
Delaware Register of Regulations

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Proposed
Final

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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before February 16, 2009.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

11 **DE Reg.** 759-786 (12/01/07)

Refers to Volume 11, pages 759-786 of the *Delaware Register* issued on December 1, 2007.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

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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.

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
April 1	March 16	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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State Employees' Pension Plan, State Police Pension Plan, State Judiciary Pension Plan, County Municipal Employees' Pension Plan, and County and Municipal Police/Firefighter Pension Plan.....	12 DE Reg. 359 (Final)
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STATE EMPLOYEES BENEFIT COMMITTEE

2001 Group Health Care Insurance Eligibility and Coverage Rules	12 DE Reg. 986 (Final)
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Symbol Key

Arial 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.

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

- (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;
- (2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;
- (3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;
- (4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and
- (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 312 and 1113;
(18 **Del.C.** §311, §1113)
18 **DE Admin. Code** 1212

Docket No. 1079

1212 Valuation of Life Insurance Policies

EMERGENCY ORDER

Pursuant to 29 **Del.C.** § 10119, it is necessary to promulgate an amendment to Regulation 1212 relating to Valuation of Life Insurance Policies.

REASONS FOR EMERGENCY ACTION

A. Due to current economic conditions, the Department believes that reducing required minimum reserves for Life Insurance companies that are overly conservative will protect the interests of consumers and the general public by enabling the industry to retain capacity to write the insurance products needed by consumers and the general public.

B. The nature of the current economic situation and the uncertainty of the conditions that lay ahead require an emergency order to be effective immediately rather than the delaying implementation of the attached amendments to the Regulation until the end of the normal advertising and comment periods.

C. The Department has completed the work necessary to submit the proposed amended regulations for public comment and by issuing this emergency order will permit time for public comment and the consideration of further amendments prior to final adoption of the amendments.

DECISION AND ORDER

1. The proposed amendments to Regulation 1212 are promulgated as an emergency regulation effective March 1, 2009.

2. This order shall be effective until September 1, 2009 or until the attached amendment to Regulation 1212 is adopted pursuant to the Delaware Administrative Procedures Act whichever shall first occur. The Department will receive, consider and respond to petitions by any interested person for the reconsideration or revision of the emergency regulation.

3. The Department gives public notice of the proposed amendment to Regulation 1212 as required by 29 Del. C. § 10115 as follows:

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amendments to Department of Insurance Regulation 1212 relating to Valuation of Life Insurance Policies. The docket number for this proposed regulation is 1079.

The Delaware Code authority for the change is 18 **Del.C.** §§ 312, 1113 and 29 **Del.C.** Ch. 101. The text can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov and clicking on the link for "Proposed Regulations."

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Monday, April 6, 2009 by delivering said comments to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or emailed to mitch.crane@state.de.us.

Since the wording of the attached emergency regulation is identical to the wording the Department intends to adopt as a final regulation, public comment on the emergency regulation shall be deemed to be public comment on the proposed regulation as would otherwise be permitted under 29 **Del.C.** § 10115.

IT IS SO ORDERED this 17th day of February, 2009

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

1212 Valuation of Life Insurance Policies

1.0 Purpose

1.1 The purpose of this regulation is to provide:

1.1.1 Tables of select mortality factors and rules for their use;

1.1.2 Rules concerning a minimum standard for the valuation of plans with non-level premiums or benefits; and

1.1.3 Rules concerning a minimum standard for the valuation of plans with secondary guarantees.

1.2 The method for calculating basic reserves defined in this regulation will constitute the Commissioners' Reserve Valuation Method for policies to which this regulation is applicable.

5 DE Reg. 1470 (1/1/02)

2.0 Authority

This regulation is issued under the authority of 18 **Del.C.** §§312, 1113 and 29 **Del.C.** Ch. 101.

3.0 Applicability

- 3.1 This regulation shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2002, subject to the following exceptions and conditions.
- 3.2 Exceptions
- 3.2.1 This regulation shall not apply to any individual life insurance policy issued on or after January 1, 2002 if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before January 1, 2002, that guarantees the premium rates of the new policy. This regulation also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.
- 3.2.2 This regulation shall not apply to any universal life policy that meets all the following requirements:
- 3.2.2.1 Secondary guarantee period, if any, is five (5) years or less;
- 3.2.2.2 Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in Section 4F and the applicable valuation interest rate; and
- 3.2.2.3 The initial surrender charge is not less than 100 percent of the first year annualized specified premium for the secondary guarantee period.
- 3.2.3 This regulation shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.
- 3.2.4 This regulation shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.
- 3.2.5 This regulation shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.
- 3.3 Conditions
- 3.3.1 Calculation of the minimum valuation standard for policies with guaranteed non-level gross premiums or guaranteed non-level benefits (other than universal life policies), or both, shall be in accordance with the provisions of Section 6.
- 3.3.2 Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of Section 7.

5 DE Reg. 1470 (1/1/02)**4.0 Definitions**

- 4.1 For purposes of this regulation:
- "**1980 CSO valuation tables**" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.
- "**Basic reserves**" means reserves calculated in accordance with 18 Del.C. §1113(c).
- "**Contract segmentation method**" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in section 4.1.6 of this section, (or any other valuation mortality table adopted by the

National Association of Insurance Commissioners (NAIC) after ~~the effective date of this regulation January 1, 2002,~~ and promulgated by regulation by the commissioner for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in section 5.2 of this regulation.

The length of a particular contract segment shall be set equal to the minimum of the value t for which G_t is greater than R_t (if G_t never exceeds R_t the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where G_t and R_t are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

- x = original issue age;
- k = the number of years from the date of issue to the beginning of the segment;
- t = 1, 2, ...; t is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$ = Guaranteed gross premium per thousand of face amount for year t of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{qx_{k+t}}{qx_{k+t-1}}$$

However, R_t may be increased or decreased by one percent in any policy year, at the company's option, but R_t shall not be less than one;

where:

x , k and t are as defined above, and

qx_{k+t-1} = valuation mortality rate for deficiency reserves in policy year $k+t$ but using the mortality of Section 5B(2) if Section 5B(3) is elected for deficiency reserves.

However, if GP_{x+k+t} is greater than 0 and $GP_{x+k+t-1}$ is equal to 0, G_t shall be deemed to be 1000. If GP_{x+k+t} and $GP_{x+k+t-1}$ are both equal to 0, G_t shall be deemed to be 0.

"Deficiency reserves" means the excess, if greater than zero, of

- (1) Minimum reserves calculated in accordance with 18 Del.C. §1113(g) over
- (2) Basic reserves.

"Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

"Maximum valuation interest rates" means the interest rates defined in 18 Del.C. §1113(b)(3) (Computation of Minimum Standard by Calendar Year of Issue) that are to be used in determining the minimum standard for the valuation of life insurance policies.

"Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in section 7.1.3, if any, or else the minimum premium described in Section 7.1.4.

"Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment.

- (1) The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:
 - (a) The present value of the death benefits within the segment, plus
 - (b) The present value of any unusual guaranteed cash value (see section 6.4) occurring at the end of the segment, less
 - (c) Any unusual guaranteed cash value occurring at the start of the segment, plus
 - (d) For the first segment only, the excess of the Item (i) over Item (ii), as follows:
 - (i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
 - (ii) A net one year term premium for the benefits provided for in the first policy year.
- (2) The length of each segment is determined by the "contract segmentation method," as defined in this section.
- (3) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.
- (4) For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

"Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

"Ten-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

"Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

- (a) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and
- (b) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item (i) over Item (ii), as follows
 - (i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
 - (ii) A net one year term premium for the benefits provided for in the first policy year.

The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

"**Universal life insurance policy**" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

5.0 General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves

- 5.1 At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after ~~the effective date of this regulation~~ January 1, 2002, and promulgated by regulation by the commissioner for this purpose). If select mortality factors are elected, they may be:
- 5.1.1 The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
 - 5.1.2 The select mortality factors in the Appendix; or
 - 5.1.3 Any other table of select mortality factors adopted by the NAIC after ~~the effective date of this regulation~~ January 1, 2002, and promulgated by regulation by the commissioner for the purpose of calculating basic reserves.
- 5.2 Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after ~~the effective date of this regulation~~ January 1, 2002, and promulgated by regulation by the commissioner). If select mortality factors are elected, they may be:
- 5.2.1 The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
 - 5.2.2 The select mortality factors in the Appendix of this regulation;
 - 5.2.3 For durations in the first segment, X percent of the select mortality factors in the Appendix, subject to the following:
 - 5.2.3.1 X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;
 - 5.2.3.2 X shall not be less than twenty percent (20%);
 - 5.2.3.3 X shall not decrease in any successive policy years;
 - 5.2.3.4~~2~~ X is such that, when using the valuation interest rate used for basic reserves, Item 5.2.3.4.1 is greater than or equal to Item 5.2.3.4.1.2;
 - 5.2.3.4~~2~~.1 The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;
 - 5.2.3.4~~2~~.2 The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;
 - 5.2.3.5~~3~~ X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five (5) years after the valuation date;
 - 5.2.3.6~~4~~ The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of section 5.2.3;
 - 5.2.3.7~~5~~ The appointed actuary may decrease X at any valuation date as long as X ~~does not decrease in any successive policy years and as long as it~~ continues to meet all the requirements of section 5.2.3; and
 - 5.2.3.8~~6~~ The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums.

5.2.3.9~~7~~ If X is less than 100 percent at any duration for any policy, the following requirements shall be met:

5.2.3.9~~7~~.1 The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of 18 **Del.C.** §1111(c); and

5.2.3.7.2 The appointed actuary shall disclose, in the regulatory asset adequacy issues summary, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and

5.2.3.9-~~27~~.3 The appointed actuary shall annually opine for all policies subject to this regulation as to whether the mortality rates resulting from the application of X meet the requirements of section 5.2.3. This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

5.2.4 Any other table of select mortality factors adopted by the NAIC after ~~the effective date of this regulation~~ January 1, 2002, and promulgated by regulation by the commissioner for the purpose of calculating deficiency reserves.

5.3 This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten (10) years, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

5.4 In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

5.5 Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following: (1) reserves calculated ignoring the guarantee, (2) reserves assuming the guarantee was made at issue, and (3) reserves assuming that the policy was issued on the date of the guarantee.

5.6 The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to ~~the effective date of this regulation~~ January 1, 2002. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of 18 **Del.C.** §1111(c).

5 DE Reg. 1470 (1/1/02)

6.0 Calculation of Minimum Valuation Standard for Policies with Guaranteed Non-level Gross Premiums or Guaranteed Non-level Benefits (Other than Universal Life Policies)

6.1 Basic Reserves

6.1.1 Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described in sections 6.1.1.1 or 6.1.1.2 below may be made:

6.1.1.1 Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

- 6.1.1.2 Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.
- 6.2 Deficiency Reserves
- 6.2.1 The deficiency reserve at any duration shall be calculated:
- 6.2.1.1 On a unitary basis if the corresponding basic reserve determined by Subsection A is unitary;
- 6.2.1.2 On a segmented basis if the corresponding basic reserve determined by section 6.1 is segmented; or
- 6.2.1.3 On the segmented basis if the corresponding basic reserve determined by section 6.1 is equal to both the segmented reserve and the unitary reserve.
- 6.2.2 This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality (specified in section 5.2) and rate of interest.
- 6.2.3 Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in section 5.2.
- 6.2.4 For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.
- 6.3 Minimum Value
- 6.3.1 Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policy owner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.
- 6.4 Unusual Pattern of Guaranteed Cash Surrender Values
- 6.4.1 For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.
- 6.4.2 The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where
- 6.4.2.1 In is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:
- 6.4.2.1.1 The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or
- 6.4.2.1.2 The mandatory expiration date of the policy; and

- 6.4.2.2 The net premium for a given year during the n year period is equal to the product of the net to gross ratio and the respective gross premium; and
- 6.4.2.3 The net to gross ratio is equal to Item (i) divided by Item (ii) as follows:
 - 6.4.2.3.1 The present value, at the beginning of the n year period, of death benefits payable during the n year period plus the present value, at the beginning of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n year period.
 - 6.4.2.3.2 The present value, at the beginning of the n year period, of the scheduled gross premiums payable during the n year period.
- 6.4.3 For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:
 - 6.4.3.1 One hundred ten percent (110%) of the scheduled gross premium for that year;
 - 6.4.3.2 One hundred ten percent (110%) of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and
 - 6.4.3.3 Five percent (5%) of the first policy year surrender charge, if any.
- 6.5 Optional Exemption for Yearly Renewable Term Reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:
 - 6.5.1 Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.
 - 6.5.2 Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in section 6.3.
 - 6.5.3 Deficiency reserves.
 - 6.5.3.1 For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
 - 6.5.3.2 Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with section 6.5.3.1 above.
 - 6.5.4 For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after ~~the effective date of this regulation~~ January 1, 2002, by the NAIC and promulgated by regulation by the commissioner for this purpose.
 - 6.5.5 A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.
 - 6.5.6 If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.
- 6.6 Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:
 - 6.6.1 Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.
 - 6.6.2 Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in section 6.3.
 - 6.6.3 Deficiency reserves.
 - 6.6.3.1 For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

- 6.6.3.2 Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with section 6.6.3.1 above.
- 6.6.4 For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after ~~the effective date of this regulation~~ January 1, 2002, by the NAIC and promulgated by regulation by the commissioner for this purpose.
- 6.6.5 A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:
- 6.6.5.1 The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and
- 6.6.5.2 The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.
- 6.6.6 For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:
- 6.6.6.1 The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or
- 6.6.6.2 The initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and
- 6.6.6.3 After the initial period of coverage, the policy meets the conditions of Paragraph 6.6.5 above.
- 6.6.7 If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after ~~the effective date of this regulation~~ January 1, 2002.
- 6.7 Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:
- 6.7.1 The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than 10 years and less than twice the size of the earlier n-year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;
- 6.7.2 The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten-year select mortality factors; and
- 6.7.3 There are no cash surrender values in any policy year.
- 6.8 Exemption from Unitary Reserves for Certain Juvenile Policies
- 6.8.1 Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:
- 6.8.1.1 At issue, the insured is age twenty-four (24) or younger;
- 6.8.1.2 Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five (25), the gross premiums and death benefits are level, and there are no cash surrender values; and
- 6.8.1.3 After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

5 DE Reg. 1470 (1/1/02)

7.0 Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policy owner to Keep a Policy in Force Over a Secondary Guarantee Period**7.1 General****7.1.1 Policies with a secondary guarantee include:**

7.1.1.1 A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;

7.1.1.2 A policy in which the minimum premium at any duration is less than the corresponding one year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after ~~the effective date of this regulation~~ January 1, 2002, by the NAIC and promulgated by regulation by the commissioner for this purpose; or

7.1.1.3 A policy with any combination of sections 7.1.1.1 and 7.1.1.2.

7.1.2 A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in 7.1.2 and 7.1.3 below shall be recalculated from issue to reflect these changes.

7.1.3 Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

7.1.4 For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue.

7.1.5 The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in sections 5.2.2, 5.2.3 and 5.2.4 may not be used to calculate the one-year valuation premiums.

7.1.6 The one-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

7.2 Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in section 4.1.2.

7.3 Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in section 6.2 with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

7.4 The minimum reserves during the secondary guarantee period are the greater of:

7.4.1 The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or

7.4.2 The minimum reserves required by other rules or regulations governing universal life plans.

5 DE Reg. 1470 (1/1/02)

8.0 Effective Date

This regulation shall become effective ten days after publication in the *Register of Regulations* on ~~January 15, 2002~~ for valuations on or after December 31, 2008.

5 DE Reg. 1470 (1/1/02)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 312 and 1113;
(18 **Del.C.** §311, §1113)
18 **DE Admin. Code** 1215

Docket No. 1080

1215 Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities

EMERGENCY ORDER

Pursuant to 29 **Del.C.** § 10119, it is necessary to promulgate an amendment to Regulation 1215 relating to Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities

REASONS FOR EMERGENCY ACTION

A. Due to current economic conditions, the Department believes that applying the provisions of current Regulation 1215, which were effective February 11, 2007, retroactively to January 1, 2004 serves the best interest of the general public by improving the capital condition of insurance companies.

B. The Department has completed the work necessary to submit the proposed amended regulations for public comment and by issuing this emergency order will permit time for public comment and the consideration of further amendments prior to final adoption of the amendments.

DECISION AND ORDER

1. The proposed amendments to Regulation 1215 are promulgated as an emergency regulation effective March 1, 2009.

2. This order shall be effective until September 1, 2009 or until the attached amendment to Regulation 1215 is adopted pursuant to the Delaware Administrative Procedures Act whichever shall first occur. The Department will receive, consider and respond to petitions by any interested person for the reconsideration or revision of the emergency regulation.

3. The Department gives public notice of the proposed amendment to Regulation 1215 as required by 29 **Del.C.** § 10115 as follows:

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amendments to Department of Insurance Regulation 1215 relating to Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities. The docket number for this proposed regulation is 1080.

The Delaware Code authority for the change is 18 **Del.C.** §§ 311, and 1113. The text can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov and clicking on the link for "Proposed Regulations."

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the

proposed change must be received by the Department of Insurance no later than 4:30 p.m., Monday, April 6, 2009 by delivering said comments to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or emailed to mitch.crane@state.de.us.

Since the wording of the attached emergency regulation is identical to the wording the Department intends to adopt as a final regulation, public comment on the emergency regulation shall be deemed to be public comment on the proposed regulation as would otherwise be permitted under 29 **Del.C.** § 10115.

IT IS SO ORDERED this 17th day of February, 2009

Karen Weldin Stewart, CIR-ML, Insurance Commissioner

1215 Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities

1.0 Authority

- 1.1 This regulation is promulgated by the Commissioner of Insurance pursuant to 18 **Del.C.** §§311 and 1113 and Sections 5.1 and 5.2 of 18 **DE Admin. Code** 1212 (referred to as "Regulation 1212").

2.0 Purpose

- 2.1 The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with 18 **Del.C.** §§311 and 1113 and Sections 5.1 and 5.2 of Regulation 1212.

3.0 Definitions

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

- (1) **"2001 CSO Mortality Table (F)"** means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.
- (2) **"2001 CSO Mortality Table (M)"** means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.
- (3) **"Composite mortality tables"** means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.
- (4) **"Smoker and nonsmoker mortality tables"** means mortality tables with separate rates of mortality for smokers and nonsmokers.

"2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September, 2006 national meeting and published in the NAIC Proceedings {3rd Quarter 2006}. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

“Statistical agent” means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

4.0 2001 CSO Preferred Class Structure Table

- 4.1 At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007, or with the consent of the Commissioner, January 1, 2004. No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the NAIC model regulation, “Recognition of the 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits Model Regulation.”

5.0 Conditions

- 5.1 For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:
- 5.1.1 The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.
- 5.1.2 The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.
- 5.2 For each plan of insurance with separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:
- 5.2.1 The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basis table corresponding to the valuation table being used for that class.
- 5.2.2 The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.
- 5.3 Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

6.0 Separability

- 6.1 If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

7.0 Effective Date

- 7.1 The effective date of this regulation shall be ~~February 11, 2007~~ 10 days after execution by the Commissioner and effective for valuations on and after December 31, 2008.

10 DE Reg. 1306 (02/01/07)

Symbol Key

Arial 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.

DELAWARE VIOLENT CRIMES COMPENSATION BOARD**ADMINISTRATIVE OFFICE OF THE COURTS**

Statutory Authority: 11 Delaware Code, Section 9004 (11 **Del.C.** §9004)

PUBLIC NOTICE

The Delaware Violent Crimes Compensation Board in accordance with Title 11 Del.C. Chapter 90 proposes amendments to its regulations. Specifically, the proposed changes to 26.0 Burial awards explain the funeral and burial policy.

The proposed changes which have been added to 25.0 explain the new mental health policy which has been simplified to require less paperwork and to use similar forms and universal billing documents already used by mental health providers. The Board's intent is to award a mental health counseling benefit to a primary or secondary victim and then to pay for the mental health counseling without having the victims case reheard by the Board.

The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to Barbara Brown, Executive Director at 240 N. James Street, Suite 203, Wilmington, Delaware 19804.

The final date to submit public comments is March 31, 2009.

There are two public hearings scheduled to receive comments. The first is on March 30 at 2pm, Tatnall Building, room 113, Dover Delaware.19904. The second public hearing is on March 31 at the Carvel State Bldg. auditorium, 820 N. French Street, Wilmington, Delaware 19801 at 2pm. Anyone wishing to obtain a copy of the proposed regulations should contact Barbara Brown at 302 995-8383.

The Board will consider promulgating the proposed regulations following the public hearing.

301 Violent Crimes Compensation Board Rules and Regulations

(Break in Continuity of Sections)

26.0 Mental Health Practitioner Qualifications/Licensure Counseling (Formerly Rule XXIX)

26.1 Awards-

- 26.1.1 The Board defines the maximum award. The amount shall not exceed \$7500, per victim whether primary and/or secondary.
- 26.1.2 Benefits remain in affect until maximum allowed compensation has been reached.
- 26.1.3 Exception: Maximum Award
 - 26.1.3.1 There are separate benefits awarded under CCAP (Section 4.0)
- 26.1.4 The Board pays mental health provider claims at 80% of charges.
- 26.1.5 Effective 1/1/2009 reopen cases before the Board will be given a \$7500 mental health benefit for both primary and secondary victims.

26.2 Applicable Definitions

- 23.2.1 Victim: shall mean a person who is injured or killed by the act of any other person during the commission of a crime.
- 26.2.2 Secondary Victim: shall mean any parent, stepparent, grandparent, son, daughter, spouse, sibling, half sibling, fiancée, caretaker, of the victim, latch-key child, any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an act of domestic violence; the parents of a victim's spouse; or any other person who resided in the victim's household at the time of the crime or at the time of the discovery of the crime.
- 26.2.3 Child: shall mean an unmarried person who is under eighteen years of age, and shall include the step-child or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.
- 26.2.4 CCAP: A program of assessment and counseling applied to those who meet the following criteria: (further defined in Section 4.0)
 - 26.2.4.1 The definition of a child
 - 26.2.4.2 The definition of a victim
 - 26.2.4.3 The definition of a secondary victim

26.3 Application and Approval Process

- 26.3.1 All applicants must comply with requirements defined in Operating Procedure 01 when initiating a claim for Mental Health awards.
- 26.3.2 The Board reviews the application and records their findings.
- 26.3.3 If request is granted and compensation awarded, the claim in accordance with internal administrative procedures, is processed.

26.4 Child Counseling Program (CCAP)

- 26.4.1 Applicable to children (Refer to Section 2.0 definitions)
- 26.4.2 Applicable to either/both primary and secondary victims.
- 26.4.3 Award includes both evaluation and short term counseling.
- 26.4.4 Compensation scale:
 - 26.4.4.1 Maximum of \$350.00 for child psychological assessment
 - 26.4.4.2 Maximum of \$850 for outpatient therapy, utilizing an \$85.00 per session standard.
- 26.4.5 Any request for additional counseling will be reviewed for consideration upon receipt of the required application form.

