad, and her two children are a family size of four. Step-dad is included.

EXAMPLE 6: Mom and step-dad live with mom's three year old child from a previous marriage. Step-dad also has a five year old child from a previous marriage living in the home. Mom and step-dad both work and need child care. This family is a family size of four.

EXAMPLE 7: Mom and her unmarried partner have a child in common. Mom and the unmarried partner also have one child each from previous relationships. Since Mom and the unmarried partner have a child in common the needs and income of each parent will be considered for all three children. This would be a family size of 5. In this example the Child Care Sub system will first build the family together as one AG. If the AG fails the system will break this family down into 3 AG's to determine as many persons eligible as possible. The three AG's would be Mom, unmarried partner and child in common, Mom and child from a previous relationship, unmarried partner and his child from a previous relationship.

B. Adults who are not the natural, legal, adoptive, or step-parent of any of the child or children under 18 living in the home are not included when determining family size and child care fee.

EXAMPLE : Mom lives with her grandmother. Mom has two children ages 10 and 6 for whom she needs after-school care. Mom and her two children are considered a family size of three. Grandmother is not included because she is not the parent of the children nor is her income counted.

~~NOTE: In all instances, the people counted together for family size when considering financial eligibility are the same people counted for family size when considering the family's child care fee.~~

*(Break in Continuity of Sections)*

#### **11004.4.2 Purchase of Care Plus (POC+)**

POC+ is a care option that allows providers to charge DSS clients the difference between the DSS reimbursement rate up to the provider's private fee for service. The provider receives the DSS rate, the DSS determined child care parent fee if applicable, and any additional provider determined co-pay.

This option is primarily for DSS fee-paying clients. DSS chooses not to limit childcare options for any group of individuals. DSS will allow all DSS purchase of care clients eligible for POC with no parent fee the opportunity to waive their right to receive childcare with no additional provider co-pays and choose a POC+ slot.

POC+ is an option for all DSS clients, not a requirement. If a provider does not have a regular POC slot available, the client can choose to self arrange, enter into a POC+ arrangement or find another provider that will take the regular DSS payment.

It is the provider's responsibility to include in their contract with the DSS client the explanation of POC+, the length of POC+ if it is specified, the co-payment amount, the providers policy on non-payment of fees, and a statement that they have explained to the client their options and that the client chooses to participate in POC+.

In order for providers to be able to participate in the POC+ option they must agree to take a percentage of DSS waived fee clients and attend training on POC+.

If a client is currently participating in POC+ and goes to a zero parent fee for DSS, the client can stay POC+ or request a regular POC slot. If a regular POC slot is not available the client can chose to remain in a POC+ slot, self arrange, or find a provider with a regular POC slot.

A provider cannot change a zero parent fee client from a regular POC slot to a POC+ slot.

NOTE: It is important to explain to DSS clients who receive POC and Food Stamps that if they choose to participate in POC+ they need to inform the DSS worker of the co-payment amount so that the Food Stamp case can be updated.

## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Sections 311 & 1718 (18 Del.C. §§ 311, 1718)  
18 DE Admin. Code 504

### **PUBLIC NOTICE**

#### **504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants**

**INSURANCE COMMISSIONER MATTHEW DENN** hereby gives notice of a proposed change to Department of Insurance Regulation 504 relating to producer continuing education. The Commissioner proposes to amend **Regulation 504** relating to **Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants**. The docket number for this proposed amendment is 2005-207.

The two proposed changes to the regulation appear in section 8 relating to the licensee's responsibilities. The required number of ethics credits is proposed to decrease from four hours to three hours for each reporting period. Licensees who are authorized to sell homeowners and/or personal lines coverage will be required to complete two hours of continuing education on flood insurance each reporting period starting March 1, 2006. The text of the proposed amendment is reproduced in the December 2005 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Tuesday, January 3, 2006, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

#### **504 Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants**

##### **1.0 Statutory Authority and Purpose**

This Regulation is established and promulgated pursuant to 18 Del.C. §§314, 1718 and 29 Del.C. Ch.101.

The purpose of this Regulation is to establish requirements for insurance education and ethics for resident insurance adjusters, public adjusters, producers, surplus lines brokers and for standards for education providers and instructors in order to ensure a high level of professionalism for the benefit of Delaware consumers.

## 8 DE Reg. 703 (11/1/04)

### 2.0 Definitions

**"Administrative record"** means any document relating to course approval, course offerings, attendance, course completions or credits, and any other records required to be kept by the Delaware Insurance Code, and any rule or order of the Department.

**"Audit"** means Insurance Department activity to monitor the offering of courses or examinations, including visits to classrooms, test sites, and administrative offices where documentation of individual attendance and completion records and documentation of instructor credentials is maintained. Audit may include re-evaluating approved classroom course outlines, self-study programs and distance learning programs based on current guidelines.

**"Authorized representative" or "provider representative"** means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records. Where this regulation provides for an act by an entity sponsor or provider, such act shall be performed by an authorized representative.

**"Commissioner"** means the Insurance Commissioner of the State of Delaware and/or such designee appointed by the Commissioner.

**"Completion"** when used in the context of:

**Self-Study**, means a passing grade of 70% or better on the examination.

**Class**, means attendance for the full amount of time approved for each course.

**Seminar** means attendance for the full amount of time assigned for each workshop or break-out session selected.

**"Compliance date"** means the last day of February of even numbered years. Each biennial license shall commence on March 1st and end on the last day of February of even numbered years.

**"Contact person"** means the person at the entity level with authority to transact business for the entity; through contracts, licenses, or other means, usually as the owner or

corporate officer, and who designates the school official to represent the entity.

**"Continuously licensed"** means an uninterrupted license without lapse due to suspension, revocation, voluntary surrender, cancellation or non-renewal for a period of 12 months or greater.

**"Course"** means any class, self-study, seminar or distance learning course for insurance producers, surplus lines brokers, adjuster and public adjustor licensees or other insurance professionals that has been approved by the Department for the purpose of complying with continuing education requirements.

**"Credit hour (CEUs)"** means one (1) unit of credit based on a classroom hour or approved hour of credit for a seminar or self-study program.

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

**"Disciplinary action"** means administrative action that has been taken against an individual or entity as a licensee or approved course provider, instructor, or school official for which probation, suspension, or revocation of any license (issued by this or any other state, country, or territory) or approved status has been ordered or consented to or for which a fine has been entered for a wrongdoing against a consumer or a licensee.

**"Distance learning" or "Distance education"** means instructional delivery that does not constrain the student to be physically present in the same location as the instructor. Distance education includes but is not limited to: audio, instructional television, videotape, teleconferencing, audio/video conferencing, and computer conferencing, web based instruction, traditional self-study course(s) including CDs and DVDs as supplied materials and any other planned learning that normally occurs in a different place from teaching and as a result requires special techniques of course design, special instructional techniques, special methods of communication by electronic and other technology, as well as special organizational and administrative arrangements approved by the Department.

**"Entity sponsor" or "sponsor"** means a natural person, firm, institution, partnership, company, corporation, or association offering, sponsoring, or providing courses approved by the Department in eligible continuing education subjects.

**"Ethics credits"** means the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, professionalism, policy replacement consideration, handling or supervising the affairs or funds of another, conflicts of interest and matters that deal with individual character and

personal characteristics such as honesty, integrity and professionalism in the insurance industry.

**"Hour"** means sixty (60) minutes of class or seminar time, of which at least fifty (50) minutes must be instruction, with a maximum of ten minutes of break per hour all of which must be accounted for on the agenda or syllabus. For self-study courses, "hour" means sixty (60) minutes of time including reading and studying which would be necessary to successfully complete the final examination (actual exam time not included).

**"Initially Licensed"** means the first insurance license issued an individual by this Department authorizing the transaction of insurance business in this state to which the continuing education requirement applies.

**"Recognized association"** means an insurance industry association established for at least 5 years.

**"School official"** means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records.

**"Syllabus"** means an agenda showing the schedule of how a continuing education course is to be presented including time allotment to subject matter and including any meals and break times.

**2 DE Reg. 122 (7/1/98)**

**8 DE Reg. 703 (11/1/04)**

### **3.0 Course Providers**

3.1 A provider who sponsors a continuing education course must be approved by the Department and shall be operated by, including but not limited to, an authorized insurance company, a recognized insurance agents' association, an insurance trade association, a self-insurance fund, a non-profit educational institute, national provider, a member of a state Bar Association, an independent program of instruction, or an institution of higher learning. Application for entity approval shall be concurrent with application for course approval and shall be submitted on written forms or in an electronic format approved by the Department. The Department may approve or participate in reciprocal agreements relating to continuing education with the NAIC and/or its members. In assessing a provider's application for approval, the Department may consider, among other factors, whether the management of a provider, including officers, directors, or any other person who directly or indirectly controls the operation of the provider, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the provider in such position.

### **3.2 General Requirements and Responsibilities.**

3.2.1 Providers shall maintain the records of each individual completing a course for three (3) years from the date of completion and shall send the Department a roster of those in attendance within thirty (30) days of the course completion date on forms or in electronic format prescribed by the Department.

3.2.2 Providers shall notify the Producer Licensing Education Section, within thirty (30) days of a change in their mailing address or administrative office address.

3.2.3 Course providers will provide each licensee successfully completing their program a Certificate of Completion for attendees' records only after successful completion of the entire approved education course/activity. Entity Sponsors are required to distribute a Certificate of Completion to each licensee successfully completing the educational activity within thirty (30) calendar days.

3.2.4 Course providers shall obtain the Department's approval for each course offered. No prior approval shall be required for any course offered through any NAIC sponsored reciprocal agreement but course credit under this regulation shall only be allowed for those subjects eligible for course credit in Delaware.

3.2.5 No partial credit may be granted for any course unless an emergency arises. In case of an emergency, a written explanation shall be provided to the Department upon request.

3.2.6 Self-study courses shall contain an exam that shall be graded by the sponsor or an approved third party. No credit shall be given for a failing grade.

3.2.7 One Continuing Education Credit shall consist of fifty (50) minutes of qualifying classroom instruction.

3.2.8 Course Providers are responsible for the actions of their school officials, instructors, speakers and monitors.

3.2.9 Entity sponsors and instructors shall conduct themselves in a professional manner and may not misrepresent any course material or other information.

3.2.10 Course approvals, once granted by the Department, shall remain valid until modified or terminated by the entity sponsor or Department. Any changes or modifications to one or more courses by an entity sponsor shall not be valid until submitted to and approved by the Department in writing. All courses approved for credit as of November 1, 2004 shall not be subject to re-approval under the provisions of this section.

3.2.11 No activity may be advertised as having been approved until the sponsor receives written notification from the Department.

**8 DE Reg. 703 (11/1/04)****4.0 Instructors**

4.1 An entity sponsor shall certify to the Department that the instructor shall possess one or more of the following qualifications:

4.1.1 A minimum of 3 years working experience in the subject matter being taught.

4.1.2 An approved professional designation in accordance with Section 9.3 from a recognized association.

4.1.3 A degree from an accredited school in the subject matter being taught.

4.1.4 Special expertise, such as employment with a governmental entity; or a documented history of research or study in the area.

4.1.5 An instructor who is a licensee shall receive the same number of continuing education credits granted to participants. The instructor may not receive additional credit for teaching the same course more than once in a biennium reporting period.

4.1.6 Instructors shall have the authority and responsibility to deny credit to anyone who disrupts the class or is inattentive. Based on the course provider's policies, refunds may be given. It will be a violation of this regulation for an instructor or school official to knowingly allow during the class, the activities of sleeping, reading of books, newspapers, or other non-course materials, use of a cellular phone, or to allow absence from class other than authorized breaks. Penalties will be assessed against participant, instructor, and school, as provided in this regulation. Approval of a course will constitute approval of submitted instructors.

**8 DE Reg. 703 (11/1/04)****5.0 Department's Action upon Violation or Non-conformity by Course Provider or Instructor**

If the Department determines that a course provider or instructor has violated any provisions of this regulation, the Department may withdraw approval of the entity sponsor or instructor or may order a refund of course fees to licensees who attended the course, or both. The Department may also refuse to approve courses conducted by specific sponsors or instructors if the Department determines that past offerings by those entity sponsors or instructors have not been in compliance with insurance education laws, rules and regulations. The Department or his/her designee(s) may perform course provider audits on all educational activity proposed to be available to licensees of this State.

**8 DE Reg. 703 (11/1/04)****6.0 Appeals**

6.1 Appeals shall be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch.101 and 18 Del.C. §§323-28.

6.2 Providers may appeal to the Commissioner or Commissioner's designee, from any adverse decision on their request concerning continuing education activity. Appeals shall be in writing and minimally contain:

6.2.1 A synopsis of the issue,

6.2.2 The basis for the appeal,

6.2.3 The name, address, and telephone number of a contact person,

6.2.4 A copy of the original course submission and supporting documents, and

6.2.5 A copy of any correspondence from the Continuing Education Advisory Council or the Insurance Department.

**8 DE Reg. 703 (11/1/04)****7.0 Required Forms**

7.1 Requests for entity sponsor approval shall be made to the Department on such forms as shall be authorized by the Department.

7.2 Requests for entity sponsor course approval shall be made to the Department on such forms as shall be authorized by the Department.

**8 DE Reg. 703 (11/1/04)****8.0 Licensee's Responsibility**

8.1 Each licensee shall retain each original course completion certificate for a period of 3 years. The course completion certificate may be required in the event of a discrepancy between the licensee's records and the Department's records. Each licensee may be subjected to a Department audit of continuing education requirements. Failure to comply with a Department audit may result in suspension of a licensee's license. Each licensee will have thirty (30) days to produce such records upon request or audit by the Department.

8.2 General Requirements. Resident licensees and producers not otherwise exempted shall earn, at a minimum, the number of education credits described below.

8.2.1 Resident licensees required to fulfill continuing education requirements shall complete twenty-four (24) credit hours of Department approved education subjects, ~~four~~ three (43) of which shall be in ethics subjects during each biennium reporting period. If the resident producer holds a health license and solicits long term care policies, as part of his/her biennial requirement, the producer must complete at least three (3) hours of training in Delaware long term care insurance that consists of product

knowledge, laws, rules and regulations. Any resident licensee who is authorized to write homeowners or personal lines coverage shall be required to complete a two (2) hour continuing education course related to flood insurance and the National Flood Insurance Program as part of the twenty-one (21) general credit hours necessary to maintain a Delaware resident license. The flood education requirement shall become effective for reporting periods on or after March 1, 2006.

8.2.2 Resident adjusters, public adjusters and Fraternal Agents shall be required to fulfill twelve (12) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period.

8.2.3 Resident licensees will receive a continuing education transcript at least ninety (90) days prior to the end of a license biennium by mail or by electronic access as the Department deems appropriate. The licensee is responsible for reviewing the transcript for accuracy. To dispute the Department's accounting, the licensee must submit a written exception thereto prior to the biennium deadline and include a copy of the providers course completion certificate.

8.2.4 The maximum number of carryover credits shall not exceed five (5) credits in a biennium reporting period. Carryover shall not apply to ethics credit requirements. Credits in excess of the mandatory requirements set forth in section 8.2.1 may be applied to the licensee's general course requirements.

8.2.5 No continuing education requirement shall apply to newly licensed individuals during the biennium in which such individuals are licensed.

8.3 Automatic credit. An individual continuously licensed for twenty-five (25) years or longer prior to the start of a biennium reporting period or who holds a professional designation shall receive an automatic credit of twelve (12) credits in each biennium. The Department shall maintain a list of approved professional designations. Automatic credits may not be applied to satisfy the mandatory continuing education courses set forth in section 8.2.1.

8.4 License reinstatement after suspension, revocation or cancellation. All resident licensees whose licenses were canceled, suspended or revoked for a period of twelve (12) months or more shall first complete all licensing requirements under 18 Del.C. §1706 including the retaking of exams for all lines of authority under which the individual proposes to transact insurance. Any licensee who is reinstated under the provisions of this subsection shall not be entitled to the waiver provided for in section 8.2.5.

8.5 Extension of time. For good cause shown, the Department may grant an extension of time during which the requirements imposed by this regulation may be completed.

The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding biennium period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Department no less than thirty (30) days before the expiration of the biennium period.

8.6 Waiver of Continuing Education Requirements. The requirements of this regulation may be waived in writing by the Department for good cause shown. "Good cause" includes long-term illness or incapacity and any other emergency situations deemed appropriate by the Department. Request for waivers of continuing education requirements shall be made in writing and shall be submitted to the Department no later than thirty (30) days prior to the end of the biennium for which such waiver is requested. Those individuals serving full time in the armed forces of the United States of America on active duty outside of the State of Delaware shall notify the Department upon their return by supplying a copy of their activation orders as part of their application for a waiver. Any waiver granted pursuant to this regulation shall be valid only for the biennium for which waiver application was made.

8.7 Sixty (60) days prior to the start of each biennium, the Department shall prepare and publish a list of those lines of insurance for which the producers are exempt from the requirements of section 8.

8.8 Resident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation are exempt from the provisions of section 8.2.2 of this regulation. Nonresident adjusters and public adjusters must meet the license requirements of their home state.

#### **8 DE Reg. 703 (11/1/04)**

### **9.0 Penalty for Noncompliance**

9.1 Pursuant to 18 Del.C. §§334, 1712, and 1718, any licensee who fails to complete the minimum requirements of this regulation, and who has not been granted an extension of time to comply under section 8.5 of this regulation shall be subject to an administrative penalty up to and including a \$2000.00 fine and suspension of license(s) for one year. Submission of false or fraudulent information shall result in an administrative penalty up to and including a \$15,000.00 fine and permanent revocation of license.

9.2 Any appointment(s) of such licensee suspended for failure to comply with this regulation shall likewise be suspended by operation of law. Upon satisfactory completion of education requirements in arrears and payment of any administrative fine imposed within a period of twelve (12)

months, all license(s) and appointments shall be reinstated unless or until the insurer notifies the Department and licensee in writing of the insurer's intent to terminate such appointment. If suspension is for a period of twelve (12) months or greater, the licensee is subject to compliance with 18 **Del.C.** §1706 including the retaking of examinations for all line(s) of authority for which the individual licensee seeks a license.

9.3 The Commissioner may, by Order based upon a reasonable belief that a violation of Title 18 occurred, require any individual licensed under 18 **Del.C.** Ch. 17 to complete in addition to biennium insurance education requirements, approved continuing education course work to ensure the maintenance and improvement of a licensee's insurance skills and knowledge.

**8 DE Reg. 703 (11/1/04)**

### 10.0 Continuing Education Advisory Council

10.1 The Council shall consist of fourteen (14) licensees drawn from the professional organizations and the insurance industry in the State, 5 from the life and health field, 5 from the property and casualty field and four (4) from the claims settlement field.

10.2 One of the primary responsibilities of the Council shall be to review applications for course approvals and make recommendations to the Department – regarding acceptance/rejection and the number of CEUs to be granted if accepted.

10.3 The Council shall also advise the Department on matters of concern as they arise and be the liaison between the Department and the professional organizations.

10.4 Members shall serve a term of 2 years. Any member may be reappointed for successive terms. The committee shall meet every 2 months on the third Tuesday of the month or additionally as required. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

10.5 The Department's decision with respect to any Entity Sponsor submission shall be final.

**8 DE Reg. 703 (11/1/04)**

### 11.0 Separability

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

**8 DE Reg. 703 (11/1/04)**

### 12.0 Effective Date

This Regulation shall become effective March 1, 1998 and shall remain in effect until rescinded. Prior to the aforementioned date the provisions of Regulation 504 (Formerly Regulation 47) as last amended in 1987 shall

remain in effect. The amendments to this Regulation shall become effective November 15, 2004. Any matters that are not merely procedural in nature arising prior to November 15, 2004 shall be governed by the provisions of the prior version of this regulation in effect at the time the matter arose.

**8 DE Reg. 703 (11/1/04)**

## DEPARTMENT OF INSURANCE

18 Delaware Code, Sections 311 and 2503

(18 **Del.C.** §§311 and 2503)

18 **DE Admin. Code** 607

### PUBLIC NOTICE

#### 607 Defensive Driving Course Discount (Automobiles and Motorcycles)

**INSURANCE COMMISSIONER MATTHEW DENN** hereby gives notice that a **PUBLIC HEARING** will be held on **THURSDAY JANUARY 5, 2006** at 2:00 p.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to receive public comment in **Docket No. 2005-140**, proposed amendments to **Regulation 607** relating to **Defensive Driving Course Discount Automobiles and Motorcycles** as a result of comments received in response to the original publication of the proposed changes to Regulation 607.

The revised amendments will (1) eliminate the proposed testing requirement for persons taking a defensive driving course; (2) more clearly require that providers offering an on line course will be required to assure that the persons taking the course will meet the same time requirements as those attending live classroom courses; (3) clarify the requirements for live assistance for on line courses; and (4) clarify the on line provider's obligation to assure the identity of the course taker. The text of the proposed amendment is reproduced in the December 2005 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The hearing will be conducted in accordance with 18 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments,

testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 2:00 p.m., Thursday January 5, 2006, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us). If you are disabled and might need assistance in this matter, please contact Julia Blevins at 302.739.4251 ext.111 or [Julia.Blevins@state.de.us](mailto:Julia.Blevins@state.de.us).

### **607 Defensive Driving Course Discount (Automobiles and Motorcycles)**

#### **1.0 Purpose and Authority**

The purpose of this Regulation is to provide a discount applicable to total premiums for persons who voluntarily attend and complete a Defensive Driving Course and to provide criteria for Defensive Driving Courses, Providers and Instructors. This Regulation is adopted pursuant to 18 Del.C. §314, and 18 Del.C. §2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 Del.C. Ch. 101.

**2 DE Reg 989 (12/1/98)**

#### **2.0 Definitions**

“**Classroom courses**” for the purpose of this regulation means a defensive driving program conducted with students and instructors in a location common to all. These courses may include the use of audio or visual aides or materials.

~~“**Committee**” for the purpose of this regulation means the Defensive Driving Credentials Committee.~~

“**Department**” means the Delaware Insurance Department.

“**On-line courses**” for the purpose of this regulation means instruction provided online or offline through the use of a computer (or digital reader) including the use of CD ~~ROMs~~ ROMS or similar pre-recorded media or websites.

“**Providers**” means corporate sponsor for any course as well as the individual who signs the application for the course.

#### **3.0 Minimum Requirements**

A Defensive Driving Course Discount shall be applied to the total premiums for bodily injury liability coverage, property damage liability coverage, and personal injury protection coverage provided:

3.1 The automobile or motorcycle is individually owned or jointly owned by husband and wife or by members of the same household and is classified and rated as a private passenger automobile or motorcycle; and

3.2 The driver who customarily operates the automobile or motorcycle has a certificate certifying voluntary attendance and successful completion within the last 36 months from the date of application of a motor vehicle accident prevention course or motorcycle rider course, as appropriate, which is approved by the ~~Insurance Commissioner~~ Department.

**2 DE Reg 989 (12/1/98)**

#### **4.0 Application**

4.1 A 10% discount shall be applied with respect to the applicable premium(s) for each automobile or motorcycle insured under a policy if all operators named on the policy as insureds complete the course. If fewer than all the operators covered as principal or occasional drivers complete the course, then the discount shall be a fraction of 10%. The fraction shall be the number of operators completing the course, divided by the total number operators. The discount shall begin at the inception date of the policy or the first renewal date following application by the insured and shall terminate at the policy expiration date subsequent to the expiration of three years since completion of the course.

4.2 An insured who has received a defensive driving discount as outlined in section 4.1 above may take a refresher defensive driving course within the ninety days prior to the three year expiration date thereof or within two years thereof to receive a 15% discount for an additional three year period as outlined in section 4.1 above. Discounts shall not overlap. The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

**2 DE Reg 989 (12/1/98)**

#### **5.0 Implementation**

5.1 ~~In the effective date of the Act, the discount shall be first applied to policies written to be effective on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), or with renewal dates on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), if applied for by the insured, and shall remain in effect for a 3-year period from the effective date of such policies.~~

~~5.2~~ The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

~~5.3~~ All courses certified by this Department as of September 1, 2004 shall apply for re-certification under the provisions of section 7 of this regulation on or before January 1, 2005. All courses not certified by this Department prior to September 1, 2004 shall apply for certification under the provisions of section 7 of this regulation.

**6.0 Defensive Driving Course Credential Committee**

~~6.1 The Commissioner hereby forms an entity known as the Defensive Driving Course Credential Committee ("Committee"). In appointing Committee members, the Commissioner shall consider the following characteristics:~~

~~6.1.1 Knowledge of principles of teaching and learning;~~

~~6.1.2 Knowledge of safe driving principles; and~~

~~6.1.3 Knowledge of Delaware Motor Vehicle laws.~~

~~6.2 The Committee shall be composed of five citizens of this State who are not employed by or have any financial interest in any course provider and who meet the standards set forth in sections 10.1.1 through 10.1.4.~~

~~6.3 Duties. The Committee shall:~~

~~6.3.1 Elect its Chairperson and shall make recommendations to the Commissioner concerning the duties set forth herein;~~

~~6.3.2 Review and examine defensive driving course provider, instructors and prospective providers and instructors to its satisfaction. Recommend certification, denial of certification or de-certification of a course provider or prospective provider and applicants.~~

~~6.3.3 Review and examine defensive driving courses and shall provide occasional monitoring of courses to ensure each course continues to meet the Committee's minimum requirements, as outlined in this Regulation. The Committee may from time to time recommend amendments to course requirements.~~

~~6.3.4 Certify approved course providers and individual instructors for a two year period so long as the course sponsor/instructor continues to meet the requirements of this Regulation; and~~

~~6.3.5 Conduct any other such activity reasonably related to the furtherance of its duties.~~

**76.0 Certification Criteria for Defensive Driving Programs and Providers**

Each course provider shall:

76.1 Submit to the Department for approval written instructor and student materials for any defensive driving course to be offered that ~~minimally includes the elements listed in this section.~~ On-line courses shall provide free site access to the Department ~~a Committee member~~ for purposes of verification of compliance. The course materials for each defensive driving course shall include, at a minimum, the following:

76.1.1 The definition of defensive driving and the collision prevention theory serving as the basis for the course;

76.1.2 A discussion of vVehicle safety devices, including the use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems shall be explained in detail with special attention to proper passenger seating and proper use of anti-lock braking systems and how they compare to standard braking systems;

76.1.3 A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs;

76.1.4 A discussion of the factors affecting driving and how they pertain to driving defensively, including, but not limited to:

76.1.4.1 The condition of the driver, the vehicle, the road, sun glare, weather and lighting;

76.1.4.2 Distractions such as use of cellular telephones while driving, adjusting radios, audio and video tapes and compact discs, talking with a passenger, reading and eating;

76.1.5 A discussion, including specific requirements of Delaware law where applicable, of pertinent driving situations, including stopping distances, proper following distances, proper intersection driving, stopping at railroad crossings, right-of-way and traffic devices as well as situations involving passing and being passed and how to protect against head-on collisions; and

76.1.6 Consideration of the hazards and techniques of various driving situations such, as but not limited to, city, highway, expressway and rural driving, proper use of exit and entrance ramps, driving in parking lots and a discussion of Delaware law concerning school buses.