26.5 Mental Health Providers

- 26.5.1 Claims for service must be submitted on the form (HCFA 1500) approved by and dedicated for reimbursement by the VCCB.

PROPOSED REGULATIONS

26.5.2 All claims for reimbursement must be accompanied by the Dedicated VCCB form (Mental Health Treatment)

26.6 Mental Health Practitioners

- 26.6.1 To be eligible for crime victim's compensation for mental health counseling treatment, within and without the State of Delaware, a practitioner possessing an advanced degree in an applied mental health discipline must provide treatment. The advanced degree should be in Psychiatry, Psychology, Social Work, Counseling, or Psychiatric Nursing.
- 26.6.2 To be eligible for crime victim's compensation for adult psychological assessments, within and without the State of Delaware, a licensed psychologist or a licensed psychiatrist must perform the assessment unless waived by the Board.
- 26.6.3 To be eligible for crime victim's compensation for child psychological assessments, within and without the State of Delaware, a licensed child psychologist or a licensed child psychiatrist must perform the assessment unless waived by the Board.
- 26.6.4 To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, a licensed mental health practitioner must provide services. The five disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits is: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.
- 26.6.5 Payment for mental health treatment received outside the State of Delaware will be evaluated for practitioner's licensure on a case-by-case basis by the Violent Crimes Compensation Board.
- 26.6.6 The Violent Crimes Compensation Board may consider payment for mental health counseling services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by the Violent Crimes Compensation Board, as set forth in paragraph one, sentence two. The Violent Crimes Compensation Board will decide claims for payment of services rendered by an unlicensed practitioner on a case-by-case basis.

2 DE Reg. 1670 (3/1/99)

(Break in Continuity of Sections)

29.0 Funeral - Burial Awards (Formerly Rule XXVII)

- 29.1 The aggregate award for funeral and burial shall not exceed \$8,500.00 Aggregate Awards
- 29.1.1 The Board defines the maximum award. The amount shall not exceed \$8500.
- 29.1.2 The Board has established further limitations on specific expenditures that when calculated shall be included in and not exceed the total aggregate. The permitted expenses are:
- 29.1.2.1 Funeral expense. This shall include flowers and cremation
 - 29.1.2.2 Opening/closing of grave
 - 29.1.2.3 Purchase of cemetery plot
 - 29.1.2.4 Grave marker
 - 29.1.2.5 Local transportation of remains
- Note: Compensation shall only be awarded for one funeral service
- 29.1.3 Supplemental Awards (excluding the base aggregate of \$8500)
- 29.1.3.1 Long distance transportation either via air or ground of the deceased to the final burial destination
 - 29.1.3.2 Transportation of one accompanying member if required by laws of the country or entity of final destination
- 29.1.4 Exclusion
- 29.1.4.1 Excluding mental health counseling, reasonable expenses for secondary victims shall not be considered as part of the funeral and burial awards process.

29.2 Application Requirements

29.2.1 Claimant must meet the basic criteria and application standards defined by the Violent Crimes Compensation Board.

29.2.2 Supplemental, required documents shall also include:

29.2.2.1 A police report as completed by the investigating law enforcement agency

29.2.2.2- A copy of the official death certificate

Note: Applicant shall when possible, solicit support in completing the VCCB application form from the law enforcement agency charged with investigating the crime.

29.3 Service Providers

29.3.1 The Board must receive specific information from all service providers to process claims. This shall include but not limited to:

29.3.1.1 A detailed list and expense breakdown of services provided. Those specifics must be recorded on documents or stationary bearing the name and all relevant contact information for said business.

29.3.1.2 All documents submitted in support of a claim, must reflect the name of the victim as recipient of the services. In addition, should the claim be filed on behalf of the deceased, the document must also reflect the name of the person actually filing the claim and who has assumed responsibility for that process.

29.4 Emergency Claims

29.4.1 The Board will make an emergency award only upon showing of dire necessity. The claimant, must, in writing request an emergency award when submitting their claims form and show just cause as to why an award should be considered. No such award will be made until the police report is acquired.

***Please Note: As the rest of the sections were not amended, they are not being published here. A copy of the regulation is available at:**

301 Violent Crimes Compensation Board Rules and Regulations

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

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

SUMMARY OF PROPOSED AMENDMENTS

The proposal amends the Title XIX Medicaid State Plan, the Title XXI Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) regarding the income disregards utilized in the Medicaid income eligibility determination process. Currently, individuals eligible for coverage under the Medicaid program are allowed disregards for certain types of income in the determination of their eligibility. The proposed change will add a disregard for income earned from temporary employment with the United States Census Bureau in completing a Decennial Census. In the past, the Census Bureau has successfully recruited program participants to help fill these vacancies, and wishes to do the same for the upcoming 2010 Census.

Statutory Authority

- Section 1902(r)(2) of the Social Security Act, The methodology to be employed in determining income and resource eligibility...;
- Section 1931 of the Social Security Act, Assuring coverage for certain low-income families

Basis

CMS, State Health Officials Letter dated February 18, 2000, Eligibility for Those Individuals and Families Who Were Temporarily Hired for the 2000 Census Bureau

Background

Delaware received a request from the United States Census Bureau asking that income from temporary census employment be excluded. The Centers for Medicare and Medicaid Services (CMS) is encouraging states to exclude the earned income of temporary census workers for purposes of eligibility. Doing so would mean that temporary income from census employment would not result in recipients losing access to medical assistance. The exclusion of this income will allow the Census Bureau to hire people to work in the neighborhoods in which they live to ensure the workforce reflects the diversity of the United States population.

Over the course of the 2010 Census, the Census Bureau currently expect to recruit more than 3 million applicants and hire more than 900,000 employees nationwide. Although Local Census Offices will require some staff from the fall of 2008 through the end of 2010, most positions are part of either the Address Canvassing or Nonresponse Follow-up operations occurring in 2009 and 2010, respectively. In 2009, over 100,000 people will be employed as part of the decennial census. Almost 600,000 people will be employed solely for the Nonresponse Follow-up operation in 2010.

Census work provides valuable job skills that could lead to permanent employment elsewhere (enumerators complete four to five days of paid training). Some of the skills involved in Census work include:

- Using handheld computers,
- Following detailed instructions,
- Completing paperwork,
- Working independently,
- Public contact skills, and
- Work during nights, weekends, and/or normal business hours depending on the operation.

Preliminary activities related to the 2010 Census have already begun in some states.

Summary of Proposal

The proposed rule allows the Division of Medicaid and Medicaid Assistance (DMMA) to exercise the federal option, in years in which there is a federal census, to exclude earned income paid by the Census Bureau to temporary census workers from the determination of the individual's eligibility for the following programs:

- Delaware Medical Assistance Program (DMAP);
- Delaware Healthy Children Program (DHCP).

Previous policy/state plan language specifically excluded wages from temporary employment related to Census 2000 activities. This exclusion was applied to the last federal census, but the reference was time-limited. These amendments will make the exclusion permanent.

Please note that this exclusion applies to temporary census workers only; income received by permanent census workers will be treated as countable income in the above programs.

Food and Nutrition Service (FNS) will not allow states to exclude income received by temporary census workers in determining eligibility and benefits for the Food Supplement Program. Delaware's Temporary Assistance for Needy Families (Delaware TANF) Program has also opted not to provide this exclusion.

The Child Care Subsidy Program has had this wage exclusion for temporary Census activities at DSSM 11003.9.1 since October 2005 and will remain in place.

The provisions of the state plan amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

DMMA PROPOSED REGULATION #09-09a**REVISION:**Revision: HCFA-PM-00-1
February 2000Supplement 8A to Attachment 2.6-A
Page 2

State Plan Under Title XIX of the Social Security Act

State: DELAWARE**LESS RESTRICTIVE METHODS OF TREATING INCOME
UNDER SECTION UNDER SECTION 1902(r)(2) OF THE ACT**

- X** All wages paid by the U.S. Census Bureau for temporary employment related to Decennial Census activities are excluded for the eligibility groups listed below:
For 1902(r)(2) mandatory eligibility groups:
Poverty level pregnant women and infants (133% - 200% FPL) under (a)(10)(A)(i)(IV);
Poverty level children under age 6 (133% FPL) under (a)(10)(A)(i)(VI);
Poverty level children under age 19 (100% FPL) under (a)(10)(A)(i)(VII), and;
For optional categorically needy groups under 1902(a)(10)(A)(ii) as listed below:
NOTE: The Special Income Level Group under 1902(a)(10)(A)(ii)(V), the Individuals Who Would be Eligible if In an Institution Group under 1902(a)(10)(A)(ii)(VI) and the Hospice Group under 1902(a)(10)(A)(ii)(VII) cannot be included in this disregard.
1. Individuals who would be eligible for cash assistance (AFDC or SSI) if they were not in a medical institution under 1902(a)(10)(A)(ii)(IV).
 2. Individuals who are under State adoption agreements under 1902(a)(10)(A)(ii)(VIII).
 3. Working disabled individuals who buy into Medicaid under TWWIIA Basic Coverage Group under 1902(a)(10)(A)(ii)(XV).
 4. Children under age 21 who were in foster care on their 18th birthday, under 1902(a)(10)(A)(ii)(XVII).
- For 1905(p) eligibility groups:**
Qualified Medicare Beneficiaries (QMBs) under 1902(a)(10)(E)(i);
Specified-Low Income Medicare Beneficiaries (SLMBs) under 1902(a)(10)(E)(iii); and,
Qualifying Individuals (QIs) under 1902(a)(10)(E)(iv)(I).

*Less restrictive methods may not result in exceeding gross income limitations under section 1903(f).

DMMA PROPOSED REGULATION #09-09b**REVISION:**Supplement 12 to ATTACHMENT 2.6-A
Page 2a

Less Restrictive income and/or resource methodologies than those in effect as of July 16, 1996 - continued

PROPOSED REGULATIONS

4. *For both applicant and recipient families, all interest and dividend income is excluded.*
The income and/or resource methodologies that the less restrictive methodologies replace are as follows:
Prior to 10/1/99, interest and dividend income is counted for both applicant and recipient families.
5. Disregard all earned income for recipients for 12 months after employment causes ineligibility.
6. A standard deduction will be applied to the gross income from self employment for poverty level pregnant women, infants and children; QMB, SLMB, and QI-1 cases. The standard deduction for self employment income is considered the cost to produce income. The standard deduction for self employment is a percentage determined annually and announced each October. When the application of the standard deduction results in a finding of ineligibility, the applicant will be given an opportunity to show that actual self employment expenses exceed the standard deduction. If the actual expenses exceed the standard deduction, they will be used to determine net income from self employment.
7. Exclude all wages paid by the U. S. Census Bureau for temporary employment related to Census activities in years in which there is a federal census.

The agency terminates medical assistance (except for certain pregnant women and children) for individuals who fail to meet TANF work requirements.

The agency continues to apply the following waivers of provisions of Part A of Title IV in effect as of July 16, 1996, or submitted prior to August 22, 1996 and approved by the Secretary on or before July 1, 1997.
Delaware's 1115 Demonstration Waiver for Welfare Reform, Delaware's Temporary Assistance for Needy Families (TANF) Program, was approved on May 8, 1995 and serves as the State's TANF Plan effective 3/10/97.

DMMA PROPOSED REGULATION #09-09c

REVISION:

Section 4

DELAWARE HEALTHY CHILDREN PROGRAM

Section 4. Eligibility Standards and Methodology (section 2102(b))

- 4.1.3 **X** Income: All wages paid by the U. S. Census Bureau for temporary employment related to Decennial Census activities are excluded in years in which there is a federal census.

DMMA PROPOSED REGULATION #09-09d**REVISION:****14710 Income**

Income is any payment from any source whether in money, goods or services; whether recurring or on a one-time basis. Gross income, net income, disregarded income, excluded income, earned and unearned income are defined in the policy of each specific program.

Income eligibility limits vary from program to program.

For each Medicaid eligibility group and for the Delaware Healthy Children Program, all wages paid by the U.S. Census Bureau for temporary employment related to ~~Decennial~~ Census 2000 activities are excluded from April 1, 2000 through December 31, 2000 in years in which there is a federal census.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 312 and 1113;
(18 **Del.C.** §311, §1113)
18 **DE Admin. Code** 1212

PUBLIC NOTICE

Docket No. 1079

1212 Valuation of Life Insurance Policies

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amendments to Department of Insurance **Regulation 1212** relating to **Valuation of Life Insurance Policies**. The docket number for this proposed regulation is 1079.

The Delaware Code authority for the change is 18 **Del.C.** §§ 312, 1113 and 29 **Del.C.** Chapter 101. The text can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov and clicking on the link for "Proposed Regulations."

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Monday, April 6, 2009 by delivering said comments to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or emailed to mitch.crane@state.de.us.

Since the wording of the attached emergency regulation is identical to the wording the Department intends to adopt as a final regulation, public comment on the emergency regulation shall be deemed to be public comment on the proposed regulation as would otherwise be permitted under 29 **Del.C.** § 10115.

IT IS SO ORDERED this 17th day of February, 2009

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

1212 Valuation of Life Insurance Policies**1.0 Purpose**

- 1.1 The purpose of this regulation is to provide:
 - 1.1.1 Tables of select mortality factors and rules for their use;
 - 1.1.2 Rules concerning a minimum standard for the valuation of plans with non-level premiums or benefits; and
 - 1.1.3 Rules concerning a minimum standard for the valuation of plans with secondary guarantees.
- 1.2 The method for calculating basic reserves defined in this regulation will constitute the Commissioners' Reserve Valuation Method for policies to which this regulation is applicable.
5 DE Reg. 1470 (1/1/02)

2.0 Authority

This regulation is issued under the authority of 18 **Del.C.** §§312, 1113 and 29 **Del.C.** Ch. 101.

3.0 Applicability

- 3.1 This regulation shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after January 1, 2002, subject to the following exceptions and conditions.
- 3.2 Exceptions
 - 3.2.1 This regulation shall not apply to any individual life insurance policy issued on or after January 1, 2002 if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before January 1, 2002, that guarantees the premium rates of the new policy. This regulation also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.
 - 3.2.2 This regulation shall not apply to any universal life policy that meets all the following requirements:
 - 3.2.2.1 Secondary guarantee period, if any, is five (5) years or less;
 - 3.2.2.2 Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables as defined in Section 4F and the applicable valuation interest rate; and
 - 3.2.2.3 The initial surrender charge is not less than 100 percent of the first year annualized specified premium for the secondary guarantee period.
 - 3.2.3 This regulation shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.
 - 3.2.4 This regulation shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.
 - 3.2.5 This regulation shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.
- 3.3 Conditions
 - 3.3.1 Calculation of the minimum valuation standard for policies with guaranteed non-level gross premiums or guaranteed non-level benefits (other than universal life policies), or both, shall be in accordance with the provisions of Section 6.
 - 3.3.2 Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of Section 7.

5 DE Reg. 1470 (1/1/02)

4.0 Definitions

4.1 For purposes of this regulation:

"1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table (1980 CSO Table) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

"Basic reserves" means reserves calculated in accordance with 18 Del.C. §1113(c).

"Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment (from policy inception, for the first segment) to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in section 4.1.6 of this section, (or any other valuation mortality table adopted by the National Association of Insurance Commissioners (NAIC) after ~~the effective date of this regulation~~ January 1, 2002, and promulgated by regulation by the commissioner for this purpose), and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in section 5.2 of this regulation.

The length of a particular contract segment shall be set equal to the minimum of the value t for which G_t is greater than R_t (if G_t never exceeds R_t the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy), where G_t and R_t are defined as follows:

$$G_t = \frac{GP_{x+k+t}}{GP_{x+k+t-1}}$$

where:

- x = original issue age;
- k = the number of years from the date of issue to the beginning of the segment;
- t = 1, 2, ...; t is reset to 1 at the beginning of each segment;

$GP_{x+k+t-1}$ = Guaranteed gross premium per thousand of face amount for year t of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$$R_t = \frac{q_{x+k+t}}{q_{x+k+t-1}}$$

However, R_t may be increased or decreased by one percent in any policy year, at the company's option, but R_t shall not be less than one;

where:

- x, k and t are as defined above, and
- $q_{x+k+t-1}$ = valuation mortality rate for deficiency reserves in policy year k+t but using the mortality of Section 5B(2) if Section 5B(3) is elected for deficiency reserves.
- However, if GP_{x+k+t} is greater than 0 and $GP_{x+k+t-1}$ is equal to 0, G_t shall be deemed to be 1000. If GP_{x+k+t} and $GP_{x+k+t-1}$ are both equal to 0, G_t shall be deemed to be 0.

PROPOSED REGULATIONS

"Deficiency reserves" means the excess, if greater than zero, of

- (1) Minimum reserves calculated in accordance with 18 **Del.C.** §1113(g) over
- (2) Basic reserves.

"Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

"Maximum valuation interest rates" means the interest rates defined in 18 **Del.C.** §1113(b)(3) (Computation of Minimum Standard by Calendar Year of Issue) that are to be used in determining the minimum standard for the valuation of life insurance policies.

"Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in section 7.1.3, if any, or else the minimum premium described in Section 7.1.4.

"Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed gross premiums within the segment.

(1) The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

- (a) The present value of the death benefits within the segment, plus
- (b) The present value of any unusual guaranteed cash value (see section 6.4) occurring at the end of the segment, less
- (c) Any unusual guaranteed cash value occurring at the start of the segment, plus
- (d) For the first segment only, the excess of the Item (i) over Item (ii), as follows:
 - (i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
 - (ii) A net one year term premium for the benefits provided for in the first policy year.

(2) The length of each segment is determined by the "contract segmentation method," as defined in this section.

(3) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.

(4) For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

"Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

"Ten-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

"Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

- (a) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and
- (b) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net

premiums equals the present value of all death benefits and pure endowments, plus the excess of Item (i) over Item (ii), as follows

- (i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one year higher than the age at issue of the policy.
- (ii) A net one year term premium for the benefits provided for in the first policy year.

The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

"Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits (other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts) and mortality or expense charges are made to the policy.

5.0 General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves

- 5.1 At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after ~~the effective date of this regulation~~ January 1, 2002, and promulgated by regulation by the commissioner for this purpose). If select mortality factors are elected, they may be:
 - 5.1.1 The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
 - 5.1.2 The select mortality factors in the Appendix; or
 - 5.1.3 Any other table of select mortality factors adopted by the NAIC after ~~the effective date of this regulation~~ January 1, 2002, and promulgated by regulation by the commissioner for the purpose of calculating basic reserves.
- 5.2 Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors (or any other valuation mortality table adopted by the NAIC after ~~the effective date of this regulation~~ January 1, 2002, and promulgated by regulation by the commissioner). If select mortality factors are elected, they may be:
 - 5.2.1 The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;
 - 5.2.2 The select mortality factors in the Appendix of this regulation;
 - 5.2.3 For durations in the first segment, X percent of the select mortality factors in the Appendix, subject to the following:
 - 5.2.3.1 X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;
 - 5.2.3.2 ~~X shall not be less than twenty percent (20%);~~
 - 5.2.3.3 ~~X shall not decrease in any successive policy years;~~
 - 5.2.3.4~~2~~ X is such that, when using the valuation interest rate used for basic reserves, Item 5.2.3.4.1 is greater than or equal to Item 5.2.3.4.1.2;

PROPOSED REGULATIONS

- 5.2.3.42.1 The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;
- 5.2.3.42.2 The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;
- 5.2.3.53 X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first five (5) years after the valuation date;
- 5.2.3.64 The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of section 5.2.3;
- 5.2.3.75 The appointed actuary may decrease X at any valuation date as long as X ~~does not decrease in any successive policy years and as long as it~~ continues to meet all the requirements of section 5.2.3; and
- 5.2.3.86 The appointed actuary shall specifically take into account the adverse effect on expected mortality and lapsation of any anticipated or actual increase in gross premiums.
- 5.2.3.97 If X is less than 100 percent at any duration for any policy, the following requirements shall be met:
- 5.2.3.97.1 The appointed actuary shall annually prepare an actuarial opinion and memorandum for the company in conformance with the requirements of 18 **Del.C.** §1111(c); and
- 5.2.3.7.2 The appointed actuary shall disclose, in the regulatory asset adequacy issues summary, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and
- 5.2.3.9-27.3 The appointed actuary shall annually opine for all policies subject to this regulation as to whether the mortality rates resulting from the application of X meet the requirements of section 5.2.3. This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.
- 5.2.4 Any other table of select mortality factors adopted by the NAIC after ~~the effective date of this regulation~~ January 1, 2002, and promulgated by regulation by the commissioner for the purpose of calculating deficiency reserves.
- 5.3 This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten (10) years, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.
- 5.4 In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.
- 5.5 Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one year after the date of the change shall be the greatest of the following: (1) reserves calculated ignoring the guarantee, (2) reserves assuming the guarantee was made at issue, and (3) reserves assuming that the policy was issued on the date of the guarantee.
- 5.6 The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to ~~the effective date of this regulation~~ January 1, 2002. This documentation may include a demonstration of the extent to which aggregation

with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of 18 Del.C. §1111(c).

5 DE Reg. 1470 (1/1/02)

6.0 Calculation of Minimum Valuation Standard for Policies with Guaranteed Non-level Gross Premiums or Guaranteed Non-level Benefits (Other than Universal Life Policies)

6.1 Basic Reserves

6.1.1 Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described in sections 6.1.1.1 or 6.1.1.2 below may be made:

6.1.1.1 Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

6.1.1.2 Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

6.2 Deficiency Reserves

6.2.1 The deficiency reserve at any duration shall be calculated:

6.2.1.1 On a unitary basis if the corresponding basic reserve determined by Subsection A is unitary;

6.2.1.2 On a segmented basis if the corresponding basic reserve determined by section 6.1 is segmented; or

6.2.1.3 On the segmented basis if the corresponding basic reserve determined by section 6.1 is equal to both the segmented reserve and the unitary reserve.

6.2.2 This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality (specified in section 5.2) and rate of interest.

6.2.3 Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in section 5.2.

6.2.4 For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

6.3 Minimum Value

6.3.1 Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves (including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination) be less than the amount that the policy owner would receive (including the cash surrender value of the supplemental benefits, if any, referred to above), exclusive of any deduction for policy loans, upon termination of the policy.

6.4 Unusual Pattern of Guaranteed Cash Surrender Values

PROPOSED REGULATIONS

- 6.4.1 For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.
- 6.4.2 The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where
- 6.4.2.1 n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:
- 6.4.2.1.1 The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or
- 6.4.2.1.2 The mandatory expiration date of the policy; and
- 6.4.2.2 The net premium for a given year during the n year period is equal to the product of the net to gross ratio and the respective gross premium; and
- 6.4.2.3 The net to gross ratio is equal to Item (i) divided by Item (ii) as follows:
- 6.4.2.3.1 The present value, at the beginning of the n year period, of death benefits payable during the n year period plus the present value, at the beginning of the n year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n year period.
- 6.4.2.3.2 The present value, at the beginning of the n year period, of the scheduled gross premiums payable during the n year period.
- 6.4.3 For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:
- 6.4.3.1 One hundred ten percent (110%) of the scheduled gross premium for that year;
- 6.4.3.2 One hundred ten percent (110%) of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and
- 6.4.3.3 Five percent (5%) of the first policy year surrender charge, if any.
- 6.5 Optional Exemption for Yearly Renewable Term Reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:
- 6.5.1 Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.
- 6.5.2 Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in section 6.3.
- 6.5.3 Deficiency reserves.
- 6.5.3.1 For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
- 6.5.3.2 Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with section section 6.5.3.1 above.
- 6.5.4 For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after ~~the effective date of this regulation~~ January 1, 2002, by the NAIC and promulgated by regulation by the commissioner for this purpose.

- 6.5.5 A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.
- 6.5.6 If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.
- 6.6 Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:
- 6.6.1 Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.
- 6.6.2 Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in section 6.3.
- 6.6.3 Deficiency reserves.
- 6.6.3.1 For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.
- 6.6.3.2 Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with section 6.6.3.1 above.
- 6.6.4 For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after ~~the effective date of this regulation~~ January 1, 2002, by the NAIC and promulgated by regulation by the commissioner for this purpose.
- 6.6.5 A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:
- 6.6.5.1 The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and
- 6.6.5.2 The premium rates (on both the initial current premium scale and the guaranteed maximum premium scale) are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.
- 6.6.6 For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:
- 6.6.6.1 The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or
- 6.6.6.2 The initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and
- 6.6.6.3 After the initial period of coverage, the policy meets the conditions of Paragraph 6.6.5 above.
- 6.6.7 If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after ~~the effective date of this regulation~~ January 1, 2002.
- 6.7 Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Policies. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:
- 6.7.1 The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than 10 years and less than twice the size of the earlier n-year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

- 6.7.2 The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten-year select mortality factors; and
- 6.7.3 There are no cash surrender values in any policy year.
- 6.8 Exemption from Unitary Reserves for Certain Juvenile Policies
- 6.8.1 Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:
- 6.8.1.1 At issue, the insured is age twenty-four (24) or younger;
- 6.8.1.2 Until the insured reaches the end of the juvenile period, which shall occur at or before age twenty-five (25), the gross premiums and death benefits are level, and there are no cash surrender values; and
- 6.8.1.3 After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

5 DE Reg. 1470 (1/1/02)**7.0 Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policy owner to Keep a Policy in Force Over a Secondary Guarantee Period****7.1 General****7.1.1 Policies with a secondary guarantee include:**

- 7.1.1.1 A policy with a guarantee that the policy will remain in force at the original schedule of benefits, subject only to the payment of specified premiums;
- 7.1.1.2 A policy in which the minimum premium at any duration is less than the corresponding one year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after ~~the effective date of this regulation~~ January 1, 2002, by the NAIC and promulgated by regulation by the commissioner for this purpose; or
- 7.1.1.3 A policy with any combination of sections 7.1.1.1 and 7.1.1.2.

7.1.2 A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in 7.1.2 and 7.1.3 below shall be recalculated from issue to reflect these changes.

7.1.3 Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

7.1.4 For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors (including mortality charges, loads and expense charges) and the interest crediting rate, which are all guaranteed at issue.

7.1.5 The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in sections 5.2.2, 5.2.3 and 5.2.4 may not be used to calculate the one-year valuation premiums.

- 7.1.6 The one-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.
- 7.2 Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in section 4.1.2.
- 7.3 Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in section 6.2 with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.
- 7.4 The minimum reserves during the secondary guarantee period are the greater of:
- 7.4.1 The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or
- 7.4.2 The minimum reserves required by other rules or regulations governing universal life plans.

5 DE Reg. 1470 (1/1/02)

8.0 Effective Date

This regulation shall become effective ten days after publication in the *Register of Regulations* on ~~January 15, 2002~~ for valuations on or after December 31, 2008.

5 DE Reg. 1470 (1/1/02)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 312 and 1113;
(18 Del.C. §311, §1113)
18 DE Admin. Code 1215

PUBLIC NOTICE

Docket No. 1080

1215 Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amendments to Department of Insurance **Regulation 1215** relating to **Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities**. The docket number for this proposed regulation is 1080.

The Delaware Code authority for the change is 18 Del.C. §§ 311, and 1113. The text can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov and clicking on the link for "Proposed Regulations."

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Monday, April 6, 2009 by delivering said comments to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or emailed to mitch.crane@state.de.us.

Since the wording of the attached emergency regulation is identical to the wording the Department intends to adopt as a final regulation, public comment on the emergency regulation shall be deemed to be public comment on the proposed regulation as would otherwise be permitted under 29 Del.C. § 10115.

IT IS SO ORDERED this 17th day of February, 2009

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

1215 Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities

1.0 Authority

- 1.1 This regulation is promulgated by the Commissioner of Insurance pursuant to 18 **Del.C.** §§311 and 1113 and Sections 5.1 and 5.2 of 18 **DE Admin. Code** 1212 (referred to as "Regulation 1212").

2.0 Purpose

- 2.1 The purpose of this regulation is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with 18 **Del.C.** §§311 and 1113 and Sections 5.1 and 5.2 of Regulation 1212.

3.0 Definitions

"2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table defined below. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO Mortality Table include the following:

- (1) **"2001 CSO Mortality Table (F)"** means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.
- (2) **"2001 CSO Mortality Table (M)"** means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.
- (3) **"Composite mortality tables"** means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.
- (4) **"Smoker and nonsmoker mortality tables"** means mortality tables with separate rates of mortality for smokers and nonsmokers.

"2001 CSO Preferred Class Structure Mortality Table" means mortality tables with separate rates of mortality for Super Preferred Nonsmokers, Preferred Nonsmokers, Residual Standard Nonsmokers, Preferred Smokers, and Residual Standard Smoker splits of the 2001 CSO Nonsmoker and Smoker tables as adopted by the NAIC at the September, 2006 national meeting and published in the NAIC Proceedings {3rd Quarter 2006}. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

"Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

4.0 2001 CSO Preferred Class Structure Table

- 4.1 At the election of the company, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007, or with the consent of the Commissioner, January 1, 2004. No such election shall be made until the company demonstrates at least 20% of the business to be valued on this table is in one or more of the preferred classes. A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of the NAIC model regulation, "Recognition of the 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits Model Regulation."

5.0 Conditions

- 5.1 For each plan of insurance with separate rates for Preferred and Standard Nonsmoker lives, an insurer may use the Super Preferred Nonsmoker, Preferred Nonsmoker, and Residual Standard Nonsmoker tables to substitute for the Nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the Residual Standard Nonsmoker Table, the appointed actuary shall certify that:
- 5.1.1 The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.
- 5.1.2 The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.
- 5.2 For each plan of insurance with separate rates for Preferred and Standard Smoker lives, an insurer may use the Preferred Smoker and Residual Standard Smoker tables to substitute for the Smoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the Preferred Smoker Table, the appointed actuary shall certify that:
- 5.2.1 The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basis table corresponding to the valuation table being used for that class.
- 5.2.2 The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the Preferred Smoker valuation basic table.
- 5.3 Unless exempted by the commissioner, every authorized insurer using the 2001 CSO Preferred Class Structure Table shall annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports shall be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

6.0 Separability

- 6.1 If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

7.0 Effective Date

- 7.1 The effective date of this regulation shall be ~~February 11, 2007~~ 10 days after execution by the Commissioner and effective for valuations on and after December 31, 2008.

10 DE Reg. 1306 (02/01/07)

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

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 (7 **Del.C.** c 60 & 63)
7 DE Admin. Code 1302

REGISTER NOTICE SAN # 2008-30**1. Title of the Regulations:**

1302 Regulations Governing Hazardous Waste (DRGHW)

2. Brief Synopsis Of The Subject, Substance and Issues:

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State must periodically seek authorization from the EPA to administer the program, and Delaware is preparing the 7th such program reauthorization. For Delaware's Hazardous Waste program to be authorized, the EPA has requested minor, miscellaneous corrections to align the State's program with the Federal program.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 **Del.C.** Chapters 60 and 63.

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice of Public Comment:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday March 24, 2009 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. Prepared By:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

ID #	Description
1	Cathode Ray Tubes – correction for export notification §261.39(a)(5)(iii) and (iv)
2	Cathode Ray Tubes – correction for broken CRT storage time limit §261.4(b)(16)(i)(B)(3)
3	reserve all of §262.21
4	reverse DepositARY back to DepositORY in 264.151(a)(1) Section “8c”
5	§262 Appendix

PROPOSED AMENDMENTS TO DELAWARE REGULATIONS GOVERNING HAZARDOUS WASTE

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the *Delaware Regulations Governing Hazardous Waste* are not affected and are unchanged.

AMENDMENT 1: Cathode Ray Tubes – Correction for export notification

Subpart E—Exclusions/Exemptions

§ 261.39 Conditional Exclusion from Hazardous Waste for Used, Intact or Broken Cathode Ray Tubes and CRT Glass (CRTs) Managed by CRT Collectors and CRT Processors and Processed CRT Glass Undergoing Recycling.

(a) *****

(5) *Exports*. In addition to the applicable conditions specified in paragraphs (a) (1)–(4) of this section, exporters of used, intact or broken CRTs must comply with the following requirements:

(iii) Upon request by EPA or DNREC, the exporter shall furnish to EPA/DNREC any additional information which a receiving country requests in order to respond to a notification.

(iv) ~~EPA will provide a complete notification to the receiving country.~~ Reserved

PROPOSED REGULATIONS

AMENDMENT 2

Cathode Ray Tubes – Correction for broken CRT storage time limit

§ 261.4(b)

* * * * *

(16) Used, intact or broken cathode ray tubes and CRT glass (CRTs)

(i) Used, intact or broken CRTs while at the site of the CRT Generator as defined in § 260.10 of this chapter are not hazardous waste, provided the CRT's are not disposed and provided they are managed as follows:

* * * * *

B. Used, Broken CRT's, including CRT Glass

* * * * *

(3) A CRT generator may accumulate used, broken CRT's for not longer than one year from the date the CRT is first taken out of service. The CRT generator must be able to demonstrate the length of time that each used, broken CRT is accumulated from the date it is first taken out of service. [Note: The out of service date for a used, broken CRT resulting from breakage of an out of service used, intact CRT, is that of the original out of service date.]

* * * * *

AMENDMENT 3

reserve all of §262.21

~~Section 262.21 Manifests tracking numbers, manifest printing, and obtaining manifests. Reserved~~

~~(a)~~

~~(1) A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA Director of the Office of Solid Waste to do so under paragraphs (c) and (e) of 40 CFR 262.21.~~

~~(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to its manifests.~~

~~(b) Reserved~~

~~(c) Reserved~~

~~(d) Reserved~~

~~(e) Reserved~~

~~(f) Reserved~~

~~(g)~~

~~(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under paragraphs (c) and (e) of 40 CFR 262.21. A registered source may be a:~~

~~(i) State agency;~~

~~(ii) Commercial printer;~~

~~(iii) Hazardous waste generator, transporter or TSDf; or~~

~~(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.~~

~~(2) A generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply~~

~~copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.~~

- ~~(h) Reserved~~
- ~~(i) Reserved~~
- ~~(j) Reserved~~
- ~~(k) Reserved~~
- ~~(l) Reserved~~
- ~~(m) Reserved~~

AMENDMENT 4

reverse DepositARY back to DepositORY in 264.151(a)(1) Section "8c"

Section 264.151 Wording of Instruments.

(a) (1) * * * * *

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central ~~depository~~ depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such ~~depository~~ depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

AMENDMENT 5

§262 Appendix

- §262 Appendix, add first two instruction notes
- Strike clause from Manifest Instructions Item 5 for Generators regarding emergency phone number

Appendix to Part 262

Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)
U.S. EPA Form 8700-22

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used – press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (FORM 8700-22) and, if necessary, the continuation sheet (FORM 8700-22A) for both inter- and intrastate transportation of hazardous waste.

Manifest 8700-22

* * * * *

I. Instructions for Generators

* * * * *

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the normal business number for the generator, or the number where the generator or his authorized agent may be reached to provide instructions in the event of an emergency or if the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903 (e)(2)(a) (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3507 and 3511

REGISTER NOTICE: SAN# 2009-02**1. Title of the Regulations:**

Tidal Finfish Regulations

2. Brief Synopsis of the Subject, Substance and Issues:

The coast wide minimum size requirement for recreationally harvested black sea bass, as mandated by the Atlantic States Marine Fisheries Commission's (ASMFC) Fishery Management Plan (FMP) for Summer Flounder, Scup and Black Sea Bass for the 2009 fishing season is 12.5 inches. Delaware currently has a twelve (12) inch minimum size limit for recreationally harvested black sea bass. It is proposed to amend Tidal Finfish Regulation No. 3507 to adjust the current minimum size to comply with the ASMFC FMP.

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Atlantic States Marine Fisheries Commission's Summer Flounder Fishery Management Board, the Mid-Atlantic Fisheries Management Council and the National Marine Fisheries Service are to use for establishing conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2009. Delaware is obligated to cap the summer flounder recreational harvest at 65,000 fish for 2009. The harvest cap has been adjusted up from the previous year's level of 64,000 fish because the latest scientific stock assessment data indicates that overfishing is not occurring in the stock. In addition, it is estimated, based on the Marine Recreational Fisheries Statistics survey data, that approximately 33,000 summer flounder were harvested in Delaware during the 2008 fishing season. As such, a number of options will be considered that are designed to restrain the harvest at or below the cap for 2009. It is proposed that a suite of management options will be developed that take into consideration measures that have been successfully employed in the past to restrain the harvest while attempting to meet the needs of the fishing public. These options will include potential minimum size limits ranging between 18.5 and 19.5 inches. Three management options for Delaware have been reviewed by the ASMFC Summer Flounder Technical Committee to determine if the correct data sets and analyses were used to project landings under the various options. All three options were determined to be technically valid by the ASMFC Summer Flounder technical committee and were also approved by the ASMFC Summer Flounder Board on February 3, 2009. All approved options will be presented at a public hearing on March 26, 2009 in order to receive input from the fishing community on the various management strategies.

3. Possible Terms of the Agency Action:

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware.

4. Statutory Basis or Legal Authority to Act:

7 Del.C. § 903, (e)(2)(a)

5. Other Regulations That May Be Affected by the Proposal:

None

6. Notice of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on March 26, 2009 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, April 3, 2009.

7. Prepared By:

Richard Cole
richard.cole@state.de.us
Ph: (302)739-4782
Fax: (302) 739-6780
February 2, 2009

3507 Black Sea Bass Size Limits; Trip Limits; Seasons; Quotas

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than ~~twelve (12)~~ twelve and one-half (12.5) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)**6 DE Reg. 1360 (4/1/03)**

- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.
- 1 DE Reg. 1767 (5/1/98)**
2 DE Reg. 1900 (4/1/99)
3 DE Reg. 1088 (2/1/00)
4 DE Reg. 1665 (4/1/01)
4 DE Reg. 1859 (5/1/01)
5 DE Reg. 2142 (5/1/02)
6 DE Reg. 348 (9/1/02)
6 DE Reg. 1230 (3/1/03)
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.
- Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
- 9.1 A maximum of one transfer per year per person.
- 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
- 10.1 A maximum of one transfer per year per person.
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.

-
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

7 DE Reg. 1575 (5/1/04)

6 DE Reg. 1230 (3/1/03)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

11 DE Reg. 1662 (06/01/08)

3511 Summer Flounder Size Limits; Possession Limits; Seasons

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~nineteen and one half (19.5)~~ inches between the tip of the snout and the furthest tip of the tail. **(Note: size limit to be determined in combination with creel limit.)**

7 DE Reg. 1575 (5/1/04)

- 3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~nineteen and one half (19.5)~~ inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed. **(Note: size limit to be determined in combination with creel limit.)**
- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
- 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
- 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
- 4.3 A bill of lading while transporting fresh or frozen summer flounder.
- 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is

PROPOSED REGULATIONS

determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

Note: Proposed options for creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware during 2009. These options embody varying levels of risk with regard to Delaware potentially exceeding its allowable harvest quota for 2009, with the smallest size limit being the most risky and the largest minimum size limit being the least risky.

<u>Option</u>	<u>Season Closure</u>	<u>Number of Open Days</u>	<u>Bag Limit</u>	<u>Minimum Size - inches</u>
<u>1</u>		<u>365</u>	<u>4</u>	<u>18.5</u>
<u>2</u>		<u>365</u>	<u>4</u>	<u>19.0</u>
<u>3</u>		<u>365</u>	<u>4</u>	<u>19.5</u>

1 DE Reg. 1767 (5/1/98)

2 DE Reg. 1900 (4/1/99)

3 DE Reg. 1088 (2/1/00)

4 DE Reg. 1552 (3/1/01)

5 DE Reg. 462 (8/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 1358 (4/1/03)

7 DE Reg. 1575 (5/1/04)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

10 DE Reg. 1722 (05/01/07)

11 DE Reg. 1493 (05/01/08)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
3800 COMMITTEE ON DIETETICS/NUTRITION

Statutory Authority: 24 Delaware Code, Section 3805 (a)
24 DE Admin. Code 3800

PUBLIC NOTICE

The Delaware State Board of Dietetics/Nutrition in accordance with 24 **Del.C.** §3805(a) has proposed amendments to its rules and regulations as the result of the enactment in the 144th General Assembly of House Bill 38, as amended, providing for the licensure of dietitians and nutritionist in the State of Delaware.

A public hearing will be held on April 17, 2009 at 1:45 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware State Board of Dietetics/Nutrition, 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.

3800 ~~Committee on~~ State Board of Dietetics/Nutrition

1.0 Qualifications of Applicants

1.1 ~~An equivalent~~ A Major course of study [24 **Del.C.** §3806~~(1)(2)~~] must include 3 semester credits with content in biochemistry, 3 semester credits with content in human physiology, and 12 semester credits of courses with major content in human nutrition and/or dietetics including 3 semester credits in nutrition and disease or diet therapy.

1.2 Foreign Degrees:

1.2.1 An agency authorized to validate foreign academic degrees equivalent to the Baccalaureate or Master's Degree conferred by a regionally accredited college or University in the U.S. includes the following:

International Consultants of Delaware, Inc., ~~(109 Barksdale Professional Center, Newark, DE 19711~~ P.O. Box 8629, Philadelphia, PA 19101 - www.icdel.com)

IERF Credentials Evaluation Services, Inc., (P.O. Box 66940, Los Angeles, CA 90066 3665 Culver City, CA 90231-3665 - 222.ierf.org)

World Education Services, Inc., (P.O. Box 745, Old Chelsea Station, New York, NY 10014 5087 Bowling Green Station, New York, NY 10274-5087 - www.wes.org)

Education Credential Evaluators, Inc., (P.O. Box 92970 5140740, Milwaukee, WI 53202-0970 53203-3470) -www.ece.org

Josef Silny & Associates, International Education Consultants, (P.O. Box 248233 Coral Gables, FL 33124 7107 SW 102 Ave. Miami, FL 33173) -www.jsilny.com

4.3 Examination

~~4.3.1 The cost of the examination is borne by the applicant.~~

~~4.3.2 Satisfactory completion of the registration examination established by the Committee. [24 **Del.C.** §3806(a)(2)].~~

~~4.3.2.1 The passing score established by the Commission on Dietetic Registration.~~

~~4.3.3 Another national examination may be approved by the Committee. The Committee shall use the following criteria:~~

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1.3.3.1 ~~It shall be a national validated examination, the primary objective of which is to measure minimum professional competency in dietetics and/or nutrition. In order to take the examination, the candidate is required to have a minimum of a baccalaureate degree and collegiate level coursework in nutrition conferred by a regionally accredited college or university in the U.S.~~

1.3.3.2 ~~The approval of the Director of Professional Regulation is also required if another examination is adopted.~~

1.43 Supervised Practice

1.43.1 ~~Proof of professional completion of supervised practice experience of 900 hours [24 Del.C. §3806(a)(3)] may be:~~ is required and must be demonstrated by documenting completion of a Commission on Accreditation for Dietetic Education (CADE) program. CADE is the accrediting agency for the American Dietetic Association (ADA).