76.1.7 A discussion of aggressive driving including but not limited to identifying an aggressive driver and providing appropriate defensive driving techniques. Discussion shall also include identifying oneself as an aggressive driver and the appropriate manner to respond.

76.2 Require instructors in classroom courses to present information in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.

76.3 Require on-line courses to provide toll free telephone lines staffed by knowledgeable customer service personnel who can assist with content based questions at all times during which the course is accessible online. For courses which are accessible offline, the provider must provide toll free telephone access at such times and for such hours as shall be approved by the Department.

76.4 Require that each student receives a minimum of six hours of classroom or on-line time for the initial course and three hours of classroom or on-line time for the refresher advanced (renewal) course. Each classroom hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of course curriculum. Online courses shall be structured to provide the same learning time as required for the classroom and shall submit to the Department any materials necessary to demonstrate their ability to comply with the minimum time requirement set forth in this section.

76.5 Require that registration shall be completed prior to the beginning of any type of instruction and shall not be counted as instructional time.

76.6 Require its instructors in classroom courses to be in the classroom with the students during any and all periods of instructional time.

76.7 Require instructors in classroom courses to maintain an atmosphere appropriate for class-work.

76.8 Material required to be covered by this Regulation shall be discussed by the instructor in a classroom situation and be included as on screen information in an on-line course.

76.9 Supply students who complete a defensive driving course and who have presented a valid Delaware driver's license and/or government issued photo identification with a certification of completion that includes, at a minimum, the name of the student, the date of the class, the name of the defensive driving course and the course sponsor's authorized signature.

6.9.1 All online courses shall be required to obtain the student's driver's license number as part of the student identification information prior to permitting the student access to the course materials.

6.9.2 No online course provider shall issue a certificate of completion online or offline. All such providers shall appoint an agent or agents in Delaware with an address and telephone number easily accessible by all students who shall personally compare the online identification information with the information on the student's Delaware driver's license and/or government-issued photo identification prior to the hand delivery of a certification of completion as described in section 6.9.

76.10 All courses shall provide all students with a copy of a letter provided by the Committee Department informing the student how to provide comment or file a complaint regarding a defensive driving course. This letter shall be in hard copy form for classroom courses. On-line courses shall place the letter with registration on-line and shall provide a hard copy with the certificate of completion.

76.11 Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division.

### **~~8.0 Complaints, De-certification, Suspension and Probationary Status~~**

~~8.1 Complaints received by the Department of Insurance against course providers and/or instructors shall be directed to the Chairperson for the Committee. The Chairperson shall forward the complaint, in writing or by electronic mail, to the provider and shall request a response. The provider shall respond in writing or by electronic mail within fifteen working days. At the next meeting, the Committee shall determine whether the complaint is in an area over which it has the authority to take action or to make a recommendation. The results shall be reported to the course provider in writing as soon as reasonably possible.~~

~~8.2 Course providers and instructors may be de-certified, placed on probation for not more than 90 calendar days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. Investigations relating to issues of compliance shall be directed by the Committee.~~

~~8.3 Prior to de-certification, placement on probation or suspension of certification, the course provider or instructor or both shall be notified, in writing, by the Committee. The course provider or instructor or both shall be given a reasonable opportunity to submit evidence of compliance in his or her defense.~~

~~8.4 A course provider or instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days shall be subject to de-certification at the end of the probationary period.~~

~~8.5 A course provider or instructor or both may be de-certified, suspended or placed on probation for the following:~~

~~8.5.1 Falsification of information on, or accompanying, the Application for Certification/Re-certification;~~

~~8.5.2 Falsification of, or failure to keep and provide adequate student records and information as required herein;~~

~~8.5.3 Falsification of, or failure to keep and provide adequate financial records and documents as required; and~~

~~8.5.4 Failure to comply with any section of this Regulation.~~

### **9.0 Appeal Procedures**

9.1 Within 10 business days after the date of written notification of certification denial, suspension, probation or

de-certification, the course provider or instructor or both may file an appeal requesting review of the action taken.

9.2 The appeal shall be addressed to the Committee, citing the reasons for the request, and accompanied by any other relevant substantiating information.

9.3 The Committee shall conduct all hearings pursuant to 29 ~~Del.C. Ch.101 of the Delaware Code Annotated.~~

## **7.0 Complaints, Hearings, De-certification, Suspension and Probationary Status**

7.1 The following procedure shall be followed for the investigation of complaints against course providers and/or instructors certified under section 6.0 of this Regulation (the term "course provider" as used in section 7.0 of this Regulation shall include individual instructors as may be appropriate in the context of this section):

7.1.1 Any person who desires to file a complaint against any course provider must do so in writing.

7.1.2 The complaint shall state the name of the course provider and the facts that allegedly constitute the basis for the complaint. If either of these elements is missing from the complaint, the Department may, in its discretion, dismiss the complaint without further notice or a hearing.

7.1.3 The Department, upon determining that the complaint is complete as provided in section 7.1.2 above, shall, within 15 days of the receipt of the complaint, assign a docket number to the complaint and shall transmit a copy of the complaint by certified mail, receipted email or other receipted delivery service to the course provider named in the complaint at the course provider's address of record in the Department's files. The named course provider may file an answer to the complaint within 20 calendar days with the Department.

7.1.4. The Department shall assign a staff member to investigate the complaint and the course provider's response.

7.1.5 The staff member, as part of the investigation, shall provide a report of the staff member's findings and recommendations to the Commissioner or his designee for further action as may be appropriate under this section. The report shall list the evidence reviewed, the witnesses interviewed and cite the law or regulation alleged to have been violated and the facts to support such finding. The report shall contain a written recommendation either to take such action as may be authorized by this section or to dismiss the complaint.

7.1.6 A dismissal of the complaint shall be without prejudice and no further action shall be taken by the Department. The Department shall provide a written notification of the Department's action and the basic

reason(s) therefor to the complainant and to the course provider.

7.2 Upon a recommendation for further action under section 7.1 of this Regulation, the Commissioner shall determine whether the course provider should be warned (with or without conditions), placed on probation (with or without conditions) for not more than 90 days, suspended for a period not to exceed 6 months, or to be permanently decertified for one or more violations of this Regulation. For purposes of the enforcement of this Regulation and the protection of the public, progressive discipline is not required.

7.3 Upon making a determination as provided for in section 7.2 of this Regulation, the Department shall provide written notice to the course provider by certified mail, receipted email or other receipted delivery service. A copy of the notice shall be provided to the complainant. The notice shall include the following:

7.3.1 a summary of the complaint;

7.3.2 a summary of the information obtained in the investigation;

7.3.3 findings of fact and/or law; and

7.3.4 the sanction to be imposed by the Department.

7.4 Upon receipt of the notice provided for in section 7.3 of this Regulation, the course provider shall have the rights to a hearing and appeal as provided for in 18 ~~Del.C. §§ 323-28.~~

7.5 Nothing in section 7.0 of this Regulation shall preclude the course provider from entering into a consent agreement with the Department.

7.6 A course provider or instructor who receives a warning or is placed on probation and does not show proof of compliance with the conditions of the warning or probation within the time set forth in the consent agreement or order may be subject to suspension or decertification.

7.7 In addition to the other provisions of this Regulation, a course provider may be placed on probation, suspended or decertified for any one or more of the following:

7.7.1 Falsification of information on, or accompanying, the Application for Certification/Re-certification;

7.7.2 Falsification of, or failure to keep and provide, adequate student records and information as required herein; or

7.7.3 Falsification of, or failure to keep and provide, adequate financial records and documents as required.

**108.0 Certification Process for Defensive Driving Instructors**

108.1 Basic Requirements. Each instructor shall:

108.1.1 Be at least 18 years of age;

108.1.2 Be a high school graduate or have a G.E.D.;

108.1.3 Provide a certified copy of his or her driving record showing he or she holds a valid driver's license with no more than four (4) points, no suspensions or revocations in the past two years; and

108.1.4 Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. ~~The Committee reserves the right to~~ Department may require a criminal history background check of all applicants for an instructor's certification.-

10.2 ~~The Committee may recommend that Basic Requirements sections 10.1.2 through 10.1.4 hereof be waived upon a finding that an instructor is qualified and fit to act as an instructor.-~~

10.38.2 Re-certification. Every two years each instructor shall:

10.38.2.1 Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous calendar year;

10.38.2.2 Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and

10.38.2.3 Submit a form as prescribed by the ~~Committee~~ Department certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation- and;

10.38.2.4 Submit a certified copy of his or her driving record.

10.3.58.3 The above-described submissions shall be filed not later than January 31st of the year in which re-certification is desired. ~~The Committee~~ Department shall accept requests for re-certification not earlier than November 15th of the preceding year and make reasonable efforts to act on such requests within 30 days of receipt thereof.

8.4 The Department may provide procedural guidelines and directives through the use of bulletins and/or circular letters through the Commissioner's website from time to time as may be appropriate.

**11.0 Meetings**

~~The committee shall set a day and time for quarterly meetings. Other meetings may be set as needed.~~

**12 2.0 Effective Date**

~~12.1~~ This ~~act~~ regulation shall become effective on ~~September~~ February 11, 2004. The procedural guidelines set forth in this regulation shall govern the disposition of any matter pending before the Defensive Driving Credentials Committee as of the effective date of this regulation.

**2 DE Reg. 989 (12/01/98)**

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**DEPARTMENT OF STATE  
DIVISION OF PROFESSIONAL REGULATION**

1400 Board of Electrical Examiners  
Statutory Authority: 24 Delaware Code,  
Section 1406(a)(1) (24 **Del.C.** §1406(a)(1))  
24 **DE Admin. Code** 1400

**PUBLIC NOTICE**

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(a)(1) has proposed changes to its rules and regulations to modify the continuing education submission procedure.

A public hearing will be held at 9:00 a.m. on January 4, 2005 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

**Proposed Rules and Regulations****7.0 Expiration and Renewal.**

7.1 The biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirements of filing a renewal application with the Board.

Beginning in 2006, license renewal may be accomplished online at [www.dpr.delaware.gov](http://www.dpr.delaware.gov).

7.2 As a condition of renewal, each applicant must show proof of continuing education as required in the Rules and Regulations. Extra continuing education hours do not carry over to the next licensing period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.

7.3 A license is expired when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee may activate an expired license within one year of the date the renewal application was due by meeting all requirements and paying an additional fee set by the Division of Professional Regulation.

7.4 A licensee with a valid license may request in writing to be placed on inactive status. An inactive status can be effective for up to two years and renewed biennially by application to the Division upon proof of 10 hours of continuing education. Said license may be reactivated by the Board upon written request, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of inactive status.

7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience satisfies can be used to satisfy the requirements under 24 **Del.C.** §1408(a). However, the applicant must take the examination required by §1408(5) ~~again~~ and achieve a passing score unless he or she previously passed an approved licensure test that covered the National Electric Code that is the standard in Delaware at the time of the new application.

**4 DE Reg. 1788 (5/1/01)**

**9 DE Reg. 260 (8/1/05)**

## 8.0 Continuing Education

8.1 Continuing education (CE) is required of all licensees and ~~proof shall be submitted to the Board completed by April June 30 of any year after 2000~~ in which a license is to be renewed. ~~For example, if a license must be renewed June 30, 2001, the proof of completion of CE is due on April 30, 2001. A licensee who has submitted CE hours that are not allowed will be notified so that he or she may obtain replacement CE before the June 30 expiration of the license.~~

8.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 8.0.

8.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted.

8.1.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 8.5.

8.2 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of the Division of Professional Regulation at [www.dpr.delaware.gov](http://www.dpr.delaware.gov). Licensees may also contact the Administrative Assistant of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.

8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.

8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and ~~name~~ the curriculum vitae or resume of the instructor.

8.2.3 Sponsors or licensees seeking pre-approval should submit the request as provided in 8.1.2 at least 60 days before the CE course is being offered.

8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.42.

8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10 CE hours required for renewal must be related to the National Electrical Code.

8.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

~~8.5 A log of CE on a form approved by the Board shall be maintained and submitted. Documentation of the CE should not be routinely sent with the log but must be retained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirements. Licensees selected for the random audit shall submit attendance verification.~~

8.5.1 The Board will notify licensees within sixty (60) days after June 30 that they have been selected for audit.

8.5.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.

**4 DE Reg. 1788 (5/1/01)**

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

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

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### **DIVISION OF PROFESSIONAL REGULATION**

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code,

Section 2509 (24 Del.C. §2509)

24 DE Admin. Code 2500

### **PUBLIC NOTICE**

The Delaware Board of Pharmacy in accordance with 24 Del.C. §2509 has proposed changes to its rules and regulations. Regulation 3.3 has updated the pharmacy requirements to provide for more flexibility based on the needs of the setting. Regulation 5.12 provides for centralized prescription processing. Compounding is permitted for office use by a practitioner in Regulation 5.13. Regulation 13.0 relating to Nuclear Pharmacies has been replaced.

A public hearing will be held on the proposed changes on January 13, 2006 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board of Pharmacy, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

### **3.0 Pharmacy Requirements**

#### **3.1 Pharmacist in Charge**

3.1.1 Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement

to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

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

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

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

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

3.1.2.4 Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals. These procedures shall include proper supervision of supportive personnel and delegation of authority to another pharmacist when not on duty.

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

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

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

3.3 Equipment and Reference Materials. ~~Each pharmacy shall have the following equipment and maintain a library of the latest edition and supplements of current reference sources (either hard copy or electronically accessible) appropriate to the individual pharmacy practice and to the care of the patients served. The reference sources must:~~

#### ~~3.3.1 References:~~

~~3.3.1.1 Provide information on the therapeutic use, dosing, pharmacology, adverse effects, and interactions of drugs dispensed to patient.~~

~~3.3.1.2 Provide information helpful in the counseling of patients on the use of drugs dispensed.~~

~~3.3.1.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.~~

~~3.3.1.4 Include a listing of therapeutic equivalents for drugs dispensed.~~

~~3.3.1.5 Include current Delaware and federal laws and regulations governing pharmacy and controlled substances.~~

~~3.3.1.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.~~

### ~~3.3.2 Equipment~~

#### ~~3.3.2.1 Prescription Scale, Class A~~

~~Set of Metric Weights if balance is used~~

#### ~~3.3.2.2 Graduates, (must be glass) Metric~~

~~One of Each:~~

~~— 30 ml~~

~~— 60 ml~~

~~125 ml~~

~~500 ml~~

~~(or Set with both metric and Apothecary~~

~~Graduations may be used)~~

#### ~~3.3.2.3 Mortars and Pestles~~

~~One 8 ounce glass~~

~~One 8 ounce wedgewood~~

#### ~~3.3.2.4 Filter Paper~~

#### ~~3.3.2.5 Prescription/physician Order Files~~

#### ~~3.3.2.6 Two Spatulas~~

#### ~~3.3.2.7 One Glass Funnel~~

#### ~~3.3.2.8 One Glass Stirring Rod~~

#### ~~3.3.2.9 Ointment Slab or Papers~~

#### ~~3.3.2.10 Distilled Water~~

~~Each Pharmacy shall have such additional equipment as is necessary to perform a specific procedure.~~

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

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

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

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

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

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

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

3.3.2.3 Enable the pharmacist to properly compound medicines within accepted standards of pharmacy practice.

3.3.2.4 Include a listing of therapeutic equivalents for drugs dispensed.

3.3.2.5 Include current Delaware and Federal laws and regulations governing pharmacy and controlled substances.

3.3.2.6 Provide any other information necessary to the safe and effective practice of pharmacy for the specific practice setting.

3.4 Physical Facilities. Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:

3.4.1 A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.

3.4.2 Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between 59 degrees and 86 degrees Fahrenheit.

3.4.3 The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment required by the Board so that the utensils can be properly washed and sanitized.

3.4.4 Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained within the USP/NF range:

Refrigerator - 36 degrees to 46 degrees Fahrenheit

Freezer - Minus 13 degrees to plus 14 degrees Fahrenheit.

A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed at that pharmacy or the name of the pharmacist on duty.

3.5 Building Standards. An application to operate a new pharmacy must include (3) copies of floor plans drawn to scale of the proposed prescription department. The floor plans must include the following:

3.5.1 The requirements listed in §2534(f)(1) through (4).

3.5.2 An area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. An area partitioned by a 5 foot divider on 2 sides with a minimum of 9 square feet would satisfy this requirement in most settings.

3.5.3 The floor plans shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.

3.5.4 The floor plans must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Narcotics and Dangerous Drugs.

3.5.5 The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the floor plans requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.

3.6 Security. When the pharmacist is not physically present and the operation is open for business, the pharmacy department shall be physically or electronically secured from floor to ceiling. The partitioned off section required by 24 **Del.C.** §2534 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.

3.7 Board Interview. Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.

**Regulation 3.5.2 revised 6/16/97**

**Regulation 3.5.6 revised Effective date 10/11/98**

**2 DE Reg. 683 (10/1/98)**

**6 DE Reg. 488 (10/1/02)**

**7 DE Reg. 309 (9/1/03)**

**7 DE Reg. 1666 (6/1/04)**

**9 DE Reg. 85 (7/1/05)**

*(Break in Continuity of Sections)*

## **5.0 Dispensing**

### **5.1 Definitions**

**"Agent"** An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

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

**"Cell"** Any container which holds the medication for automatic dispensing.

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

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

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

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

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

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

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

**"Dispensing"** To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling

or compounding necessary to prepare the drug for that delivery.

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

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

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

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

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

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

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

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

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

**“Reduced to Writing”**

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

For a refill authorization, it may be handled as a new prescription as in above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of

similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

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

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

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

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

5.2 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.

5.2.1 Receive oral prescriptions and reduce them immediately to writing.

5.2.2 Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

5.2.3 The pharmacist, intern or student who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the individual verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the individual.

5.3 Patient Counseling

5.3.1 Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of the pharmacist, shall conduct a prospective drug review. A prospective drug review may be conducted before refilling a prescription to the extent deemed appropriate. A prospective drug review shall include screening for potential drug therapy problems due to

therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

5.3.2 A pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist shall, with each new medication dispensed, provide verbal counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

5.3.2.1 the name and description of the prescribed drug;

5.3.2.2 the dosage and the dosage form;

5.3.2.3 the method and route of administration;

5.3.2.4 the duration of the prescribed drug therapy;

5.3.2.5 any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;

5.3.2.6 common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;

5.3.2.7 patient techniques for self-monitoring of the drug therapy;

5.3.2.8 proper storage;

5.3.2.9 prescription refill information;

5.3.2.10 the action to be taken in the event of a missed dose; and

5.3.2.11 current over-the-counter medication use.

5.3.3 This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

5.3.4 Nothing in this section requires a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling.

5.3.5 If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and

non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

#### 5.4 Supportive personnel

##### 5.4.1 Qualifications and training

5.4.1.1 The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

5.4.1.2 The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

5.4.1.2.1 general drug and dosage form knowledge

5.4.1.2.2 medical terminology

5.4.1.2.3 pharmaceutical calculations

5.4.1.2.4 prescription labeling

requirements

5.4.1.2.5 general filling/dispensing

responsibilities

5.4.1.2.6 patient profile record system

requirements

5.4.1.2.7 requirements for patient

counseling

5.4.1.2.8 confidentiality

5.4.1.2.9 safety practices

5.4.1.2.10 inventory functions

5.4.1.2.11 knowledge of applicable

State and Federal Statutes and Regulations

5.4.1.2.12 other site-specific

parameters

5.4.1.3 The general content of the training program must be maintained in the policy and procedure manual.

5.4.1.4 Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

5.4.2 Supervision. Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

##### 5.4.3 Activities allowed

5.4.3.1 Supportive personnel will be allowed to perform only those duties permitted by this regulation.

5.4.3.2 Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

5.4.3.2.1 Obtaining the medication from stock.

5.4.3.2.2 Typing the label after the pharmacist has interpreted the directions.

5.4.3.2.3 Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will be a final check by a licensed pharmacist prior to dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.

5.4.3.3 Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. All compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

5.4.3.3.1 The formulation is developed by the pharmacist before proceeding with the compounding.

5.4.3.3.2 The compounding ingredients are checked by the pharmacist before proceeding with the compounding.

5.4.3.3.3 Every weight and measurement is checked by the pharmacist before proceeding with the compounding.

5.4.3.3.4 The finished product is checked by the pharmacist before dispensing.

5.4.3.3.5 A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

5.4.3.4 Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

5.5 Automatic Dispensing Devices. If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

5.6 Authorization for renewal of prescriptions. A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

#### 5.7 Mandatory Patient Profile Record System

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

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

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

5.7.2.2 The address of the patient and phone number;

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

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

5.7.2.5 The number or designation identifying the prescription;

5.7.2.6 The prescriber's name;

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

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

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

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

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

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

5.7.2.5 The number or designation identifying the prescription;

5.7.2.6 The prescriber's name;

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

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

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

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

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

5.8 Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

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

5.8.1.1 The request comes from a registered pharmacist.

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

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

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

5.8.1.5 The copy shows the last date of dispensing.

5.8.1.6 Only the actual number of refills remaining are indicated.

5.8.1.7 A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

5.8.2 A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

5.8.3 Written copies of prescriptions are for information only and are not valid for refilling.

5.9 Automated Data Processing Systems

5.9.1 Profiles. When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation 5.0 must be met.

5.9.2 Prescription (Drug Order) Information. Prescription information (drug order) shall include, but not be limited to:

5.9.2.1 Original dispensing date

5.9.2.2 Name and address of patient (patient location if in an institution)

5.9.2.3 Name of prescriber

5.9.2.4 DEA number of prescriber in the case of a controlled substance

5.9.2.5 Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed

5.9.2.6 Renewals authorized

5.9.2.7 Directions of use for patient

5.9.3 Records of Dispensing. Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five

days upon request from proper authorities. The information shall include, but not be limited to:

- 5.9.3.1 Quantity dispensed
- 5.9.3.2 Date of dispensing
- 5.9.3.3 Serial Number (or equivalent if an institution)
- 5.9.3.4 The identification of the pharmacist responsible for dispensing
- 5.9.3.5 Record of renewals to date
- 5.9.3.6 Name and strength of medicine

5.9.4 Record Retrieval (Documentation of Activity). Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

- 5.9.4.1 Serial number of prescription (equivalent if an institution)
- 5.9.4.2 Date of processing
- 5.9.4.3 Quantity dispensed
- 5.9.4.4 The identification of the pharmacist responsible for dispensing
- 5.9.4.5 Medication dispensed

5.9.5 Auxiliary Recordkeeping System. An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

5.9.6 Common Data Base. Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation 5.0 for non-controlled substances.

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

non-controlled drug for renewal purposes in accordance with current State Regulations.

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

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

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

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

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

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

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

#### 5.10 Electronic Transmission Of Prescriptions

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

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

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

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

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

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

5.10.3 The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity

of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

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

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

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

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

5.10.7.1 The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

5.10.7.2 Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

5.10.7.3 A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

5.10.7.4 The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

5.10.7.5 Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

#### 5.11 Return of Medications and Supply

5.11.1 Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

5.11.2 Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in

customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

#### 5.12 Centralized Prescription Processing

5.12.1 A Pharmacy may perform or outsource centralized prescription processing, services provided the parties:

5.12.1.1 have the same owner; or

5.12.1.2 have a written contract outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations; and

5.12.1.3 share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.

5.12.2 The parties performing or contracting for centralized prescription processing services shall maintain a policy and procedures manual and documentation that implementation is occurring in a manner that shall be made available to the Board for review upon request and that includes, but is not limited to, the following:

5.12.2.1 A description of how the parties will comply with federal and state laws and regulations;

5.12.2.2 The maintenance of appropriate records to identify the responsible pharmacist(s) in the dispensing and counseling processes;

5.12.2.3 The maintenance of a mechanism for tracking the prescription drug order during each step in the dispensing process;

5.12.2.4 The maintenance of a mechanism to identify on the prescription label all pharmacies involved in dispensing the prescription drug, order;

5.12.2.5 The provision of adequate security to protect the confidentiality and integrity of patient information;

5.12.2.6 The maintenance of a quality assurance program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

5.12.3 In addition to the requirements of 24 Del.C. §2536, all drugs dispensed to a patient that have been filled via a centralized prescription processing system shall bear a label containing an identifiable code that provides a complete audit trail of the dispensing of the drug and pharmaceutical care activities.

#### 5.13 Compounded medications for office use

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

**Effective Date: October 11, 1996**

**Effective Date: April 14, 1997 Section 5.4 revised**

**Effective Date: June 11, 1998**

**Amended Effective September 11, 1999**

**1 DE Reg. 1965 (6/1/98)**

**3 DE Reg. 431 (9/1/99)**

**4 DE Reg. 163 (7/1/00)**

**4 DE Reg. 682 (10/1/00)**

**9 DE Reg. 85 (7/1/05)**

*(Break in Continuity of Sections)*

### 13.0 Nuclear Pharmacy Regulations

#### 13.1 Purpose and Scope

13.1.1 The purpose of this regulation is to recognize the practice of nuclear pharmacy as a specialty of pharmacy practice to be regulated by the Delaware State Board of Pharmacy. As such, the following rules are included to address those areas specific to this specialty practice.

13.1.2 Nuclear Pharmacy practice refers to a patient oriented service that embodies the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals and other drugs.

#### 13.2 Definitions

**“Authentication of Product History”** includes, but is not limited to, identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.

**“Authorized Personnel”** means any individual trained through management to be permitted to perform assigned duties in a safe and effective manner.

**“Authorized User”** means any individual or institution named on a radioactive materials license.

**“Nuclear Pharmacy”** is a pharmacy which provides radiopharmaceutical services.

**“Qualified Nuclear Pharmacist”** is a currently licensed pharmacist in the State of Delaware who meets either of the following criteria:

Must be currently certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties.

Must have successfully completed a minimum of 700 contact hours of instruction in nuclear pharmacy and the safe handling and use of radioactive materials from a nationally accredited college of pharmacy or from an American Council on

Pharmaceutical Education (ACPE) approved training program. The training qualifications are described in 13.6.

**“Radiopharmaceutical Quality Assurance”** means, but is not limited to, the performance of tests on radiopharmaceuticals to ascertain the radionuclidic, radiochemical, chemical, physical, and microbiological purity and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history, and the keeping of proper records.

**“Radiopharmaceutical Services”** means, but shall not be limited to, the procurement, storage, handling, preparation, labeling, quality assurance testing, dispensing, delivery, record keeping, and disposal of radiopharmaceuticals and other drugs.

**“Radiopharmaceuticals”** are radioactive drugs as defined by the FDA to include any drug which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any non-radioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such substance. This definition does not include drugs such as carbon containing compounds or potassium containing salts which contain trace quantities of naturally occurring radionuclides. The term radiopharmaceutical also includes any biological product which is labeled with a radionuclide or intended solely to be labeled with a radionuclide.

**“Restricted Area”** means any area the access to which is controlled by the license for purpose of protection of individuals from exposure to radiation and radioactive materials.

**“Unrestricted Area”** means any area the access to which is not controlled by the licensee for purpose of protection of individuals from exposure to radiation and radioactive materials.