1.4.1 ~~a program ADA-approved or ADA-accredited by the Commission on Dietetic Registration of The American Dietetic Association currently called~~

1.4.1.1 ~~an accredited dietetic internship~~

1.4.1.2 ~~an approved professional practice program~~

1.4.1.3 ~~an accredited coordinated program~~

~~OR~~

1.4.2 ~~at least 900 hours of supervised participation in nutrition services. The scope of activities may include observation, but must include direct client/patient involvement. The 900 hours must be concurrent to and/or following completion of the academic requirements for certification and need not be a paid experience. The following will define the equivalent professional practice experience and verification necessary:~~

1.4.2.1 ~~Each supervisor shall have administrative responsibility for the area of the professional practice experience OR provide a letter from the area's administrator showing approval for him/her to officially function as a supervisor of the applicant's experience for the purposes of this chapter.~~

1.4.2.2 ~~The supervisor shall have access to relevant patient/client records in the site of the professional practice experience. In order to guide the applicant and to have a basis for evaluation, the supervisor shall review performance by periodic observation, either directly or by some recording of the nutrition services.~~

1.4.2.3 ~~If there is more than one supervisor and/or facility for different parts of the experience, information and verification of each part is required.~~

1.4.2.4 ~~The applicant shall provide to the Committee for each supervisor/facility~~

1.4.2.4.1 ~~the name and address of the facility providing the professional practice experience and name of the area within the facility where the professional practice experience occurred.~~

1.4.2.4.2 ~~name, address, phone and title of the official supervisor who is supervising the qualifying experience for purpose of obtaining the certification. The supervisor for the purpose of certification may be different than the administrative supervisor of the unit in the facility.~~

1.4.2.4.3 ~~a summary of the nature of nutrition services performed, along with dates and hours spent performing them.~~

1.4.2.4.4 ~~evidence that the supervisor was either a registered dietitian, a licensed dietitian or a certified dietitian/nutritionist or a certified nutrition specialist in Delaware or any other state at the time of supervision; or the supervisor was a licensed physician with expertise in human nutrition. A copy of the current license, certification, or registration must be provided.~~

1.4.2.4.5 ~~the applicant will send the description of the qualifying experience noted above to the professional practice experience supervisor for verification.~~

~~1.4.2.4.6 Each supervisor must review the evidence provided by the applicant and verify that the information is true including~~

~~1.4.2.4.6.1 that the applicant participated in nutrition services under his/her supervision, indicating the total number of hours.~~

~~1.4.2.4.6.2 that the applicant performed the nutrition services at a satisfactory level and followed the Code of Ethics in the course of this qualifying experience.~~

~~OR~~

~~1.4.3 Documented work experience: If you are applying under 24 Del.C. §3806(A)(3)b, the requirements for documentation are the same as Equivalent Professional Practice Experience, except that the number of hours is different.~~

1.4 Examination

~~1.4.1 Satisfactory completion of the registration examination established by the Commission on Dietetic Registration is required. [24 Del. C. §3806(a)(4)].~~

~~1.4.1.1 The passing score shall be the passing score established by the Commission on Dietetic Registration.~~

~~1.4.2 The cost of the examination shall be borne by the applicant.~~

~~1.5 Graduate Degrees: "Persons presenting evidence of a Master's degree or Doctorate degree" as specified in 24 Del.C. §3806(d) "shall provide evidence that the degree is in nutrition, nutrition education, nutrition science or a major closely related to human nutrition. "The major closely related to human nutrition" shall include either as part of the degree or in courses taken in addition to the degree a minimum of 3 semester credits with content in biochemistry, 3 semester credits with content in human physiology, and 12 semester credits of courses with major content in human nutrition and/or dietetics including 3 semester credits in nutrition and disease or diet therapy. All qualifying degrees and courses shall be from a college or university accredited through regional accrediting agency recognized by the U.S. Department of Education at the time the degree was earned or when courses were taken.~~

2.0 Reciprocity

~~2.1 The Board may grant licensure to registered, certified or licensed dietitians/nutritionists holding a valid license issued by another jurisdiction whose standards of licensure are equal to or greater than those of 24 Del.C. Ch. 38.~~

~~2.2 The applicant shall include, as part of the application, copies of state licensing and/or practice statutes and regulations pertaining to the practice of dietetics and nutrition for each jurisdiction through which he/she is seeking reciprocity.~~

~~2.3 The Applicant shall include letters of good standing from all jurisdictions in which the applicant is licensed or registered.~~

~~2.4 "Standards of licensure," as used in 24 Del.C. §3807, shall refer to the qualifications of applicants set forth at §3806.~~

23.0 Continuing Professional Education

~~23.1 "Continuing professional education" (CPE) as specified in Dietetics/Nutrition Certification Licensure Act, 24 Del.C. §3808, must meet the content requirements of The American Dietetic Association for CPE credit. One hour of CPE credit shall be given for each hour of CPE activity.~~

~~23.1.1 To renew his or her certification license a CDN LDN must obtain thirty (30) hours of CPE during each two year certification period.~~

~~23.1.1.1 CPE requirements shall be prorated for new CDNs LDNs as follows: If the new CDN LDN has been certified licensed less than 1 year, CPE is not required for renewal, if the new CDN LDN has been certified licensed for more than 1 year but less than 2 years, half of the 30 CPE hours (15 hours) are required. If certified licensed for 2 or more years, the full 30 hours of CPE is required.~~

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- ~~2.1.1.2~~ ~~Due to the shortened time period of the October 1, 2007 – May 31, 2009 certification period, only 25 CPE hours must be earned during that period to qualify for renewal on May 31, 2009.~~
- ~~23.1.1.32~~ Extensions of time: An extension of time to complete CPE requirements will be granted to any CDN LDN who can demonstrate to the Committee Board an acceptable cause. The CDN LDN must petition the Committee Board for an extension. Should the Committee Board deny the request, the CDN LDN must complete the requirements to maintain certification licensure. Examples of circumstances for which the Committee Board may grant extensions of time include, but are not limited to, prolonged illness or extended absence from the country.
- 23.2 Proof of continuing education is satisfied with an attestation by the certificate holder licensee that he or she has satisfied the requirements of Rule 23.0.
- 23.2.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.
- 23.2.2 ~~Certificate holders~~ Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 23.3.
- 23.3 Random audits will be performed by the Committee Board to ensure compliance with the CPE requirements.
- 23.3.1 The Committee Board will notify ~~CDNs LDNs~~ within sixty (60) days after the certificate license renewal date that they have been selected for audit.
- 23.3.2 ~~CDNs LDNs~~ selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.
- 23.3.3 Verification shall include such information necessary for the Committee Board to assess whether the course or other activity meets the CPE requirements in Rule 23.0, which may include, but is not limited to, the following information:
- 23.3.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance.
- 23.3.3.2 Date of CPE course;
- 23.3.3.3 Instructors of CPE course;
- 23.3.3.4 Sponsor of CEU course;
- 23.3.3.5 Title of CPE course; and
- 23.3.3.6 Number of hours of CPE course.
- 23.3.4 The CPE activities must be performed within the two year period prior to renewal of certification licensure. If an activity overlaps two renewal periods, the date of completion of the activity determines the date in which the activity can be reported.
- 23.3.5 The current document published by CDR/ADA, describing CPE guidelines for registered dietitians shall be used as a guide to interpret requirements of CDR/ADA for CPE.
- 23.3.6 The Committee Board will accept the decisions of CDR for appropriateness of CPE activities and reserves the right to approve or disapprove any other activity deemed appropriate for CPE, using current CDR/ADA standards as criteria.
- 23.3.7 The Committee Board may establish maximum hours allowed for any type of activity in the two-year period.
- 23.3.7.1 A maximum of 15 CPE hours shall be allowed for selfstudy programs.
- 23.3.7.2 A maximum of 6 CPE hours shall be allowed for exhibits.
- 23.3.7.3 A maximum of 10 CPE hours shall be allowed for poster presentations.
- 3.4 The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent

noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered grounds for discipline in the practice of dietetics and nutrition, pursuant to 24 Del.C. §3811. The minimum penalty for unjustified noncompliance shall be a letter of reprimand.

- 3.5 Any licensee denied renewal or disciplined pursuant to these rules and regulations may contest such ruling by filing an appeal pursuant to the Administrative Procedures Act.

11 DE Reg. 226 (08/01/07)

3.0 Renewal of Certification

~~Beginning on October 1, 2007, CDN certification shall expire biennially on May 31 of odd-numbered years.~~

~~11 DE Reg. 226 (08/01/07)~~

4.0 Licensure-Renewal

- 4.1 The biennial licensure period expires on May 31 of every odd-numbered year. A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation (Division) along with an attestation of completion of the continuing education requirements. License renewal may be accomplished online at the Division's website. Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division.
- 4.2 Any licensee who fails to renew his/her license by the renewal date may reactivate his/her license during the one (1) year period immediately following the license expiration date provided the licensee pays a late fee in addition to the prescribed renewal fee, submits an application on an appropriate form to the Board and provides proof that he/she completed the required continuing education.
- 4.3 No LDN will be permitted to renew his/her license once the one-year period has expired but the former licensee may re-apply under the same conditions that govern applicants for licensure under 24 Del.C. Ch. 38.

45.0 Code of Ethics. [24 Del.C. §3811(a)(4).]

- 45.1 ~~The CDN LDN~~ provides professional service with objectivity and with respect for the unique needs and values of individuals, avoiding discrimination on the basis of race, creed, gender, national origin, age or disability.
- 45.2 ~~The CDN LDN~~ accurately presents professional qualifications and credentials and does not permit the use of these credentials by an unqualified person.
- 45.3 ~~The CDN LDN~~ remains free of conflict of interest and promotes or endorses products/services in a manner that is neither false nor misleading.
- 45.4 ~~The CDN LDN~~ assumes responsibility and accountability for personal competence in practice through continuing professional education and adherence to accepted standards of practice.
- 45.5 ~~The CDN LDN~~ shall recognize and exercise professional judgment within the limits of his/her qualifications and shall not accept or perform professional responsibilities which the ~~CDN LDN~~ is not qualified to perform.
- 45.6 ~~The CDN LDN~~ practices nutrition/dietetics based on scientific principles and current substantiated information without personal bias, enabling clients to make informed decisions.
- 45.7 ~~The CDN LDN~~ maintains the confidentiality of information obtained from clients and maintains records relating to services provided to a client in the course of a professional relationship.
- 45.8 ~~The CDN LDN~~ conducts himself/herself with honesty, integrity and fairness, advertises services in a factual, straightforward manner, and fulfills professional commitments in good faith.
- 45.9 ~~The CDN LDN~~ shall not engage in dietetic practice while under the influence of alcohol or drugs which impair the provision of such practice.
- 45.10 ~~The CDN LDN~~ shall be responsible for reporting alleged misrepresentation or violations of the Code of Ethics to the State Committee of Dietetics/Nutrition.

6.0 Crimes Substantially Related To Provision Of Dietetic/Nutrition Services.

6.1 For the purposes of this section the following definition shall apply:

6.1.1 "Conviction" means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a "Robinson" or "Alford" plea unless the individual has been discharged under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program). Including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

6.2 Conviction of any of the following crimes In Title 11, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the provision of Dietetics/Nutrition services as a LDN in the State of Delaware without regard to the place of conviction:

6.2.1 §501 Criminal solicitation in the third degree

6.2.2 §502 Criminal solicitation in the second degree

6.2.3 §503 Criminal solicitation in the first degree

6.2.4 §511 Conspiracy in the third degree

6.2.5 §512 Conspiracy in the second degree

6.2.6 §513 Conspiracy in the first degree

6.2.7 §601 Offensive touching; Class A Misdemeanor

6.2.8 §602. Menacing;

6.2.9 §603. Reckless endangering in the second degree;

6.2.10 §604. Reckless endangering in the first degree;

6.2.11 §605. Abuse of a pregnant female in the second degree;

6.2.12 §606. Abuse of a pregnant female in the first degree;

6.2.13 §611. Assault in the third degree;

6.2.14 §612. Assault in the second degree;

6.2.15 §613. Assault in the first degree;

6.2.16 §615 Assault by abuse or neglect;

6.2.17 §621 Terroristic threatening;

6.2.18 §625 Unlawfully administering drugs;

6.2.19 §626 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;

6.2.20 §629 Vehicular assault in the first degree;

6.2.21 §630 Vehicular homicide in the second degree;

6.2.22 §630A Vehicular homicide in the first degree;

6.2.23 §631 Criminally negligent homicide;

6.2.24 §632 Manslaughter;

6.2.25 §633 Murder by abuse or neglect in the second degree;

6.2.26 §634 Murder by abuse or neglect in the first degree;

6.2.27 §635 Murder in the second degree;

6.2.28 §636 Murder in the first degree;

6.2.29 §645 Promoting suicide.

Sexual Offenses

6.2.30 §763 Sexual harassment;

6.2.31 §764 Indecent exposure in the second degree;

6.2.32 §765 Indecent exposure in the first degree;

6.2.33 §766 Incest;

6.2.34 §767 Unlawful sexual contact in the third degree;

- 6.2.35 §768 Unlawful sexual contact in the second degree;
 - 6.2.36 §769 Unlawful sexual contact in the first degree;
 - 6.2.37 §770 Rape in the fourth degree;
 - 6.2.38 §771 Rape in the third degree;
 - 6.2.39 §772 Rape in the second degree;
 - 6.2.40 §773 Rape in the first degree;
 - 6.2.41 §776 Sexual extortion;
 - 6.2.42 §777 Bestiality;
 - 6.2.43 §778 Continuous sexual abuse of a child;
 - 6.2.44 §780 Female genital mutilation.
 - 6.2.45 §781 Unlawful imprisonment in the second degree;
 - 6.2.46 §782 Unlawful imprisonment in the first degree;
 - 6.2.47 §783 Kidnapping in the second degree;
 - 6.2.48 §783A Kidnapping in the first degree;
 - 6.2.50 §791 Acts constituting coercion;
- 6.3 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:
- 6.3.1 §801 Arson in the third degree;
 - 6.3.2 §802 Arson in the second degree;
 - 6.3.3 §803 Arson in the first degree;
 - 6.3.4 §811 Criminal mischief, Felony.
 - 6.3.5 §820 Trespassing with intent to peer or peep into a window or door of another;
 - 6.3.6 §824 Burglary in the third degree;
 - 6.3.7 §825 Burglary in the second degree;
 - 6.3.8 §826 Burglary in the first degree;
 - 6.3.9 §828 Possession of burglar's tools or instruments facilitating theft;
- Robbery
- 6.3.10 §831 Robbery in the second degree;
 - 6.3.11 §832 Robbery in the first degree.
 - 6.3.12 §835 Carjacking in the second degree;
 - 6.3.13 §836 Carjacking in the first degree;
 - 6.3.14 §840 Shoplifting; Felony.
 - 6.3.15 §841 Theft;
 - 6.3.16 §846 Extortion;
 - 6.3.17 §854 Identity theft;
 - 6.3.18 §860 Possession of shoplifter's tools or instruments facilitating theft;
 - 6.3.19 §861 Forgery
 - 6.3.20 §862 Possession of forgery devices;
 - 6.3.21 §871 Falsifying business records;
 - 6.3.22 §873 Tampering with public records in the second degree;
 - 6.3.23 §876 Tampering with public records in the first degree;
 - 6.3.24 §877 Offering a false instrument for filing;
 - 6.3.25 §878 Issuing a false certificate;
 - 6.3.25 §903 Unlawful use of credit card; Felony.
 - 6.3.26 §903 A Re-encoder and scanning devices;
 - 6.3.27 §906 Deceptive business practices;

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- 6.3.28 §907B Criminal impersonation of a police officer;
- 6.3.29 §908 Unlawfully concealing a will;
- 6.3.30 §909 Securing execution of documents by deception;
- 6.3.31 §913 Insurance fraud;
- 6.3.32 §913A Health care fraud;
- 6.4 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code** Annotated:
 - 6.4.1 §1100 Dealing in children;
 - 6.4.2 §1101 Abandonment of child;
 - 6.4.3 §1102 Endangering the welfare of a child;
 - 6.4.4 §1105 Endangering the welfare of an incompetent person;
 - 6.4.5 §1106 Unlawfully dealing with a child;
 - 6.4.6 §1107 Endangering children;
 - 6.4.7 §1108 Sexual exploitation of a child;
 - 6.4.8 §1109 Unlawfully dealing in child pornography;
 - 6.4.9 §1111 Possession of child pornography;
 - 6.4.10 §1112 Sexual offenders; prohibitions from school zones.
 - 6.4.11 §1112A Sexual solicitation of a child;
 - 6.4.12 §1113 Criminal non-support and aggravated criminal non-support.
 - 6.4.13 §1325 Cruelty to animals;
 - 6.4.14 §1326 Animals; fighting and baiting prohibited;
 - 6.4.15 §1327 Maintaining a dangerous animal, felony;
- 6.5 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code** Annotated:
 - 6.5.1 §1201 Bribery;
 - 6.5.2 §1203 Receiving a bribe;
 - 6.5.3 §1207 Improper influence;
 - 6.5.4 §1211 Official misconduct
 - 6.5.5 §1212 Profiteering
 - 6.5.6 §1221 Perjury in the third degree;
 - 6.5.7 §1222 Perjury in the second degree;
 - 6.5.8 §1223 Perjury in the first degree;
 - 6.5.9 §1233 Making a false written statement; class
 - 6.5.10 §1240 Terroristic threatening of public officials or public servants
 - 6.5.11 §1245 Falsely reporting an incident, felony;
 - 6.5.12 §1250 Offenses against law-enforcement animals;
 - 6.5.13 §1254 Assault in a detention facility;
 - 6.5.14 §1256 Promoting prison contraband, felony;
 - 6.5.15 §1257A Use of an animal to avoid capture, felony;
 - 6.5.16 §1261 Bribing a witness;
 - 6.5.17 §1262 Bribe receiving by a witness;
 - 6.5.18 §1263 Tampering with a witness;
 - 6.5.19 §1263A Interfering with child witness;
 - 6.5.20 §1264 Bribing a juror;
 - 6.5.21 §1265 Bribe receiving by a juror;

- 6.5.22 §1266 Tampering with a juror;
6.5.23 §1267 Misconduct by a juror;
6.5.24 §1269 Tampering with physical evidence;
6.5.27 §1273 Unlawful grand jury disclosure;
- 6.6 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the **Delaware Code Annotated** which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.
- 6.6.1 §1302 Riot;
6.6.2 §1304 Hate crimes;
6.6.3 §1312 Aggravated harassment;
6.6.4 §1312A Stalking, felony;
6.6.5 §1313 Malicious interference with emergency communications;
6.6.6 §1331 Desecration;
6.6.7 §1332 Abusing a corpse;
6.6.8 §1333 Trading in human remains and associated funerary objects.
6.6.9 §1335 Violation of privacy;
6.6.10 §1338 Bombs, incendiary devices, Molotov cocktails and explosive devices;
6.6.11 §1339 Adulteration;
6.6.12 §1340 Desecration of burial place.
6.6.13 §1341 Lewdness;
6.6.14 §1351 Promoting prostitution in the third degree;
6.6.15 §1352 Promoting prostitution in the second degree;
6.6.16 §1353 Promoting prostitution in the first degree;
6.6.17 §1355 Permitting prostitution;
6.6.22 §1361 Obscenity; acts constituting;
6.6.23 §1365 Obscene literature harmful to minors
- 6.7 Any crime which involves the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the **Delaware Code Annotated**:
- 6.7.1 §4751 Prohibited acts A;
6.7.2 §4752 Prohibited acts B;
6.7.3 §4752A Unlawful delivery of noncontrolled substance;
6.7.4 §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs;
6.7.5 §4754A Possession and delivery of noncontrolled prescription drug (felony);
6.7.6 §4755 Prohibited acts E;
6.7.7 §4756 Prohibited acts;
6.7.8 §4757 Hypodermic syringe or needle; delivering or possessing (felony); disposal (felony);
6.7.9 §4761 Distribution to persons under 21 years of age;
6.7.10 §4761A Purchase of drugs from minors;
6.7.11 §4767 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;
6.7.12 §4768 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship;

6.7.13 §4774 Drug Paraphernalia (felony).

6.8 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code** Annotated:

6.8.1 §1442 Carrying a concealed deadly weapon;

6.8.2 §1443 Carrying a concealed dangerous instrument;

6.8.3 §1444 Possessing a destructive weapon;

6.8.4 §1445a Unlawfully dealing with a dangerous weapon (felony);

6.8.5 §1446 Unlawfully dealing with a switchblade knife;

6.8.6 §1447 Possession of a deadly weapon during commission of a felony;

6.8.7 §1447A Possession of a firearm during commission of a felony;

6.8.8 §1448 Possession and purchase of deadly weapons by persons prohibited;

6.8.9 §1448A Criminal history record checks for sales of firearms

6.8.10 §1449 Wearing body armor during commission of felony;

6.8.11 §1450 Receiving a stolen firearm;

6.8.12 §1451 Theft of a firearm;

6.8.13 §1452 Unlawfully dealing with knuckles-combination knife;

6.8.14 §1453 Unlawfully dealing with martial arts throwing star;

6.8.15 §1454 Giving a firearm to person prohibited;

6.8.16 §1455 Engaging in a firearms transaction on behalf of another;

6.8.17 §1456 Unlawfully permitting a minor access to a firearm;

6.8.18 §1457 Possession of a weapon in a Safe School and Recreation Zone;

6.8.19 §1458 Removing a firearm from the possession of a law enforcement officer;

6.8.20 §1459 Possession of a weapon with a removed, obliterated or altered serial number;

6.8.21 §1504 Organized Crime & Racketeering;

6.8.22 §3532 Acts of Intimidation;

6.8.23 §3533 Aggravated act of intimidation;

6.8.24 §3534 Attempt to Intimidate;

Other Crimes

6.8.25 Title 16 §1136 Violations – neglect or abuse of patient or resident of nursing facilities;

6.8.26 Title 23 §2302 – Operation of a vessel or boat while under the influence of intoxicating liquor or drugs (Felony under §2305);

6.8.27 Title 30 §571 Attempt to evade or defeat tax;

6.8.28 Title 30 §572 Failure to collect or pay over tax;

6.8.29 Title 30 §574 Fraud and false statements (felony);

6.8.30 Title 31 §§1003,1004 and 1005 (felony under §1007);

6.8.31 Title 21 §2810 Driving after judgment prohibited;

6.8.32 Title 21 §4177 Driving a vehicle while under the influence or with a prohibited alcohol content, (felony);

6.8.33 Title 21 §4177J Drinking while driving prohibited;

6.8.34 Title 21 §6704 Receiving or transferring stolen vehicle

6.8.35 Title 21 §6705 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identify, (felony);

6.8.36 Title 7 §1717 Unauthorized Acts against a Service Guide or Seeing Eye Dog. (class D felony);

6.8.37 Title 11 §2402 Interception of Communications Generally; Divulging Contents of Communications;

6.8.38 Title 11 §2403 Manufacture, Possession or Sale of Intercepting Device ;

- 6.8.39 Title 11 §2410 Breaking and Entering, Etc. to Place or Remove Equipment:
- 6.8.40 Title 11 §2412 Obstruction, Impediment or Prevention of Interception:
- 6.8.41 Title 11 §2421 Obtaining, Altering or Preventing Authorized Access:
- 6.8.42 Title 11 §2422 Divulging Contents of Communications:
- 6.8.43 Title 11 §2431 Installation and Use Generally [of pen trace and trap and trace devices]:
- 6.8.44 Title 11 §8523 Penalties [Criminal History Record Information-penalties for violation of reporting provision re: SBI], (felony):
- 6.8.45 Title 11 §8562 - for failure of child-care provider to obtain information [Criminal History Record Information] required under §8561 or for those providing false information:
- 6.8.46 Title 11 §8572 [Providing false information when seeking employment in a public school]:
- 6.8.47 Title 16 §914 Penalty for Violation [of reporting requirements involving abuse under §903]:
- 6.8.48 Title 16 §2513 Penalties [relating to improper health-care decisions] (falsification, destruction of a document to create a false impression that measures to prolong life have been authorized):
- 6.8.49 Title 16 §7112 Penalties [for violations of chapter [Sale, Use, Etc., of Explosive Materials other than §7103] (felony):
- 6.8.50 Title 23 §2303 Operation of a Vessel or Boat while under the Influence of Intoxicating Liquor and/or Drugs (Felony):
- 6.8.51 Title 31 §3913 Violations [knowing or reckless abuse of an infirm adult]:
- 6.9 Any crime which is a violation of Title 24, Chapter 38 (Dietetics and Nutrition Practice Act) as it may be amended from time to time.
- 6.10 Crimes substantially related to the provision of services as a LDN shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

57.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 57.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 57.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.
- 57.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 57.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 57.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to

the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 5.8 of this section.

- 57.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 57.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
 - 57.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
 - 57.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
 - 57.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
 - 57.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
 - 57.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 57.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 57.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.
- 57.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 57.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 57.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

~~5~~12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

6.0 ~~Crimes Substantially Related To Provision Of Dietetic/Nutrition Services.~~

6.1 ~~For the purposes of this section the following definition shall apply:~~

6.1.1 ~~“Conviction” means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a “Robinson” or “Alford” plea unless the individual has been discharged under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program). Including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.~~

6.2 ~~Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the provision of Dietetics/Nutrition services as a Certified Dietitian and/or Nutritionist in the State of Delaware without regard to the place of conviction:~~

~~6.2.1 Homicide~~

~~6.2.2 Assault~~

~~6.2.3 Criminal Sexual Abuse~~

~~6.2.4 Tax Evasion~~

~~6.2.5 Kidnapping~~

~~6.2.6 Theft and all related offenses~~

~~6.2.7 Embezzlement~~

~~6.2.8 Child pornography~~

~~6.2.9 Forgery~~

~~6.2.10 Identity theft~~

~~6.2.11 Insurance fraud~~

~~6.2.12 Bribery~~

~~6.2.13 Perjury~~

~~6.2.14 Abuse—any abuse of a person or animal~~

~~6.2.15 Counterfeiting~~

~~6.2.16 Tampering with consumer products~~

~~6.2.17 Hate crimes~~

~~6.2.18 False or fraudulent statements~~

~~6.2.19 Kick Back schemes~~

~~6.2.20 Abduction or unlawful restraint~~

6.3 ~~Crimes substantially related to the provision of services as a Certified Dietitian and/or Nutritionist shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.~~

8 DE Reg. 1288 (03/01/05)

11 DE Reg. 226 (07/01/07)

Symbol Key

Arial 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.

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 **Del.C.** §6403)

ORDER**501 Regulations of the Delaware Solid Waste Authority****I. Summary of the Evidence and Information Submitted**

The Delaware Solid Waste Authority is promulgating revisions to its comprehensive regulations, last revised in the year 2001. The Authority held a properly noticed public hearing on November 6, 2008 to receive comment on the revisions. No written or oral comments were received prior to or at the hearing regarding any provision of the regulations, although one oral comment was received which lauded the process by which the regulations were revised. DSWA staff submitted to the Board of Directors a report which explains the history of the regulations, the proposed revisions and the rationale for the revisions.

The revisions require haulers of dry waste to obtain a DSWA license. The requirement enhances DSWA's ability to implement its programs and enforce restrictions on the commingling of waste. The revisions also require contractors who provide waste hauling services for certain governmental entities to use DSWA facilities. The requirement provides broader program coverage with respect to municipal solid waste generated in Delaware. Consistent with statutory law, the revisions require the filing of an annual registration statement by owners and operators of recycling programs and facilities. Numerous textual and definitional changes improve clarity, or address operational clauses or statutory developments.

II. Summary of Findings of Fact

The Delaware Solid Waste Authority finds it is appropriate to adopt the revisions to the regulation in order to carry out the Authority's statutory responsibilities. The Authority finds the revisions to the regulations are consistent with statutory law and promote efficient and necessary administration of the Authority's programs.

III. Decision

The Delaware Solid Waste Authority hereby adopts the revisions to the regulations in the form attached hereto as Exhibit "A," said form being identical to the form published in the **Delaware Register of Regulations**, on October 1, 2008. This order and the revisions to the regulations, as set forth in Exhibit "A," shall take effect ten days after the date this Order is published in the **Delaware Register of Regulations**.

IT IS SO ORDERED this 17th day of February, 2009.

Richard V. Pryor, Chairman	Timothy P. Sheldon
Ronald G. McCabe, Vice Chairman	Gerard L. Esposito
Theodore W. Ryan	William J. DiMondi
Tonda L. Parks	

***Please note that no changes were made to the regulation as originally proposed and published in the October 2008 issue of the *Register* at page 375 (12 DE Reg. 375). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

501 Regulations of the Delaware Solid Waste Authority

DELAWARE VIOLENT CRIMES COMPENSATION BOARD

ADMINISTRATIVE OFFICE OF THE COURTS

Statutory Authority: 11 Delaware Code, Section 9004 (11 **Del.C.** §9004)

ORDER

Introduction

The Violent Crimes Compensation Board of the State of Delaware hereby adopts this Report and Order, pursuant to 29 *Del.C.* §10118, for the purpose of final enactment of the amended regulations attached hereto. The proposed changes further define pecuniary loss, permanent and total disability, and include a definition for secondary victims. They include time frames for submitting requested documentation to the Board to support a claim. The changes reflect statutory changes since the regulations were enacted. The regulations also address collateral sources of compensation.

Summary of Comments

Comments, evidence, and other information were submitted to the Board in the course of public hearings on December 2, 2009 in Dover, Delaware, and on December 9, 2009 in Wilmington, Delaware. Comments were

received from: Sherri Gigliotti, a social worker at the Department of Justice Victim Services Unit; Diane Glenn, Dover Police Victim Services; Stephanie Hamilton, Wilmington Police Department Victim Services and Chair of the Victims' Rights Task Force; Polli Funk, Policy Prevention Director for Contact Lifeline and for Sexual Assault Network of Delaware ("SANDS"); Gail Riblett, co-Chair of the Sexual Assault Network of Delaware; Mona Bayard of Wilmington Police Victim Services; Susan Alfree of the Newark Police Victim Services Unit; Mariann Kenville-Moore, Director of Victim Services for the Department of Justice of the State of Delaware; Valerie Merrick of Survivors of Abuse and Recovery ("SOAR"); and Carol Post of the Delaware Coalition against Domestic Violence. These comments were transcribed and provided to the Board members for review.

In addition, written submissions were received from the Delaware Developmental Disabilities Council, the State Council for Persons with Disabilities, the Governor's Advisory Council for Exceptional Citizens, and the Delaware Victims' Rights Task Force. These materials were also reviewed and discussed by the Board.

The various comments contained specific suggestions for changes to the following Rules: Rule 1.1, Rule 2.1, Rule 7.1, Rule 10.3, Rule 17.2, Rule 18.1, Rule 18.2, Rule 18.8, Rule 19.1, Rule 20.4, and Rule 24.1. Counsel provided the Board members with a revised draft of the amendments, incorporating the suggestions received, for purposes of discussion and review by the Board.

Findings of Fact

The Board, upon review of the transcripts of the two public hearings on the proposed amendments to its regulations, and upon review of the written submissions received, determined to make additional changes in the draft amendments, consistent with the specific changes suggested.

The Board further determined that additional recommendations involving broad policy matters and substantive changes in the regulations would be deferred for discussion and possible action in the future.

The final draft of the proposed amendments reflects a process of deliberation and revision dating back several years, and represents an effort by the Board to adopt regulations that better reflect its operations, procedures, and standards with respect to compensation of victims.

Decision of the Board

The Board reviewed the various suggested changes at its meeting on January 6, 2009, and voted at its January 13, 2009 meeting, after further discussion, to make the changes reflected in the attached draft. The specific changes suggested (as set forth above in the Summary of Comments) were adopted, with some modifications.

The Board determined that the changes adopted as a result of public comments were non-substantive in nature. These changes were made to alter only the style and form of the regulations, and to correct technical and typographical errors. In addition, certain changes were made to conform the regulations to changes in the basic law governing the Board's operations. See 29 *Del.C.* §10113(b)(4) and (5). The revised proposal adopted by the Board thus does not constitute a new proposal, and is not subject to the notice requirements of 29 *Del.C.* §10115. Nor is the Board required to repropose the changes adopted on January 13, 2009. 29 *Del.C.* §10118(c).

Text of Rules Adopted

The final version of the proposed amended regulations of the Board is attached hereto.

ADOPTED, this 3rd day of February, 2009 by the undersigned members of the Violent Crimes Compensation Board:

Thomas W. Castaldi, Chairman
Leah Betts, Vice Chairwoman

V. Lynn Gregory, Commissioner
Terry A. Koston, Commissioner
Stephanie I. Liguori, Commissioner

Barbara Brown, Executive Director

301 Violent Crimes Compensation Board Rules and Regulations

1.0 Statement Of Goals (Formerly Rule III)

- 1.1 The Violent Crimes Compensation Board, hereby, declares that it serves a public purpose, and is of benefit to:
- 1.1.1 ~~individuals who are victimized within the State of Delaware;~~
 - 1.1.2 ~~Delaware residents who are victimized without the State of Delaware in possessions or territories of the United States not having eligible crime victim compensation programs;~~
 - 1.1.3 ~~Delaware residents who are victimized during acts of terrorism committed outside the United States.~~
 - 1.1.4 ~~The Violent Crimes Compensation Board shall promote the welfare of victims of crime by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the family and dependents of those victims.~~
the victims of violent crimes committed within the State of Delaware, [and to Delaware residents who are victims of crimes committed and] in States that do not have a funded Victim Compensation Program [and offering equivalent benefits. ~~It~~ It] is the purpose of the Violent Crimes Compensation Board to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victim of certain crimes, and the family and dependents of those victims and Delaware residents who are victimized by terrorist attacks committed inside or outside the United States.

2.0 ~~Address Of The Board; Office Hours (Formerly Rule II)~~

- 2.1 ~~All communications of the Board shall be addressed to the "Violent Crimes Compensation Board, State of Delaware", at the office address of the Board or such other address as the Board shall otherwise make known.~~
- 2.2 ~~The office of the Board will be open from 8:00 a.m. until 4:00 p.m. of each weekday except legal holidays, and unless otherwise provided by statute or Executive Order.~~

32.0 Definitions (Formerly Rule I)

- 32.1 The definitions set forth in 11 **Del.C.** Ch. 90 of the Delaware Criminal Code are, hereby adopted by this Board, and incorporated by reference in these rules which reads as follows: Section 9002 "The following words, terms and phrases, when used in this Act, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:
- 'Board' shall mean the Violent Crimes Compensation Board as established by this Act;
- 'Child', shall mean an unmarried person who is under eighteen years of age, and shall include the step-child or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.
- 'Crime' for purposes of this Chapter shall mean:
- (1) any specific offense set forth in Chapter 5 of Title 11 of the Delaware **[Criminal] Code [as the same appears in Chapter 497, Volume 58, Laws of Delaware]**, if the offense was committed after **[July 1, 1973, the effective date of said Criminal Code]** and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or

- unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, [or] unlawful use of firearms[, **stalking, endangering the welfare of a child, driving under the influence of any alcohol or drug or driving with a prohibited blood alcohol concentration, or hit-and-run, or any act of domestic violence or abuse**];
- (2) any specific offense set forth in Chapter 3, Title 11 of the Delaware Code if such offense was committed prior to ~~[July 1, 1973, the effective date of the Delaware Criminal Code, as set forth in Chapter 497, Volume 58, Laws of Delaware,]~~ and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms;
 - (3) Any specific offense occurring in another state possession or territory of the United States **[in which a person]** whose domicile is in Delaware is a victim, if the offense contain the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, riot robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this title. (66 **Del. Laws**, c. 269, Section 11.)
 - (4) Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this Title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;
 - (5) An act of terrorism, as defined in ~~[Section 2331 of Title 18 18 U.S.C. §2331, committed outside, or inside], [the] United States [Code, committed outside the United States]~~ against a resident **[or domiciliary]** of this State. ~~[(Effective date of amendment 4/8/97.)]~~

'**Dependent**' shall mean a person wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim;

'**Guardian**' shall mean a person[, **governmental instrumentality, or private organization who is**] entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent;

'**Incompetent**' shall mean a person who is incapable of managing his own affairs, as determined by the Board or by a court of competent jurisdiction;

'**Personal Injury**' shall mean bodily harm, ~~[or extreme]~~ mental[, **emotional, or psychological harm suffering**], and shall include pregnancy of the victim **[resulting from the crime]**.

'**Pecuniary Loss**' in instances of personal injury shall include medical expenses, including psychiatric care, non-medical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; **[crime scene cleanup, moving expenses, essential personal safety property, insurance deductibles,]** and loss of future earnings[, **including, but not limited to, reimbursement for vacation, sick, and compensatory time**] because of a disability resulting from such personal injury. 'Pecuniary Loss' in instances of death of the victim shall include funeral and burial expenses and loss of support to the dependents of the victim. Pecuniary loss includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage. Pecuniary loss", as defined in [44 Del.C.] §9002, shall include only the net amount of enumerated expenses actually and necessarily sustained as a result of personal injury or death occurring due to a crime. Compensation for increased rent or mortgage payments due to relocation of the victim as a result of the crime shall be limited to the net amount of any increase.

"Permanent and total disability" for purposes of §9007(d) shall mean that a victim has sustained a personal injury that prevents the victim from working or functioning, and from which no recovery is expected, within reasonable medical certainty.

"**Secondary Victim**" shall mean any parent, stepparent, grandparent, son, daughter, spouse, ~~brother or sister of the victim~~ sibling, half-sibling, fiancée, caretaker of the victim; any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an

act of domestic violence; the parents of a victim's spouse; or any other person who resided in the victim's household at the time of the crime or at the time of the discovery of the crime.

'Victim' shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this Chapter.

43.0 Quorum (Formerly Rule XXIII)

- 43.1 Three members shall constitute a quorum for all hearings and business of the Board, except a hearing in which the claimant has requested no more than \$5,000.00 compensation and in that instance a quorum of the Board shall be one (1) member. Where an opinion is divided, the majority shall prevail.

54.0 Meetings (Formerly Rule XXIV)

- 54.1 Meetings shall be held upon notice by the Chairman or the Executive Director at such time and place directed.
- 54.1.1 The Board will maintain a running agenda of all business matters to be discussed and acted upon. Following the hearing of claims, the Board, at its discretion and as time permits, may convene a session to address any matters on its running agenda.
- 54.1.2 A meeting solely for the purpose of addressing Board business shall be held within 30 days. Adopted October 17, 1991. Revised January 7, 1993.

65.0 Seal (Formerly Rule XXV)

- 65.1 The Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words **VIOLENT CRIMES COMPENSATION BOARD, STATE OF DELAWARE.**

76.0 Rules Of Evidence (Formerly Rule IX)

- ~~[76-4]~~ The Board is not bound by the Rules of Evidence. Hearsay evidence is admissible.

87.0 Availability Of Rules (Formerly Rule XX)

- ~~[87-4]~~ The rules of the Board shall be available to the public at the office of the Violent Crimes Compensation Board[, and online through the Board's website]. A copy of these rules and regulations shall be on file with all ~~[the]~~ County law libraries.

98.0 Construction Of Rules (Formerly Rule XXI)

- ~~[98-4]~~ These rules shall be liberally construed to accomplish the purpose of 11 Del.C. Ch. 90.

409.0 Amendments Of Rules (Formerly Rule XXII)

- 40.1.2 9.1 New rules may be adopted and any rules may be amended or rescinded by the Board at a regular or special meeting following compliance with the Administrative Procedures Act, 29 Del. Laws, c. 101, Subchapter I and II.
- 40.1 9.2 New rules, amendments, or revisions shall become effective the date approved by the Board in accordance with according to 11 Del.C. Ch. 90, [Section §]9004(d), which reads as follows: "The Board shall have the following functions, powers, and duties:
- 40.1.1 Section 9004(d) 'to adopt, promulgate, amend, and rescind such rules and regulations as are required to carry out the provisions of this Chapter'."

4410.0 The Secretary; Filing Of Papers (Formerly Rule IV)

- 4410.1 The Secretary shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Board, and of its findings, determinations, reports, opinions, orders, rules, regulations and approved forms.
- 4410.2 All orders and other actions of the Board shall be authenticated or signed by the Secretary or other person as may be authorized by the Board.
- 4410.3 All pleadings or papers required to be filed with the Board shall be filed in the office of the Board within the time limit, if any, fixed by law or Board rule for such filing; and similarly all requests for official information, copies of official records, or opportunity to inspect public records shall be made to the Secretary of the Board.
- 4410.4 Crime victims case files and records maintained by the **Violent Crimes Compensation Board** shall fall under the open records provision of the Freedom of Information Act, 29 **Del.C. [6- Chapter]** 100.
- 4410.5 Communications addressed to the Board and all petitions, and other pleadings, all reports, exhibits, dispositions, transcripts, orders and other papers or documents, received or filed in the office kept by the Secretary, shall be stamped showing the date of the receipt or filing thereof.

4421.0 Forms (Formerly Rule XIII)

- ~~[4421.4]~~The Board shall prepare and furnish claim forms and brochures.

4432.0 Filing Of Claims (Formerly Rule V)

- 4312.1 In addition to all other statutory requisites, claims must be filed on official forms which include subrogation, authorization, and consent agreements in the office of the Violent Crimes Compensation Board, ~~located at 1500 E. Newport Pike, Suite 10, Wilmington, Delaware, 19804~~ within one year of the date of the crime.
- 12.2 If the Board, in its investigation of a claim, requires further documentation from the claimant, such documentation must be submitted to the Board no later than 45 days of the date of the Board's request.
- 12.3 A victim who seeks compensation for temporary housing, rent, security deposit, furniture and/or moving expenses must submit documentation, to include an old and new lease, within 45 days of the Board's request therefor.
- 12.4 If the victim seeks compensation for an injury sustained while in the course and scope of employment, the victim must submit a claim for worker's compensation, and provide documentation thereof, before making application to the Board for compensation.

4413.0 Publication Of Claims (Formerly Rule XIX)

- ~~[4413.4]~~The Board shall maintain confidentiality of records in accordance with the open records provision of the Freedom of Information Act, 29 **Del.C.** Ch. 100.

4514.0 Investigation Of Claims (Formerly Rule VIII)

- ~~[4514.4]~~All claimants must fully cooperate with investigators or representatives of this agency in order to be eligible for an award. In the event that cooperation is refused or denied, the Board may deny a claim for lack of cooperation.

4615.0 Burden Of Proof (Formerly Rule VI)

- 4615.1 In compensation cases, the burden of proof shall be upon the petitioner, ~~it~~ is also the victim's burden to prove that he or she was an innocent victim of a violent crime, and that he or she cooperated in the apprehension and/or conviction of the perpetrator of the crime.

15.2 The victim also has the burden of proving that he/she sustained a loss or incurred an expense as a result of a violent crime that is compensable according to the statutory authority and the Rules of the Board.

4716.0 Exhibits (Formerly Rule VII)

~~[4716.4]~~ Exhibits and case file documents submitted prior to or after the **Violent Crimes Compensation Board's** hearings shall be maintained in accordance with the provisions of the Department of State, Bureau of Archives and Records Management.

4817.0 Subpoenas, Etc. (Formerly Rule XIV)

4817.1 Any Board member, and the Executive Director, shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and records relevant to any investigation or hearing authorized by 11 **Del.C.** §9015.

4817.2 The Board or any staff member may take, or request, affidavits and ~~[dispositions depositions]~~ of witnesses residing within or without of the State.

4918.0 Hearings (Formerly Rule X)

4918.1 Notice of hearings shall be posted in the office of the Violent Crimes Compensation Board **[and online at the Board website at least]** seven days prior to the scheduled hearing dates. Special meetings or rescheduled hearings shall be posted no later than 24 hours prior to the scheduled time.

4918.2 The Board may receive as evidence, any statements, documents, information or material, it finds **[is are]** relevant and of such nature as to afford the parties a fair hearing. The Board may also accept police reports, hospital records and reports, physicians reports, etc., as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or attending physician at the hearing.

4918.3 Any claimant may request to be heard by the Board following the initial claim hearing, if he/she is dissatisfied with the decision of the Board. The request to be heard before the Board must be in writing and must be received in the office of the **Violent Crimes Compensation Board** within 15 days of the Board's decision. The written statement must include any and all reasons for the dissatisfaction.

4918.4 The Board may arrange for a medical or mental health examination by a physician designated by the Board. A written report of such examination shall be filed by the attending physician with the Board. The physicians's fee shall be paid directly by the Board.

4918.5 All witnesses shall testify under oath (or by affirmation), and a record of the proceedings shall be recorded. The Board may examine the claimant and all witnesses.

4918.6 Claim hearings shall be open to the public. However, the Board may hold private deliberations under the following circumstances:

4918.6.1 When the claim to be considered derives from any sexual offense;

4918.6.2 When the claim to be considered derives from any offense by a child, unless such child has been deemed amenable to the jurisdiction of a criminal court;

4918.6.3 When the claim to be considered derives from any matter not yet adjudicated.

4918.7 A claim under \$5,000.00 may be heard by one Board Member

4918.8 A request to reopen a claim may be heard by one Member if the reopen request for compensation is less than \$5,000.00. If the reopen request for compensation is more than \$5,000.00, the request to reopen shall be heard by a quorum of the Board.

4918.9 If a claim is filed more than one (1) year after the crime occurrence, or if the claim was reported to law enforcement more than 72 hours after the commission of the crime, the claim may be reviewed by one member to accept or deny for processing.

18.10 Under no circumstances shall the Board reopen or reinvestigate a case after the expiration of two (2) years from the date of decision rendered by the Board.

18.11 Where a victim applies for additional compensation for expenses incurred more than one year from the crime occurrence, the Board may require a new physical or mental examination, in order to ascertain causal connection to the original occurrence.

~~20~~19.0 Attorneys (Formerly Rule XI)

~~20~~19.1 ~~[All-c]~~ Claimants have the right to be represented before the Board by an attorney, who is licensed to practice in the State of Delaware. The attorney shall file a notice of appearance.

~~20~~19.2 Service upon the claimant's attorney shall be deemed as service on the party he/she represents.

~~24~~20.0 Attorney Fees (Formerly Rule XII)

~~24~~20.1 The attorney representing a claimant before this Board must submit an affidavit setting forth the total number of hours expended and describe the nature of the work performed.

~~24~~20.2 The Attorney's fees shall not exceed \$1,000.00.

~~24~~20.3 Attorney's fees shall be awarded at the discretion of the Board.

~~24~~20.4 Attorney's fees may be 15% of the total amount awarded to the victim, but not to exceed \$1000.00; or a fee based on the number of hours spent in representing the claimant. ~~[The Hh]~~ourly fee rate ~~[to will]~~ be determined by the Board.

~~24~~20.5 No prior agreement between an attorney and a client to pay the attorney a fee out of the client's award will be honored by the Board. Any such arrangement is unlawful.

~~24~~20.6 Upon application to the Board for attorney's fees, the service rendered the injured victim, as well as the time spent and uniqueness of the case, will be considered in determining the allowance of attorney's fees.

~~20.7~~ The amount of any attorneys fee award shall not be included within the total compensation subject to the limits set forth in §9007(d).

~~22~~21.0 Appeal (Formerly Rule XXII)

~~22~~21.1 All questions relating to an appeal shall be determined in accordance with Chapter 90, Section 9005, Title 11, of the Delaware Code ~~which reads as follows:~~

~~22~~21.2 ~~Section 9005(c) "The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable.~~

~~22.3~~ Any claimant who is aggrieved by the Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the Superior ~~Court~~ **[Court Court]** within (30) thirty days of the decision of the Board. Any appeal to Superior Court shall not be de novo.

~~23~~22.0 Denial Of Claim; Reduction (Formerly Rule XVIII)

~~23~~22.1 All questions relating to denial of a claim shall be determined in accordance with Chapter 90, Title 11, Section 9006, of the Delaware Code ~~which reads as follows:~~

~~23.1.1~~ "The Board shall deny payment of a claim for the following reasons:

~~23.1.1.1~~ Where the claimant was the perpetrator of the crime on which the claim is based, or was the principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred.

~~23.1.1.2~~ Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime.

~~23.1.1.3~~ Where the claimant refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question.

- ~~23.1.1.4~~ Where the claim has not been filed within one year after the personal injury on which the claim is based, unless an extension is granted by the Board.
- ~~23.1.1.5~~ Where the claimant has failed to report the crime to a law enforcement agency within 72 hours of its occurrence; provided, however, that the Board in its discretion, may waive this requirement if the circumstances of the crime render this requirement unreasonable.
- ~~23.1.1.6~~ Where the victim is injured as a result of their own suicide or attempted suicide.
- ~~23.1.1.7~~ Where the victim has sustained injuries during a drug-related crime in which the victim was an illegal participant.
- ~~23.1.1.8~~ Where the victim is delinquent in the payment of an penalty assessment levied pursuant to 11 ~~Del.C.~~ §9012, or in the payment of an order of restitution payable to the Victim Compensation Fund; provided, however, that the Board may condition payment of a claim upon the satisfaction of such delinquencies. In addition, the Board may, for hardship or other good cause, waive the provision of this paragraph in their entirety.