13.3 Nuclear Pharmacy general Requirements. The process employed by any permit holder in this state concerning the handling of radioactive materials must involve procedures for the purchase receipt, storage, manipulation, compounding, distribution and disposal of radioactive materials. In order to insure the public health and safety in this respect, a nuclear pharmacy in this state shall meet the following general requirements:

13.3.1 A nuclear pharmacy may be managed only by a qualified pharmacist acting in the capacity of a pharmacist in charge who shall be responsible for the compliance with all laws and regulations, both state and federal pertaining to radiopharmaceuticals and radiopharmaceutical services. An actively licensed qualified nuclear pharmacist must personally supervise the operation of only one nuclear pharmacy when radiopharmaceutical services are being performed.

~~13.3.2 The nuclear pharmacy area shall be secured from access by unauthorized personnel.~~

~~13.3.3 Each nuclear pharmacist shall maintain accurate records of the acquisition, inventory, distribution, and disposal of all radiopharmaceuticals.~~

~~13.3.4 All nuclear pharmacies shall provide adequate space for radioactive storage and a product decay area.~~

~~13.3.5 Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies for the procurement, secure storage, inventory, preparation, distribution and disposal of radiopharmaceuticals and other drugs.~~

~~13.3.6 Radiopharmaceuticals are to be distributed only upon a prescription order from an authorized licensed medical practitioner or through the practitioner's agent.~~

~~13.3.7 A nuclear pharmacist shall transfer radioactive materials in accordance with all applicable laws and regulations.~~

~~13.3.8 A nuclear pharmacy upon receiving an oral prescription order for a radiopharmaceutical shall immediately have the prescription order reduced to writing or recorded in a data processing system which shall contain at least the following:~~

~~13.3.8.1 the name of the authorized user or his agent;~~

~~13.3.8.2 the date of distribution and the time of administration of the radiopharmaceutical;~~

~~13.3.8.3 the name of procedure;~~

~~13.3.8.4 the name of the radiopharmaceutical;~~

~~13.3.8.5 the prescription number assigned to the order for the radiopharmaceutical;~~

~~13.3.8.6 any specific instructions; and~~

~~13.3.8.7 the initials of the person who received the order.~~

~~13.3.8.8 When the order is for a therapeutic or blood product radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing.~~

~~13.3.8.9 If the product is for a therapeutic radiopharmaceutical the patient's name must be obtained and recorded (i.e. verified) by a pharmacist when the pharmacy receives an oral prescription.~~

~~13.3.9 In addition to other labeling requirements of the Board of Pharmacy for non-radioactive pharmaceuticals, the immediate outer container shield of a radiopharmaceutical to be dispensed shall be labeled with:~~

~~13.3.9.1 the name and address of the pharmacy;~~

~~13.3.9.2 the name of the prescriber;~~

~~13.3.9.3 the name of the procedure;~~

~~13.3.9.4 the standard radiation symbol;~~

~~13.3.9.5 the words "caution Radioactive material";~~

~~13.3.9.6 the prescription number of the radiopharmaceutical;~~

~~13.3.9.7 the radionuclide and chemical form;~~

~~13.3.9.8 the amount of radioactive material contained in millicuries (mCi), or microcuries (uCi) and the corresponding time that applies to this activity, if different from 13.3.9.9 of this paragraph;~~

~~13.3.9.9 the calibration date and time;~~

~~13.3.9.10 the expiration date and time;~~

~~13.3.9.11 if a liquid, the volume;~~

~~13.3.9.12 if a solid, the number of items or weight;~~

~~13.3.9.13 if a gas, the number of ampules or vials;~~

~~13.3.9.14 molybdenum 99 content to USP limits; and~~

~~13.3.9.15 the name of the patient or the words "Physicians Use Only" in the absence of a patient name. If the order is for a therapeutic or blood product radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing. The requirements of this subsection shall be met when the name of the patient is readily retrievable from the physician upon demand.~~

~~13.3.10 The immediate inner container label of a radiopharmaceutical to be distributed shall also be labeled with:~~

~~13.3.10.1 the standard radiation symbol~~

~~13.3.10.2 the words "Caution Radioactive Material"~~

~~13.3.10.3 the radionuclide;~~

~~13.3.10.4 the amount of radioactivity in mCi or uCi;~~

~~13.3.10.5 the calibration date and time~~

~~13.3.10.6 the prescription number of the radiopharmaceutical; and~~

~~13.3.10.7 the pharmacy name; and~~

~~13.3.10.8 the name of the patient or the words "Physicians use only" in the absence of a patient name. If the order is for a therapeutic or blood product radiopharmaceutical, the patient's name must be on the label.~~

~~13.4 Nuclear Pharmacy minimum Requirements. All nuclear pharmacies must meet the requirements of the Department of Health and Rehabilitative Services for the control of radiation hazards and applicable requirements of the Federal Food and Drug Administration. In addition, in order to insure compliance with general safety requirements, the following additional minimum requirements must be met by a nuclear pharmacy:~~

~~13.4.1 Physical Facilities~~

13.4.1.1 Each nuclear pharmacy shall have an area for the storage, compounding, distribution and disposal of radiopharmaceuticals which shall be adequate to completely separate such radioactive pharmaceuticals from pharmacy areas which contain non radioactive medicinal drugs.

13.4.1.2 The nuclear pharmacy facility shall have adequate space commensurate with the scope of services.

#### 13.4.2 Equipment:

13.4.2.1 Vertical laminar air flow unit (hood) used as a shielded radiation containment drawing station;

13.4.2.2 Exhaust/fume unit (hood) with engineering controls to assure airborne concentrations in compliance with federal regulations for storage and handling of all volatile radioactive drugs, if applicable;

13.4.2.3 Vertical laminar flow biological safety cabinet to be used for all compounding of applicable radiopharmaceuticals (i.e. blood products; white blood cells procedures);

13.4.2.4 Dose calibrator;

13.4.2.5 Well scintillation counters;

13.4.2.6 Area rate meters;

13.4.2.7 Geiger Mueller (GM) Survey meters;

13.4.2.8 Refrigerator;

13.4.2.9 Microscope;

13.4.2.10 Hemaeytometer

13.4.2.11 Leaded glass syringe shields;

13.4.2.12 Personal radiation detection devices

#### 13.4.3 Supplies:

13.4.3.1 Syringes and vials required to perform practice;

13.4.3.2 Disposable gloves and protective lab coats;

13.4.3.2 Supplies to insure sterile practices for I.V. solutions and preparations;

13.4.3.3 Supplies to perform thin layer chromatography;

13.4.3.4 Lead transport shields for syringes and vials;

13.4.3.5 D.O.T. type 7A approved transport containers and other labels and supplies for shipping radioactive materials.

13.4.4 Library/Current references: In addition to the reference requirements of Regulation 3.0, a nuclear pharmacy shall maintain a reference library which shall include the following:

13.4.4.1 NRC Title 10 CFR, Code of Federal Regulations;

13.4.4.2 NRC Title 21 CFR, Code of Federal Regulations;

13.4.4.3 NRC Title 49 CFR, Code of Federal Regulations;

13.4.4.4 NABP Nuclear Pharmacy Practice Guidelines;

13.4.4.5 A minimum of three current edition texts dealing with nuclear medicine science;

13.4.4.6 A copy of the procedure manual.

13.4.4.7 Delaware Radiation Control Regulations

#### 13.5 Records:

13.5.1 Policy and procedure manual. All nuclear pharmacies shall maintain a policy and procedure manual. The nuclear pharmacy policy and procedure manual is a compilation of written policy and procedure statements.

13.5.2 A technical operations manual governing all nuclear pharmacy functions shall be prepared. It shall be continually revised to reflect changes in techniques, organization, etc. All pharmacy personnel shall be familiar with the contents of the manual.

13.5.3 The nuclear pharmacy policies and procedures manual shall be prepared by the pharmacist in charge with input from other pharmacy staff members.

#### 13.6 Training Qualifications

13.6.1 A pharmacist licensed to practice pharmacy in this state who performs a radiopharmaceutical service shall, prior to engaging in such specialized practice, be qualified as a nuclear pharmacist and licensed by the Board of Pharmacy.

13.6.2 Qualifications for a nuclear pharmacist are as follows:

13.6.2.1 A pharmacist shall:

13.6.2.1.1 be a pharmacist licensed by the Board to practice pharmacy in Delaware.

13.6.2.1.2 submit to the Board either:

13.6.2.1.2.1 Certification that he or she has successfully completed a minimum of four months on the job training providing radioactive drug services under the supervision of a nuclear pharmacist;

13.6.2.1.2.2 certification that he or she has successfully completed a nuclear pharmacy training program in an accredited college; or

13.6.2.1.2.3 an application, in affidavit form, along with such other information the Board may require, requesting partial or equivalent credit for education and experience gained in programs not sponsored by an accredited college of pharmacy.

13.6.2.2 A qualified pharmacist seeking licensure as a nuclear pharmacist in the state shall submit to the Board of Pharmacy a course outline from an accredited college of pharmacy or other program recognized by the Delaware Board of Pharmacy (a program comparable to those offered by accredited colleges of pharmacy for the

training of nuclear pharmacists), and a certificate of training which provides a minimum of 200 clock hours of formal didactic training, which includes:

13.6.2.2.1 Radiation protection (45 hours);

13.6.2.2.2 Radiation physics and instrumentation (85 hours);

13.6.2.2.3 Mathematics of radioactivity (20 hours);

13.6.2.2.4 Radiation biology (20 hours); and

13.6.2.2.5 Radiopharmaceutical chemistry (30 hours);

13.6.2.3 Proof of attaining a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist. The training and experience shall include, but shall not be limited to the following:

13.6.2.3.1 Procurement

13.6.2.3.2 Compounding

13.6.2.3.3 Quality Assurance

13.6.2.3.4 Dispensing

13.6.2.3.5 Distribution

13.6.2.3.6 Health and Safety

13.6.2.3.7 Provisions of Information and

Consultation

13.6.2.3.8 Monitoring patient outcome

13.6.2.3.9 Research and Development

#### 13.7 Nuclear Pharmacist Continuing Education

13.7.1 Proof satisfactory that a nuclear pharmacist licensed pursuant to this section, has met the requirements necessary for biennial renewal of this license shall be constituted by the following:

13.7.1.1 The licensee has completed no less than ten (10) out of the total requirements of 30 hours of coursework each two year period by or through a committee approved provider (e.g. ACPE), instructionally designed to provide in depth treatment of nuclear pharmacy practice.

13.7.1.2 Content of nuclear pharmacist continuing education program can include, but not be limited to the following:

13.7.1.2.1 Formulation and quality control issues in nuclear pharmacy

13.7.1.2.2 Radionuclide therapy in nuclear pharmacy

13.7.1.2.3 Radiopharmaceutical updates for target organs

13.7.1.2.4 Current concepts in radiation physics, radiation biology and exposure.

13.7.1.2.5 Current principles of radiation safety

13.7.1.2.6 Current principles of nuclear pharmacy management

13.7.1.2.7 Advances in drug, radiopharmaceutical, or related technology (including but not limited to monoclonal antibodies, peptides, magnetic resonance imaging, positron emission tomography, novel radionuclide therapy and other applicable issues.

Effective 09/23/95

#### 13.1 Purpose and Scope.

The Practice of Nuclear/Radiological Pharmacy is hereby recognized as a specialty of Pharmacy practice, regulated by the Delaware Board of Pharmacy. As such, the following rules are included to address those areas specific or unique to this specialty practice. Nuclear/Radiological Pharmacy Practice refers to patient-oriented and institutional services that embody the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals and other drugs.

#### 13.2 Definitions

**“Authentication of Product History”** means, but is not limited to, identifying the purchase sources, and any handling of any Component of a radiopharmaceutical.

**“Internal Test Assessment”** means, but is not limited to, conducting those tests of quality assurance necessary to ensure the integrity of the product.

**“Nuclear Pharmacy”** means a Pharmacy providing radiopharmaceutical services or, as provided in Section 3 of these rules, an appropriate area of any Institutional Facility.

**“Qualified Nuclear Pharmacist”** means a currently licensed Pharmacist in the State of Delaware, who is certified as a Nuclear Pharmacist by a certification Board recognized by the Delaware Board of Pharmacy, or who meets the following standards set by the Delaware Board of Pharmacy:

Satisfied the minimum standards of training for “authorized user status” of radioactive material as included in the Nuclear Regulatory Commission (NRC) licensure guide.

Completed a minimum of 200 contact hours of instruction in nuclear Pharmacy and the safe handling and the use of radioactive materials from a program approved by the NRC or the Office of Radiation Control (ORC), with emphasis in the following areas: radiation physics and instrumentation; radiation protection; mathematics of radioactivity; radiation biology; and radiopharmaceutical chemistry.

Attained a minimum of 500 hours of clinical nuclear Pharmacy training under the supervision of a qualified nuclear Pharmacist.

**“Radiopharmaceutical Quality Assurance”** means, but is not limited to, the performance of appropriate chemical, biological, and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history, and the keeping of proper records.

**“Radiopharmaceutical Service”** means, but is not limited to, the procurement, storage, handling preparation, labeling, quality assurance testing, dispensing, delivery, recordkeeping, and disposal of radiopharmaceuticals and other drugs.

**“Radiopharmaceuticals”** are radioactive drugs as defined by the FDA.

### 13.3 General Requirements for Pharmacies Providing Radiopharmaceutical Services.

13.3.1 Nuclear Pharmacy License. A License to operate a Pharmacy providing radiopharmaceutical services shall only be issued to a Qualified Nuclear Pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct supervision of a Qualified Nuclear Pharmacist. A Qualified Nuclear Pharmacist shall be responsible for all operations of the Pharmacy and shall be in personal attendance at all times that the Pharmacy is open for business.

13.3.2 Nuclear Pharmacies shall have adequate space and equipment, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the State or as otherwise defined by the Delaware State Board of Pharmacy.

13.3.3 The Nuclear Pharmacy area shall be secured from unauthorized personnel.

13.3.4 Nuclear Pharmacies shall maintain records of acquisition, inventory, and disposition of all radioactive drugs and other radioactive materials in accordance with NRC statute(s) and regulation(s).

13.3.5 All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area. Detailed floor plans shall be submitted to the State Board of Pharmacy and the State Office of Radiation Control and NRC before approval of the license.

13.3.6 Radiopharmaceuticals are to be dispensed only upon a Prescription Drug Order from a Practitioner authorized to possess, use, and administer radiopharmaceuticals.

13.3.7 The permit to operate a Nuclear Pharmacy is conditioned upon an approved State Office of Radiation Control or NRC license. Copies of the Radiation Control Agency, ORC and NRC inspection reports shall be made available upon request for Board inspection.

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

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

## DIVISION OF PROFESSIONAL REGULATION

3700 Board of Examiners of Speech/Language  
Pathologists, Audiologists & Hearing Aid  
Dispensers

Statutory Authority: 24 Delaware Code,  
Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))  
24 **DE Admin. Code** 3700

### PUBLIC NOTICE

The Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, in accordance with 24 **Del.C.** §3706(a)(1) has proposed changes to its rules and regulations. Rule 9.3.1.8 is modified to require disclaimers or limitations in advertising to be clear and conspicuous and at least one half the type size used in the offer.

A public hearing will be held at 2:00 p.m. on January 11, 2006 in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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

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

should serve as examples of obligations that must be satisfied to maintain minimum standards.

#### 9.2 Standards of Professional Conduct

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

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

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

9.2.1.3 Licensees shall maintain reasonable documentation of professional services rendered.

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

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

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

#### 9.3 Standards of Professional Integrity.

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

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

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

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

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

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

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

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

9.3.1.8 Licensees who advertise shall provide information in a truthful manner that is direct and not likely to mislead the public. Any written disclaimer or condition that limits or modifies an offer of services or merchandise must be provided in a clear and conspicuous manner in a type size that is at least one-half the size of the type used in making the offer of services or merchandise

9.3.2 A licensee who violates the following Standards of Professional Integrity may be guilty of misrepresentation, impersonation, or facilitating unlawful practice and disciplined pursuant to 24 **Del.C.** §3715(a)(1).

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

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

#### 9.4 Miscellaneous Professional Standards

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

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

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

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

#### 8 DE Reg. 1106 (2/1/05)

**\*Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers is available at:**  
**<http://dpr.delaware.gov/boards/speechaudio/index.shtml>**

Symbol Key

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

Final Regulations

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

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

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**DEPARTMENT OF AGRICULTURE  
NUTRIENT MANAGEMENT**

Statutory Authority: 3 Delaware Code,  
Section 2221 (3 Del.C. §2221)  
3 DE. Admin. Code 1201

**ORDER**

**1201 Nutrient Management Certification Regulations**

Pursuant to 29 Del.C. §10115, I hereby recommend adoption of the modified nutrient management and request that they be published as final regulations.

Synopsis: Certification by the Delaware Nutrient Management Program, 2320 S. Dupont Hwy., Dover, DE 19901, is required (3 Del.C. §2201 - 2290) for all who apply fertilizer and/or animal manure greater than 10 acres or who manage animals greater than 8,000 pounds of live animal weight. As required by the regulations, certain continuing education credits are needed in order to maintain certification. The proposed changes reduce the required credits in order to maintain consistency with recertification requirements from regional programs.

The proposed regulation was posted in Volume 9, Issue 3, page 305, September 1, 2005. The comment period was from September 1, 2005 until October 11, 2005 and the public hearing was conducted November 8, 2005. The

hearing was noticed according to 29 Del.C. §10115. No comments were received. This final order shall be effective December 10, 2005.

**7.0 Continuing Education**

7.1 After a certificate is issued, the certificate holder must take and successfully complete continuing education courses approved by the Commission or Program Administrator in accordance with the following:

7.1.1 Nutrient generator - 6 credits of continuing education in each three-year period following the issuance of the certification.

7.1.2 Private nutrient handlers - 6 credits of continuing education in each three-year period following the issuance of the certification.

7.1.3 Commercial nutrient handlers - ~~9~~ 6 credits of continuing education in each three-year period following the issuance of the certification.

7.1.4 Nutrient consultants - ~~8~~ 5 credits of continuing education each year following the issuance of the certification.

7.2 Failure to satisfy the continuing education requirements may result in the revocation of a certificate or non-renewal of the certificate.

7.3 Any dispute regarding continuing education credits may be directed to the Commission which will determine whether a hearing is necessary to resolve the dispute.

**\*Please Note:** As the rest of the sections were not amended, they are not being published. The complete regulation is available at:

[http://www.state.de.us/research/AdminCode/title3/1200/1201%20Nutrient%20Management%20Certification%20Regulations.shtml#P2\\_24](http://www.state.de.us/research/AdminCode/title3/1200/1201%20Nutrient%20Management%20Certification%20Regulations.shtml#P2_24)

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**DEPARTMENT OF EDUCATION**  
**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 396

**ORDER****396 Private Business and Trade Schools****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 DE Admin. Code 396 Private Business and Trade Schools. The amendments to add 3.6 and to change 7.1 are necessary in order to change the renewal cycle for the certification of approval for private business and trade schools by the Department of Education. Instead of all renewals occurring at the same time the renewals will be done on a quarterly basis. These changes are needed because of the large increase in the number of schools seeking renewal of their approval at the same time. The number of the regulation has also been changed from 396 to 282 placing the regulation in the 200 section of the **Administrative Code** entitled *Administrations and Operations*.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 21, 2005, 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 14 DE Admin. Code 396 in order to change the renewal cycle for the certification of approval for private business and trade schools due to large increase in the number of schools seeking renewal of their approval at the same time.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 396.

Therefore, pursuant to 14 Del.C. Ch. 85, 14 DE Admin. Code 396 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 396 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 14 DE Admin. Code 396 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 282 in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. Ch. 85 on November 8, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 8<sup>th</sup> day of November 2005.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

**396 282 Private Business and Trade Schools****1.0 Definitions****For purposes of this regulation:**

"Agent" has the same meaning as in 14 Del.C. §8501(4).

"Agent Card" shall mean the pocket card provided for in 14 Del.C. §8510.

"Department" means the Delaware Department of Education.

"Private Business and Trade School" has the same meaning as in 14 Del.C. §8501(1).

**2.0 General Provisions**

2.1 The distinguishing characteristic of a private business or trade school shall be the potential for wage earning by its graduates.

2.2 Private business and trade schools shall include:

2.2.1 Correspondence school courses offered as post high school courses in trade or business subjects; and

2.2.2 Programs that may also be available as high school introductory courses in trade or business subjects, without regard for the age or the prior educational attainment of the student.

2.3 A private business and trade school which actively seeks enrollees from the State of Delaware, or which sends an agent or agents into the State of Delaware to solicit enrollees, shall ensure that each of its agents maintains a current agent permit issued by the Department.

2.4 The term agent shall include individuals who solicit enrollees in Delaware even though the institution the agent represents does not conduct classes within the State of Delaware.

2.5 All advertising by a private business and trade school shall be in accordance with the statutes, rules and regulations for advertising administered and supervised by the Department of Justice Consumer Protection Division.

2.6 ~~[The Department's 14 DE Admin. Code 225, prohibits discrimination on the basis of race, color, creed, national origin, disability, age or gender in programs receiving approval from the Department applies to private business and trade schools and agents approved by the Department. 14 DE Admin. Code 225 Prohibition of Discrimination shall apply to all private business and trade schools and agents approved by the Department.]~~

### 3.0 Certificates of Approval

3.1 Applications for an initial certificate of approval to conduct a private business and trade school, and for annual renewal of such certificates, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.

3.2 A private business and trade school offering more than one program of instruction must have each program approved by the Department.

3.3 The Department may conduct an on-site evaluation of any applicant for a certificate of approval or for renewal of a certificate of approval. The Secretary of Education may waive an on-site evaluation if the applicant is accredited by a regional or national accrediting association recognized by the Department, or is certified to conduct a similar program or school by the state education agency of another state with comparable standards for such schools.

3.4 If a private business and trade school makes any material change in its operation, such as, but not limited to, corporate structure or financial structure, the school shall notify the Department of the change within thirty days. The school shall also identify the change in its next renewal application.

3.5 The fees charged as filing and renewal fees are not refundable.

3.6 For purposes for this section, the following definitions shall apply: first calendar quarter – January 1st

through March 31st; second calendar quarter – April 1st through June 30; third calendar quarter – July 1st through September 30th; and fourth calendar quarter- October 1st through December 31st.

3.6.1 Any current and valid Certificate of Approval with an expiration date of December 31, 2005, shall automatically be extended to the end of the calendar quarter in which the private business and trade school was originally granted its Certificate of Approval, conditioned on the school providing the Department with evidence of continuation of surety bond at least through the extension period.

3.6.2 Beginning with the fourth quarter of 2005, a private business and trade school will be required to renew its certification by the end of the calendar quarter in which the Department originally granted its Certificate of Approval.

3.6.3 Private business and trade schools with multiple campuses may request the Department to renew all campuses on a single renewal date based on initial approval of any one of the campuses.

### 4.0 Agent Permits

4.1 Applications for an initial agent permit, and for renewal of such permits, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.

4.2 An agent representing more than one private business and trade school must apply for separate permits for each such school.

4.3 Agents shall apply to renew their permit(s) each year at the same time that the school or schools the agent represents make application to renew their respective certificates of approval. In the case of a school not conducting classes in Delaware, but sending agents into Delaware, the application for an agent permit must be accompanied by a notarized verification of employment from the school represented and must be received by the Department on or before the expiration of the current permit. No permit shall be issued for a period of more than twelve calendar months.

4.4 No agent shall solicit Delaware enrollees on behalf of the private business and trade school represented until the Department issues the appropriate agent card.

4.5 The lapse, suspension, revocation, or non-renewal of a private business and trade school certificate of approval for any cause shall terminate all agent permits for that institution.

4.6 A school shall report the discharge or resignation of any agent to the Department within thirty days.

4.7 The fee for the agent permit will be waived for the owner or chief executive officer of a private business and trade school who also serves as its agent. Each such individual must still apply for and obtain the agent permit. Any additional agents must obtain permits as otherwise described.

4.8 The fees charged as filing and renewal fees are not refundable.

### **5.0 Complaints**

5.1 Each private business and trade school shall adopt a policy and procedures to address complaints by its students. The school catalogue shall contain its complaint policy and procedures or a reference to where the policy and procedures can be obtained.

5.2 In addition to the complaint procedures adopted by a private business and trade school for its students, the Department will investigate complaints by any person alleging facts that, if true, would constitute grounds for refusing or revoking a certificate of approval or an agent permit. In either event, the Department will notify the complainant of its conclusions and provide the complainant with a copy of the school or agent's initial response, if any.

5.2.1 Such complaints must be in writing and verified by the signature of the person making the complaint. Oral, anonymous or unsigned complaints will not be investigated.

5.2.2 A copy of the written complaint will be provided to the affected private business and trade school or agent for their written response. The Department may require that the complainant provide written permission for the Department to forward the complaint to the school or agent.

5.2.2.1 If, after reviewing the school or agent's response, the Department concludes that there is insufficient evidence to believe that the school or agent has violated applicable law or a standard, rule or regulation of the Department, the Department may close the complaint without further investigation. In such case, the Department will notify the complainant and the school or agent of this conclusion and provide the complainant with a copy of the school or agent's response.

5.2.2.2 If, after reviewing the school or agent response, the Department concludes that there is sufficient evidence to believe that the school or agent has violated applicable law or a standard, rule or regulation of the Department, the Department may continue its investigation or begin revocation or other action against the school or agent as the Department determines appropriate. The

Department may also continue its investigation or begin revocation or other action if the school or agent fails to respond to a complaint within the time established by the Department.

5.3 The Department may also investigate circumstances that would constitute grounds for refusing or revoking a certificate of approval or an agent permit on its own initiative.

### **6.0 Denials and Revocations of Certificates and Permits**

6.1 In view of an apparent conflict between the statutory statement in 14 **Del.C.** §8516 (for any combination of the following) and 14 **Del.C.** §8517 (for any cause enumerated in §8516), the Department interprets and shall administer §8516 to mean that a certificate of approval or an agent permit may be denied or revoked for any one or combination of the causes identified in that Section.

### **7.0 Bonds**

7.1 Applications for an initial certificate of approval or for renewal of certificates shall include evidence that the required surety bond is valid from the date of the complete application through the new certificate of approval expiration date.

7.2 The amount of the surety bond required of a school shall be determined as provided in 14 **Del.C.** §8505(b). In no event shall a bond be for less than \$5,000 per calendar year.

7.3 The Department interprets and shall administer the phrase fail to provide the services called for in a contract or agreement with a student, as used in 14 **Del.C.**, §8523 to mean failure to substantially provide the essential services."

#### **7.4 Forfeiture**

7.4.1 In the event a surety bond is forfeited, the Department shall notify the students identified on the last available school roster of their right to submit a claim for reimbursement. Such students shall have thirty days from the date they are notified by the Department to submit a claim for reimbursement. Claims received more than thirty days after the Department's notification shall not be considered.

7.4.2 Other students wishing to submit a claim for reimbursement must contact the Department within thirty days of the schools closing to submit their claim for reimbursement. Claims received more than thirty days after the schools closing shall not be considered.