~~2322.2~~ In determining whether or not to make an award under the provisions of this Chapter, or in determining the amount of any award, the Board may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death; unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender. The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable.

~~23.3~~ If the victim bears any share of responsibility that caused his injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced, if the victim of the personal injury in question, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident, giving rise to the injury.

2423.0 Dependency (Formerly Rule XVI)

- ~~2423.1~~ All questions relating to dependency shall be determined in accordance with 11 ~~Del.C.~~ Ch. 90 §9002 which reads as follows:
- ~~2423.2~~ Section 9002(d) "Dependent shall mean a person who is wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetenc[ye] of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim."

2524.0 Emergency Awards (Formerly Rule XV)

~~[2524.1]~~The Board will make an emergency award only upon a showing of dire necessity. The claimant, must, in writing, request an emergency award when submitting his claim form and show just cause as to why such an award should be considered. No such award will be made until the police report **[or other official documentation from the appropriate law enforcement agency]** is acquired.

2625.0 Mental Health Practitioner Qualifications/Licensure (Formerly Rule XXIX)

- ~~2625.1~~ To be eligible for crime victim's compensation for **[psychological assessments and]** mental health counseling treatment, within and without the State of Delaware, a practitioner possessing an advanced degree in an applied mental health discipline must provide assessment and treatment. The advanced degree should be in Psychiatry, Psychology, Social Work, Counseling, or Psychiatric Nursing.
- ~~2625.2~~ To be eligible for crime victim's compensation for adult psychological assessments and mental health counseling treatment, within and without in the State of Delaware, a licensed psychologist or a licensed psychiatrist mental health practitioner must perform the assessment unless waived by the Board provide services.

- ~~26.3~~ To be eligible for crime victim's compensation for child psychological assessments, within and without the State of Delaware, a licensed child psychologist or a licensed child psychiatrist must perform the assessment unless waived by the Board.
- ~~26.4~~ To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, a licensed mental health practitioner must provide services. The five disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits is are: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.
- ~~26.5~~ 25.3 Payment for mental health treatment received outside the State of Delaware will be evaluated for practitioner's licensure on a case-by-case basis by the Violent Crimes Compensation Board.
- ~~26.6~~ 25.4 The Violent Crimes Compensation Board may consider payment for mental health counseling services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by the Violent Crimes Compensation Board, as set forth in ~~paragraph one, sentence two~~ Rule 27.1 above. The Violent Crimes Compensation Board will decide claims for payment of services rendered by an unlicensed practitioner on a case-by-case basis.

2 DE Reg. 1670 (3/1/99)

~~27.0~~ Mental Health Counseling Award (Formerly Rule XXVIII)

Removed March 11, 1999

2 DE Reg. 1670 (3/1/99)

~~28.0~~ Mental Suffering Award (Formerly Rule XXVI)

Removed March 11, 1999 (Prohibited by statute effective February 11, 1992)

2 DE Reg. 1670 (3/1/99)

~~2926.0~~ Burial Awards (Formerly Rule XXVII)

~~[2926.4]~~ The aggregate award for funeral and burial shall not exceed \$8,500.00

~~3027.0~~ Child Victim Counseling and Assessment Program (CCAP) Provisions (Formerly Rule XXX)

~~[3027.4]~~ For the purposes of section 9020(c), up to \$1,200.00 may be paid from the victim's compensation fund on behalf of each child victim of crime for reasonable costs incurred for psychological assessments and short-term counseling.

2 DE Reg. 1670 (3/1/99)

28.0 Collateral Sources of Compensation; Subrogation

- 28.1 Any award made by the Board shall be reduced by the amount, if any, of compensation the claimant has received or will receive as indemnification from any other source, including insurance of any kind. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9005(1)]
- 28.2 The Board shall deduct from its award the amount of any compensation for personal injury of death arising from the crime or incident and received by the victim, or by the victim's dependents. Such compensation includes payments by or on behalf of the offender, from any insurer, and from any governmental entity. The amount of compensation to be deducted from the Board's award shall be the net amount of compensation paid to the victim, after deductions for costs or attorney fees. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9008(d)]
- 28.3 Where an award has been made, and the claimant subsequently receives reimbursement from any source set forth above, in Rules 31.1 and 31.2, with the exception of life insurance, the Board may recover reimbursement from the claimant, up to the amount of the award.

- 28.4 Prior to making an award, the Board shall require the claimant to execute an agreement acknowledging the claimant's understanding that any award is net of funds received from collateral sources, and further acknowledging the claimant's obligation to reimburse the Board to the extent of any such funds received from collateral sources.
- 28.5 Any attorney representing a client before the Board is bound by the Rules set forth herein regarding collateral sources of compensation.

32.0 Travel Awards
2 DE Reg. 1670 (3/1/99)

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 220

220 Diversity
REGULATORY IMPLEMENTING ORDER

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 220 Diversity to add a definition and to clarify districts reflect practices that ensure diversity in the school community.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on January 12, 2009, in the form hereto attached as *Exhibit "A"*. The Department received comments from both the State Council for Persons with Disabilities and the Governors Advisory Council for Exceptional Citizens. The Department has adopted the recommended changes which include a grammatical correction and reinstatement of a statement that was to be deleted in the proposed amended version.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 220 Diversity in order to add a definition and to clarify district diversity practices are adopted and represented in the Success Plans.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 220 Diversity. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 220 Diversity attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 220 Diversity 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** 220 Diversity amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 220 Diversity in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on February 13, 2009. 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 13th day of February 2009.

DEPARTMENT OF EDUCATION

Lillian M. Lowery, Secretary of Education

Approved this 13th day of February 2009

220 Diversity

1.0 Definitions

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

"Diversity" in a school community means ~~it A school community that values diversity is one which~~ embraces and builds on the strengths of individual and group differences, and by so doing enriches the educational program for all students. A ~~The curriculum that~~ is inclusive of many racial, ethnic, regional, religious, linguistic, and socioeconomic groups, ~~[and] which~~ gives visibility to both women and men, to people of all ages, and to persons with disabilities, ~~[and] affirms the richness of our pluralistic society. [The Secretary of Education believes that students achieve their best in classrooms where diversity is commonplace.~~ The Secretary of Education believes that **students achieve their best in classrooms where diversity is commonplace.]**

"Success Plan" means the web-based document submitted to the Department of Education as part of the request for state and federal funds that provides the mission, goals, objectives, measures, and strategies of the district or school.

2.0 Each School District Shall

- 2.1 Infuse information on diverse cultural groups throughout the K to 12 curriculum in order to equip students with the knowledge and skills necessary to participate productively in a culturally diverse society.
- 2.2 Provide professional development to equip all teachers with various instructional techniques and best practices.
- 2.3 Describe in district ~~strategie~~ success plans and school success plans how disparities and gaps in student achievement associated with the student's gender, race, ethnicity, socioeconomic status, limited English proficiency, or disability will be identified and eliminated.
- 2.4 Provide student counseling, assessment, discipline and placement that is sensitive to the needs of diverse populations.
- 2.5 Provide appropriate instruction to limited English proficient students so that they will have success in a mainstream classroom where the medium of instruction is English.
- 2.6 Describe in the district ~~strategie~~ success plan a strategy to attract and retain a highly skilled and committed faculty and staff reflective of the diversity in the school community.
- 2.7 Enact measures to avoid and address inequitable and prejudicial behaviors among employees and students.
- 2.8 Describe in the school success plans specific ways principals and building staff create an atmosphere which recognizes, accepts and values diversity as a positive, integral resource of a democratic society.

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

7 DE Reg. 1177 (3/1/04)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 240

REGULATORY IMPLEMENTING ORDER

240 Recruiting and Training of Professional Educators for Critical Curricular Areas

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to reauthorize 14 DE Admin. Code 240 Recruiting and Training of Professional Educators for Critical Curricular Areas with no changes.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, January 12, 2009, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to reauthorize 14 DE Admin. Code 240 Recruiting and Training of Professional Educators for Critical Curricular Areas in order to be in compliance with the 5 year review cycle.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to reauthorize 14 DE Admin. Code 240 Recruiting and Training of Professional Educators for Critical Curricular Areas. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 240 Recruiting and Training of Professional Educators for Critical Curricular Areas attached hereto as *Exhibit "B"* is hereby reauthorized. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 240 Recruiting and Training of Professional Educators for Critical Curricular Areas hereby reauthorized 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 240 Recruiting and Training of Professional Educators for Critical Curricular Areas reauthorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 240 Recruiting and Training of Professional Educators for Critical Curricular Areas in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on February 19, 2009. 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 19th day of February 2009.

DEPARTMENT OF EDUCATION

Lillian M. Lowery, Secretary of Education

Approved this 19th day of February 2009

STATE BOARD OF EDUCATION

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

G. Patrick Heffernan

Barbara Rutt

Dr. Terry M. Whittaker

***Please note that no changes were made to the regulation as originally proposed and published in the January 2009 issue of the *Register* at page 895 (12 DE Reg. 895). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

240 Recruiting and Training of Professional Educators for Critical Curricular Areas

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1580

REGULATORY IMPLEMENTING ORDER

1580 School Library Media Specialist

I. Summary of the Evidence and Information Submitted

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 regulation 14 **DE Admin. Code** 1580 School Library Media Specialist. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is appropriate to amend this regulation as it has been 5 years since the last review of this regulation and some clarification was warranted. This regulation sets forth the requirements for a School Library Media Specialist.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on January 5, 2009 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend 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 amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1580 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 5TH DAY OF FEBRUARY, 2009

Kathleen Thomas, Chair	Joanne Christian
Samtra Devard	Marilyn Dollard
Karen Gordon	Cristy Greaves
Lori Hudson	David Kohan
Jill Lewandowski	Wendy Murray
Gretchen Pikus	Whitney Price
Karen Schilling-Ross	Michael Thomas
Carol Vukelich	Cathy Zimmerman

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Lillian Lowery Ed.D., Secretary of Education

IT IS SO ORDERED THIS 19TH DAY OF FEBRUARY, 2009

STATE BOARD OF EDUCATION

Richard M. Farmer, Jr., Vice President	G. Patrick Heffernan
Jorge L. Melendez	Barbara Rutt
Dennis J. Savage	Dr. Terry M. Whittaker

***Please note that no changes were made to the regulation as originally proposed and published in the January 2009 issue of the *Register* at page 901(12 DE Reg. 901). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

1580 School Library Media Specialist

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1597

REGULATORY IMPLEMENTING ORDER

1597 Delaware Professional Teaching Standards

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1597 Delaware Professional Teaching Standards. It was fitting to review this regulation as it has been 5 years since the initial draft and inception of this regulation. Upon review it was felt that the standing regulation language is still appropriate and relevant. This regulation sets forth the criteria for Delaware Professional Teaching Standards.

Notice of the proposed reauthorization of the regulation was published in the *News Journal* and the *Delaware State News* on January 5, 2009 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to reauthorize this regulation.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to reauthorize the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby reauthorized. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby reauthorized 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 reauthorized shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1597 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 5TH DAY OF FEBRUARY, 2009

Kathleen Thomas, Chair
Samtra Devard
Karen Gordon
Lori Hudson

Joanne Christian
Marilyn Dollard
Cristy Greaves
David Kohan

Jill Lewandowski
Gretchen Pikus
Karen Schilling-Ross
Carol Vukelich

Wendy Murray
Whitney Price
Michael Thomas
Cathy Zimmerman

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Lillian Lowery Ed.D., Secretary of Education

IT IS SO ORDERED THIS 19TH DAY OF FEBRUARY, 2009

STATE BOARD OF EDUCATION

Richard M. Farmer, Jr., Vice President
Jorge L. Melendez
Dennis J. Savage

G. Patrick Heffernan
Barbara Rutt
Dr. Terry M. Whittaker

***Please note that no changes were made to the regulation as originally proposed and published in the January 2009 issue of the *Register* at page 904 (12 DE Reg. 904). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

1597 Delaware Professional Teaching Standards

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

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

4406 Home Health Agencies--Aide Only (Licensure)**Nature of the Proceedings:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Home Health Agencies. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Section 122 (3)o.

On October 1, 2008 (Volume 12, Issue 4), 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 October 30, 2008, or be presented at a public hearing on October 23, 2008, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written and verbal comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings of Fact:

Based on comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Home Health Agencies are adopted and shall become effective March 10, 2009, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary

Summary of Evidence

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Home Health Agencies were published in the Delaware State News, the News Journal and the Delaware Register of Regulations. Verbal and written comments were received on the proposed regulations during the public comment period (October 1, 2008 through October 30, 2008). Entities offering written comments included:

- State Council for Persons with Disabilities
- Delaware Developmental Disabilities Council
- Governor's Advisory Council for Exceptional Citizens
- Christiana Care Visiting Nurse Association, Rhonda Combs
- Bayada Nurses, Jean Mullin
- Delaware Association for Home and Community Care, Ruth Hansen
- Addus Healthcare, Reed Mortimer

Public comments and the DHSS (Agency) responses are as follows:

Definitions of Parent/Branch should be the same as Medicare Conditions of Participation for Home Health Care. Suggest remove the requirement for location within a 50 mile radius. While mileage is a factor to consider when determining supervision of staff it should not stand alone as the only requirement when determining the ability of the parent to provide oversight to branch units in a state as small as Delaware.

Agency Response: The definitions are similar to those used in the Federal regulations. While mileage will not be the only factor considered when determining an agency's oversight capability, the mileage provides a guideline for same.

Definitions of Patient Record should clearly delineate that written does not include the computerized medical record.

Agency Response: Computerized records are considered written records and are considered compliant within the definition.

Disciplinary Proceedings - "exhibited a pattern of cyclical deficiencies..." -Is the pattern limited to severity or to any type of repeat deficiency?

Agency Response: Any type of deficiency exhibited over a period of two or more years with sanctions dependent upon the facts of each individual case.

General Requirements - "...shall advise...following any change in the designation of the director or other administrative personnel within the agency" - Need to define administrative personnel - who does this include?

Agency Response: Only two "administrative personnel" are defined within the regulations (director and clinical director). For clarification we will change this to read "...designation of the director or clinical director..."

Records and Reports - "All notes written in the patient record must be signed and dated on the day that the service is rendered" - Does this include authentication by the computer or telephony user?

Agency Response: Yes. We will change the section to read, "All notes written in the patient record must be signed and dated or authenticated on the day that the service is rendered."

Quality Improvement - "A review of patient deaths" - Expected versus unexpected at the agency?

Agency Response: This regulation requires a review of all patient deaths.

REGULATION 4406: HOME HEALTH AGENCIES - AIDE ONLY LICENSURE

In Section 1.0, definition of "home health aide", first sentence, recommend insertion of "and/or patient" after the term "licensed nurse" to encompass patient-delegated services within the scope of Section 6.4 and Title 24 Del.C. §1921(a)(19).

Agency Response: 6.4.1 of the proposed regulations addresses patient delegated services. This phrase within the definition of home health aide refers only to those services that can be performed by an aide if delegated by a nurse.

In Section 1.0, the Division may wish to consider a revision of the definition of "immediate jeopardy" to comport with the terminology used in Section 2.4.4.1 ("immediate and imminent danger"). Otherwise, a provider could argue that the standard in Section 2.4.4.1 is either undefined or more narrow than "immediate jeopardy".

Agency Response: The Agency agrees and will change 2.4.4.1 to read, "...determines present an immediate jeopardy or imminent danger to the public health..."

In Section 1.0, definition of "parent agency", the requirement that the parent agency be located within 50 miles of any "branch" is difficult to justify. For example, if Easter Seals main office is in Georgetown, it could not have a branch in Wilmington. Delaware is such a small state that the requirement that the parent agency be located in the State should suffice.

Agency Response: While Delaware is a small state, supervision cannot be properly provided from such a distance as Georgetown to Wilmington. Therefore, each office would need to be a parent in order to maintain administrative functions.

Section 2.1.4 requires any agency which "undergoes a change in ownership" ...to "reapply as a new agency". This is "overbroad". If the agency were a stock corporation, the change of one share of stock would "trigger" the need to reapply for a new license. Section 2.2.2.3.4 implies that ownership interests of less than 5% are so unimportant that they do not have to be disclosed to DPH. Moreover, Section 2.5 defines "modification of ownership and control" as encompassing only significant changes in ownership. For consistency, DPH should consider amending Section 2.1.4 to read as follows: "An agency that anticipates a modification of ownership and control as defined in Section 2.5 is required to apply as a new agency"

Agency Response: The Agency agrees and will change 2.1.4 to read, "Any agency that undergoes a modification of ownership and control is required to re-apply as a new agency."

In Section 2.3.1.1, recommend the following amendment: "A probationary license shall be granted to every agency that completes the application process consistent with these regulations and whose policies and procedures have demonstrated willingness to comply demonstrate compliance with the rules and regulations..." The "willingness" reference suggests a subjective intent standard rather than an objective criterion. Contrast the DPH personal assistance services agencies regulations, Part 4469, Section 2.3.1.1: "A probationary license shall be granted for a period of ninety (90) calendar days to every agency that completes the application process consistent with these regulations."

Agency Response: The Agency agrees and will change 2.3.1.1 to read, "A probationary license shall be granted for a period of ninety (90) calendar days to every agency that completes the application process consistent

with these regulations and whose policies and procedures demonstrate compliance with the rules and regulations pertaining to home health agency - aide only licensure."

In Section 2.3.2.1, recommend substituting "may" for "shall". This is the approach adopted in the DPH personal assistance services agencies regulations, Part 4469, Section 2.3.2.1: "A provisional license may be granted to a period of less than one year to all personal assistance agencies that....". Use of the term "may" provides DPH with more discretion.

Agency Response: The Agency agrees and will substitute "may" for "shall".

Recommend adding a reference to Section 2.4 prohibiting reprisal against any employee, contractor, patient, or patient's representative for cooperating with a Departmental disciplinary investigation or proceedings. Although there is limited reference protecting patients and representatives in Section 5.4.2.5, it would be prudent to include an explicit reference in Section 2.4 as well. Moreover, there is no other provision protecting employees and contractors who cooperate with the Department in investigations and disciplinary proceedings.

Agency Response: The Agency respectfully disagrees. These regulations are written for the purpose of protecting the patient. There is no reference as suggested in any of DPH's other regulations.

In Section 2.4.1.8, there is a lack of parallel form. All other subparts (Sections 2.4.1.1 through 2.4.1.9) begin with a verb. Consider the following amendment: "2.4.1.8. Committed a serious violation of statutes..." Alternatively, the same section in the proposed skilled home health agency regulations (Part 4410) recites as follows: "Violated any status relating to Medicaid..."

Agency Response: The Agency agrees and will change 2.4.1.8 to read, "Violated any statutes relating to Medical Assistance or Medicare reimbursement for those agencies who participate in those programs; or..."

In Section 2.4.3.1.3, second sentence, consider deleting the comma between "based" and "shall". In addition, this Section states the same concepts that are stated in Sections 2.4.3.1.4 and 2.4.3.1.5, therefore, it appears redundant.

Agency Response: The second sentence is struck through and will not appear in the final regulations.

There is some "tension" between Section 2.4.4.1 and 2.4.4.2. The former section requires 24 hour advance oral or written notice of an emergency suspension of license. The latter section contemplates "forthwith" notice which must be in writing. The interrelationship between these notices is unclear. Moreover, if DPH envisions a single notice, the regulations are inconsistent since the first regulation allows "oral" notice while the second regulation requires notice "in writing". The Division may wish to clarify these sections to prevent any confusion.

Agency Response: Section 2.4.4.1 is the immediate notice to the agency. Section 2.4.4.2 is the follow up "formal" written notice.

In Section 2.4.4.5, second sentence, consider the following amendment: Upon a final decision of the Department, the order of temporary suspension shall be vacated or superseded by disciplinary action ordered by the Department. This is more accurate since the Department could determine that its temporary suspension order was a mistake or was inadvertently entered, justifying vacating of the order with no disciplinary action.

Agency Response: The Agency agrees and will amend as suggested.

Section 2.7.1 contains no minimum frequency for inspection of home health agencies. DPH should consider adopting a standard requiring at least annual inspections.

Agency Response: The agency intentionally left this open by using the term "periodically" so as not to create a predictable pattern of inspections. It is the Agency's experience that this is the most effective way to evaluate real-time performance and compliance efforts.

Section 3.7 requires the director or clinical director to be "available at all times during the operating hours of the home health agency". Since most agencies operate 24-hour shifts, this means that either the director or clinical director are on duty 24 hours/day. As a practical matter, if the director were out of town on vacation, and the clinical director was sick, the clinical director would still have to work. In contrast, the corresponding DPH personal assistance regulations, part 4469, Section 3.9, recites as follows: "The director or a designee of any agency shall be available to consumers at all times during the operating hours of the personal assistance services agency." DPH could consider a compromise (e.g. "director, clinical director, or designee with full authority to act in their stead"). This would comport with Sections 5.1.4 and 5.2.4.

Agency Response: The Agency respectfully disagrees. Sections 5.1.4 & 5.2.4 clarify this.

There is some "tension" between Sections 4.2.9. and 5.2.1. The former section contemplates governing body appointment of the clinical director. The latter contemplates agency director appointment of the clinical director.

Agency Response: The Agency respectfully disagrees. The Governing Body has the ultimate responsibility for all appointments. The Director, however, is actually responsible for making the appointment.

Section 5.2.3.1 literally requires the clinical director to be available 24 hours/day, 365 days/year, for agencies with 24 hour shifts. This is an impractical standard.

Agency Response: The Agency respectfully disagrees. Section 5.2.4 clarifies this by allowing the appointment of a designee in the clinical director's absence.

Section 5.4.2.5 disallows reprisal against patients and their representatives who complain to DHSS. Consistent with a previous comment above, it would be preferable to include a similar provision protecting employees and contractors.

Agency Response: The Agency respectfully disagrees. These regulations are written for the purpose of protecting the patient.

Recommend deletion of Section 5.4.2.6 since the content of this standard is already addressed in Section 3.10.

Agency Response: The Agency respectfully disagrees. Section 3.10 requires a plan for uninterrupted service. Section 5.4.2.6 requires action if the service is interrupted.

Section 5.7.10 requires annual competency testing of all employees. It is unclear if this applies to the director, clinical director, and other licensed supervisory personnel apart from home health aides. DPH may wish to clarify whether the requirement only applies to aides.

Agency Response: Clarification - this comment refers to Section 5.7.9, not 5.7.10. The requirement is that the testing be for anyone providing care to patients.

In Section 6.1.3.3 there is a lack of parallel form. Subsections 1-3 begin with a noun and are complete sentences. Subsection 4 is a clause. The next three subsections begin with a verb and are not sentences.

Agency Response: The Agency respectfully disagrees. When read in context and with the punctuation, there is not a lack of parallel form.

In Section 6.4.1.1, recommend substituting "Title 24 Del.C. §1921(a)(19)" for "Del.C.".

Agency Response: This was left more generic for other sections of the code that may apply and for those occasions when revisions are made.