7.4.3 Claims for reimbursement shall be submitted and documented as directed by the Department. The Department shall consider only appropriately documented claims in distributing the proceeds of any surety bond.

**4 DE Reg. 986 (12/1/00)**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 405

**ORDER****405 Minor Capitol Improvement Program****I. Summary of the Evidence and Information Submitted**

The Secretary of Education intends to amend 14 DE Admin. Code 405 Minor Capitol Improvement Program in order to remove the reference in 1.2 and 1.5 to sending copies of purchase orders and invoices to the Department of Education. This practice is not needed and is inconsistent with current practice.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 21, 2005, 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 14 DE Admin. Code in order to remove the reference in 1.2 and 1.5 to sending copies of purchase orders and invoices to the Department of Education.

**III. Decision to Amend the Regulation**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 405. Therefore, pursuant to 29 Del.C. Ch. 75, 14 DE Admin. Code 405 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 405 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 14 DE Admin. Code 405 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 405 in the *Administrative Code of Regulations* for the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 29 Del.C. Ch. 75 on November 8, 2005. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 8<sup>th</sup> day of November 2005.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

**405 Minor Capital Improvement Programs****1.0 The Minor Capital Improvement Program**

The Minor Capital Improvement Program is a program to provide for the planned and programmed maintenance and repair of the school plant. The program's primary purpose is to keep real property assets in their original condition of completeness and efficiency on a scheduled basis. It is not for increasing the plant inventory or changing its composition. Minor Capitol Improvement Projects are projects that cost less than \$500,000 unless the project is for roof repair. The program is reviewed annually and should be comprised of work necessary for good maintenance practice.

1.1 Minor Capitol Improvement Project purchase orders shall be submitted to the State Division of Accounting prior to any work being done. A separate purchase order must be submitted for each project. (One copy of the approved purchase order will be returned to the district for their information and record.)

~~1.2 The local school district shall send a copy of the purchase order to the Department of Education.~~

~~1.3~~ 1.2 Use of Funds: The following areas are authorized for Minor Capital Improvement Program funds: roofs, heating systems, ventilation and air conditioning systems, plumbing & water systems, electrical systems, windows, doors, floors, ceilings, masonry, structural built-in equipment, painting, fire suppression systems, life safety systems, maintenance of site, office equipment used for instructional purposes only and renovations/alterations/modernizations that do not require major structural changes.

~~1.4~~ 1.3 Exclusions: Funds allocated for a specific project shall be used only for that project. Program funds may not be used for the following: movable equipment other than office equipment used for instructional purposes that is transported from one location to another, routine janitorial supplies, new construction that increases the area of a building or extends any of its component systems, site

improvements that add to or extend the existing roadways or side walks, surfacing a non-surfaced area for parking, completing major construction projects or specific items omitted/deleted from major construction projects or floor space allocated according to formula and used otherwise.

~~4.5 1.4~~ Invoices: Invoices may be sent directly to the Division of Accounting for processing after work has been completed and accepted. ~~except for invoices with an adjustment which must be approved by the Department of Education before transmittal to the Division of Accounting.~~

## **2.0 Career-Technical Program Equipment Replacement Requests**

2.1 Requests for the replacement of Career-Technical Program equipment may be made under the Minor Capital Improvement Program. Requests shall be made when the equipment is within three years of its estimated life so districts can accumulate the necessary dollars to purchase the item. Districts desiring to participate in the Career Technical Program equipment replacement program shall submit a request in writing to the Office of School Plant Planning at the time of the Minor Capital Improvement Program submission. Districts should not include Career-Vocational Program replacements with regular Major Capitol Improvement Projects.

2.2 Career-Vocational Program Equipment is defined as either a movable or fixed unit but not a built-in unit. In addition, the equipment shall retain its original shape and appearance with use, be non-expendable, represent an investment which makes it feasible and advisable to capitalize and not lose its identity through incorporation into a different or more complex unit.

2.2.1 In order to replace Career-Vocational Program equipment, the equipment must have a minimum 10 year life expectancy, have a unit cost of \$500 or more, be obsolete or more than five (5) years old, and be purchased with state, state and local or local funds.

2.3 Funds: Funds shall be allocated based on the percentage of a district's Vocational Division II Units to the total of such units of all participating districts. This percentage is applied to the total funds available in a given year for capital equipment. Vocational Career-Technical Schools are 100% State funded.

## **3.0 Purchase Orders.**

Funds may be expended anytime during the life of the Act which appropriated the funds, usually, a three-year period. Appropriations may be accumulated over those three years and expended for a major replacement when a sufficient balance is attained. However, should funds prove insufficient after three years of appropriations, the district

must supplement the program from their own or other resources. Funds unexpended when the appropriating Act expires shall revert to the State. Purchase orders shall include the reference ID system, sub system, component and deficiency code from the correction on the facility assessment website database.

## **4.0 Cost Limitations.**

The maximum cost of a Minor Capital Improvement Project is \$500,000 except roof repairs/replacements which are not cost limited. Non-roof projects exceeding the ceiling shall be requested in the Major Capital Improvement Program.

## **5.0 Temporary Employees.**

Workers may be hired under the Minor Capital Improvement Program provided they are temporary hires and directly involved in the planning, constructing, or record maintenance of the construction project.

## **6.0 Reporting.**

At the end of each fiscal year, school districts shall submit a list of completed projects accomplished under the Minor Capital Improvement Program.

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**PROFESSIONAL STANDARDS BOARD**  
Statutory Authority: 14 Delaware Code,  
Sections 1260-1264 (14 Del.C. §§1260-1264)  
14 DE Admin. Code 1519

## **REGULATORY IMPLEMENTING ORDER**

### **1519 Alternative Routes to Teacher Licensure and Certification**

#### **I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1519 Alternative Routes to Teacher Licensure and Certification. It is necessary to revise this regulation to align it with changes in statute and to correct some discrepancies in the existing regulation. This regulation concerns the organization and operation of the alternative routes for teacher licensure and certification program, which provides a vehicle for individuals who hold a bachelor's degree in a content area appropriate to secondary education to participate in course work and other experiences

necessary to be eligible for teacher licensure and certification in critical needs areas while serving as a teacher in a Delaware school district. The word “to” in the title and elsewhere in the regulation was changed to “for”. In Section 2.0, the definition of “educator” was changed, and definitions for “examination of content knowledge” and “major or its equivalent” were added. Clarification of the issuance of an Initial License and Emergency Certificate conditioned on continued enrollment in the program was inserted in Section 3.0. Time requirements for the passage of PRAXIS™ I and II were adjusted to comply with changes in statute. Section 6.0 dealing with evaluation and supervision was revised. New sections 7.0, 8.0, 9.0, and 10.0 were added to address licensure and certification recommendations and the candidates’ right to a hearing. Sections 7.0 and 8.0 were renumbered 11.0 and 12.0. The title has been changed to Alternative Routes for Teacher Licensure and Certification to align it with changes in statute. Comments received from the Governor’s Advisory Council for Exceptional Children suggested a statement clarifying that mentors were in no way involved in decisions having a bearing on licensure, certification or employment of teachers in the Alternative Routes program. A statement to that effect has been added.

## II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

## 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** 1519 of the *Administrative Code of Regulations* of the Department of Education.

## V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

### Approved by the Professional Standards Board the 3rd day of November, 2005

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Leslie Holden
Carla Lawson	Mary Mirabeau
Gretchen Pikus	Karen Schilling Ross
Carol Vukelich	

### For Implementation by the Department of Education:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** this 17th day of November, 2005

### STATE BOARD OF EDUCATION

Jean W. Allen, President  
Richard M. Farmer, Jr., Vice President  
Mary B. Graham, Esquire  
Barbara Rutt  
Dennis J. Savage  
Dr. Claibourne D. Smith

### 1519 Alternative Routes ~~to~~ for Teacher Licensure and Certification

#### 1.0 Content

This regulation shall apply to the Alternative Routes ~~to~~ for Teacher Licensure and Certification Program, pursuant to 14 **Del.C.** §1260 through 1264.

**7 DE Reg. 161 (8/1/03)**

#### 2.0 Definitions

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

**“Coherent Major”** means a major in an area appropriate to the instructional field.

**“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. person licensed and certified by the State under Chapter 12 of 14 Del.C. to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board, but does not include substitute teachers.~~

**“Emergency Certificate”** means a certificate issued to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to meet certification requirements in a specific content area.

**“Examination of Content Knowledge”** means a standardized State test of subject matter knowledge which measures knowledge in a specific content area, such as PRAXIS™ II.

**“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, such as PRAXIS™ I, which for the purposes of this regulation, means the State Basic Skills Test.

**“Initial License”** means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

**“Major or Its Equivalent”** means no fewer than thirty (30) credit hours in a content area.

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

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

**“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.

**7 DE Reg. 161 (8/1/03)**

### **3.0 Alternative Routes for Teacher Licensure and Certification Program Candidates**

Candidates seeking participation in the Alternative Routes for Teacher Licensure and Certification Program shall be issued an Initial License of no more than three (3) years duration conditioned on continued enrollment in the Alternative Routes for Teacher Licensure and Certification Program and a ~~Standard or an~~ Emergency Certificate or Certificates of no more than three years duration. Candidates must:

3.1 Hold a bachelor’s degree from a regionally accredited college or university in a coherent major, or its equivalent, appropriate to the instructional field they desire to teach;

3.2 Pass an examination of general knowledge, such as PRAXIS™ I, or provide an acceptable alternative to the PRAXIS™ I test scores, as set forth in 14 DE Admin. Code 1510, within the period of time from the date of hire to the end of the next consecutive fiscal year;

3.3 Pass an examination of content knowledge, such as PRAXIS™ II, in the instructional field they desire to teach, if applicable and available, within the period of time from the date of hire to the end of the next fiscal year;

3.34 Obtain an acceptable health clearance and an acceptable criminal background check clearance; and

3.45 Obtain and accept an offer of employment in a position that requires licensure and certification.

**7 DE Reg. 161 (8/1/03)**

### **4.0 Content of the Alternative Routes for Teacher Licensure and Certification Program**

The Alternative Routes ~~to for~~ Teacher Licensure and Certification Program shall consist of: ~~three interrelated but distinct components: a summer institute of intensive study, a practicum experience the first year of teaching, and seminars in teaching during, and, immediately following, the first year of teaching.~~

4.1 A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or charter school, instructional strategies and classroom management and child or adolescent development.

4.1.1 Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching.

4.2 A one-year, full-time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.

4.3 Seminars on teaching that provide alternative routes to licensure and certification teachers with approximately ~~120~~ 200 instructional (clock) hours or equivalent professional development during the first year of their teaching assignment and during ~~a one week~~ an intensive seminar the following summer. Content shall include

curriculum, student development and learning, and the classroom and the school.

7 DE Reg. 161 (8/1/03)

### 5.0 Mentoring Support

Mentoring support shall be carried out in accordance with ~~Section 1261 (b) (2) and (3) of 14 Del.C.~~ **14 DE Admin. Code 1502.** [No mentor shall participate in any way in decisions which might have a bearing on the licensure, certification or employment of teachers participating in the Alternative Routes for Teacher Licensure and Certification Program.]

7 DE Reg. 161 (8/1/03)

### 6.0 ~~Evaluation/Supervision~~ Supervision and Evaluation

~~Evaluation/supervision shall be conducted as per Section 1261 (b) (2) (3) of 14 Del.C.~~ Teachers enrolled in the Alternative Routes for Teacher Licensure and Certification Program shall be observed and formally evaluated by a certified evaluator using the state approved evaluation system at least once during the first ten (10) weeks in the classroom, and a minimum of two (2) additional times within the next twenty (20) weeks. Evaluations shall be no more than two (2) months apart.

### 7.0 Recommendation for Licensure and Certification

Upon completion of the Alternative Routes for Teacher Licensure and Certification Program, the certified evaluator shall prepare a summative evaluation report for the teacher participating in the Program. The evaluation report shall include a recommendation as to whether or not a license shall be issued. The evaluation report and license recommendation shall be submitted to the Department. A copy of the evaluation report and license recommendation should be issued to the candidate twenty (20) days before submission to the Department.

### 8.0 Issuance of License

If the evaluation report recommends approval of the candidate for licensure, the Department shall issue an Initial License valid for the balance of the three (3) year term, if the participant has completed the Program in less than three (3) years, or a Continuing License, if the three (3) year term of the Initial License has expired, and shall issue the appropriate Standard Certificate or Certificates.

Candidates who receive a recommendation of 'disapproved' shall not be issued an Initial

License and Standard Certificate by the Department, and may not continue in the Alternative Routes for Licensure and Certification Program.

### 9.0 Recommendation of "Disapproved"

Candidates who receive a recommendation of "disapproved" may petition the Department for approval of additional opportunities to participate in the Alternative Routes for Teacher Licensure and Certification Program. Within fifteen (15) days of receipt of the evaluation report and the certification recommendation, a candidate[s] disagreeing with the recommendation may submit [the to] the evaluator written materials documenting the reasons that the candidate believes a license should be awarded. The evaluator shall forward all documentation submitted by the candidate, along with the evaluation report and recommendation concerning licensure and certification [to the Secretary of Education]. The Secretary or his or her designee shall review the evaluation report, the licensure and certification recommendation, and any documentation supplied by the candidate and make a determination with respect to licensure and certification.

### 10.0 Right to a Hearing

A teacher participating in the Alternative Routes for Teacher Licensure and Certification Program who is denied a license and certificate may appeal the decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

### ~~7.0~~ 11.0 Program Evaluation

Those responsible for alternative routes to certification Programs approved by the Standards Board and the State Board shall develop a Program evaluation process. The focus of the Program evaluation must be to demonstrate the degree to which teachers who complete the Program are effective in the classroom.

### ~~8.0~~ 12.0 Additional Alternative Routes to Teacher Licensure and Certification Programs

The Secretary may implement other Alternative Routes to Teacher Licensure and Certification Programs, provided the Programs meet the minimum criteria set forth in this regulation.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL  
ASSISTANCE**

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

**ORDER****Pharmaceutical Services – Multi-State Pooling Rebate  
Program****Nature of the Proceedings**

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan to expand the recently approved preferred drug list by participating in a Medicaid Multi-State Pooling Rebate Program to reduce the cost of pharmaceuticals in a clinically sound way. 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 October 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Amendment****Statutory Authority**

- 1927(a)(1) and 1927 (a)(4) of the Social Security Act, *Authorizes state to enter directly into separate or supplemental rebate agreements with manufacturers*
- 1902(a)(19) of the Social Security Act, *Care and services under a Medicaid state plan be provided in a manner consistent with simplicity of administration and the best interests of beneficiaries*
- 42 CFR §440.120, *Prescribed drugs et al*
- 42 CFR §447.201, *State plan requirements*
- State Medicaid Director Letter, SMDL #04-006, September 9, 2004, *Guidelines for Multi-State Pooling Agreements*

Amending the Following State Plan Page  
Attachment 3.1-A, Page 5 Addendum

**Background**

On September 9, 2004, CMS issued a State Medicaid Director letter giving guidance to states on how to implement multi-state pooling arrangements that achieve cost savings and protect the interest of Medicaid beneficiaries while promoting competition.

**Summary of Proposed Changes**

DMMA intends to submit an amendment to the Title XIX Medicaid State Plan to the Centers for Medicare and Medicaid Services (CMS) to participate in a multi-state pool by submitting a SPA package that includes the following elements:

1. Standard multi-state pooling language incorporated into the supplemental rebate agreement portion of the state plan.
2. A supplemental rebate agreement template.
3. A document referenced in the supplemental rebate agreement template that indicates the state’s participation in the purchasing pool.

Although, the state will pool its efforts in buying drugs, DMMA will maintain its own Preferred Drug List (PDL) and exercise clinical oversight of the list to assure adequate access to needed prescribed drugs for its beneficiaries. This approach builds on the Department’s efforts to curb program costs while assuring access to prescribed drugs and quality care.

DMMA is working with Provider Synergies, L.L.C. TOP\$(SM), a multi-state pharmaceutical purchasing pool administered by Provider Synergies, L.L.C., has received CMS approval. TOP\$ (SM) stands for “The Optimal PDL Solution”.

**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 concerns summarized below. DMMA has considered each comment and responds as follows:

**DDDC**

Delaware plans to join a multi-state pool administered by a firm (Provider Synergies) already approved by CMS in this context. DMMA provides assurances that participation in the purchasing pool will not affect its individual PDL. In other words, DMMA does not intend to define its PDL based

on a multi-state list. And, yet we understand that Provider Synergies currently is a consultant for EDS, the agency that DMMA contracts with to manage the system and make recommendations for our PDL. We are concerned as citizens and taxpayers that a potential conflict of interest may be present in this relationship.

We strongly encourage the DMMA to keep a close eye on this process and the development of the PDL for Delaware so that we do not end up with a PDL that is comprised of only generic medications for Medicaid recipients. We also strongly encourage that Provider Synergies, EDS, and the members of the PDL review committee adhere to a strict disclosure of conflict of interest while doing business in Delaware.

### SCPD

While the SCPD is generally supportive of securing drugs at competitive prices, this proposal gives us reason for pause. The regulations ostensibly provide assurances that the selection of drugs on the PDL will be based on clinical factors without influence from the existence or lack of existence of a rebate. The Council has been advised that inclusion of drugs in PDLs in other states has been materially influenced by the availability of multi-state drug pool rebates. As a result, some clinically effective medications have been excluded from PDLs in other states.

Since Provider Synergies may be involved in both development of the PDL and the rebate program, it is imperative that a "firewall" be established to prevent the rebate program from affecting selection of drugs on the PDL in any way. Council recommends that further assurances in this context be provided.

**Agency Response:** The Secretary has formed a committee of fifteen (15) members that includes Doctors, Pharmacist, Nurses, Medical Practitioners, and Consumers that review and make decisions on what drugs will be put on the PDL. The members act independently and, based on sound medical evidence, determine which drugs should be placed on the PDL. All members of the committee are aware of their responsibilities concerning conflict of interests and the need for them to declare any potential conflict of interest. DMMA appreciates your comments and will closely monitor the process.

### Findings of Fact

The Department finds that the proposed changes as set forth in the October 2005 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding Pharmaceutical Services – Multi-State Pooling Drug Rebate Program is adopted and shall be final effective December 10, 2005.

Vincent P. Meconi, Secretary, DHSS, November 17, 2005

### Pharmaceutical Services – Multi-State Pooling Rebate Program

#### DSS FINAL ORDER REGULATION #05-74

REVISIONS:

ATTACHMENT 3.1-A

Page 5 Addendum

### LIMITATIONS

#### 12.a. Prescribed Drugs:

##### Drug Coverage

1. Drug products are covered when prescribed or ordered by a physician, or other licensed practitioner within the scope of their practice and when obtained from a licensed pharmacy. Covered drugs, as defined in Section 1927(k)(2) of the Act, are those which are prescribed for a medically accepted indication, medically necessary, and produced by any pharmaceutical manufacturer, which has entered into and complies with a drug rebate agreement under Section 1927(a) of the Act.

2. Drugs excluded from coverage as provided by Section 1927(d)(2) of the Act, include:

a. Drugs designated less than effective by the FDA (DESI drugs) or which are identical, similar, or related to such drugs;

b. Drugs when used for cosmetic purposes or hair growth (products, such as Minoxidil Lotion and Retin A are not covered for adults, except for certain medical conditions);

c. Drugs when used to promote fertility;

d. Drugs that have an investigational or experimental or unproven efficacy or safety status;

e. Drugs when used for anorexia, weight loss, or weight gain. Drugs for the purpose of weight control may be reimbursed when prior authorized following established criteria as reviewed and approved by the DUR Board and deemed medically necessary.

3. Non-covered services also include: drugs used to correct sexual dysfunction and compound drugs (compound prescriptions must include at least one medication that on its own would be a covered entity).

4. Participating manufacturers' new drugs are covered (except excluded/restricted drugs specified in Section

1927[d][1]-[2] of the Social Security Act) for six months after FDA approval and upon notification by the manufacturer of a new drug.

### Quantity and Duration

1. Dosage limits: Medications are limited to a maximum dose recommended by the FDA and appropriate medical compendia described in section 1927(k) of the Social Security Act, that indicate that doses that exceed FDA guidelines are both safe and effective or doses that are specified in regional or national guidelines published by established expert groups such as the American Academy of Pediatrics, or guidelines recommended by the Delaware Medicaid Drug Utilization Review (DUR) Board and accepted by the DHSS Secretary.

2. Quantity limits are placed on therapeutic categories that will allow for coordinated care and improve outcomes. Limits exist for:

- a. Sedative hypnotics-15 doses per 30 days
- b. Triptans, acute treatment of migraines, 9 doses per 45 days
- c. Opioid analgesics-200 doses per 30 days
- d. Skeletal muscle relaxants-120 tablets/capsules per 30 days
- e. Benzodiazepines-120 tablets per 30 days
- f. Tramadol-240 tablets per 30 days
- g. Narcotic cough medications-480ml per 30 days
- h. Adjunctive anticonvulsants-240 tablets/capsules per 30 days
- i. Nebulizer solutions-3 acute exacerbations per 30 days
- j. Clients utilizing greater than 15 unique medications per 30 days
- k. Medications that are dosed once a day are limited to one dose per day unless that total dosage required is within the limits stated above and require more than one tablet/capsule to obtain the required therapeutic amount.

3. Duration of therapy

- a. Nicotine cessation products are limited to the duration that has been approved by the FDA.
- b. Palivizumab-6 months during the high viral period of the year.

4. Prescriptions are limited to a quantity not to exceed the greater of 100 dosing units or a 34-day supply except for drugs selected and received through mail order.

### Prior Authorization

1. Prior authorization requirements may be established for certain drug classes or particular drugs, or a medically accepted indication for uses and doses.

2. The DUR Board determines which prescription drugs may require prior authorization. The Board assesses data on drug use in accordance with predetermined standards. The standards shall be:

- a. monitoring for therapeutic appropriateness
- b. over-utilization and underutilization
- c. appropriate use of generic products
- d. therapeutic duplication
- e. drug-disease contraindications
- f. drug-drug interactions
- g. incorrect drug dosage or duration of drug treatment
- h. clinical efficacy
- i. safety
- j. medical necessity
- k. potential for abuse, misuse and diversion
- l. experimental use opportunity
- m. cost effectiveness relative to similar therapies

The recommendations of the DUR Board constitute interpretive guidelines to be used in determining whether to grant or deny prior authorization of a prescription drug. The make up and membership authority for the DUR Board complies with 42 U.S.C. S1396r-8.

3. A request for prior authorization for covered outpatient drugs is processed within 24 hours of receipt of a completed prior authorization request from a prescribing provider by telephone, mail or electronic communication. A 72-hour supply of medically necessary covered drugs is provided in an emergency situation as mandated and pursuant to 42 United States Code s1396r-8.

### Preferred Drug Lists with Prior Authorization

A process is established which utilized a preferred drug list (PDL) for selected therapeutic classes. Drugs in those classes that are not included on the PDL shall require prior authorization. A Pharmaceutical & Therapeutics (P&T) Committee, comprised of pharmacists, physicians, and community members, appointed by the Secretary, Delaware Health and Social Services, selects drugs for the PDL.

Delaware will participate in a multi-state pooling program that will negotiate supplemental rebates in addition to the federal rebates provided for in Title XIX of the Social Security Act.

### Drug Rebate Agreements

CMS has authorized the state of Delaware to enter into The State of Delaware Department of Health and Social Services supplemental drug rebate agreement. This supplemental drug rebate agreement was submitted to CMS on April 7, 2005 and has been authorized by CMS.

- Pharmaceutical manufacturers are allowed to audit

- utilization rates;
- Compliance with the reporting requirements for state utilization information and restrictions to coverage;
- The unit rebate amount is confidential and cannot be disclosed for purposes other than rebate invoicing and verification; and,
- Rebate agreements between the state and a pharmaceutical manufacturer that are separate from the drug rebate agreements of Section 1927 are approved by the Centers for Medicare and Medicaid Services. The state reports rebates from separate agreements to the Secretary of Health and Human Services. The state will remit the federal portion of any cash state supplemental rebates collected.

#### Diagnostic Services

Medicaid will pay for the rental of an apnea monitor to monitor the breathing of an infant for whom a diagnosis of apneic episodes (near-miss Sudden Infant Death Syndrome) has been made.

**9 DE Reg. 420 (9/1/05)**

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### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### ORDER

#### Long Term Care Nursing Facilities

##### Nature of the Proceedings

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for nursing facilities. Additionally, the proposed rule is technical in nature to change a reference from the HCFA (Health Care Financing Administration) to the CMS (Centers for Medicare and Medicaid 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 October 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Amendment

##### Title of Regulation

Methods and Standards for Establishing Payment Rates – Prospective Reimbursement System for Long Term Care Facilities

##### Statutory Authority

42 CFR Part 447, Subpart C – Payment for Inpatient Hospital and Long-Term Care Facility Services

##### Amending the Following State Plan Pages

Attachment 4.19-D and Attachments

##### Summary of Proposed Changes

- Clarifies the calculation of primary patient care reimbursement policy regarding the placement of costs for administrative nurses on the cost report.
- Clarifies the policy regarding the calculation of the rate for “Incentive add-ons”, such as the level of care classifications of Rehabilitative, Psychological/Social and Rehab/Psych Preventive and Treatments.
- Changes the reimbursement rate year from October 1 to January 1 for private facilities.
- Clarifies the policy regarding the calculation of the base rate portion of the reimbursement rate.
- Clarifies the policy regarding the calculation of the capital rate component of the base rate portion of the reimbursement rate.
- Changes the source of the inflator applied to the rate. The inflator source was the University of Delaware. New source for the inflator will be a recognized source based on an appropriate index for the primary cost center and the cost centers that make up the base rate.
- Changes the period for rebasing the rates. Current policy indicates a rebase every three years; new policy changes rebase cycle to every fourth year.
- Changes the next rebase year. Currently, the rebase year would have taken place for rates effective October 1, 2006, new policy indicates

the next rebase will take place for rates effective January 1, 2008.

- Changes the federal agency reference from HCFA to CMS.
- Clarifies that the reimbursement methodology for super skilled prior to 4/1/93 and after is the same.
- Removes the estimate of the cost increases due to OBRA '87.
- Removes the Nursing Facility Cost Report and Instructions from the State Plan.

### **Summary of Comments Received with Agency Response and Explanation of Changes**

The Delaware Developmental Disabilities Council (DCCC); the Governor's Advisory Council for Exceptional Citizens (GACEC); the State Council for Persons with Disabilities (SCPD); the Delaware Health Care Facilities Association (DHCFA); the Long Term Care Corporation (LTCC); and, the Delaware Healthcare Association (DHA) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

#### **SCPD, GACEC & DDDC**

The Councils have the observations given that it lacks specific background in nursing home finances and generally recommends that the proposed changes not reduce overall reimbursement rates for Medicaid beneficiaries seeking long-term care residence.

**Agency Response:** The Division of Medicaid and Medical Assistance (DMMA) does not anticipate a reduction in the overall reimbursement rates for Medicaid beneficiaries seeking long-term care residence. The expected savings are a result of changing the rate year from October 1<sup>st</sup> to January 1<sup>st</sup>.