In Section 6.4.2, recommend substituting "Title 24 Del.C. §1921(a)(9)" for "Del.C.".

Agency Response: This was left more generic for other sections of the code that may apply and for those occasions when revisions are made.

In Section 6.5.1.6.3, at a minimum, consider adding a reference to "frequency". See section 6.3.3.1 See also the proposed skilled home health agencies regulations, Part 4410, Section 6.5.5, which contemplates recording the following for "all medication and treatment": "date, time of day, type of medication/treatment, dose, route of self-administration/administration, by whom given and any reactions noted."

Agency Response: Section 6.5.1.6.3 refers to aide notes. The aides are required to document each time they provide a service. The aide care plan as noted in 6.3.3.1 includes the frequency. Please note that home health aides are not permitted to administer medications.

In Section 6.6.3, authorizing two weeks notice of involuntary discharge of a patient by a provider is too short. Compare Title 16 Del.C. §1121(18). It may be very difficult for a consumer to obtain an alternative agency services plan within two weeks. A 30 day notice would be preferable and be consistent with Section 2.8.1 which requires 30 day notice of termination of services by agencies voluntarily going out of business.

Agency Response: The Agency respectfully disagrees. The minimum 2 week notice is reasonable. The patient may negotiate a longer time frame if needed. The agency must inform the patient of the discharge and include the patient in the discharge planning.

Section 6.6.3.2 authorizes a provider to discontinue services immediately upon its unilateral determination that the patient should have a higher level of care. No notice would be required, leaving the consumer at great risk. In 2006, as assisted living agency unilaterally determined that a consumer (D.R.) exceeded the assisted living level of care and unilaterally terminated her services. The Division of Long-term Care Residents Protection conducted its own evaluation, determined the consumer eligible for assisted living services, and fined the provider who refused to reinstate services. Agencies make mistakes. If DPH allows abrupt, unilateral termination of services with no notice, this will create a huge "loophole" for agencies who simply wish to stop services with no notice. Moreover, if a consumer has decompensated to the point of needing more care, an orderly transition period to a higher level of care would be more logical than complete termination of services. The DPH approach is akin to a nursing home determining that a resident needs a hospital level of care and abruptly discharging the resident to the street!

Agency Response: The agency is required to "transfer" the patient to a higher level of care after informing the patient of the discharge, allowing the patient to participate in the discharge planning and developing a written discharge plan. This was included, not to permit agencies to dump patients, but to prevent them from keeping patients whose needs they can no longer meet.

The exception of notice for even minor, minuscule "non-compliance" with the plan of care or non-payment (§6.6.3.3) is highly objectionable. Contrast Title 16 Del.C. §1121(18), requiring 30 day notice of termination from long-term care facility for even non-payment. A provider could discharge a patient simply for contesting a \$10 charge that the patient feels is unjustified. Similarly, dispensing with notice "when care goals have been met" is subjective and objectionable. Recommend adoption of a 30 day notice period and deletion of exceptions (§§6.6.3.1-6.6.3.3) except for "emergency situations", akin to Title 16 Del.C. §1121(18). Apart from notice, would also recommend some authorization for patient appeal of the decision.

Agency Response: Agencies would be required to show documentation upholding a decision to discharge with less than 2 weeks notice. This requires prior communication with the patient and discharge planning.

Section 9.1 requires home health agencies to have "appropriate insurance coverage in force to compensate patients for injuries and losses resulting from services provided by the agency." Recommend adding "or failure to provide services". Otherwise, the insurance may cover negligent services but not omitted services (e.g. failure to turn patient resulting in bedsores; failure to assist with medications resulting in missed doses). Moreover, "appropriate" insurance is a subjective term. Contract the DPH personal assistance services regulation, Part 4469, Section 7.0:

- 7.1 The personal assistance services agency shall have appropriate insurance coverage in force to compensate consumers for injuries and losses resulting from services provided by the agency.
- 7.2 The following types and minimum amounts of coverage shall be in effect at all times:

- 7.2.1 General liability insurance covering personal property damages, bodily injury, libel and slander;
7.2.1.1 \$1 million comprehensive general liability per occurrence; and
7.2.1.2 \$500,000 single limit insurance.

Agency Response: This Section was added to ensure that Home Health Agencies (HHA) acquire insurance. The reason that it differs from the personal assistance services agency (PASA) requirements is that the PASAs are not required to employ the direct care worker. The home health aide must be an employee of the HHA. Also please note that aides do not administer medications.

Section 11.0, which covers "severability", contains overlapping and incomplete references. It would benefit from editing.

Agency Response: The Agency respectfully disagrees. When you eliminate the 1st sentence which is struck-through, there is no overlapping or incomplete references.

Page 2; 1.0 Definitions: There is no reference to the definition of "Caregivers". Can this be added to include the same information as in 4410; means those individuals employed by or under contract to a home health agency to provide personal care services or health care services to patients?

Agency Response: This is not necessary since all employees of an aide-only agency are home health aides and this is defined in the regulations.

Page 2; 1.0 Definitions; Contractor definition: Why is this definition clearly different than in 4410? Can 4406 be changed to "Staffing Agency" means an agency that holds a valid business license and provides staffing services to the home health agency? ...and...Can 4406 be changed to include the same definition of "Contractor" that is found in 4410; means an entity or individual that does not meet the definition of employee, who holds a valid business license and provides services for the agency?

Agency Response: The definitions are different for the following reasons: Contractors in the Skilled regulations are professionals that provide services for the agency. Home health aides in the Aide only regulations must be employed by the agency BUT the agency can contract with a staffing agency to provide personnel.

Page 2; 1.0 Definitions: The Director shall have a Baccalaureate Degree in Health or a related Field. Can this include current Directors to be grandfathered? Also, related field needs to be defined or edited to include any Baccalaureate Degree.

Agency Response: The director must have a baccalaureate in a health field (nursing, public health, healthcare administration, physical therapy, etc.). This section will be applied to anyone hired after the publishing of the final regulations.

Page 3; 1.0 Definitions; Home Health Aide; A Home Health Aide (A) has at least one year of practical experience in a hospital, nursing home, or home care setting; this is vague. Statement should include "verified" practical experience. Home care setting should be clearly a home care "agency" vs. private arrangement.

Agency Response: To prevent any possible misinterpretation of the regulations, the regulations will be changed to read, "...one year of practical experience in a Department licensed or approved hospital..."

Page 4; 1.0; Parent Agency; The parent agency is separately licensed from the branch(es) and must be located within 50 miles of the branch. Why must it be separately licensed?

Agency Response: So that each agency can be surveyed separately and will be able to stand on their own.

Page 5; 2.1.2; A separate license shall be required for each office maintained by a home health agency. What is the reason if an office is a branch and performs the same service?

Agency Response: So that each agency can be surveyed separately and will be able to stand on their own.

Page 7; 2.3.3.3; Existing home health agencies must apply for renewal of licensure at least (30) calendar days prior to the expiration date of the license. Currently, notification of a Desk Survey includes notification of renewal requirement; will there be anything similar to alert the agency regarding renewal prior to the 30 days?

Agency Response: A licensure renewal packet is sent to each agency 45 - 60 days prior to renewal. Included within this packet is a desk survey. The packet itself is notification of requirement for renewal.

Page 8; 2.4.1.8: Can this be changed to reflect the same wording as 4410; Violated any statutes relating to Medical Assistance or Medicare Reimbursement for those agencies who participate in those programs?

Agency Response: The Agency agrees and will change 2.4.1.8 to read, "Violated any statutes relating to Medical Assistance or Medicare reimbursement for those agencies who participate in those programs; or..."

Page 13; 3.10: This sounds as if there is a 100% coverage requirement. Family caregivers are typically trained to provide care in the event of an emergency, unsafe travel conditions and the occasional inability to identify a caregiver. Can this be written more realistically to allow for the above situations? (Or would Page 16; 5.4.2.6 cover this?)

Agency Response: Section 3.10 requires that the HHA plan for coverage. Section 5.5.2.6 is the procedure to follow in the event that the HHA is not able to provide services.

Page 15; 5.3.2.4: This section should be worded similarly to 4410; Page 17; 5.4.2.4, to include the clinical notes of the RN, periodic patient evaluation, and determining charges and reimbursement.

Agency Response: The Agency respectfully disagrees. The RN in this case would not be a contracted employee.

Page 19; 5.7.5; Training Requirements for Home Health Aides. Aides shall be offered a quarterly....This section was deleted; it should remain part of the regulation as it is in 4410.

Agency Response: The quarterly requirement was eliminated from both sets of regulations and inserted is a requirement for 12 hours of training annually. 12 hours annually falls in line with the requirement for certified nursing assistants and is more specific and measurable than quarterly.

Page 22; 6.2.4: Should include the same as 4410; 6.2.4; A registered nurse must participate in the reassessment and monitoring of the patient.

Agency Response: Section 6.2.1 requires that, "All assessments of the patient must be performed by a registered nurse."

Page 22; 6.3.1: Does not require a written plan of care established by the physician and developed in consultation with a registered nurse. This makes sense and should not be required for "aide only" services provided under 4410; Page 24, 6.3.1.

Agency Response: Skilled services require that a physician establish the care plan in consultation with an RN. Aide only services do not require that a physician be involved in the care planning.

Page 22; 6.3.3 should include a section for the requirement of "All pertinent diagnosis" as is required in 4410; 6.3.3.1.

Agency Response: This is not included as there is no requirement for physician involvement in aide-only services.

Page 24; 6.5.4 Why is the requirement "every 2 weeks" vs. every week in 4410? The requirement should be uniform in both sets of regulations.

Agency Response: Since aide-only agencies provide a lower level of care, it is adequate to have notes incorporated every 2 weeks.

4406 Home Health Agencies--Aide Only (Licensure)

***Please Note:** Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:

4406 Home Health Agencies--Aide Only (Licensure)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)o (16 **Del.C.** §122(3)o)
16 **DE Admin. Code** 4410

4410 Skilled Home Health Agencies (Licensure)

Nature of the Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Home Health Agencies. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122 (3)o.

On October 1, 2008 (Volume 12, Issue 4), 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 October 30, 2008, or be presented at a public hearing on October 23, 2008, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written and verbal comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings of Fact:

Based on comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Home Health Agencies are adopted and shall become effective March 10, 2009, after publication of the final regulation in the Delaware Register of Regulations.

Rita M. Landgraf, Secretary

Summary of Evidence

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Home Health Agencies were published in the Delaware State News, the News Journal and the Delaware Register of Regulations. Verbal and written comments were received on the

proposed regulations during the public comment period (October 1, 2008 through October 30, 2008). Entities offering written comments included:

- State Council for Persons with Disabilities
- Delaware Developmental Disabilities Council
- Governor's Advisory Council for Exceptional Citizens
- Christiana Care Visiting Nurse Association, Rhonda Combs
- Bayada Nurses, Jean Mullin
- Delaware Association for Home and Community Care, Ruth Hansen
- Addus Healthcare, Reed Mortimer

Public comments and the DHSS (Agency) responses are as follows:

Definitions of Parent/Branch should be the same as Medicare Conditions of Participation for Home Health Care. Suggest remove the requirement for location within a 50 mile radius. While mileage is a factor to consider when determining supervision of staff it should not stand alone as the only requirement when determining the ability of the parent to provide oversight to branch units in a state as small as Delaware.

Agency Response: The definitions are similar to those used in the Federal regulations. While mileage will not be the only factor considered when determining an agency's oversight capability, the mileage provides a guideline for same.

Definitions of Patient Record should clearly delineate that written does not include the computerized medical record.

Agency Response: Computerized records are considered written records and are considered compliant within the definition.

Disciplinary Proceedings - "exhibited a pattern of cyclical deficiencies..." -Is the pattern limited to severity or to any type of repeat deficiency?

Agency Response: Any type of deficiency exhibited over a period of two or more years with sanctions dependent upon the facts of each individual case.

General Requirements - "...shall advise...following any change in the designation of the director or other administrative personnel within the agency" - Need to define administrative personnel - who does this include?

Agency Response: Only two "administrative personnel" are defined within the regulations (director and clinical director). For clarification we will change this to read "...designation of the director or clinical director..."

Records and Reports - "All notes written in the patient record must be signed and dated on the day that the service is rendered" - Does this include authentication by the computer or telephony user?

Agency Response: Yes. We will change the section to read, "All notes written in the patient record must be signed and dated or authenticated on the day that the service is rendered."

Quality Improvement - "A review of patient deaths" - Expected versus unexpected at the agency?

Agency Response: This regulation requires a review of all patient deaths.

REGULATION 4410 SKILLED HOME HEALTH AGENCIES (LICENSURE)

In Section 1.0, definition of "home health aide", first sentence, recommend insertion of "and/or patient" after the term "licensed nurse" to encompass patient-delegated services within the scope of Section 6.4 and Title 24 Del.C. §1921(a)(19).

Agency Response: 6.4.1 of the proposed regulations addresses patient delegated services. This phrase within the definition of home health aide refers only to those services that can be performed by an aide if delegated by a nurse.

In Section 1.0, the Division may wish to consider a revision of the definition of "immediate jeopardy" to comport with the terminology used in Section 2.4.4.1 ("immediate and imminent danger"). Otherwise, a provider could argue that the standard in Section 2.4.4.1 is either undefined or more narrow than "immediate jeopardy".

Agency Response: The Agency agrees and will change 2.4.4.1 to read, "...determines present an immediate jeopardy or imminent danger to the public health..."

In Section 1.0, definition of "parent agency", the requirement that the parent agency be located within 50 miles of any "branch" is difficult to justify. For example, if Easter Seals main office is in Georgetown, it could not have a branch in Wilmington. Delaware is such a small state that the requirement that the parent agency be located in the State should suffice.

Agency Response: While Delaware is a small state, supervision cannot be properly provided from such a distance as Georgetown to Wilmington. Therefore, each office would need to be a parent in order to maintain administrative functions.

In Section 1.0, there is some tension between the definitions of "professional" and "social worker". The definition of "professional" is limited to "licensed" persons. The definition of "social worker" does not require licensing. Recommend revision of the definition of social worker to only cover licensed social workers. See Title 24 Del.C. Ch. 39.

Agency Response: A licensed clinical social worker is not a requirement for provision of home health services.

In Section 1.0, there is no definition or reference to "advanced practice nurse", an individual who can maintain an independent practice with authority to issue prescriptions. See Title 24 Del.C. §1902(b). For example, there is no reference to "advanced practice nurse" in the definition of "professional". The Division should consider correcting this omission.

Agency Response: An Advanced Practice Nurse is a nurse and is included as part of the definition of nurse in Title 24 Del. C. Ch. 19.

Section 2.1.4 requires any agency which "undergoes a change in ownership" ...to "reapply as a new agency". This is "overbroad". If the agency were a stock corporation, the change of one share of stock would "trigger" the need to reapply for a new license. Section 2.2.2.3.4 implies that ownership interests of less than 5% are so unimportant that they do not have to be disclosed to DPH. Moreover, Section 2.5 defines "modification of ownership and control" as encompassing only significant changes in ownership. For consistency, DPH should consider amending Section 2.1.4 to read as follows: "An agency that anticipates a modification of ownership and control as defined in Section 2.5 is required to apply as a new agency"

Agency Response: The Agency agrees and will change 2.1.4 to read, "Any agency that undergoes a modification of ownership and control is required to re-apply as a new agency."

In Section 2.3.1.1, recommend the following amendment: "A probationary license shall be granted to every agency that completes the application process consistent with these regulations and whose policies and procedures have demonstrated willingness to comply demonstrate compliance with the rules and regulations..." The "willingness" reference suggests a subjective intent standard rather than an objective criterion. Contrast the DPH personal assistance services agencies regulations, Part 4469, Section 2.3.1.1: "A probationary license shall be granted for a period of ninety (90) calendar days to every agency that completes the application process consistent with these regulations."

Agency Response: The Agency agrees and will change 2.3.1.1 to read, "A probationary license shall be granted for a period of ninety (90) calendar days to every agency that completes the application process consistent

with these regulations and whose policies and procedures demonstrate compliance with the rules and regulations pertaining to home health agency - aide only licensure."

In Section 2.3.2.1, recommend substituting "may" for "shall". This is the approach adopted in the DPH personal assistance services agencies regulations, Part 4469, Section 2.3.2.1: "A provisional license may be granted to a period of less than one year to all personal assistance agencies that....". Use of the term "may" provides DPH with more discretion.

Agency Response: The Agency agrees and will substitute "may" for "shall".

Recommend adding a reference to Section 2.4 prohibiting reprisal against any employee, contractor, patient, or patient's representative for cooperating with a Departmental disciplinary investigation or proceedings. Although there is limited reference protecting patients and representatives in Section 5.4.2.5, it would be prudent to include an explicit reference in Section 2.4 as well. Moreover, there is no other provision protecting employees and contractors who cooperate with the Department in investigations and disciplinary proceedings.

Agency Response: The Agency respectfully disagrees. These regulations are written for the purpose of protecting the patient. There is no reference as suggested in any of DPH's other regulations.

In Section 1.0, there is no definition or reference to "Licensed Clinical Mental Health Counselor". For example, there is no reference to "advanced practice nurse" in the definition of "professional". The Division should consider correcting this omission.

Agency Response: Skilled services are not defined to include mental health counseling, therefore, a definition is not required in the regulations. An Advanced Practice Nurse is a nurse and is included as part of the definition of nurse in Title 24 Del. C. Ch. 19.

In Section 2.4.3.1.3, second sentence, consider deleting the comma between "based" and "shall". In addition, this Section states the same concepts that are stated in Sections 2.4.3.1.4 and 2.4.3.1.5, therefore, it appears redundant.

Agency Response: The second sentence is struck through and will not appear in the final regulations.

There is some "tension" between Section 2.4.4.1 and 2.4.4.2. The former section requires 24 hour advance oral or written notice of an emergency suspension of license. The latter section contemplates "forthwith" notice which must be in writing. The interrelationship between these notices is unclear. Moreover, if DPH envisions a single notice, the regulations are inconsistent since the first regulation allows "oral" notice while the second regulation requires notice "in writing". The Division may wish to clarify these sections to prevent any confusion.

Agency Response: 2.4.4.1 is the immediate notice to the agency. 2.4.4.2 is the follow up "formal" written notice.

In Section 2.4.4.5, second sentence, consider the following amendment: Upon a final decision of the Department, the order of temporary suspension shall be vacated or superseded by disciplinary action ordered by the Department. This is more accurate since the Department could determine that its temporary suspension order was a mistake or was inadvertently entered, justifying vacating of the order with no disciplinary action.

Agency Response: The Agency agrees and will amend as suggested.

Section 2.7.1 contains no minimum frequency for inspection of home health agencies. DPH should consider adopting a standard requiring at least annual inspections.

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Section 3.7 requires the director or clinical director to be "available at all times during the operating hours of the home health agency". Since most agencies operate 24-hour shifts, this means that either the director or clinical director are on duty 24 hours/day. As a practical matter, if the director were out of town on vacation, and the clinical director was sick, the clinical director would still have to work. In contrast, the corresponding DPH personal assistance regulations, part 4469, Section 3.9, recites as follows: "The director or a designee of any agency shall be available to consumers at all times during the operating hours of the personal assistance services agency." DPH could consider a compromise (e.g. "director, clinical director, or designee with full authority to act in their stead"). This would comport with Sections 5.1.4 and 5.2.4.

Agency Response: The Agency respectfully disagrees. Sections 5.1.4 & 5.2.4 clarify this.

There is some "tension" between Sections 4.2.9. and 5.2.1. The former section contemplates governing body appointment of the clinical director. The latter contemplates agency director appointment of the clinical director.

Agency Response: The Agency respectfully disagrees. The Governing Body has the ultimate responsibility for all appointments. The Director, however, is actually responsible for making the appointment.

Section 5.3.3.2 literally requires the clinical director to be available 24 hours/day, 365 days/year, for agencies with 24 hour shifts. This is an impractical standard.

Agency Response: The Agency respectfully disagrees. Section 5.3.4 clarifies this by allowing the appointment of a designee in the clinical director's absence.

Section 5.5.2.5 disallows reprisal against patients and their representatives who complain to DHSS. Consistent with a previous comment above, it would be preferable to include a similar provision protecting employees and contractors.

Agency Response: The Agency respectfully disagrees. These regulations are written for the purpose of protecting the patient.

Recommend deletion of Section 5.5.2.6 since the content of this standard is already addressed in Section 3.10.

Agency Response: The Agency respectfully disagrees. Section 3.10 requires a plan for uninterrupted service. Section 5.5.2.6 requires action if the service is interrupted.

Sections 5.5.2.8.6 and 5.8.9 require annual competency testing of all employees. It is unclear if this applies to the director, clinical director, and other licensed supervisory personnel apart from unlicensed personnel. DPH may wish to clarify whether the requirement only unlicensed personnel.

Agency Response: The requirement is that the testing be for anyone providing care to patients.

In Section 6.1.3.3 there is a lack of parallel form. Subsections 1-3 begin with a noun and are complete sentences. Subsection 4 is a clause. The next three subsections begin with a verb and are not sentences.

Agency Response: The Agency respectfully disagrees. When read in context and with the punctuation, there is not a lack of parallel form.

In Section 6.6.1.1, recommend substituting "Title 24 Del.C. §1921(a)(19)" for "Del.C.".

Agency Response: This was left more generic for other sections of the code that may apply and for those occasions when revisions are made.

In Section 6.6.7, recommend substituting "Title 24 Del.C. §1921(a)(9)" for "Del.C.".

Agency Response: This was left more generic for other sections of the code that may apply and for those occasions when revisions are made.

In Section 6.7.2, at a minimum, consider adding a reference to "frequency". It would also be preferable to adopt an equivalent standards for compilation of data as listed in §6.5.5 which contemplates recording the following for "all medication and treatment": "date, time of day, type of medication/treatment, dose, route of self-administration/administration, by whom given and any reactions noted."

Agency Response: Section 6.7.2 refers to aide notes. The aides are required to document each time they provide a service. The aide care plan as noted in 6.5.6 includes the frequency. Please note that home health aides are not permitted to administer medications.

In Section 6.6.3, authorizing two weeks notice of involuntary discharge of a patient by a provider is too short. Compare Title 16 Del.C. §1121(18). It may be very difficult for a consumer to obtain an alternative agency services plan within two weeks. A 30 day notice would be preferable and be consistent with Section 2.8.1 which requires 30 day notice of termination of services by agencies voluntarily going out of business.

Agency Response: The Agency respectfully disagrees. The minimum 2 week notice is reasonable. The patient may negotiate a longer time frame if needed. The agency must inform the patient of the discharge and include the patient in the discharge planning.

This was left more generic for other sections of the code that may apply and for those occasions when revisions are made.