First, it appears that some changes may reduce reimbursement to nursing homes. For example, "rebasings" rates every 4 years instead of every 3 years and postponing the "rebase" date from October 1, 2006 to January 1, 2008. These changes delay a rate increase. However, DMMA plans to apply an inflation factor annually. This will at least partially offset the effect of delays in "rebasings" rates.

**Agency Response:** The language has been changed to clarify that the rebasing takes place every fourth year, with three years in between. This is not a change in the DMMA policy, merely a clarification of existing policy.

Second, the formula for calculating enhanced reimbursement based on patients receiving active

rehabilitation is changed from reimbursement "at the next higher patient class" to "an additional 20% of the primary care rate component". Without specific knowledge of nursing home finances, it is difficult to assess whether this will generally result in more or less compensation.

**Agency Response:** This policy has been in place since the implementation of the Patient Index Reimbursement System (PIRS) reimbursement methodology in 1990. It does not change the reimbursement methodology.

Third, there is a favorable sentence added at page 513 to authorize a payment enhancement for "disruptive" patients: Patients exhibiting disruptive psychosocial behaviors on a frequent basis as defined by the Department and are receiving an active rehabilitation/preventive program as defined and approved by the Department shall be reimbursed an additional 10% of the rehabilitative/preventive primary care rate component.

**Agency Response:** This policy has been in place since the implementation of the Patient Index Reimbursement System (PIRS) reimbursement methodology in 1990. It does not change the reimbursement methodology.

Historically, some nursing homes have used civil commitment process or other means to try to have "disruptive" Medicaid patients removed from home. Once the bed hold period lapses, the patient may lose his/her slot and be unable to return. This circumvents the Bill of Rights Act protections against transfer. See Title 16 Del.C. §1121(18). We endorse the 10% enhancement for "disruptive" residents to deter facilities from seeking discharge based on such behavior.

**Agency Response:** The DMMA thanks the Councils for their endorsement.

#### **DHCFA (letter dated 10/14/05)**

#### **Section II, B – Primary Care Administrative Nurses**

In the summary of proposed changes, this change is described as a clarification of policy regarding the placement of costs for administrative nurses on the cost report. What is the effective date of when this policy was put into place by the Division? Do the current payment ceilings used to limit the costs for administrative nurses include administrative nurse costs? Or was this change made after the last "rebasings" of these ceilings? Does the State intending on making any accommodations to ensure providers they will be paid for these costs, which were incurred, provide services in conformity with applicable State and Federal laws, regulations and quality and safety standards?

**Agency Response:** This is a clarification of policy regarding the placement of administrative nursing costs. The effective date of this policy was for the cost report period ending June 30, 2004. The current payment ceilings used to limit the costs for administrative nurses include the administrative nurse costs up to the administrative cost center cap. This change was made after the last “rebasings”. The Division of Medicaid and Medical Assistance (DMMA) has no plans to make any accommodation for changing the administrative cost center cap.

#### **Section II, D, 2 – Incentive Add-ons for Rehabilitative Services**

In the summary of proposed changes this change is described as a clarification of policy regarding the incentive add-ons for rehabilitative, psychological/social and rehab./psych preventive and treatments. This particular paragraph only refers to the rehabilitative services. What is the effective date of when this policy was put into place by the Division?

**Agency Response:** This policy has been in place since the implementation of the Patient Index Reimbursement System (PIRS) reimbursement methodology in 1990. It does not change the reimbursement methodology.

#### **Section II, D, 4 – Reimbursement Rate Year Change [Primary Care]**

The State intends on changing the effective date on which the Medicaid reimbursement rates are paid to providers. These rates are annually updated to account for information reported on both the annual wage surveys [typically performed in June] and the fiscal year ending June 30<sup>th</sup> cost reports of the previous reimbursement year. The reported costs are then inflated to account for the time variance between when the costs are incurred and when the rates are set. The appropriate inflation methodology would apply an inflation rate for the number of months from the midpoint of the cost reporting year to the midpoint of the rate setting year. Since facilities will still be reporting on a June 30<sup>th</sup> year-end and the rate year is now based on a calendar year the inflation period would go from January 1 of the cost reporting year to July 1 of the rate setting year - an 18 month period.

It is our understanding that the State has already received the inflation factors that would have been used to inflate the costs had the rates been effective October 1 of this current year. *It is the DHCFA’s position that these inflation factors need to be updated to account for the change in the reimbursement year to January 1.* In order for Delaware Medicaid to use rates that are reasonable and adequate to

meet costs that must be incurred by providers to provide services in conformity with applicable State and Federal laws, regulations and quality and safety standards, these inflation factors must account for this extension in time.

**The association strongly opposes this change unless assurances are made that the inflation factors will be revised to account for date change.**

**Agency Response:** The DMMA thanks the Delaware Health Care Facilities Association (DHCFA) for their comments. Regarding DHCFA’s concern about the inflation factor, DMMA intends to use the annual inflation factors as supplied by the University of Delaware for the time period January 1, 2006 through December 31, 2006. Annual inflation factors to be applied in the future will cover inflation from January 1<sup>st</sup> – December 31<sup>st</sup>. However, the DMMA intends to explore alternative sources for the inflation factor. The DMMA would welcome any suggestions from the DHCFA regarding alternative sources. Once the DMMA has made a determination regarding the source, it is the DMMA’s intention to use that source indefinitely. If the source is changed, the DMMA will notify the providers of any change in the source.

#### **Section II, D, 4 – Incentive Add-ons for Rehabilitative and Rehab./Psych Services.**

In the summary of proposed changes this change is described as a clarification of policy regarding the incentive add-ons for rehabilitative, psychological/social and rehab./psych preventive and treatments. These two particular paragraphs only refer to the rehabilitative and Rehab/Psych services. What is the effective date of when this policy was put into place by the Division?

**Agency Response:** This policy has been in place since the implementation of the PIRS reimbursement methodology in 1990. It does not change the reimbursement methodology. The PIRS reimbursement methodology was developed with industry input.

#### **Section II, E – Reimbursement Rate Year Change [Base Rate] [Non-Primary]**

The same comments that were made for Section II, D, 4 – Reimbursement Rate Year Change [Primary Care] apply to this section as well.

The State intends on changing the effective date on which the Medicaid reimbursement rates are paid to providers. These rates are annually updated to account for information reported on both the annual wage surveys (typically performed in June) and the fiscal year ending June 30<sup>th</sup> cost reports of the previous reimbursement year. The

reported costs are then inflated to account for the time variance between when the costs are incurred and when the rates are set. The appropriate inflation methodology would apply an inflation rate for the number of months from the midpoint of the cost reporting year to the midpoint of the rate setting year. Since facilities will still be reporting on a June 30<sup>th</sup> year end and, the rate year is now based on a calendar year, the inflation period would go from January 1 of the cost reporting year to July 1 of the rate setting year – an 18 month period.

It is our understanding that the State has already received the inflation factors that would have been used to inflate the costs had the rates been effective October 1 of this current year. *It is the DHCFA's position that these inflation factors need to be updated to account for the change in the reimbursement year to January 1.* In order for Delaware Medicaid to use rates that are reasonable and adequate to meet costs that must be incurred by providers to provide services in conformity with applicable State and Federal laws, regulations and quality and safety standards, these inflation factors must account for this extension in time.

**The association strongly opposes this change unless assurances are made that the inflation factors will be revised to account for date change.**

**Agency Response:** The DMMA thanks the DHCFA for their comments. Regarding DHCFA's concern about the inflation factor, DMMA intends to use the annual inflation factors as supplied by the University of Delaware for the time period January 1, 2006 through December 31, 2006. Annual inflation factors to be applied in the future will cover inflation from January 1<sup>st</sup> – December 31<sup>st</sup>. However, the DMMA intends to explore alternative sources for the inflation factor. The DMMA would welcome any suggestions from DHCFA regarding alternative sources. Once the DMMA has made a determination regarding the source, it is the DMMA's intention to use that source indefinitely. If the source is changed, the DMMA will notify the providers of any change in the source.

#### **Section II, E – Occupancy Limitation for Base Rate Calculations**

In the summary of proposed changes, this change is described as a clarification of policy regarding the calculation of the base rate. In essence, what this change does is put in to wording the Divisions policy regarding the application of the occupancy limitation and how it applies to capital costs. It is our memberships understanding that there was no occupancy limitation applied to capital since these costs already have a 95% stop/loss application and were not subject to inflation, even though providers are required to

report costs that fluctuate with inflation, such as RE Taxes, equipment rentals and property insurance. When did the State implement this policy and what was the methodology behind it? What was the date in which the Division made the public aware of this policy change?

**Additionally, we object to any cap being applied for agency personnel, since nursing home operators have no alternative but to use agency to meet staffing requirements when there is a shortage.**

**Agency Response:** The 90% occupancy limitation has been applied to the capital cost center since the creation of the PIRS Reimbursement methodology, which was designed with the assistance of the industry. The policy has not changed and is only clarified with this new wording. The cap that is applied to agency personnel was raised when Eagles Law was implemented. The DMMA does not have plans at this time to change the 30% cap placed on the usage of agency nursing. The DMMA is concerned with the continuity of care, as well as the quality of care being given to Delaware's nursing home patients. We thank the Delaware Health Care Facilities Association for their comment.

#### **Section II, I, 3 – Source of the Inflation Factor Applied to Rates**

This section currently details exactly how and where the Division will obtain its inflation factor that is to be applied to the rates. The proposed change eliminates this completely and replaces it with generalizations and ambiguity. By removing any form of detail of exactly where these inflation factors come from and how they are used, allows the State unrestrained freedom to select whatever inflation index they choose for any given year. To our membership's knowledge, *there is no other State Plan filed with the Federal Government* that does not explicitly state the source and means in which an inflation factor is applied.

Historically, the State has retained the University of Delaware to calculate inflationary rates for a wide array of matters, including the calculation of its Medicaid rates. By changing this source for this one division's purpose can and will lead to inconsistencies in applications such as the State's budgets, forecasts and analytical review processes.

**The association strongly opposes this change and feels that any type of change made to this process must be laid out in a precise and accurate manner in which all nursing facilities providing services to the State's Medicaid patients can understand and substantiate. In its current form, this change makes it impossible for anyone to know what source of the inflation factor is and what it will be in the future and is completely unacceptable.**

**Agency Response:** The DMMA thanks the DHCFA for their comments. Regarding DHCFA's concern about the inflation factor, DMMA intends to use the annual inflation factors as supplied by the University of Delaware for the time period January 1, 2006 through December 31, 2006. Annual inflation factors to be applied in the future will cover inflation from January 1<sup>st</sup> – December 31<sup>st</sup>. However, the DMMA intends to explore alternative sources for the inflation factor. The DMMA would welcome any suggestions from DHCFA regarding alternative sources. Once the DMMA has made a determination regarding the source, it is the DMMA's intention to use that source indefinitely. If the source is changed, the DMMA will notify the providers of any change in the source.

### Section II, I, 3 – Rebasing Periods

In the summary of proposed changes, this change is described as a change in policy regarding the period in which cost reports will be rebased. Specifically, the summary indicates the State's old policy was to rebase every three years and now will be every fourth year. Please clarify the difference between these policies. Historically the State has been rebasing every fourth year, not every three years. As identified by the summary, if the State's policy was to rebase every three years, then the State is currently off on its rebasing cycles. If this is the case, how does the State plan on setting forth corrections to this oversight?

**In order to avoid any future confusion, please identify when the next two rebasing cycles will occur? It is already indicated in the proposed changes that the next change will be January 1, 2008; does this mean the cycle after this would be January 2012?**

**Agency Response:** This is a clarification of current policy and does not result in a change. The State has been rebasing every fourth year and intends to continue rebasing every fourth year. The clarification is in the wording of the State Plan. The next rebase will be for the rate year starting January 1, 2008, then January 1, 2012.

### Section IV. Rate Reconsideration

**The threshold on patient reclassification re-determinations is too high.**

**The Medicaid programs allow a seller's basis to be indexed by marshall swift.**

**Agency Response:** This section of the State Plan was developed originally by the joint State-Provider group, which determined this process to be appropriate. Currently, the DMMA has no information, which supports a change in this language. However, certainly, if a typographical error

occurred in entering the level of care, the DMMA would correct this when the provider identifies it. The Department plans to proceed with the amendment as published. No change will be made to the State Plan because of this comment.

### Section VI. Audit

We also object to recalculating the ceilings for a provider based on that provider's disallowed. We know of no other State that does this.

**Agency Response:** The DMMA will recalculate the payment caps, floors, ceilings and incentive payments after a field audit. However, it is not the intention of the DMMA to have those revisions affect providers that have not been audited. The Department plans to proceed with the amendment and no change will be made to the State Plan Amendment because of this comment.

### DHCFA (letter dated 10/25/05 following 10/24/05 meeting with DMMA)

**Primary issues** – There is one primary issue, which has basically two aspects to it. That issue relates to how Delaware Medicaid will set providers rates now that the rate setting year is a Calendar year as opposed to the previous October 1<sup>st</sup> to September 30<sup>th</sup> rate setting year. Of primary importance to us is the inflation of the cost reports for the rate setting year follow encompasses the proper number of months from the mid-point of the cost reporting year to the mid-point of the rate setting year. It is our understanding that cost reports will still be filed on a June 30<sup>th</sup> year end. Therefore, we feel rates should be inflated from the mid-point of the cost report year, which would be January 1<sup>st</sup> for a June 30<sup>th</sup> cost reporting year to the mid-point of the rate setting year, which would be July 1<sup>st</sup> for the new calendar rate setting year. This encompasses an 18 month time frame. We feel this is equitable to both the long term care industry and the Division of Medical Assistance since the mid-point of the cost report year represents a logical starting point for applying inflation and the mid-point of a rate setting year is a logical ending point for the application of that inflation.

In addition, we feel it very important that the inflation index used in the rate setting process be clearly defined. For many years, the University of Delaware Economic Index has been used and accepted by the Division of Medicaid and Medical Assistance and by the provider community. To change to an unknown and undefined index either immediately or in the future, will cause an inconsistency with the application of inflation to provider incurred cost and more importantly, will create a great amount of uncertainty as to how the rates will be set each year. We, therefore,

request that the University of Delaware Economic Index be used going forward. If the Division of Medical Assistance desires consideration for a change of that index, we are requesting that the provider community and the Division meet to discuss any changes before implementation, and that any changes decided upon, be clearly defined.

**The re-basing of cost in the past has shown that the current inflation index is reasonably conservative since re-basing has, for the most part, resulted in an increase in provider ceilings. Therefore, we would conclude that the index currently in use is the appropriate index.**

**Agency Response:** The DMMA thanks the Delaware Health Care Facilities Association (DHCFA) for their comments. Regarding DHCFA's concern about the inflation factor, DMMA intends to use the annual inflation factors as supplied by the University of Delaware for the time period January 1, 2006 through December 31, 2006. Annual inflation factors to be applied in the future will cover inflation from January 1<sup>st</sup> – December 31<sup>st</sup>. However, the DMMA intends to explore alternative sources for the inflation factor. The DMMA would welcome any suggestions from DHCFA regarding alternative sources. Once the DMMA has made a determination regarding the source, it is the DMMA's intention to use that source indefinitely. If the source is changed, the DMMA will notify the providers of any change in the source.

**Secondary issues** – There are four issues, which fall in this category:

1. The application of the agency caps as indicated on Page 6 of the proposed regulations we feel is not justified and is inconsistent with the mandate for providers to fully staff their facilities to meet “ppds” as well as staff to patient ratios. All providers desire that professional nurses and nursing assistants be employees of the facility and not agency staff. As you know, however, with shortages over the years, it has been necessary for the provider community to contract agency staff for periods of time. This is always a last resort for providers and only after they have made extensive attempts to recruit staff for their facilities. Moreover, the opening of 4 new facilities in Delaware will further exacerbate the shortage that exists. Therefore, we feel there is no logic to the application of the limitation on agency cost for a facility or for the entire industry. Therefore, we would request that any limitation on nurse agency cost as indicated by the proposed regulations be eliminated.

**Agency Response:** The cap that is applied to agency personnel was raised when Eagles Law was implemented. The DMMA does not have plans at this time to change the 30% cap placed on the usage of agency nursing. The DMMA

is concerned with the continuity of care, as well as the quality of care being given to Delaware's nursing home patients. We thank the Delaware Health Care Facilities Association for their comment.

2. On Page 14 (A1) of the proposed regs, there is a methodology in place for when reconsideration of a patient classification can be made. That reconsideration indicates a threshold of at least 10% of the Medicaid revenue for the facility for a month in order for the State to consider reconsideration. We feel this limitation is too high and will prevent providers from ever being able to request reconsideration. We are asking that this threshold be lowered and be based on a percentage of Medicaid patients for the facility where a reconsideration is deemed appropriate.

**Agency Response:** This section of the State Plan was developed originally by the joint State-Provider group, which determined this process to be appropriate. Currently, the DMMA has no information, which supports a change in this language. However, certainly, if a typographical error occurred in entering the level of care, the DMMA would correct this when the provider identifies it. The Department plans to proceed with the amendment as published. No change will be made to the State Plan because of this comment.

3. On Page 16 (B) regarding audits, the paragraph indicates that payment ceilings and incentive payments for other facilities within a peer group will not be altered by audit revisions. We would request the words “and incentive payments for other facilities within the peer group” be removed.

**Agency Response:** The DMMA will recalculate the payment caps, floors, ceilings and incentive payments after a field audit. However, it is not the intention of the DMMA to have those revisions affect providers that have not been audited. The Department plans to proceed with the amendment and no change will be made to the State Plan Amendment because of this comment.

4. On Page 13 (J) under Medicare Aggregate Upper Limitations proposed language reads for any change of ownership after July 18, 1984, the state will not increase payments to providers for depreciation interest and capital and return on equity. We know that Medicaid regulations permit state Medicaid programs to increase seller's basis by a recognized construction index to partially reflect current replacement cost. In the States of Wisconsin, Georgia, and Virginia, a percentage of the Dodge construction index has been applied to the original seller's basis to index that basis up to the audit period year in order to have a basis more

reflective of current replacement costs for the facility. We are requesting that Delaware give consideration to this same methodology for seller asset basis.

**Agency Response:** The DMMA acknowledges and has considered the commenter's concerns but declines the suggestion. The Department plans to proceed with the amendment as published. No change will be made to the State Plan because of this comment.

### LTCC

Incorporating new language in the capital reimbursement element of the plan stipulating an occupancy reimbursement adjustment will be of grave concern. Also, this provision could potentially have a very negative effect on the new Veteran's Home.

It is requested that a new reimbursement adjustment for occupancy not be applied to capital reimbursement for any facility that has applied for and received a Certificate of Public Review as of December 31, 2005.

Moving forward, as it relates to new facilities, if the department is insistent upon implementing an occupancy adjustment, the following is suggested as a fair compromise:

Year 1	40%
Year 2	70%
Year 3	90%.

The last new facility opened in 1996. The reason NO new facilities have opened in Delaware despite the obvious severe demand for new nursing home beds is a function of the reimbursement plan and the very strict regulatory environment.

**Agency Response:** The 90% occupancy limitation has been applied to the capital cost center since the creation of the PIRS Reimbursement methodology, which was designed with the assistance of the industry. The policy has not changed and is only clarified with this new wording. The Division of Medicaid and Medical Assistance thanks Long Term Care Corp. for its comments. The Department plans to proceed with the amendment as published. No change will be made to the State Plan because of this comment.

### DHA

We have one overall concern that are included in the proposed regulation are current practice and apparently have been for some time. This is consistent with our comments on the proposed regulation for inpatient facilities that we made last month.

Our two overwhelming concerns are those contained in Section 2.D.4, which changes the reimbursement year from October 1st through September 30th to January 1st through

December 31st; and, Section 2.I.3., which eliminates the very detailed language regarding generation of the inflation indices and replaces the detail with a very vague "inflation indices will be obtained from a recognized source and based on an appropriate index for the primary cost center and the following cost centers: secondary, support and administrative."

There apparently is substantial variation in inflation factors for long-term care facilities, depending on whether capital is included. If the factors were used for budgetary purposes, then our members would urge you to consider that one source should be identified and used consistently and that the source is appropriately the University of Delaware.

It is our conclusion that once again the State is intending to pass on another portion of its financial shortfalls to all long-term care facilities. Additionally, by means of this proposed regulation, DMMA is seeking a formal retroactive approval for practices that have already been implemented without amendment to its State Plan.

Therefore, we **strongly oppose Sections 2.D.4 and 2.I.3** and suggest that the reimbursement year remain and the Department of Economics at the University of Delaware continue to provide the inflation factors for the State.

**Agency Response:** The DMMA thanks the Delaware Healthcare Association (DHA) for their comments regarding the change in rate year and the inflation factor. The DMMA intends to change the rate year as specified. The annual inflation factors will be supplied by the University of Delaware for the time period January 1, 2006 through December 31, 2006. Annual inflation factors to be applied in the future will cover inflation from January 1<sup>st</sup> – December 31<sup>st</sup>. However, the DMMA intends to explore alternative sources for the inflation factor. The DMMA would welcome any suggestions from the DHA regarding alternative sources. Once the DMMA has made a determination regarding the source, it is the DMMA's intention to use that source indefinitely. If the source is changed, the DMMA will notify the providers of any change in the source. The Department plans to proceed with the amendment and no change will be made to the State Plan Amendment because of this comment.

Additionally, the DMMA initiated a few changes to correct grammatical and typographical errors. These changes are indicated by **[bracketed bold type]** and ~~**[bracketed bold strikethrough]**~~.

### Findings of Fact

The Department finds that the proposed changes as set forth in the October 2005 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for Long Term Care Nursing Facilities is adopted and shall be final effective December 10, 2005.

Vincent P. Meconi, Secretary, DHSS, November 17, 2005

**DSS FINAL ORDER REGULATION #05-73**  
REVISIONS: ATTACHMENT 4.19-D  
Page 1

**State Plan Under Title XIX of the Social Security Act**

**STATE OF DELAWARE**

**Methods and Standards for Establishing Payment Rates**

**Prospective Reimbursement System for Long Term Care Facilities**

**I. General Provisions**

A. Purpose

This plan establishes a reimbursement system for long-term care facilities that complies with federal requirements, including but not limited to:

- Requirements of the Omnibus Reconciliation Act of 1981 that nursing facility provider reimbursements be reasonable and adequate to assure an efficient and economically operated facility.
- The requirement that Medicaid payments in the aggregate do not exceed what would have been paid by Medicare based on allowable cost principles.
- Limitations on the revaluation of assets subsequent to a change of ownership since July 18, 1984.
- Requirements of the Omnibus Reconciliation Act of 1987 to establish one level of nursing care, i.e., Nursing Facility Care, to eliminate the designation of Skilled and Intermediate Care, and to provide sufficient staff to meet these requirements.
- The requirement to employ only nurse aides who have successfully completed a training and competency evaluation program or a competency evaluation program.

B. Reimbursement Principles

1. Providers of nursing facility care shall be reimbursed prospectively determined per diem rates based on a patient based classification system. Providers of ICF-MR and ICF-IMD services shall be reimbursed prospectively determined per diem rates.

ATTACHMENT 4.19-D  
Page 2

2. The Delaware Medicaid Program shall reimburse qualified providers of long-term care based on the individual Medicaid recipient's days of care multiplied by the applicable per diem rate for that patient's classification less any payments made by recipients or third parties.

**II. Rate Determination for Nursing Facilities**

A. Basis for Reimbursement

Per Diem reimbursement for nursing facility services shall be composed of five prospectively determined rate components that reimburse providers for primary patient care, secondary patient care, support services, administration, and capital costs.

The primary patient care component of the per diem rate is based on the nursing care costs related specifically to each patient's classification. In addition to assignment to case mix classifications, patients may qualify for supplementary primary care reimbursement based on their characteristics and special service needs. Primary care component reimbursement for each basic patient classification will be the same for each facility within a group. A schedule of primary rates, including rate additions, is established for each of three groups of facilities:

- Private facilities in New Castle County
- Private facilities in Kent and Sussex Counties
- Public facilities

Payment for the secondary, support, administrative, and capital costs comprise the base rate, and is unique to each facility. Provider costs are reported annually to Medicaid and are used to establish rate ceilings for the secondary, support, and administrative cost centers in each provider group.

The sections that follow provide specific details on rate computation for each of the five rate components.

B. Rate components

Payment for services based on the sum of five rate components. The rate components are defined as:

- Primary Patient Care. This cost center encompasses all costs that are involved in the provision of basic nursing care for nursing home patients and is inclusive of nursing

staff salaries, fringe benefits, and training costs. ~~Costs of completing Resident Assessment and Plans of Care will be covered in this cost center. All nurses salaries, fringe benefits, and training for staff with duties that count[s] towards the minimum staff requirements will be included in this cost center.~~

## ATTACHMENT 4.19-D

Page 3

- Secondary Patient Care. This cost center encompasses other patient care costs that directly affect patient health status and quality of care and is inclusive of clinical consultants, social services, raw food, medical supplies, and non prescription drugs, dietitian services, dental services (in public facilities only), and activities personnel.
- Support Services. This cost center includes costs for departments that provide supportive services other than medical care and is inclusive of dietary, operation and maintenance of the facility, housekeeping, laundry and linen, and patient recreation.
- Administrative. This category includes costs that are not patient related and is inclusive of owner/administrator salary, medical and nursing director salary (excluding such time spent in direct patient care), administrative salaries, medical records, working capital, benefits associated with administrative personnel, home office expenses, management of resident personal funds, and monitoring and resolving patient's rights issues.
- Capital. This category includes costs related to the purchase and lease of property, plant and equipment and is inclusive of lease costs, mortgage interest, property taxes and depreciation.

## C. Excluded Services

Those services to residents of private long term care facilities that are ordinarily billed directly by practitioners will continue to be billed separately and are not covered by the rate component categories. This includes prescription drugs, Medicare Part B covered services, physician services, hospitalization and dental services, laboratory, radiology, and certain ancillary therapies.

For public facilities, laboratory, radiology, prescription drugs, physician services, dental services, and ancillary therapies ~~[are maybe]~~ included in the per diem.

Costs of training and certification of nurse aides are billed separately by the facilities as they are incurred, and reimbursed directly by Medicaid.

## D. Primary Payment Component Computations

The primary patient care rate component is based on a patient index system in which all nursing home patients are classified into patient classes. The lowest resource intensive clients are placed in the lowest class.

## ATTACHMENT 4.19-D

Page 4

The Department will assign classes to nursing home patients. Initial classification of patients occurs through the State's pre-admission screening program. These initial classifications will be reviewed by Department nurses within 31 to 45 days after assignment. Patient classification will then be reviewed twice a year. Facilities will receive notices from the Department concerning class changes and relevant effective dates.

1. In order to establish the patient classification for reimbursement, patients are evaluated and scored by Medicaid review nurses according to the specific amount of staff assistance needed in Activity of Daily Living (ADL) dependency areas. These include Bathing, Eating, Mobility/Transfer/Toileting. Potential scores are as follows:

0 - Independent

1 - Supervision (includes verbal cueing and occasional staff standby)

2 - Moderate assistance (requires staff standby/physical presence)

3 - Maximum Assistance

Patients receiving moderate or maximum assistance will be considered "dependent" in that ADL area. Patients receiving supervision will not be considered dependent.

Reimbursement is determined by assigning the patient to a patient classifications based on their ADL scores or range of scores.

Each patient classification is related to specific nursing time factors. These time factors are multiplied by the 75<sup>th</sup> percentile nurse wage in each provider group to determine the per diem rate for each classification.

2. Patients receiving an active rehabilitative/preventive program as defined and approved by the Department shall be reimbursed ~~at the next higher patient class. For qualifying patients at the highest level, the facility will receive an additional 10 percent of the primary care rate~~

~~component. an additional 20% of the primary care rate component.~~

To be considered for the added reimbursement allowed under this provision, a facility must develop and prepare an individual rehabilitative/preventive care plan. This plan of care must contain rehabilitative/preventive care programs as described in a Department approved list of programs. The services must seek to address specific activity of daily living and other functional problems of the patient. The care plan must also indicate specific six month and one-year patient goals, and must have a physician's approval.

**6 DE Reg. 964 (2/1/03)**

ATTACHMENT 4.19-D  
Page 5

The Department will evaluate new facility-developed rehabilitative/preventive care plans during its patient classification reviews of nursing homes.

Interim provisional approval of plans can be provided by Department review nurses. When reviewed, the Department will examine facility documentation on the provision of rehabilitative/preventive services to patients with previously approved care plans as well as progress towards patient goals.

3. Patients exhibiting disruptive psycho social behaviors on a frequent basis as defined and classified by the Department shall receive an additional 10 percent of the primary care rate component for the appropriate classification.

The specific psychosocial behaviors that will be considered for added reimbursement under this provision are those that necessitate additional nursing staff intervention in the provision of personal and nursing care. Such behaviors include: verbal and physically disruptive actions, inappropriate social behavior, non-territorial wandering, and any other similar patient problems as designated by the Department.

Facilities must have complete documentation on frequency of such behaviors in a patient's chart for the Department to consider the facility for added reimbursement under this provision. This documentation will be evaluated during patient classification reviews of a nursing home.

4. Patient class rates are determined based on the time required to care for patients in each classification, and nursing wage, fringe benefit, and training costs tabulated separately for private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities statewide.

Primary rates are established by the following methodology:

- Annual wage surveys and cost reports required of each provider are used to determine 75<sup>th</sup> percentile hourly nursing wages.

The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting, is from ~~October 1 through September 30~~ January 1 through December 31 for private facilities and October 1 through September 30 for State facilities.

ATTACHMENT 4.19-D  
Page 6

This is calculated by first dividing total pay by total hours for each nursing classification (RN, LPN, Aide) in each facility, then ~~arraying the representative 75<sup>th</sup> percentile wages of each facility~~ them to determine the 75<sup>th</sup> percentile within each provider group. Based on cost data from each provider group, hourly wage rates are adjusted to include hourly training and fringe benefit costs within each provider group.

- In each of the three provider groups (private facilities in New Castle County, Kent and Sussex Counties, and public facilities), the rates are established in the same manner. The primary component of the Medicaid nursing home rate is determined by multiplying the 75<sup>th</sup> percentile hourly nursing wage for RNs, LPNs, and Aides by standard nursing time factors for each of the base levels of patient acuity.
- Providers will be reimbursed for agency nurse costs if their use of agency nurses does not exceed the allowable agency nurse cap determined each year by the Delaware Medicaid staff. Any nursing cost incurred in excess of the allowable cap will not be included in the nursing cost calculation.
- Within each of the patient classes, Medicaid provides "Incentive add-ons" to encourage rehabilitative and preventive programs. Rehabilitative and preventive services shall be reimbursed ~~at the same rate as the next highest patient class. In the case of patients in the highest class, the facility will receive an additional 10 percent of the primary care~~

~~rate component. an additional 20% of the primary care rate component.~~ Incentive payments discourage the deterioration of patients into higher classifications.

- Patients exhibiting disruptive psychosocial behaviors on a frequent basis as defined by the Department and are receiving an active rehabilitation/preventive program as defined and approved by the Department shall be reimbursed an additional 10% of the rehabilitative/preventive primary care rate component.

#### E. Non-primary Rate Component Computations

Facility rates for the four non-primary components of secondary, support, administrative, and capital are computed from annual provider cost report data on reimbursable costs. Reimbursable costs are defined to be those that are allowable based on Medicare principles, according to HIM 15. Costs applicable to services, facilities, and supplies furnished to a provider by commonly owned, controlled or related organizations shall not exceed the lower cost of comparable services purchased elsewhere.

#### ATTACHMENT 4.19-D Page 7

The cost report used in the calculations will represent the fiscal year ending June 30<sup>th</sup> of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting is from ~~October 1 through September 30~~ January 1 through December 31 for private facilities and October 1 through September 30 for State facilities.

- Individual allowable cost items from cost reports for each facility comprising the base rate component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equal actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities<sup>1</sup> equals actual patient days for the period of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is greater. This applies to cost centers comprising the basic rate.

The discussion that follows explains rate computation for the secondary, support, administrative and capital payment centers.

1. Secondary patient care rates are reimbursed according to the cost of care determined prospectively up to a calculated ceiling (115 percent of median per diem costs). Three steps are required:

- Facilities are grouped into three peer groups – private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities.
- Individual allowable cost items from cost reports for each facility comprising the secondary care component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equals actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities<sup>1</sup> equals actual patient days for the period of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is greater.
- The median per diem cost is determined for each category of facility and inflated by 15 percent. The secondary care per diem assigned to a facility is the actual allowable cost up to a maximum of 115 percent of the median.

2. Support service component rates are determined in a manner that parallels the secondary component rate calculation process. However, the ceiling is set at 110 percent of median support costs per day for the appropriate category of facility. In addition, facilities, which maintain costs below the cap, are entitled to an incentive payment 25 percent of the difference between the facility's actual per day cost and the applicable cap, up to a maximum incentive of 5 percent of the cap amount.

\* "New facility" is defined as: (1) New construction built to provide a new service of either intermediate or skilled nursing care for which the existing facility has never before been certified, or (2) construction of an entirely new facility totally and administratively independent of an existing facility.

#### ATTACHMENT 4.19-D Page 8

3. Administrative component rates are determined in a manner parallel to the secondary component. However, the ceiling is set at 105 percent of median costs per day. A facility is entitled to an incentive payment of 50

percent of the difference between its actual costs and the cap. The incentive payment is limited to 10 percent of the ceiling amount.

4. Capital component rates are determined prospectively and are subject to a rate floor and rate ceiling. The dollar amounts representing the 20th percentile of actual per diem capital cost (floor) and the 80th percentile of actual per diem capital cost (ceiling) are calculated. If the facility's costs are greater than or equal to the floor, and less than or equal to the ceiling, the facility's prospective rate is equal to its actual cost. If the facility's costs are below the floor, the prospective rate is equal to the lower of the floor or actual cost plus twenty-five percent of actual cost. If the facility's costs are greater than the ceiling, the prospective rate is equal to the higher of the ceiling or ninety-five percent of actual cost. Costs associated with revaluation of assets of a facility will not be recognized.

The capital component is also subject to the occupancy standards as set forth in section II.E. of State Plan Amendment 4.19-D. The capital component rate is calculated on a statewide basis.

5. Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories for private facilities, but may be included in the rate for public facilities. These services include therapies, physician services, dental services and prescription drugs.

F. Computation of Total Rate from Components

A facility's secondary, support, administrative, and capital payments will be summed and called its basic rate. The total rate for a patient is then determined by adding the primary rate for which a patient qualifies to the facility's basic rate component. The basic payment amount will not vary across patients in a nursing home. However, the primary payment [~~depend~~] will depend on a patient's class and qualification for added rehabilitative/preventive and/or psychosocial reimbursement.

G. OBRA '87 Additional Costs

1. Nurse Aide Training and Certification

Providers of long-term care services will be reimbursed directly for the reasonable costs of training, competency testing and certification of nurse aides in compliance with the requirements of OBRA '87. The training and competency testing must be in a program approved by the Delaware Department of Health and Social Services, Division of Public Health. A "Statement of Reimbursement Cost of Nurse Aide Training" is submitted to the state by each facility quarterly.

ATTACHMENT 4.19-D

Page 9

Costs reported on the Statement of Reimbursement Cost are reimbursed directly and claimed by the State as administrative costs. They include:

- Costs incurred in testing and certifying currently employed nurse aides, i.e., testing fees, tuition, books, and training materials.
- Costs of providing State approved training or refresher training in preparation for the competency evaluation testing to employed nurse aides who have not yet received certification.
- Salaries of in-service [~~instructions~~ **instructors**] to conduct State approved training programs for the portion of their time involved with training, or fees charged by providers of a State approved training program.
- Costs of transporting nurse aides from the nursing facility to a testing or training site.

The following costs of nurse aide training are considered operational, and will be reported annually on the Medicaid cost report. These costs will be reimbursed through the Primary cost component of the per diem rate:

- Salaries of nurse aides while in training or competency evaluation.
- Costs of additional staff to replace nurse aides participating in training or competency evaluation.
- Continuing education ~~or~~ of nurse aides following certification.

2. Additional Nurse Staff Requirements

Additional nurse staff required by a nursing facility to comply with the requirements of OBRA '87 will be reimbursed under the provisions of the Delaware Medicaid Patient Index Reimbursement System (PIRS). This system makes no distinction between levels of care for reimbursement. Nursing costs are derived from average hourly wage, benefit, and training cost data provided on the Nursing Wage Survey submitted by each facility. Prospective rates for each patient acuity classification are calculated by these costs by the minimum nursing time factors. Although representative of actual costs incurred, these prospectively determined rates are independent of the

number employed or the number of staff vacancies at any given time.

ATTACHMENT 4.19-D  
Page 10

### 3. Additional Non-Nursing Requirements

The Delaware Medicaid reimbursement system will recognize the incremental costs of additional staff and services incurred by nursing facilities to comply with the mandates of OBRA '87. Prospective rate calculations will be adjusted to account for costs incurred on or after October 1, 1990.

Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories (for private facilities, but may be included in the rate for public facilities.) These services include therapies, physician services, dental services, and prescription drugs.

A supplemental schedule to the Statement of Reimbursement Costs (Medicaid Cost Report) will be submitted by each facility to demonstrate projected staff and service costs required to comply with OBRA '87. For the rate year beginning October 1, 1990, facilities may project full year costs onto prior year reported actual costs to be included in the rate calculation.

The supplemental schedule will be used to project costs incurred for programs effective October 1, 1990 into the prospective reimbursement rates. Where nursing care facilities indicate new and anticipated staff positions, those costs will be included with the actual SFY '90 costs when calculating the reimbursement rates effective October 1, 1990.

Additional staff requirements include dietitian, medical director, medical records, activities personnel, and social worker.

#### H. Hold Harmless Provision

For the first year under the patient index reimbursement system the Department will have in effect a hold-harmless provision. The purpose of the provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, no facility will be paid less by Medicaid under the patient index system than it would have been paid had Federal Fiscal Year 1988 rates, adjusted by an inflation factor, been retained.

For the period October 1, 1990 to September 30, 1991, the Department will have in effect a hold-harmless provision with respect to capital reimbursement rates. The purpose of this provision is to give facilities an opportunity to adjust their operations to the new system. Under this

provision, facilities will be paid the greater of the rate under the prospective capital rate methodology or the rate based on reimbursable costs. Beginning October 1, 1991, all facilities will be subject to the prospective capital rate methodology described in Section II, E.4.

ATTACHMENT 4.19-D  
Page 11

### I. Annual Rate Recalculation

#### 1. Primary Payment Component

Rates for the primary patient care component will be rebased annually. Two sources of provider-supplied data will be used in this rate rebasing:

- An annual nursing wage and salary survey that the Department will conduct of all Medicaid-participating nursing facilities in Delaware.
- Nursing home cost report data on nurses' fringe benefits and training costs.

The 75<sup>th</sup> percentile wages will be redetermined annually from the wage and salary survey, and the standard nurse time factors will be applied for each patient classification. The cost report and wage and salary survey will be for the previous year ending June 30.

#### 2. Non-Primary Payment Components

The payment caps for the secondary, support, and administrative components will be rebased every fourth year using the computation methods specified in Section E above. For the interim periods between rebasing, the payment caps will be inflated annually based on reasonable inflation estimates as published by the Department. Facility-specific payment rates for these cost centers shall then be calculated using these inflated caps and cost report data from the most recently available cost reporting period.

The capital floor and ceiling will be rebased annually.

ATTACHMENT 4.19-D  
Page 12

#### 3. Inflation Adjustment

Per Diem caps for primary, secondary, support and administrative cost centers will be adjusted each year by inflation indices. The inflation indices ~~are obtained from the Department of Economics of the University of Delaware and include both regional and national health care specific economic trends. The inflation forecast is based on the U.S. Consumer Price Index. Factors reviewed on the demand~~

~~side include recent growth rates in the money supply, employment, and business and government debt, as well as the state of the business cycle. Current capacity utilization rates and new capital spending plans, production delivery delays, employment to population ratios, wages, and trends in energy, housing, and food are studies on the supply side. The forecast is also confirmed by reviewing the Consumer Estimates and Columbia University Leading Index of Inflation, interest rates in the futures markets, the Commodity Research Bureau's Index of Future Prices, and the trade weighted price of the dollar. will be obtained from a recognized source and based on an appropriate index for the primary cost center and the following cost centers: secondary, support and administrative.~~

The inflation factors are applied to the actual nursing wage rates to compensate for the annual inflation in nursing costs. This adjustment is made before the nurse training and benefits are added and the wages are multiplied by the standard nurse time factors.

Cost center caps are used to set an upper limit on the amount a provider will be reimbursed for the costs in the secondary, support, and administrative cost centers. Initially, these caps are computed by determining the median value of the provider's actual daily costs, then adjusting upwardly according to the particular cost center. The Secondary cost center cap is 115% of the provider group median, and Administrative costs are capped at 105% of the median. Delaware Medicaid will recalculate non-primary cost center caps every ~~three years~~ fourth year. The next rebase will be for rates effective January 1, 2008. In interim rate years, these cost center caps will not be recomputed. Instead, cost center caps will be adjusted by inflation factors. The inflation index provided by ~~the University of Delaware~~ a recognized source will be applied to the current cap in each cost center in each provider group to establish the new cap. The actual reported costs will be compared to the cap. Facilities with costs above the cap will receive the amount of the cap.

ATTACHMENT 4.19-D  
Page 13

J. Medicare Aggregate Upper Limitations

The State of Delaware assures ~~HCFA~~ CMS that in no case shall aggregate payments made under this plan, inclusive of DEFRA capital limitations, exceed the amount that would have been paid under Medicare principles of reimbursement. As a result of a change of ownership, on or after July 18, 1984, the State will not increase payments to providers for depreciation, interest on capital and return on equity, in the aggregate, more than the amount that would be

recognized under section 1861(v)(1)(0) of the Social Security Act. Average projected rates of payment shall be tested against such limitations. In the event that average payment rates exceed such limitations, rates shall be reduced for those facilities exceeding Medicare principles as applied to all nursing facilities.

**III. Rate Determination ICF/MR and ICF/IMD Facilities**

Delaware will recalculate the prospective per diem rates for ICF/MRs and ICF/IMDs annually for the reimbursement year, ~~of October through September 30~~ January 1 through December 31 for private facilities and October 1 through September 30 for public facilities. ICF/MR and ICF/IMD facilities shall be reimbursed actual total per diem costs determined prospectively up to a ceiling. The ceiling is set at the 75<sup>th</sup> percentile of the distribution of costs of the facilities in each class. There are four (4) classes of facilities, which are:

1. Public ICF/MR facilities of 8 beds or less.
2. Public ICF/MR facilities of greater than 8 beds.
3. Private ICF/MR facilities of 60 beds or less.
4. Public ICF/IMD facilities.

An inflation factor (as described in II.H.3 above) will be applied to prior year's costs to determine the current year's rate.

**IV. Rate Reconsideration**

A. Primary Rate Component

Long-term care providers shall have the right to request a rate reconsideration for alleged patient misclassification relating to the Department's assignment of the case mix classification. Conditions for reconsideration are specified in the Department's nursing home appeals process as specified in the long-term care provider manual.

ATTACHMENT 4.19-D  
Page 14

1. Exclusions from Reconsideration  
Specifically excluded from patient class reconsiderations are:

- Changes in patient status between regular patient class reviews.
- Patient classification determinations, unless the loss of revenues for a month's period of alleged misclassification equals ten percent or more of the facility's Medicaid revenues in that month.

2. Procedures for Filing

Facilities shall submit requests for reconsiderations within sixty days after patient classifications are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as required by the Department.

### 3. Patient Reclassifications

Any reclassification resulting from the reconsideration process will become effective on the first day of the month following such reclassification.

#### B. Non-Primary Rate Components

Long-term care providers shall have the right to request a rate reconsideration for any alleged Department miscalculation of one or more non-primary payment rates. Miscalculation is defined as incorrect computation of payment rates from provider supplied data in annual cost reports.

#### 1. Exclusions from Reconsideration

Specifically excluded from rate consideration are:

- Department classification of cost items into payment centers.
- Peer-group rate ceilings.
- Department inflation adjustments.
- Capital floor and ceiling rate percentiles.

ATTACHMENT 4.19-D

Page 15

#### 2. Procedures for Filing

Rate reconsiderations shall be submitted within sixty days after payment rate schedules are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as requested by the Department.

#### 3. Rate Adjustments

Any rate adjustments resulting from the reconsideration process will take place on the first day of the month following such adjustment. Rate adjustments resulting from this provision will only affect the facility that had rate miscalculations. Payment ceilings and incentive amounts for other facilities in a peer group will not be altered by these adjustments.

## V. Reimbursement for Super Skilled Care

A higher rate will be paid for individuals who need a greater level of skilled care than that which is currently reimbursed in Delaware nursing facilities. For patients in the Super Skilled program ~~prior to 4/1/93~~, the rate will be determined as follows:

A summary of each individual who qualified under the Medicaid program's criteria for a "Super Skilled" level of

care will be sent to local nursing facilities, which have expressed an interest in providing this level of care. They will be asked to submit bids, within a specific time frame, for their per diem charge for caring for the individual. The Medicaid program will review the bids and select the one that most meets the needs of the patient at the lowest cost.

~~Effective 4/1/93, all new patients who would have formerly been placed in a super skilled level will be placed in one of the patient class levels and reimbursed as any other client. The Medicaid program will pay outside of the per diem rate for the exceptional costs of their care, such as ventilator equipment and special supplies required.~~

## VI. Reporting and Audit Requirements

### A. Reporting

All facilities certified to participate in the Medicaid program are required to maintain cost data and submit reports on the form and in the format specified by the Department. Such reports shall be filed annually. Cost reports are due within ninety days of the close of the state fiscal year. All Medicaid participating facilities shall report allowable costs on a state fiscal year basis, which begins on July 1 and ends the following June 30. The allowable costs recognized by Delaware are those defined by Medicare principles.

ATTACHMENT 4.19-D

Page 16

In addition, all facilities are required to complete and submit an annual nursing wage survey on a form specified by the Department. All facilities must provide nursing wage data for the time periods requested on the survey form.

For patients in the Super Skilled program, ~~prior to 4/1/93~~ annual Super Skilled bids will be considered the cost report for Super Skilled services. The nursing facility cost report must be adjusted to reflect costs associated with care for Super Skilled patients.

Failure to submit timely cost reports or nursing wage surveys within the allowed time periods when the facility has not been granted an extension by the Department, shall be grounds for suspension from the program. The Department may levy fines for failure to submit timely data as described in Section II.D. of the General Instructions to the Medicaid nursing facility cost report.

### B. Audit

The Department shall conduct a field audit of participating facilities, in accordance with Federal regulation

# FINAL REGULATIONS

and State law. Both cost reports and the nursing wage surveys will be subject to audit.

Overpayments identified and documented as a result of field audit activities, or other findings made available to the Department, will be recovered. Such overpayments will be accounted for on the Quarterly Report of Expenditures as required by regulation.

Rate revisions resulting from field audit will only affect payments to those facilities that had an identified overpayment. Payment ceilings and incentive payments for other facilities within a peer group will not be altered by these revisions.

**C. Desk Review**

All cost reports and nursing wage surveys shall be subjected to a desk review annually. Only desk reviewed cost report and nursing wage survey data will be used to calculate rates.

**VII. Reimbursement for Out-of-State Facilities**

Facilities located outside of Delaware will be paid the lesser of the Medicaid reimbursement rate from the state in which they are located or the highest rate established by Delaware for comparably certified non-state operated facilities as specified above.

ATTACHMENT 4.19-D  
Page 17

**VIII. Reimbursement of Ancillary Service for Private Facilities**

Oxygen, physical therapy, occupational therapy, and speech therapy will be reimbursed on a fee-for-service basis. The rates for these services are determined by a survey of all enrolled facilities' costs. The costs are then arrayed and a cap set at the median rate. Facilities will be paid the lower of their cost or the cap. The cap will be recomputed every three years based on new surveys.

The Delaware Medicaid Program's nursing home rate calculation, the Patient Index Reimbursement System, complies with requirements found in the Nursing Home Reform Act and all subsequent revisions. A detailed description of the methodology and analysis used in determining the adjustment in payment amount for nursing facilities to take into account the cost of services required to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident eligible for benefits under Title XIX is found in Attachment A.

~~DELAWARE MEDICAID PROGRAM  
ESTIMATE OF THE COST INCREASES INCURRED  
BY NURSING FACILITY  
IN MEETING THE REQUIREMENTS OF OBRA '87  
I. TRAINING, CERTIFICATION AND CONTINUING  
EDUCATION FOR NURSE AIDES~~

		# Aid es		Cost / Aide	Total Cost
A	Prior to October 1, 1990				
	Competency Evaluation	204		\$50	\$10,200
	75-hour Training (10%)	204	Average fee for training	\$160	\$32,640
	Staff Salaries - Testing	204	Average \$6.82/hr x 6 hrs	\$41	\$8,368
	Staff Salaries - Training	204	Average \$6.82/hr x 75 hrs x 80%	\$409	\$83,436
	Travel Costs	700	\$.30/mi x 34 mi / 5 persons	\$3	\$2,100
	<b>Total Cost</b>				<b>\$33,907</b>
	Cost per Aide				\$149
	Avg # Aides per facility				33
	Avg Cost per facility				\$4,914

Information from DE Office of Licensing and Certification indicates that most currently employed nurse aides were able to take the certification examination prior to October 1, 1990 without the 75 hour training program. An estimate of 10% requiring the training is used here.

Average staff salaries are derived from the Nurse Wage Survey, July 1989, and projected forward to 1990.

Nurse aide training and certification costs will be reimbursed directly as administrative costs from billing submitted by each nursing facility.

		# Aides		Cost / Aide	Total Cost
B	After October 1, 1990				
	Competency Evaluation	680	33% Turnover / year	\$50	\$34,000

75 hour Training (100%)	680	Average fee for training	\$160	\$108,800
Staff Salaries Testing	680	Average \$6.82/hr x 6 hrs	\$41	\$27,880
Staff Salaries Training	680	Average \$6.82/hr x 75 hrs x 80%	\$409	\$278,120
Travel Costs	230	\$.30/mi x 34 mi / 5 persons	\$3	\$690
Total Costs				\$449,490
Cost per Aide				\$661
Avg # Aides per facility				33
Avg Cost per facility				\$21,813

Continuing education for nurse aides will be reported on the annual cost report and will be reimbursed as part of the per diem.

Annual staff turn-over estimate of 33Z is derived from staffing experience of facilities.

## H. ADDITIONAL NURSE STAFF REQUIREMENTS

### A. Nursing Staff

#### 1. RN on Day Shift # Facilities Currently Meeting Requirement

# Facilities That Must Increase Staff to Comply With Requirement

o No financial impact of this additional staff requirement because all facilities are currently meeting minimum staffing requirement.

#### 2. RN/LPN on all shifts #Facilities Currently Meeting Requirement 29

— #Facilities That Must Increase Staff to Comply With Requirement

3 Total Cost per Facility 1.7 FTE x 2080 hrs/ FTE x \$15.30/hr Salary/Benefit/Training \$54,101

Current reimbursement under the Delaware Patient Index Reimbursement System makes no distinction between Skilled and Intermediate levels of care. The three facilities which must increase their staff to comply with the new regulations have always been paid on the same basis as those facilities which exceeded the new staffing requirement. The nursing time factors in the Medicaid time matrix are sufficient to reimburse for the required staffing.

Three of 29 private facilities in Delaware must increase their nursing staff in order to meet the new requirements. Two of the three facilities will continue to receive reimbursement exceeding their costs providing that they maintain their current patient mix.

The third facility currently has costs exceeding reimbursement due to several factors. Significant factors include their corporate policy to accept low care patients, their 72% occupancy rate, and higher than average nursing salaries. By making only minor adjustments to the patient mix, this facility could increase the average daily reimbursement per patient from \$20.94 to \$26.75. Their costs will increase from \$22.62 to \$26.62 as a result of the additional nursing staff required.

### Resident Assessment

Avg 87 pts/facility x 25 minutes/pt/year @ \$16.98/hr = \$615.53 per Facility

o The PIRS nursing time requirements matrix has been adjusted to account for the additional nursing time required to conduct Resident Assessment. Time for assessment and documentation was originally included in the nursing time requirements for RN and LPN at each level of patient acuity. Additional time will be included when calculating the Oct 1, 1990 rates to account for the new requirements. The amount of time added to the matrix was calculated by estimating the time required for assessment per patient per year and dividing by the number of annual available patient days per patient.

### C. Plans Of Care

Avg 87 pts/facility x 30 minutes/pt/year @ \$16.98/hr = \$738.63 per Facility

The PIRS nursing time requirements matrix has been adjusted to account for the additional nursing time required to conduct Plans of Care. Time for plans of care and documentation was originally included in the nursing time requirements for RN and LPN at each level of patient acuity. Additional time will be included when calculating the Oct 1, 1990 rates to account for the new requirements. The amount of time added to the matrix was calculated by estimating the time required for plans of care per patient per year and dividing by the number of annual available patient days per patient.

## III. EXTENDED PATIENT SERVICES

**A. Dietary:** No cost increase is expected as a result of the new

No cost increase is expected as a result of the new requirements

Current State certification standards require the level of

Dietary standards required by OBRA.

The PIRS reimbursement system will reflect any increase in staffing.

**B. Pharmacy:** No cost increase is expected as a result of the new requirements.

Current State certification standards require the level of Pharmacy standards required by OBRA. The FIRS reimbursement system will reflect any increase in staffing.

**C. Dental Services:** Delaware does not currently cover Dental Care under the State Plan. No cost impact is expected.

**D. Medical Records:** Nursing time for conducting Patient Assessment and coordinating Plans of Care will have been expanded in the Nursing Time Requirements Matrix. This accounts for the additional time required to manage medical records.

Please refer to the explanation of the Additional Nursing Staff Requirements above.

**E. Activities Personnel:** 8 Facilities - P.T. Activities Director @ \$23,400 annually  
8 facilities expect to expand their activities staff, although they currently employ an Activities Director.

All Delaware facilities currently meet this requirement by employing an qualified Activities Director on staff. Many facilities also have activities personnel in addition to the Director. The estimates of the number of facilities effected by this requirement and the cost of a part time Activities Director were derived from a telephone survey of 9 facilities and information from the state nursing facilities association.

**F. Social Workers:** > 120 beds - 4 Facilities - F.T. Social Worker @ \$31,200 annually  
< 120 beds - 11 Facilities - P.T. Social Worker @ \$23,400

4 of 10 facilities over 120 beds will incur costs to upgrade their social work activities.

11 of 22 facilities under 120 beds must upgrade their social work program by increasing their social work staff.

The estimates of the number of facilities effected by this requirement and the cost of Social Workers were derived from a telephone survey of 9 facilities and information from the state nursing facilities association.

**G. Physical Therapy:** 1753 ICI beds x 90% occupancy = 1578 patients x 20% increase = 316 patients Therapist treats 6 pts/hr @ avg \$35/hr x 2 times/week/pt = \$11.67/pt/week Total Cost 316 patients x \$11.67/pt/week = \$3,688/week total

Average Cost per Facility 11 pts @ \$11.67/pt/week = \$128.37/wk = \$6,675/yr.

On-site therapy will continue to be billed directly as a contracted ancillary service, and will not be part of the per diem reimbursement rate.

ICF as well as SNF patients are currently receiving therapy as needed. An increase of about 20% utilization is anticipated, primarily for ICF patients.

Estimates of additional costs were derived from information from the Delaware Division of Public Health, Office of Health Facilities Licensing and Certification, and a review of therapy reimbursement.

#### IV. MEDICAL DIRECTOR

Average \$66/hour for contractual services x 5 hours per month

\$330 per month x 12 months = \$3,960 per year for Medical Director

All Delaware nursing facilities are currently required to have Medical Director. Many will need to expand the responsibilities of the designated position.

12 facilities to increase Medical Director hours under contract from an average of \$720/ mo to \$1050/ mo. Increase represents \$3,960 per facility per year.

The cost estimate for the Medical Director was based on information from the Medicaid review nurse, who projected the number of hours required and the average hourly reimbursement, and called a number of facilities to determine how this requirement would be met. The number of facilities effected was estimated by the state nursing facilities association.

#### V. RESIDENT'S RIGHTS

**A. Resident Personal Funds:** 8 hours/day x 1.5 days/ mo x 12 mo/yr x \$12.50/hr = \$1,800 per year

Estimated 20 facilities will increase their bookkeeping staff to maintain records of interest bearing accounts, calculate interest, and produce quarterly statements.

Most likely approach to this requirement will be to employ temporary bookkeeping services.

Other facilities will absorb this requirement into their current bookkeeping staff.

This is the estimate of the Medicaid review nurse, who contacted a number of facilities to determine how this requirement would be met.

#### B. Other Resident's Rights:

The following patient's rights are not expected to result in additional costs for the nursing facilities:

1. Notice of Rights and Services
2. Rights of Incompetent Residents
3. Transfer and Discharge Rights
4. Access and Visitation Rights
5. Equal Access to Quality Care

## 6. Admissions Policy

No additional costs are anticipated for nursing facilities to implement other resident's rights. Most state regulations concerning specific patient's rights are the same as or more stringent than the Federal requirements. Those rights that are not addressed specifically as individual requirements in the state regulations, are protected by the Delaware's Patient Bill of Rights.

## STATE OF DELAWARE

## STATEMENT OF REIMBURSEMENT COST FOR SKILLED AND INTERMEDIATE CARE NURSING FACILITIES TITLE XIX

1. FOR THE PERIOD TO:

2. NAME OF FACILITY

STREET ADDRESS

CITY, STATE, ZIP CODE

3. Name and telephone number of person to contact in case of questions concerning this report:

NAME:

TITLE:

TELEPHONE NUMBER:

4. TYPE OF ENTITY: (check one only)

- A. Corporation  
 B. Individual Proprietorship  
 C. Non-Profit Organization  
 D. Partnership  
 E. State Facility  
 F. Other (Describe)

Under penalties of perjury, I declare that I have examined this Statement of Reimbursement Cost, including accompanying schedules, statements and adjustments and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than facility personnel) is based on all information of which preparer has any knowledge.

5. Your signature: Date: Title:

6. Preparer's signature: Date: Company or Organization Name:

Street address:

City, State, Zip Code:

## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

## ORDER

## Long Term Care Medicaid

## Nature of the Proceedings

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Medicaid Long Term Care Program. The proposal amends a rule in the Division of used to determine eligibility for medical assistance. Additionally, the proposed rule is technical in nature to change reference from the Division of Social Services to the Division of Medicaid and Medical Assistance. 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 October 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

## Summary of Proposed Amendment

## Statutory Authority

- 42 CFR §435.907, *Written Application*
- 42 CFR §435.908, *Assistance with Application*

## Summary of Proposed Change

DSSM 20103: Clarifies who is permitted to file an application for Long Term Care Medical Assistance to ensure that a person who is knowledgeable about the applicant's finances completes the application. DMMA adds an eligibility determination requirement that a knowledgeable and responsible representative complete the application process for the applicant. This will enable the Social Worker to process the case in a more accurate and timely manner.

Additionally, the proposed rule is technical in nature to revise reference to the Division of Social Services to the Division of Medicaid and Medical Assistance.

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

The Delaware Developmental Disabilities Council (DDDC), the Governor’s Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

First, if there is a guardian or agent with a POA, it is unclear if the applicant is an optional attendee at the interview. To clarify that the representative substitutes for the applicant at the interview and covers the situation in which the guardian or agent with a POA is a non-relative, it would be clearer to modify the reference in the first sentence to read “...with the applicant, family member, or other representative”.

**Agency Response:** Often the applicant is unable to come in to the interview, so a family member may apply on their behalf DMMA has added clarifying language on this point.

Second, the standards for waiving an interview are unduly narrow. There must be medical inability to attend. There may be other reasons justifying waiver. For example, if the applicant were severely cognitively impaired (e.g. by Alzheimer’s), the applicant could physically appear but the interview would be meaningless. We recommend the following substitute for the sixth sentence in the second paragraph:

The interview can only be waived if the applicant is medically unable to come in for the interview, there is no family member, POA *agent* or Guardian medically unable to come in for the interview, *or other good cause exists which obviates the usefulness of the interview (e.g. applicant lacks mental capacity to meaningfully participate in the interview).*

**Agency Response:** DMMA has changed the language to read “or other good cause exists” and has amended the rules accordingly.

Third, since the application is not deemed complete until the interview is finished, we recommend a provision be added indicating that DMMA will use affirmative efforts (e.g. contact the applicant) to promptly schedule the interview. Otherwise, weeks may pass during which time the

applicant (who may have limited sophistication) may believe the application is being processed.

**Agency Response:** This is an office practice already in place. No change will be made to the regulation because of this comment.

Fourth, the proposed regulation eliminates the current requirement that the applicant sign a form, which discloses the opportunity to avoid institutionalization by opting for community services (attached). The rationale for this change is unclear and may result in unnecessary nursing home admission since the applicant may be unaware of community-based options. It is our impression that the use of the form is at least encouraged, if not required, by CMS. If this form is no longer part of the application process, how will DMMA provide information to applicants about community alternatives to institutionalization?

**Agency Response:** Form HCBS 1 is actually signed by the client/representative at the medical evaluation by the Pre-Admission Screening (PAS) nurse and not at the interview. Procedurally this gives SSI recipients, who do not come to the interview or file an application, the opportunity to see the form.

### Findings of Fact

The Department finds that the proposed changes as set forth in the October 2005 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual regarding financial eligibility determination for the Medicaid Long Term Care Program is adopted and shall be final effective December 10, 2005.

Vincent P. Meconi, Secretary, DHSS, November 17, 2005

### DSS FINAL ORDER REGULATION #05-65 REVISIONS:

#### 20103 Financial Eligibility Determination

This is the second step in the application process. A referral is passed to the LTC financial eligibility unit within two days of being referred to the Medicaid PAS unit.

An application for Medicaid is ~~presumed to be~~ made only when an interview is held with the applicant or his family member [who is applying on the applicant’s behalf]. Should anyone hold Power of Attorney or Guardianship over the applicant, he [also] must attend the interview [along with the applicant/family member,]

unless his attendance is waived by the supervisor. ~~and the In addition, the application form is~~ must be signed listing those individuals for whom Medicaid coverage is being sought. The applicant or his representative must sign the An Application, Affidavit of Citizenship, and Responsibility Statement. and HCBS-1 Awareness Form must be signed by the applicant or his representative. The application date is considered the date of the interview unless the interview requirement is waived. The interview can only be waived if the applicant is medically unable to come in for the interview and there is no family member, POA [agent] or Guardian friend medically able to come in for the interview [**or other good cause exists**]. The unit Supervisor must approve the waiving of the interview requirement.

For cases in which the interview is waived, the application must be date stamped when it is received in the Division of ~~Social Services~~ Medicaid and Medical Assistance office. The stamped date sets the base for the timeliness of determination.

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

#### Assisted Living Medicaid Waiver Program

##### Nature of the Proceedings

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance initiated proceedings to amend a rule in the Division of Social Services Manual (DSSM) related to the Assisted Living Medicaid Waiver Program. 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 October 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### Summary of Proposed Change

##### Statutory Authority

- 42 CFR Subpart G – *Home and Community-Based Services: Waiver Requirements*

##### Background

The Assisted Living Medicaid Waiver Program (ALMWP) is a community based residential services program administered by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The ALMWP pays for *services* for eligible clients living in assisted living facilities who would otherwise need nursing home placement. To be eligible, a client must meet financial and functional criteria.

##### Summary of Proposed Change

DSSM 20700.4.5: This change provides clarification of an existing policy regarding Medicaid bed hold days for the Assisted Living Medicaid Waiver Program. There are no Medicaid bed hold days for hospitalization.

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

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

Historically, DHSS has not paid for “bed hold” days for persons in assisted living facilities participating in the Medicaid assisted living waiver. The reference to a 14-day nursing home bed-hold policy is inaccurate since it was reduced to 7 days a few years ago.

The Councils prefer that the Division maintain a bed hold policy since the short-term continuation of compensation for assisted living services due to resident hospitalization would ostensibly deter loss of the “placement”. However, we endorse the technical amendment which deletes an incorrect reference to a 14-day nursing home bed hold policy.

**Agency Response:** DMMA thanks the Councils for their endorsement.

##### Findings of Fact

The Department finds that the proposed changes as set forth in the October 2005 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual regarding the Assisted Living Medicaid Waiver Program is adopted and shall be final effective December 10, 2005.

Vincent P. Meconi, Secretary, DHSS, November 17, 2005

**DSS FINAL ORDER REGULATION #05-66**  
REVISION:

**20700.4.5 Illness Or Hospitalization**

The assisted living provider shall NOT provide services for an individual that has been bedridden for 14 consecutive days unless a physician certifies that the consumer's needs may be safely met by the service agreement.

~~There is no 14 day bed hold day Medicaid payment for hospitalization (20650) as available for nursing facility residents.~~ There are no Medicaid bed hold days for hospitalization.

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**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3)c (16 Del.C. §122)(3)c, §7906)  
16 DE. Admin. Code 4462

**ORDER**

**4462 Public Drinking Water Systems**

**Nature of the Proceedings**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing Public Drinking Water Systems. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code**, Chapter 101 and authority as prescribed by 16 **Delaware Code** Chapter 1, Section 122 (3) c.

On September 1, 2005 (Volume 9, Issue 3), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code**, Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by September 30, 2005, or be presented at a public hearing on September 29, 2005, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written and verbal comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

**Findings of Fact**

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include modifications from those published in the September 1, 2005, *Register of Regulations*, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

**THEREFORE, IT IS ORDERED**, that the proposed Rules and Regulations Governing Public Drinking Water Systems are adopted and shall become effective December 10, 2005, after publication of the final regulation in the *Delaware Register of Regulations*.

Vincent P. Meconi, Secretary, DHSS, November 17, 2005

**Summary of Evidence**

A public hearing was held on September 29, 2005, in the Emergency Preparedness Training Center, Suite 4-g, Blue Hen Corporate Center, 655 S. Bay Road, Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed amendments to the Delaware Rules and Regulations Governing Public Drinking Water Systems. The announcement regarding the public hearing was advertised in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations* in accordance with Delaware Law. Mr. Edward Hallock, Program Administrator, Office of Drinking Water, Division of Public Health, made the Agency's presentation. Attendees were encouraged to discuss and ask questions regarding the proposed amendments. One comment was made during the public hearing and only two organizations (Artesian Water Company, Inc. and U.S. EPA) submitted written comments during the public comment period. Entities represented at the public hearing included:

- City of Milford
- Asset Builders
- Delmarva Rural Water Association
- Sussex County
- Tuckahoe Acres Camping
- Kitts Hummock

- Hercules/Research Center
- Dover Air Force Base
- Town of Milton
- United Water of Delaware
- Lewes Board of Public Works
- Perdue
- City of Wilmington
- Angola Crest
- Camden Wyoming Sewer & Water Authority

#### Comments Received with Agency Response

**Section 2.12.1.6:** Detailed as-built drawings are typically finished following the completion of the project, often after the need to begin operating a system. The Division should consider a time limitation on the review of these drawings, preferably one week, or accept red-line markup drawings until formal as-built plans are completed and submitted.

**Agency Response:** The Office of Drinking Water (ODW) does accept red-line markup drawings. Approval to operate will be granted if red-line markup drawings are submitted.

**Section 3.6.1:** It needs to be noted that this Section should apply to all persons collecting a water sample, including Division personnel.

**Agency Response:** Division personnel, Office of Drinking Water staff will be required to take and pass the approved sampler/tester course and exam.

**Section 4.2.2.5.6:** Public notification language for fluoride is contained under this paragraph and should be contained within its own paragraph (4.2.2.5.7).

**Agency Response:** As a result of this comment, a new Section (4.2.2.5.7) was added to the Regulation.

**Section 4.3.5.7:** This references paragraph 4.3.4.1 and states that systems serving less than 10,000 persons may forgo the requirement in said paragraph. However, paragraph 4.3.4.1 refers to the mandatory language that must be included in each CCR. Is this correct or should it refer to paragraph 4.3.5.1.1?

**Agency Response:** As a result of this comment, the reference in Section 4.3.5.7 was corrected to indicate 4.3.5.1.1.

**Section 6.1.3.1:** This paragraph seems to indicate that one sample that has a fluoride concentration of over 2.0 mg/l is an automatic violation. This paragraph should include language that requires a confirmation sample within 2 hours

of original analysis to ensure a violation of the fluoride MCL has truly occurred.

**Agency Response:** Typically, the Office of Drinking Water does require a confirmation sample before taking an enforcement action. Depending upon the level of the exceedence the ODW will work with the water supplier on the need for public notification.

**Section 8.2:** One requirement that Delaware has that the EPA does not have is that free-residual chlorine needs to be at 0.3 milligrams per liter or higher at all taps. If you have a very extensive system with a lot of dead legs, that is virtually impossible to achieve. And it doesn't look like that's been addressed in the changes in the Regulation. My experience has been that in order to get that number up high in some systems like ours, you need to waste an awful lot of water, constantly flushing through some of the lesser used buildings where those dead legs occur, which would be anti water conservation.

**Agency Response:** The Office of Drinking Water recognizes the issues involved in maintaining free available chlorine residuals in large water distribution systems. We will work with water systems on flushing plans and will take into account the total coliform monitoring results. As long as a system meets the requirements of the total coliform rule and maintains best management practices the ODW will not take an enforcement action for failure to maintain 0.3 mg/L of free available chlorine at all parts of the distribution system.

There were other grammatical, formatting and citation corrections as a result of comments from the U.S. EPA and Artesian Water Company. None of these corrections are considered substantive in nature.

The public comment period was open from September 1, 2005 through September 30, 2005.

Verifying documents are attached to the Hearing Officer's record. The Delaware Attorney General's office and the Cabinet Secretary of DHSS have approved this regulation.

**\*Please Note: Due to the size of the final regulation, it is not being published here. To obtain a copy, contact either the Division of Public Health or the Registrar's Office.**

**PDF Version (Adobe Acrobat Reader required)**

**HTML Version**

**DIVISION OF SOCIAL SERVICES**

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

**ORDER****Case Record Maintenance and Retention****Nature of the Proceedings**

Delaware Health and Social Services (“Department”) / Division of Social Services (DSS) initiated proceedings to amend the language in the Division of Social Services Manual (DSSM) as it relates to case record maintenance and retention. 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 October 2005 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2005 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Change****Citation**

Title 29 **Delaware Code**, Chapter 5, Subchapter I,  
*Public Records*

**Summary of Proposed Change**

DSSM 1005: Changes the retention period for case records for State and/or federally funded programs from three (3) years to five (5) years.

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

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

**SCPD**

Although, SCPD recognizes that there may be some negative aspects to longer retention periods (e.g. potentially promoting overpayment inquiries several years after

provision of benefits), maintaining records for longer periods should generally promote the quality and accuracy of claims processing and program administration. Therefore, Council **endorses** the proposed regulation.

**GACEC**

There are essentially two changes to the existing regulations: 1) the standards would apply not only to DSS but to DMMA as well; and 2) the current 3-year general records retention period would be expanded to 5 years.

The GACEC **endorses** the proposed regulation.

**Agency Response:** DSS thanks the Councils for their endorsement.

**Findings of Fact**

The Department finds that the proposed changes as set forth in the October 2005 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the language in the Division of Social Services Manual (DSSM) as it relates to case record maintenance and retention is adopted and shall be final effective December 10, 2005.

Vincent P. Meconi, Secretary, DHSS, November 17, 2005

**DSS FINAL ORDER REGULATION #05-69 REVISION:****1005 Case Record Maintenance and Retention**

Case records will contain important facts regarding applicants for and recipients of DSS and DMMA services, the dates that applications for benefits are filed and the dates eligibility decisions are reached, the facts essential to determining initial and continuing eligibility for financial assistance, medical assistance, food stamps or other services, the basis for terminating assistance or services, and information regarding overpayments and claims.

The Division of Management (DMS) of the Department of Health and Social Services, in discharging its fiscal accountability, will maintain an accounting system and supporting fiscal records adequate to assure that claims for federal funds are in accord with applicable Federal requirements.

The Division of Social Services and the Division of Medicaid and Medical Assistance will maintain case records for its State and/or federally funded programs for a period of

~~three (3) years~~ five (5) years subject to the following qualifications:

a) The ~~three-year~~ five-year retention period starts from the date of termination of cash assistance benefits.

b) The records will be retained beyond the ~~three (3) year~~ five (5) year period if the Division has been notified of a pending audit.

c) Records of non-expendable property which was acquired with Federal grant funds shall be retained by the State Office for ~~three (3) years~~ five (5) years after final disposition of such property.

d) Any papers (forms or correspondence) in an active record which are more than four (4) calendar years old may be destroyed on site with the permission of the unit supervisor who has possession of the record. In destroying such papers, care should be taken not to destroy records of permanent value such as birth certificates, deeds, trusts, contracts, or other records of value. The following are examples of forms which may be destroyed on site:

Cash Assistance and Food Stamp budget sheets; Bank forms or statements; Wage forms or stubs; Shelter statements, bills, or receipts; Duplicate forms, letters, etc. **Note: Information needed to substantiate outstanding overpayments cannot be destroyed.**

Cases that are under investigation by the Department of Justice (DOJ) or that have outstanding overpayments will be retained beyond the three-year period and will remain intact until the investigation and subsequent legal action is complete or the overpayment is filed. Case files that have been referred to DOJ for prosecution are so indicated with a file copy of the Criminal Justice Report.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES  
7 DE Admin. Code 7410, 7411  
Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)**

**Order No. 2005-W-0038**

**7410 TMDLs for the Naamans Creek Watersheds  
7411 TMDLs for Shellpot Creek, Delaware**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C.

§§8001 *et seq.*, 29 Del.C. §§10111 *et seq.* and 7 Del.C. §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Based on the record, including the public hearing record reviewed in the November 10, 2005, Hearing Officer's Report ("Report"), attached as Appendix A, I find that the proposed regulation is well supported and is not arbitrary or capricious. The Report reviews and summarizes the public hearing record, which was developed at the September 7, 2005, public hearing. The Report recommends approval of the proposed regulation as a final regulation without modification. I agree with the Report and adopt it as part of this Order along with its reasons.

The proposed regulation is based upon sound scientific evidence, is consistent with state and federal law, and is a reasoned regulation that will result in improved water quality within the two watersheds. The improvements will occur through the Total Maximum Daily Loads ("TMDLs"), which will require nonpoint sources to reduce or cap nitrogen, phosphorous and bacteria loads. The TMDLs will reduce pollutants to levels that the Department's experts have determined are necessary to improve the quality within these waters. The levels should meet the water quality standards that the Department and the federal government have determined are necessary to support the waters' beneficial uses. Thus, the establishment of these TMDLs for these watersheds is part of a multi-step federal and state regulatory process that will result in improved water quality for both watersheds.

The Report discusses the comments submitted by the Mid-Atlantic Environmental Law Clinic ("MAELC"). The Report notes that these comments, if adopted, would result in a significant delay in the establishment of any TMDLs. The Report further states that the proposed regulation reflects a reasonable regulation that should be approved now, as opposed to later, because it represents a clear improvement over not establishing any TMDLs. The proposed regulation was the subject of considerable public outreach efforts, including contacting interested persons when the process was first approved. The public participation culminated in the public hearing on the proposed regulation. The public comments received during the hearing were excellent, but do not convince me to change the prompt promulgation of the proposed regulation as a final regulation because that will improve the environment sooner than if the comments were to be adopted.

The comments, if adopted, would require the Department to undertake more studies, which would delay the establishment of any TMDLs for a long time. Moreover, the studies that the comments seek may result in no change

to the conclusion supported in the present record. If the studies do not change the conclusions, then the result would be a considerable delay in the regulatory progress towards cleaner waters in the two watersheds. The Department considers it more important to move forward now and direct definite pollution control steps now through establishing well-supported TMDLs that will be in effect next month, as opposed to possibly years from now.

The Report also recommends that MAELC participate earlier in the regulatory process. I agree and encourage the early and often participation of MAELC and others in this and other of the Department's regulatory proceedings.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulation as a final regulation, as set forth in the Appendix B to the Report, under 29 **Del.C.** §6010 (a) and pursuant to the federal Clean Water Act, 33 *U.S.C* §1251 *et seq.* and the United States Environmental Protection Agency's regulations pursuant to the Clean Water Act;

2. The issuance of the proposed regulation as a final regulation will protect and improve the water quality of the Shellpot Creek and Naamans Creek watersheds, as defined by elevation maps, and allow Pollution Control Strategies to be developed for them;

3. The TMDLs that are approved by this Order were developed consistent with the applicable law and regulatory standards, and are adequately supported by expert technical analysis;

4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;

5. The Department's proposed regulation, as published in the August 1, 2005, *Delaware Register of Regulations*, and set forth in Appendix B to the Report, is adequately supported, not arbitrary or capricious, is consistent with the applicable laws and regulations, and should be approved as a final regulation to go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that;

6. The Department shall provide written notice to the persons affected by the Order, as determined by those who participated in this rulemaking at either the public workshop or at the public hearing, including participation through the submission of timely and relevant written comments.

John A. Hughes, Secretary  
Department of Natural Resources and Environmental  
Control

Date of Issuance: **November 15, 2005**

Effective Date: **December 11, 2005**

### **7410 TMDLs for the Naamans Creek Watersheds**

#### **1.0 Introduction and Background**

1.1 Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that Naamans Creek is impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported by water quality in the stream.

1.2 Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

1.3 DNREC listed the Naamans Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous, and Enterococcus bacteria.

#### **2.0 Total Maximum Daily Loads (TMDLs) Regulation for Naamans Creek, Delaware**

Article 1. The nonpoint source nitrogen load shall be capped at the 2000-2004 baseline level. This shall result in a yearly-average total nitrogen load of 228 pounds per day.

Article 2. The nonpoint source phosphorous load shall be capped at the 2000-2004 baseline level. This shall result in a yearly-average total phosphorous load of 13 pounds per day.

Article 3. The nonpoint source bacteria load shall be reduced by 78%. This shall result in reducing a yearly-mean bacteria load from 5.8E+10 CFU per day to 1.6E+10 CFU per day.

Article 4. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Naamans Creek.

Article 5. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with a Naamans Creek Tributary Action Team, other stakeholders, and the public.

#### **7411 TMDLs for Shellpot Creek, Delaware**

##### **1.0 Introduction and Background**

1.1 Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Shellpot Creek is impaired by high levels of bacteria and elevated levels of the nutrients nitrogen and phosphorous, and that the designated uses are not fully supported by water quality in the stream.

1.2 Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Shellpot Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, phosphorous and Enterococcus bacteria.

##### **2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Shellpot Creek, Delaware**

Article 1. The nonpoint source nitrogen load from the area south of Business Route 13 shall be reduced by 35% (from the 2000-2003 baseline). This shall result in reducing the yearly-average total nitrogen load from 19.2 pounds per day to 12.5 pounds per day.

Article 2. The nonpoint source nitrogen load from the area north of Business Route 13 shall be capped at the 2000-2003 baseline level. This shall result in a yearly-average total nitrogen load of 89.4 pounds per day.

Article 3. The nonpoint source phosphorous load from the area south of Business Route 13 shall be reduced by 35% (from the 2000-2003 baseline). This shall result in reducing the yearly-average total phosphorous load from 2.0 pounds per day to 1.3 pound per day.

Article 4. The nonpoint source phosphorous load from the area north of Business Route 13 shall be capped at

the 2000-2003 baseline level. This shall result in a yearly-average total phosphorous load of 5.7 pounds per day.

Article 5. The nonpoint source bacteria load shall be reduced by 74% from the 1998-2004 baseline level. This shall result in reducing a yearly-mean bacteria load from 3.7E+10 CFU per day to 9.0E+9 CFU per day.

Article 6. The bacteria load from Wilmington CSO 31 shall be reduced by 28% from the 1998-2004 baseline level. This shall result in reducing a yearly-mean bacteria load from 5.4E+10 CFU per day to 3.9E+10 CFU per day.

Article 7. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 6, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Shellpot Creek.

Article 8. Implementation of this TMDLs Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with a Shellpot Creek Tributary Action Team, other stakeholders, and the public.

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### **DEPARTMENT OF STATE OFFICE OF THE STATE BANKING COMMISSIONER**

Statutory Authority: 5 Delaware Code,  
Section 121(b) (5 Del.C. §121(b))  
5 DE Admin. Code §904

### **ORDER**

IT IS HEREBY ORDERED the 4th day of November, 2005 that new Regulation 904 is adopted as a regulation of the State Bank Commissioner. A copy of new Regulation 904 is attached hereto and incorporated herein by reference. The effective date of new Regulation of 904 is December 11, 2005. This new regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the **Delaware Code**.

New Regulation 904 is adopted pursuant to the requirements of Chapter 11 and 101 of Title 29 of the **Delaware Code**, as follows:

1. Notice of the proposed new Regulation 904 and its text was published in the October 1, 2005 issue of the *Delaware Register of Regulations*. The notice was also published in the *News Journal* on September 23, 2005, and in the *Delaware State News* on September 22, 2005. In addition, the notice was also mailed to all persons who had

made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation making proceedings. The notice, among other things, summarized the proposed new regulation, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before November 4, 2005 and stated that the proposed new regulation was available for inspection at the Office of the State Bank Commissioner, that copies were available upon request and that a public hearing would be held on November 4, 2005 at 10:00 a.m. in the Office of the State Bank Commissioner in Dover, DE.

2. One written comment concerning the proposed new regulation was received prior to the November 4, 2005 public hearing. In a letter received on October 26, 2005, Discover Bank stated that it strongly supported the adoption of the regulation and requested clarification of the term "certain products specified by the bank" in §2.1 of the proposed regulation. The suggested interpretation of that term is correct, and under that language, a bank is permitted to specify products of the bank itself or an affiliate of the bank. This conforms to a proposed interpretation by the Federal Reserve Board of its equivalent regulation.

3. A public hearing was held on November 4, 2005 at 10:00 a.m. concerning the proposed new Regulation 904. The State Bank Commissioner, the Deputy Commissioner for Supervisory Affairs and a court reporter attended the hearing. No other persons attended the hearing. The State Bank Commissioner and the Deputy Commissioner for Supervisory Affairs summarized the proposed regulation for the record. No other comments were made or received at the hearing.

4. After review and consideration, the State Bank Commissioner hereby adopts new Regulation 904 as proposed.

November 4, 2005  
Robert A. Glen  
State Bank Commissioner

**904 Exceptions to Tying Restrictions**  
**[5 Del.C. §929]**

Effective Date: [December 11, 2005]

**1.0 Purpose.**

This Regulation authorizes certain conduct as exceptions to the anti-tying restrictions of Section 929 of the State Banking Code (5 Del.C. §929), pursuant to Section 929(f). These exceptions are in addition to those elsewhere in Section 929.

**2.0 Exceptions to statute.**

Subject to the limitations of paragraph 3.0 of this Regulation, a bank may:

2.1 Safe harbor for combined-balance discounts. Vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank (eligible products), if:

2.1.1 The bank offers deposits, and all such deposits are eligible products; and

2.1.2 Balances in deposits count at least as much as nondeposit products toward the minimum balance.

2.2 Safe harbor for foreign transactions. Engage in any transaction with a customer if that customer is:

2.2.1 A corporation, business, or other person (other than an individual) that:

2.2.1.1 Is incorporated, chartered, or otherwise organized outside the United States; and

2.2.1.2 Has its principal place of business outside the United States; or

2.2.2 An individual who is a citizen of a foreign country and is not resident in the United States.

**3.0 Limitations on exceptions.**

Any exception authorized pursuant to this Regulation shall terminate upon a finding by the Commissioner that the arrangement is resulting in anti-competitive practices. The eligibility of a bank to operate under any exception authorized pursuant to this Regulation shall terminate upon a finding by the Commissioner that its exercise of this authority is resulting in anti-competitive practices.

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SEVENTY-SIX**

**RE: Regarding Management of Labor Relations and  
Administrative Proceedings in State  
Government**

**WHEREAS**, a responsive and adaptive government helps promote the public interest by rationally managing its workforce to assure accountability, efficiency and stability in the provision of government services; and

**WHEREAS**, while the various Executive Branch departments and agencies have different structures, histories and missions, their goals are identical in the EEOC case management and labor relations arena: efficient and effective management practices that encourage employee productivity and creativity, and produce workplace fairness and stability at the lowest practical cost; and

**WHEREAS**, the provision of consistent and effective labor-management relations requires that the Executive Branch and its departments and agencies speak with one voice to ensure a uniform employer position, high quality management services, equitable treatment of employees, and the ability to address issues in a timely and decisive manner; and

**WHEREAS**, these goals can best be achieved by the central management of labor relations and employment related administrative proceedings by the Office of Management and Budget,

**NOW, THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The Office of Management and Budget shall maintain the central managerial role over all administrative proceedings relating to personnel matters (including equal employment opportunity cases) and labor relations matters in the Executive Branch, and shall represent the interests of the Executive Branch and its departments and agencies. Public and higher education agencies and the judicial branch of government are urged to continue using the Office of Management and Budget in an advisory role.

2. To manage this critical function effectively, the responsibilities and duties performed by the Office of Management and Budget are set forth herein as follows:

a. The Office of Management and Budget shall exercise the authority and responsibilities reposed in it, or any of its sections, by prior Executive Orders, policy statements and directives;

b. The Office of Management and Budget shall manage and conduct all collective bargaining negotiations with employee organizations, including, after prior consultation with the department or client agency, approving management team members nominated by departments and agencies. On behalf of the State, the Office of Management and Budget shall approve and sign all collective bargaining agreements and any other agreements or arrangements made involving employee organizations that represent employees subject to Executive Branch authority;

c. The Office of Management and Budget shall manage and represent the Executive Branch and its departments and agencies in labor arbitration, Public Employment Relations Board, Department of Labor, Equal Employment Opportunity Commission and other administrative proceedings involving labor relations;

d. The Office of Management and Budget shall provide policy direction and professional/technical expertise on EEOC cases and labor relations issues;

e. The Office of Management and Budget shall assist department and agency managers and human resource representatives in maintaining consistency with the State's management policies and objectives, and adherence to specified contractual terms, defined employee due process rights and merit system requirements;

f. The decision whether to use any non-Office of Management and Budget staff or outside representatives or advisors, e.g., outside consultants or attorneys, to perform or otherwise engage in any EEOC or labor relations activities shall be made by the Governor's Office, after consultation with the Director of the Office of Management and Budget, in compliance with relevant state laws, including 29 Del.C. §2507; and

g. All departments and agencies shall notify the Office of Management and Budget promptly of any information requests or subpoenas involving any administrative process or labor relations matter, including contract negotiations and grievance arbitration proceedings. Upon review and consultation with the affected department or agency, the Office of Management and Budget shall determine the appropriate response to all such requests and non-court subpoenas. Where major policy and/or legal considerations may be involved, the Office of Management and Budget shall consult with the Governor's Office and/or the Department of Justice.

3. This Order shall be circulated by all cabinet secretaries and agency heads to their relevant human resource managers. Executive Order Number Forty-Five, adopted by Governor Carper on April 30, 1997, is hereby repealed.

APPROVED: November 8, 2005

Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council to the Division of Substance Abuse and Mental Health	Ms. Mary S. Wicks	10/12/2008
Architectural Accessibility Board	Mr. Nash M. Childs Mr. Francis J. DiSabatino, Jr. Ms. Deana M. Forrest Mr. Armando Liberti, Jr.	10/12/2009 10/12/2009 10/12/2009 10/12/2009
Board of Chiropractic	Gary B. Morgan, D.C.	10/24/2008
Board of Examiners in Nursing Home Administrators	Ms. Virginia Gray	10/12/2008
Board of Examiners of Private Investigators and Private Security Agencies	Ms. Mary L. McKenzie-Dantzler Mr. P. Scott Wilson Mr. John F. Tharan, Sr.	10/24/2008 10/24/2008 10/24/2008
Board of Medical Practice	Nasreen Khan, D.O.	9/12/2008
Child Death, Near Death and Stillbirth Review Commission	Ms. Kathy A. Janvier Ms. Lani L. Nelson-Zlupko	9/6/2008 9/6/2008
Child Placement Review Board-Kent	Ms. Gail L. Allen Ms. Candice B. Swetland	9/6/2008 10/24/2008
Child Placement Review Board-New Castle	Ms. Florence M. Alberque Ms. Helen Willauer	10/12/2008 10/12/2008
Commission on State Surplus Real Property, Chair	The Honorable Jennifer W. Davis	Pleasure of the Governor
Committee on Disposition of Unmarked Human Burials	Ms. Karen Rosenberg	10/14/2006
Council on Correction	Ms. Rita Patrick	5/16/2006
Council on Housing	Mr. Fernando N. Guajardo Ms. Constance C. McCarthy	9/5/2008 9/5/2008
Council on Real Estate Appraisers	Mr. Erik T. Painter	10/12/2008

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**GOVERNOR'S APPOINTMENTS**

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1009

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Council on Soil and Water Conservation	Mr. Bangalore T. Lakshman	10/14/2008
Delaware Agricultural Lands Preservation	Mr. Theodore P. Bobola, Jr.	10/24/2008
Delaware College Investment Plan Board	Mr. A. Glenn Barlow, Jr.	10/14/2008
Delaware Commission of Veterans' Affairs	Mr. Richard E. Ennis, Sr. Mr. David Timberman	10/26/2009 10/26/2009
Delaware Commission for Women	Ms. Michele D. Allen Ms. Robin M. Fisher Ms. Muriel E. Gilman Ms. Valerie A. Lemoi Ms. Carol Ann Weisenfeld	10/12/2008 10/24/2008 10/12/2008 10/12/2008 10/12/2008
Delaware Greenways and Trails Council	Ms. Lisa S. Lasher	10/24/2008
Delaware Health Disparities Task Force	Darrin W. Anderson, Sr., Ph.D. Lisa C. Barkley, M.D. Timothy Barnekov, Ph.D. Cedric T. Barnes, D.O. Ms. Renee P. Beaman Mr. Timothy J. Constantine Keith Doram, M.D. Ms. Mawuna Gardesey Ms. Helene Gladney Ms. Renata J. Henry Ms. Lolita Lopez	Pleasure of the Governor Pleasure of the Governor

**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Delaware Health Disparities Task Force	S. Monet Sifford-Wilson, M.D.	Pleasure of the Governor
	Anthony M. Policastro, M.D.	Pleasure of the Governor
	Jaime H. Rivera, M.D.	Pleasure of the Governor
	Ms. Debra Singletary	Pleasure of the Governor
	Janice Tildon-Burton, M.D.	Pleasure of the Governor
	Ms. Kristen Williams	Pleasure of the Governor
Delaware Health Disparities Task Force, Co-Chair	Ms. Lisa Blunt-Bradley	Pleasure of the Governor
	The Honorable John C. Carney, Jr.	Pleasure of the Governor
Delaware Health Resources Board	Ms. Teresa L. Dressler	10/12/2008
Delaware Institute of Medical Education and Research, Board of Directors	Anthony D. Alfieri, D.O.	10/14/2008
Developmental Disabilities Council	Ms. Louann Vari	10/14/2011
Governor's Council on Lifestyles and Fitness	Mr. Darrin W. Anderson, Sr.	10/12/2007
	Ms. Susan R. Weimer	10/12/2007
Interagency Coordinating Council	Michael Gamel-McCormick, Ph.D.	10/18/2008
New Castle Vo-Tech Board of Education	Ms. Arnetta McRae	10/14/2012
State Fire Prevention Commission	Mr. Marvin C. Sharp	9/22/2011
	Mr. Raymond Stevens	9/22/2006
Statewide Independent Living Council	Ms. Anne Dunlap	10/24/2008
	Ms. Melissa H. Shahan	10/24/2008
Sussex County Vocational-Technical School Board of Education	Ms. Teresa G. Carey	10/14/2012

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**GOVERNOR'S APPOINTMENTS**

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1011

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Tourism Advisory Board	Barbara Benson, Ph.D.	10/24/2008
	Ms. Norma Lee Derrickson	10/24/2008
	Ms. F. Kay Wheatley	10/24/2008
Unemployment Compensation Advisory Council	Mr. Harry Gravell, Jr.	10/14/2008
Vocational Rehabilitation Advisory Council for DVI	Ms. Deborah A. Briddell	10/24/2008
	Ms. Diana S. Erickson	10/24/2008
Worker's Compensation Advisory Council	Mr. John S. Bonk	10/24/2008
	Mr. Lowell L. Groundland	10/24/2008
	Mr. Clifford B. Hearn, Jr.	10/24/2008
	Mr. George B. Heckler, Jr.	10/24/2008
	Mr. A. Richard Heffron	10/24/2008
	Mr. Joseph J. Rhoades	10/24/2008

**DEPARTMENT OF FINANCE  
DIVISION OF REVENUE**

Statutory Authority: 12 Delaware Code,  
Section 1154 (12 Del.C. §1154)

**Technical Information Memorandum 2005-02  
Legislation Passed During the First Session of the 143<sup>rd</sup>  
Delaware General Assembly**

During the First Session of Delaware's 143<sup>rd</sup> General Assembly, ending June 30, 2005, fourteen (14) bills were enacted of interest to or having an impact on Delaware taxpayers and the state's Division of Revenue. The subjects of these bills range from the technological neutrality of the Internet for taxation purposes (HB11) to a \$10 million earmark of Realty Transfer Tax revenues for the Farmland Preservation Fund (HB229).

Legislation significant to Delaware's Division of Revenue has been summarized below and is divided into two categories for retrieval ease: (I) legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year; and (II) legislation implementing broad policy changes with little to no affect on tax-filing requirements for the upcoming year.

Bills in their entirety may be viewed online through the Delaware General Assembly website: <http://www.legis.state.de.us>.

This memorandum is intended for general notification and explanation of recently enacted Delaware laws and should not be relied upon exclusively in any pending or future audit or judicial review of an individual taxpayer or transaction. Taxpayers are advised to consult the particular bill, the **Delaware Code**, or Delaware regulations in all matters conflicting with any part of this memorandum.

Taxpayers with general questions about the application of Delaware law and procedures may call the Division of Revenue Help Line at (302) 577-8200, or visit the Division's website at <http://www.state.de.us/revenue> where information about tax topics and links to phone numbers for other information may be found.

**(I) Legislation directly affecting tax procedures and filing requirements for businesses and individuals in the upcoming year:**

**House Bill No. 56**

Introduced 02/04/05  
Signed 07/12/05

This Bill extends the period which a Delaware taxpayer can apply for a tax credit in regards to research and development expenses. This Bill also changes the timeline for when the Director can approve a research and development tax credit to 2010.

**House Bill No. 163**

Introduced 05/04/05  
Signed 06/30/05

It is in the best interests of the people of the State of Delaware to recognize and encourage the valuable service contributed to their communities by the members of their local fire, ambulance and rescue companies and their auxiliaries.

In appreciation of that service, and to encourage active membership in such companies and auxiliaries, this Act will allow a non-refundable income tax credit of \$400 for active members of Delaware fire, rescues, and ambulance companies, and their auxiliaries without requiring the proof of expenditures in the performance of their service. Active status of the members shall be verified annually by the volunteer fire, ambulance or rescue service or their auxiliaries.

**House Bill No. 220**

Introduced 06/09/05  
Signed 07/12/05

This Act creates a new Section establishing a Delaware State Income Tax deduction to be credited to the Delaware Juvenile Diabetes Fund through the Delaware Juvenile Diabetes Foundation.

**House Bill No. 228**

Introduced 06/14/05  
Signed 07/12/05

This Act changes the total availability of Land and Historic Resource credits to \$5,000,000 per fiscal year.

**House Bill No. 264**

Introduced 06/21/05  
Signed 07/07/05

This Act amends statutes relating to the tax on Headquarters Management Corporations.

Section 1 of the Act makes the income tax rate for all corporations and Headquarters Management Corporations uniform.

Section 2 permits Headquarters Management Corporations that are members of an affiliated group to file consolidated income tax returns.

Sections 3, 4 and 5 of the Act clarify that the credit permitted under §2061 is intended as a credit against the tax of a Headquarters Management Corporation for economic development.

Section 6 of the Act provides an exception in §2061(b)(2)b that is consistent with the exception in §2061(b)(2)a.

Section 7 of the Act permits Headquarters Management Corporations to combine the employment and expenditure factors of multiple affiliated Headquarters Management Corporations to earn tax credits under §2061 when a consolidated return is filed.

**House Bill No. 303**

Introduced 06/29/05

Signed 07/19/05

This Act reduces General Fund business and occupational gross receipts tax rates by 20% for all categories of taxpayers except automobile manufacturers, for which rates are reduced 25%. Further, the Act increases the monthly exemption amount by \$30,000 for all categories except manufacturing.

**Senate Bill No. 25**

Introduced 01/27/05

Passed 03/22/05

Sections 1 and 2 of the Act move the time for the payment and delivery of all types of abandoned property to the time the report is required. The new payment date will provide for more time in and better information for budget estimations.

Section 3 of the Act will require holders to immediately report and pay over property that would ordinarily be payable to this State but which some other state might require be paid to it because of some shorter dormancy period or report period.

Section 4 of the Act will permit, but not require, the State Escheator to accept early custody of abandoned property without ambiguity as to his authority to do so, provided such property would eventually be paid over in a subsequent year. Because of the timing of audits and other economic efficiencies, holders often request the Director to take custody of property that is not yet ripe for abandonment. The interests of the owner in property paid over early are also protected.

**Senate Bill No. 108**

Introduced 05/04/05

Signed 07/12/05

This Bill will reduce the cost of certain occupational and business licenses for certain persons 65 years of age or older whose gross receipts from such licensed occupation or business are less than \$10,000 per year.

**Senate Bill No. 227**

Introduced 06/29/05

Signed 07/12/05

Section 1 of the Act eliminates the requirement to file a Delaware estate tax return for dates on which the federal estate tax law does not allow a credit for state death tax (currently 2005 through 2010). Under such circumstances, it is not possible for a Delaware estate tax to be due.

Section 2 eliminates the special lien on the gross estate tax if the decedent dies on a date on which the federal estate tax does not allow credit for state death taxes paid.

Section 3 eliminates the requirement of filing an affidavit with the Register of Wills that no estate tax return is required for decedent's dying on such a date.

**Senate Bill No. 230**

Introduced 06/29/05

Signed 08/22/05

This bill establishes an earned income tax credit equal to 20% of the corresponding federal tax credit.

**(II) Legislation implementing broad policy changes with little to no affect on tax-filing requirements for the upcoming year:****House Bill No. 11**

Introduced 01/11/05 Signed 02/07/05

This Bill ensures technological neutrality by providing that all Internet access is free from taxation, regardless of the technology used.

Section 2 defines "Internet access" and includes telecommunications, wireless and cable services to the extent they are purchased, used, or sold by a provider of Internet access to provide Internet access.

Sections 3 and 4 exempt the charges for Internet access, as defined in Section 2 of the Bill, from the excise tax imposed on telephone, wireless and cable providers in the state.

Section 5 of the Bill clarifies that the entire sales price of bundled transactions, consisting of distinct and

identifiable services which are sold for a single non-itemized sales price but which are treated differently for tax purposes, are subject to tax unless the provider identifies and allocates the non-taxable portion from its books and records kept in the ordinary course of business.

**House Bill No. 141**

Introduced 04/26/05

Signed 07/07/05

This act eliminates the Sunset Provision of the law passed in the 142<sup>nd</sup> General Assembly that permits municipalities with a population greater than 50,000 to impose a lodging tax. The provision would expire, without this legislation, in July 2005.

**House Bill No. 229**

Introduced 06/29/05

Signed 07/12/05

This act creates an annual earmark of \$10 million in Realty Transfer Tax revenues to the Farmland Preservation Fund.

**House Resolution No. 43**

Introduced 07/01/05

Passed 07/01/05

This resolution establishes a committee to review and report Delaware's abandoned property laws and practices. The committee is required to issue a written report of its findings by January 31, 2006.

Patrick Carter  
Director of Revenue  
November 14, 2005

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**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, December 15, 2005 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF ELECTIONS FOR  
NEW CASTLE COUNTY****NOTICE OF PUBLIC COMMENT PERIOD****Security and Integrity of the Absentee Voting Process**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 15 of the **Delaware Code**, Section 5522 (b), the Department of Elections for New Castle is proposing a regulation to ensure the security and integrity of the procedures set forth in Chapter 55 and that the counting process for absentee ballots is not subject to improper influences.

Any person who wishes to submit written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulation shall submit same to Howard G. Sholl, Jr, Deputy Administrative Director, Department of Elections for New Castle County, 820 N. French Street, Suite 400, Wilmington, Delaware 19801 by December 30, 2005.

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

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL  
ASSISTANCE****NOTICE OF PUBLIC COMMENT PERIOD****Long Term Care Medicaid**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend rules

in the Division of Social Services Manual (DSSM) used to determine eligibility for medical assistance.

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 Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

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**DIVISION OF MEDICAID AND MEDICAL  
ASSISTANCE****NOTICE OF PUBLIC COMMENT PERIOD****Chronic Renal Disease Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid & Medical Assistance (DMMA) is proposing to amend rules in the Division of Social Services Manual (DSSM) used to determine eligibility for the Chronic Renal Disease Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

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**DIVISION OF PUBLIC HEALTH  
NOTICE OF PUBLIC COMMENT PERIOD  
4202 Control of Communicable and Other Disease  
Conditions**

These proposed regulations, "Regulations for the Control of Infectious Disease," will replace by revision the current "Regulations for the Control of Communicable and

Other Disease Conditions," adopted August 2, 1984 and most recently amended July 10, 2001.

In compliance with the State's Administrative Procedures ACT (APA – Title 29, Chapter 101 of the **Delaware Code**), and under authority of Title 16, Chapters 1, 5 & 7 (sections enumerated above), Delaware Health and Social Services is proposing amendments to the Regulations for the Control of Communicable and Other Disease Conditions and is seeking comments on these amendments. A summary of amendments and amended regulations are attached below. Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulations must submit same to David P. Walton, Office of the Director, Jesse Cooper Building, 417 Federal Street, Dover, Delaware 19901, by January 3, 2006.

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

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**DIVISION OF PUBLIC HEALTH  
NOTICE OF PUBLIC HEARING  
4406 Home Health Agencies (Licensure)**

The Office of Health Facilities Licensing and Certification, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware Regulations for Home Health Agencies on February 7, 2006 at 1:00 p.m., in the Public Health Preparedness Training Center, Suite 4F, Blue Hen Corporate Center, 655 S. Bay Road, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

Office of Health Facilities Licensing and  
Certification  
2055 Limestone Road, Suite 200  
Wilmington, DE 19808  
Telephone: (302) 995-8521

Anyone wishing to present his or her comments at this hearing should contact Ms. Vanette Seals at (302) 995-8521 by February 6, 2006. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by February 8, 2006 to:

David P. Walton, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, Delaware 19901

**DIVISION OF PUBLIC HEALTH  
Authority on Radiation Protection  
NOTICE OF PUBLIC HEARING**

**4466 Radiation Technologists/Technicians (Certification)**

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 Wednesday, January 4, 2006, at 5:30 p.m. 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  
417 Federal Street  
Dover, Delaware 19901  
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 Tuesday, January 3, 2006. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by close of business Friday, January 6, 2006 to:

David Walton, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

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**DIVISION OF SOCIAL SERVICES  
NOTICE OF PUBLIC COMMENT PERIOD  
Delaware Temporary Assistance for Needy Families  
(TANF) State Plan Renewal**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing 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). Copies of the entire plan and all attachments are available upon request via mail or fax.

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 Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005. Comments may also be faxed to (302) 255-4454. Additionally, Delaware's TANF State Plan can be viewed on the Department's website at:

<http://www.dhss.delaware.gov/dhss/index.html>.

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

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**DIVISION OF SOCIAL SERVICES**  
**NOTICE OF PUBLIC COMMENT PERIOD**  
**Temporary Assistance for Needy Families (TANF) –**  
**Joint Custody**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) as it relates to Joint Custody and TANF.

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 Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

**DIVISION OF SOCIAL SERVICES**  
**NOTICE OF PUBLIC COMMENT PERIOD**  
**Refugee Cash Assistance**

**Self-Employment Income Standard Deduction**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) to implement a simplified way to calculate self-employment income.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

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**DIVISION OF SOCIAL SERVICES**  
**NOTICE OF PUBLIC COMMENT PERIOD**  
**Child Care Subsidy Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by December 31, 2005.

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

**DEPARTMENT OF INSURANCE****NOTICE OF PUBLIC COMMENT PERIOD****Proposed Changes to the Department of Insurance's Regulation Relating to Producer Continuing Education**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of a proposed change to Department of Insurance Regulation 504 relating to producer continuing education. The Commissioner proposes to amend **Regulation 504** relating to **Continuing Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants**. The docket number for this proposed amendment is 2005-207.

The two proposed changes to the regulation appear in section 8 relating to the licensee's responsibilities. The required number of ethics credits is proposed to decrease from four hours to three hours for each reporting period. Licensees who are authorized to sell homeowners and/or personal lines coverage will be required to complete two hours of continuing education on flood insurance each reporting period starting March 1, 2006. The text of the proposed amendment is reproduced in the December 2005 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Tuesday, January 3, 2006, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

**DEPARTMENT OF INSURANCE****NOTICE OF PUBLIC COMMENT PERIOD****Proposed Changes to the Department of Insurance's Regulation Relating to Defensive Driving Course Discount Automobiles and Motorcycles**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of a proposed change to Department of Insurance Regulation 607 relating to the defensive driving course for automobiles and motorcycles. The Commissioner proposes to amend **Regulation 607** relating to **Defensive Driving Course Discount Automobiles and Motorcycles**

as a result of comments received in response to the original publication of the proposed changes to Regulation 607. The docket number for this proposed amendment is 2005-140.

The new revised amendments will (1) eliminate the proposed testing requirement for persons taking a defensive driving course; (2) more clearly require that providers offering an on line course will be required to assure that the persons taking the course will meet the same time requirements as those attending live classroom courses; (3) clarify the requirements for live assistance for on line courses; and (4) clarify the on line provider's obligation to assure the identity of the course taker. The text of the proposed amendment is reproduced in the December 2005 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Tuesday, January 3, 2006, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.5566 or email to [michael.rich@state.de.us](mailto:michael.rich@state.de.us).

**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****Board of Electrical Examiners****NOTICE OF PUBLIC HEARING**

The Delaware Board of Electrical Examiners in accordance with 24 **Del.C.** §1406(a)(1) has proposed changes to its rules and regulations to modify the continuing education submission procedure.

A public hearing will be held at 9:00 a.m. on January 4, 2005 in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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**DIVISION OF PROFESSIONAL REGULATION**  
**1400 Board of Electrical Examiners**  
**NOTICE OF PUBLIC HEARING**

The Delaware Board of Pharmacy in accordance with 24 **Del.C.** §2509 has proposed changes to its rules and regulations. Regulation 3.3 has updated the pharmacy requirements to provide for more flexibility based on the needs of the setting. Regulation 5.12 provides for centralized prescription processing. Compounding is permitted for office use by a practitioner in Regulation 5.13. Regulation 13.0 relating to Nuclear Pharmacies has been replaced.

A public hearing will be held on the proposed changes on January 13, 2006 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board of Pharmacy, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

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**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Examiners of Speech/Language**  
**Pathologists, Audiologists & Hearing Aid**  
**Dispensers**  
**NOTICE OF PUBLIC HEARING**

The Delaware Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, in accordance with 24 **Del.C.** §3706(a)(1) has proposed changes to its rules and regulations. Rule 9.3.1.8 is modified to require disclaimers or limitations in advertising to be clear and conspicuous and at least one half the type size used in the offer.

A public hearing will be held at 2:00 p.m. on January 11, 2006 in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments.

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