Section 6.8.3. authorizes a provider to discontinue services immediately upon its unilateral determination that the patient should have a higher level of care. No notice would be required, leaving the consumer at great risk. In 2006, as assisted living agency unilaterally determined that a consumer (D.R.) exceeded the assisted living level of care and unilaterally terminated her services. The Division of Long-term Care Residents Protection conducted its own evaluation, determined the consumer eligible for assisted living services, and fined the provider who refused to reinstate services. Agencies make mistakes. If DPH allows abrupt, unilateral termination of services with no notice, this will create a huge "loophole" for agencies who simply wish to stop services with no notice. Moreover, if a consumer has decompensated to the point of needing more care, an orderly transition period to a higher level of care would be more logical than complete termination of services. The DPH approach is akin to a nursing home determining that a resident needs a hospital level of care and abruptly discharging the resident to the street!

Agency Response: The agency is required to "transfer" the patient to a higher level of care after informing the patient of the discharge, allowing the patient to participate in the discharge planning and developing a written discharge plan. This was included, not to permit agencies to dump patients, but to prevent them from keeping patients whose needs they can no longer meet.

This was left more generic for other sections of the code that may apply and for those occasions when revisions are made.

The exception of notice for even minor, minuscule "non-compliance" with the plan of care or non-payment (§6.8.3.3) is highly objectionable. Contrast Title 16 Del.C. §1121(18), requiring 30 day notice of termination from long-term care facility for even non-payment. A provider could discharge a patient simply for contesting a \$10 charge that the patient feels is unjustified. Similarly, dispensing with notice "when care goals have been met" is subjective and objectionable. Recommend adoption of a 30 day notice period and deletion of exceptions (§§6.8.3.1-6.8.3.3) except for "emergency situations", akin to Title 16 Del.C. §1121(18). Apart from notice, would also recommend some authorization for patient appeal of the decision.

Agency Response: Agencies would be required to show documentation upholding a decision to discharge with less than 2 weeks notice. This requires prior communication with the patient and discharge planning.

Section 9.1 requires home health agencies to have "appropriate insurance coverage in force to compensate patients for injuries and losses resulting from services provided by the agency." Recommend adding "or failure to provide services". Otherwise, the insurance may cover negligent services but not omitted services (e.g. failure to turn patient resulting in bedsores; failure to assist with medications resulting in missed doses). Moreover, "appropriate" insurance is a subjective term. Contract the DPH personal assistance services regulation, Part 4469, Section 7.0:

- 7.1 The personal assistance services agency shall have appropriate insurance coverage in force to compensate consumers for injuries and losses resulting from services provided by the agency.
- 7.2 The following types and minimum amounts of coverage shall be in effect at all times:
- 7.2.1 General liability insurance covering personal property damages, bodily injury, libel and slander;
- 7.2.1.1 \$1 million comprehensive general liability per occurrence; and
- 7.2.1.2 \$500,000 single limit insurance.

Agency Response: This Section was added to ensure that Home Health Agencies (HHA) acquire insurance. The reason that it differs from the personal assistance services agency (PASA) requirements is that the PASAs are not required to employ the direct care worker. The home health aide must be an employee of the HHA. Also please note that aides do not administer medications.

Both sections of these regulations should include a discussion about the option and notice of appeal through the Medicaid (DMMA). All consumers of these services are entitled to this appeal process and they should be made aware of this option.

Agency Response: The Agency respectfully disagrees. The Division of Medicaid & Medical Assistance (DMMA) should make consumers aware of the appeal process.

Page 2; 1.0, Definitions; 1.1; Activities of Daily Living. Can this definition be expanded to include Medication Assistance?

Agency Response: Medication assistance is not an activity of daily living.

Page 3; The Director shall have a Baccalaureate Degree in Health or a related Field. Can this include current Directors to be grandfathered? Also, related field needs to be defined or edited to include any Baccalaureate Degree.

Agency Response: The director must have a baccalaureate in a health field (nursing, public health, healthcare administration, physical therapy, etc.). This section will be applied to anyone hired after the publishing of the final regulations.

Page 3; Home Health Aide; A Home Health Aide (A) has at least one year of practical experience in a hospital, nursing home, or home care setting; this is vague. Statement should include "verified" practical experience. Home care setting should be clearly a home care "agency" vs. private arrangement.

Agency Response: To prevent any possible misinterpretation of the regulations, the regulations will be changed to read, "...one year of practical experience in a Department licensed or approved hospital..."

Page 5; Parent Agency; The parent agency is separately licensed from the branch(es) and must be located within 50 miles of the branch. Why must it be separately licensed?

Agency Response: So that each agency can be surveyed separately and will be able to stand on their own.

Page 6; 2.1.2; A separate license shall be required for each office maintained by a home health agency. What is the reason if an office is a branch and performs the same service?

Agency Response: So that each agency can be surveyed separately and will be able to stand on their own.

Page 9; 2.3.3.3; Existing home health agencies must apply for renewal of licensure at least (30) calendar days prior to the expiration date of the license. Currently, notification of a Desk Survey includes notification of renewal requirement; will there be anything similar to alert the agency regarding renewal prior to the 30 days?

Agency Response: A licensure renewal packet is sent to each agency 45 - 60 days prior to renewal. Included within this packet is a desk survey. The packet itself is notification of requirement for renewal.

Page 14; 3.10; This sounds as if there is a 100% coverage requirement. Family caregivers are typically trained to provide care in the event of an emergency, unsafe travel conditions and the occasional inability to identify a caregiver. Can this be written more realistically to allow for the above situations? (Or would Page 18; 5.5.2.6 cover this?)

Agency Response: Section 3.10 requires that the HHA plan for coverage. Section 5.5.2.6 is the procedure to follow in the event that the HHA is not able to provide services.

Page 18; 5.5.2.8.7 Something happened with the formatting of this section and so the meaning is unclear.

Agency Response: This section reads, "The process of appointment to the professional staff whereby it can satisfactorily be determined that the individual is appropriately licensed and qualified for the privileges and responsibilities to be given." The HHA must have policies governing employment which ensure that the professionals employed by the agency are licensed/qualified to perform the functions of the position for which they were hired.

Page 24, 6.3.1: 4406; Page 22; 6.3.1: Does not require a written plan of care established by the physician and developed in consultation with a registered nurse. This makes sense and should not be required for "aide only" services provided under 4410.

Agency Response: This section reads as follows, "6.3.1 The home health agency must provide services in accordance with a written plan of care established by the physician and developed in consultation with a registered nurse or qualified professional of the appropriate discipline." It does, therefore, require that the care plan be developed by a physician and registered nurse.

Page 24; 6.3.4. The plan of care must be reviewed by the attending physician... A Physician's plan of care should not be a requirement for home health aide only services unless required by the payer source; and when required, should be permitted to be "renewed" with a frequency up to 6 months, as determined by the physician.

Agency Response: This is the requirement for skilled services and physician involvement in this level of care. This is not a requirement for aide only services.

Page 26; 6.6.4.2.1 Hourly Nursing provided in combination with home health aide services should not require on-site supervisory visits as needed and no less than monthly.

Agency Response: The Agency does not understand this comment and therefore is not able to respond.

Page 28; 6.7.5: Why is the requirement "weekly" vs. "every 2 weeks" in 4406? The requirement should be uniform in both sets of regulations.

Agency Response: Skilled notes are to be incorporated weekly due to the level of care and the fact that changes can and do occur quickly.

In addition to non-substantive amendments mentioned above, minor grammatical or technical corrections were made to further clarify the proposed regulations.

The public comment period was open from October 1 - October 30, 2008.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

4410 Skilled Home Health Agencies (Licensure)

DIVISION OF SOCIAL SERVICES

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

ORDER

DSSM: 9029 Household Cooperation

Nature of the Proceedings:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Household Cooperation*. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the January 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulation to be produced by January 31, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulation.

Summary of Proposed Change

The proposed changes described below amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Household Cooperation*.

Statutory Authority

- 7 CFR §273.12(c)(3), *State agency action on changes – unclear information*;
- 7 CFR §273.16 (e)(2)(iii), *Disqualification hearing procedures*;
- 7 CFR §273.16 (f)(1)(ii)(B), *Advance notification*.

Summary of Proposed Change

DSSM 9029, Household Cooperation: The United States Department of Agriculture/Food and Nutrition Service (USDA/FNS) published an administrative notice informing the Division of Social Services (DSS) that States cannot close client food supplement benefits due to non-cooperation with fraud investigators. FNS requested that DSS remove this language from state policy.

Management has already advised staff that they cannot close a food supplement case due to non-cooperation with Audit and Recovery Management Services (ARMS). If staff closes a food supplement case for non-cooperation with ARMS, it causes a negative error if reviewed by Quality Control. The worker must send the client a *Request for Contact* form and allow the client ten days to clarify or verify the information that is in question. The client must cooperate with the DSS worker in providing the information.

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 and recommendations summarized below. DSS has considered each comment and responds as follows.

First, since persons with disabilities may have difficulty fulfilling DSS standards due to cognitive or mental health limitations, standards which give the benefit of the doubt to the beneficiary merit endorsement. See, e.g., the following guidance: “If there is any question whether the household has merely failed to cooperate, as opposed to refused to cooperate, the DSS worker will not deny the household.”

Agency Response: DSS thanks you for the endorsement.

Second, the following sentence is grammatically infirm: "After DSS a denial or termination for refusal to cooperate," We believe it should read: "After a DSS denial or termination for refusal to cooperate,"

Agency Response: DSS agrees. The final order regulation reflects the suggested change.

Third, it is somewhat difficult to follow the regulations since there are no numerical subparts. DSS may wish to consider inserting numerical subparts for ease of reference.

Agency Response: DSS agrees. The final order regulation shows the numerical subparts for ease of reference.

Fourth, the last two sentences read as follows:

When a person, organization, or agency outside the household fails to cooperate with request for verification, DSS will not determine the household to be ineligible. The worker will document the case record.

For individuals identified as non-household members in DSSM 9013.2, DSS will not consider them as individuals outside the household.

We had difficulty understanding the rationale for the last sentence. DSSM 9013.2 generally identifies roomers and live-in attendants as non-household members. Under the above two sentences, if such roomers or live-in attendants fail to cooperate, the household could be determined ineligible. DSS may wish to consider whether it intends this result. DSS may also wish to consider whether use of the double negative "will not determine the household to be ineligible" facilitates clarity.

Agency Response: The structure of this section has been reorganized and new language added to facilitate clarity and understanding.

Findings of Fact:

The Department finds that the proposed change as set forth in the January 2009 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Food Supplement Program regarding *Household Cooperation* is adopted and shall be final effective March 10, 2009.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #09-10

REVISION:

9029 Household Cooperation

[7 CFR 273.2(d)]

~~To determine eligibility, the application form must be completed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate in completing this process, the application will be denied at the time of refusal.~~

~~To be denied, the household must refuse to cooperate, not merely fail to cooperate or be unable to do so. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process.~~

~~The household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility. A subsequent review of eligibility includes, but is not limited to, reviews generated by reported changes, applications for recertifications, reviews of cases certified under disaster food stamp procedures and current eligibility reviews conducted by Audit and Recovery Management Services (ARMS). Benefits will not be terminated for refusal to cooperate with ARMS investigations of past eligibility.~~

~~Once denied or terminated for refusal to cooperate, the household may reapply but will not be determined eligible until it cooperates. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household should not be denied, and DSS shall provide assistance.~~

~~The household may voluntarily withdraw its application at any time prior to the determination of eligibility. Such action will be documented in the case record to include the reason for withdrawal and that contact was made with the household to confirm the withdrawal. Advise the household of its right to reapply at any time.~~

~~Do not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. Do not consider individuals identified as non-household members in DSSM 9013 as individuals outside the household.~~

[A. Households are required to cooperate in the application process in order to receive food benefits.]

The household or its authorized representative must complete the application, have an interview, and verify certain information on the application before DSS can determine eligibility.

If the household refuses to cooperate in completing this process, DSS will deny the application at the time the household refuses to cooperate.

[B.] DSS will not deny a case because a household merely failed to cooperate or was unable to cooperate. DSS must determine that the household refused to cooperate. Before DSS can make a determination of refused to cooperate, the household must:

- "be able to cooperate,
- "clearly demonstrate that it will not take actions that it can take, and
- "fail to take required actions to complete the application process.

[If there is any question as to whether the household merely failed to cooperate, as opposed to refused to cooperate, the DSS worker will not deny the household.

The worker must provide assistance.]

[C.] DSS will determine the household ineligible if it refuses to cooperate in any subsequent review of its eligibility. A subsequent review of eligibility includes, but is not limited to:

- "reviews generated by reported changes,
- "applications for recertification, and
- "reviews of cases certified under disaster FSP procedures.

After [a] DSS [a] denial or termination for refusal to cooperate, the household may reapply and must cooperate before determined eligible. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the DSS worker will not deny the household. The worker must provide assistance.

The household may voluntarily withdraw its application at any time before the determination of eligibility.

[D. If a household withdraws its application, the worker will:]

- **[The worker will]** document the case record to include the reason for withdrawal.
- **[The worker will]** contact the household to confirm the withdrawal and document the case record.
- **[The worker will]** advise the household of its right to reapply at any time.

~~**[When a person, organization or agency outside of the household fails to cooperate with request for verification, DSS will not determine the household to be ineligible.]**~~

[E. DSS will not determine the household to be eligible when a person, organization or agency outside of the household fails to cooperate with a request for verification.]

The worker will document the case record.

[Non-household members, like roomers, live-in attendants or others sharing the residence, are not considered as living outside the household for the purposes of this policy. This means the failure of a non-household member to cooperate could cause the household to be ineligible.

~~For individuals identified as non-household members in DSSM 9013.2, DSS will not consider them as individuals outside the household.~~

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a.(3) (7 Del.C. §903(e)(2)a.(3))
7 DE Admin. Code 3504

Secretary's Order No.: 2009-F-0006

Date of Issuance: February 10, 2009

Effective Date of the Amendment: March 11, 2009

I. Background:

A public hearing was held on Monday, January 26, 2009, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to Delaware Tidal Finfish Regulations 3504 concerning striped bass caught in tidal Delaware Estuary waterways by recreational anglers during a special two-month season. Delaware's current regulation requires a minimum size limit of 28 inches for striped bass caught by recreational anglers in all Delaware tidal waters.

The Department's Division of Fish and Wildlife received approval from the Atlantic States Marine Fisheries Commission to establish a special two-month slot limit season during the summer or early fall for tidal Delaware Estuary waterways. The Division established July and August as the special season for striped bass. The proposed amendment allows recreational anglers in tidal Delaware Estuary waters only (to wit: the Delaware Bay, Delaware River, and their tidal tributaries) to land two striped bass per day that are between 20 and 26 inches in total length during the July – August special season. During this two-month period, anglers in these areas are required to release any striped bass that are below or above the 20 to 26-inch slot limit. The proposed amendment does not apply to striped bass caught in Delaware's Atlantic coastal waters, the Inland Bays and their tributaries, or in any waters located within New Jersey or Pennsylvania's jurisdiction.

The Department has the statutory basis and legal authority to act with regard to this promulgation, pursuant to 7 Del.C. 903(e)(2)a.(3). No other regulations are affected by this proposed regulatory change. A few members of the public attended this hearing on January 26, 2009, however, no one offered public comment on this proposed amendment at that time. Afterwards, the Hearing Officer prepared her report in the form of a Hearing Officer's Memorandum dated February 9, 2009. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided sound reasoning with regard to the proposed regulatory amendment, as reflected in the Hearing Officer's Memorandum of February 9, 2009, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Delaware's current regulation requires a minimum size limit of 28 inches for striped bass caught by recreational anglers in all Delaware tidal waters;
7. The Department's Division of Fish and Wildlife received approval from the Atlantic States Marine Fisheries Commission to establish a special two-month slot limit season during the summer or early fall for tidal Delaware Estuary waterways;
8. The proposed amendment allows recreational anglers in tidal Delaware Estuary waters only (the Delaware Bay, Delaware River, and their tidal tributaries) to land two striped bass per day that are between 20 and 26 inches in total length during the July – August special season. During this two-month period, anglers in these areas are required to release any striped bass that are below or above the 20 to 26-inch slot limit;
9. The proposed amendment does not apply to striped bass caught in Delaware's Atlantic coastal waters, the Inland Bays and their tributaries, or in any waters located within New Jersey or Pennsylvania's jurisdiction;
10. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
11. The Department's proposed regulation, as published in the January 1, 2009 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
12. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated February 9, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendment to Delaware Tidal Finfish Regulation 3504, Striped Bass Possession Size Limit, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of this regulatory amendment will enable the State of Delaware to become more in sync with the other striped bass producer areas in the Mid-Atlantic region, and hopefully allow Delaware anglers to catch and keep more of the male striped bass population during the summer that would otherwise have to be released.

In developing this amendment to Delaware's regulation regarding its striped bass, the Department has balanced the environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 **Del.C.** 903(e)(2)a.(3).

David S. Small, Acting Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the January 2009 issue of the *Register* at page 922 (12 DE Reg. 922). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

3504 Striped Bass Possession Size Limit; Exceptions

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code, Section 60, (7 Del.C. §60)
7 DE Admin. Code 7404

Secretary's Order No. 2009-W-0007

Date of Issuance: February 17, 2009

Effective Date: March 11, 2009

7404 Total Maximum Daily Load (TMDL) for Zinc in the Red Clay 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 to amend the Department's regulation codified at 7 DE Admin. Code 7404, which established the Total Maximum Daily Load ("TMDL") for zinc in the Red Clay Creek in New Castle County.

Based on the record, including the public hearing record reviewed in the February 9, 2009, Hearing Officer's Report ("Report") attached hereto as an appendix, I find the proposed amendment to the regulation is reasonable and well supported, and is not arbitrary or capricious. The Report reviews the October 28, 2008 public hearing and the administrative record. The Report recommends approval of the proposed regulation as a final regulation without any modification. I agree with the Report and adopt it as part of this Order.

The proposed amendment of Department Regulation 7404 is based upon NVF Company's ("NVF") challenge to Secretary's Order No. 99-W-0062, which approved the final regulation that established the TMDL for zinc in the Red Clay Creek ("1999 TMDL"). NVF appealed the Order and the TMDL regulation because it owns and operates a paper manufacturing plant along the Red Clay Creek in Yorklyn, New Castle County. The Department and NVF exchanged technical information and water quality data from five sampling locations. In addition, the Department changed (unrelated to NVF) its water quality criteria for zinc, including a changing from total zinc to dissolved zinc and this change impacted the TMDL for zinc's calculation.

On February 22, 2007, the Department and NVF entered into a settlement ("Settlement") to resolve the challenge to the 1999 TMDL. The Settlement includes a term that the Department will amend the 1999 TMDL for zinc from 1.81 pounds per day to 55.93 pounds per day, but also requires NVF to implement a Pollution Control Strategy designed to significantly reduce the release of zinc from NVF's property into the Red Clay Creek. NVF challenged the 1999 TMDL because NVF discharges into the Red Clay Creek zinc from its paper manufacturing process and the Department determined that NVF's discharges are the primary source of the zinc pollution in the Red Clay Creek. NVF's appeal sought to increase the TMDL for zinc based upon the use of the more complex dynamic, lognormal modeling to determine the TMDL, as opposed to the Department's use of the steady state, low flow modeling. It is important to note that the Department and United States Environmental Protection Agency both have accepted the lognormal and steady state models for use in calculating TMDLs. The Department's decision to accept the lognormal method in this particular case does not represent the Department's departure from the steady state model, which the Department will continue to be use as its default model. Instead, this TMDL is based upon the availability of additional data not normally available in determining a TMDL and the specific factual circumstances with NVF's source of the zinc released into the Red Clay Creek, particularly the data that showed peak zinc concentrations are not greatest at low stream flow levels. The ironic fact is that the zinc TMDL may be increased because of NVF's successful efforts to lower zinc discharges into the Red Clay Creek and the pollution control strategy changed the timing and magnitude of the zinc levels so that they do not occur at low flow conditions.

The lognormal method produces a TMDL for zinc of 55.93 pounds per day, as opposed to the 1.81 pounds per day previously determined under the challenged steady-state method's calculations. This change is significant at first blush, but the fact remains that the scientific results conclusively show that the Department's water quality criteria for zinc will be met with the TMDL derived from lognormal method.

The Department recognized the appropriateness of the amendment, but also was able to negotiate as part of the Settlement that NVF agreed to implement a pollution control strategy. The pollution control strategy will result in significant reduction to the underlying problem, namely, NVF's release of zinc into the Red Clay Creek from both direct discharge and more importantly from groundwater flows from past releases from the NVF property are effectively being controlled by the Pollution Control Strategy.

Public comments from local environmental groups both opposed and supported the proposed amendment. The support recognized the clean up in the Settlement's pollution control strategy, while the opposition was based upon the increase in the zinc loading. I find that the scientific evidence supports the amendment as consistent under the circumstances. The Department has discretion to use different methodologies when supported by sufficient data. In this case, the water quality data and specific factual and unusual circumstances supported the use of the lognormal method. The Department's use of the lognormal method for other TMDLs will be evaluated on a case-by-case basis because the water quality data may impose an undue burden on the Department not supported by any meaningful differences in results. The TMDL will limit the release of harmful levels of zinc into the Red Clay Creek, but the Department's experts have determined that the TMDL will allow the Red Clay Creek to achieve its applicable surface water standard.

The public comment about including the pollution control strategy in the regulation is rejected only because such a change may delay the regulation. This TMDL should be implemented as soon as possible and it will allow the NPDES permit to be issued to reflect this change. I agree that the Settlement provides a sufficient tool to obtain continued compliance with the Settlement's Pollution Control Strategy.

In conclusion, the following findings and conclusions are entered:

The Department, acting through this Order of the Secretary, adopts the proposed regulation 7404 as a final regulation, as set forth in the Appendix A to the Report;

The approval of the proposed regulation as a final regulation will protect and improve the water quality of Red Clay Creek in order that it may meet the Department's water quality standards;

The TMDL approved by this Order was developed consistent with the applicable law and regulatory standards, is adequately supported by expert technical analysis and is based upon use of an approved lognormal method to calculate the TMDL, which is appropriate under the specific circumstances presented here and consistent with changes that have occurred and the Settlement;

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;

The Department's proposed regulation, as published in the October 1, 2008, *Delaware Register of Regulations*, and set forth in Appendix A to the Report, are adequately supported, not arbitrary or capricious, are 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;

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.

David S. Small, Acting Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the October 2008 issue of the *Register* at page 425 (12 DE Reg. 425). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

7404 Total Maximum Daily Load (TMDL) for Zinc in the Red Clay Creek, Delaware

FINAL REGULATIONS

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION 2000 BOARD OF OCCUPATIONAL THERAPY PRACTICE

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 **Del.C.** 20065(a)(1))
24 **DE Admin. Code** 2000

ORDER

The Board of Occupational Therapy Practice (“the Board”) was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §2006(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §2006(a)(1), the Board has proposed revisions to Rule 1.3, which addresses supervision of occupational therapy assistants. Rule 1.3.3 provides that: “An occupational therapist may supervise up to three (3) occupational therapy assistants but never more than two (2) occupational therapy assistants who are under direct supervision at the same time.” The proposed amendments add new Rules 1.3.4 and 1.3.5, which will require occupational therapists to notify the Board when a supervisory relationship begins and when it ends. This notification requirement will enforce compliance with Rule 1.3.3, which is designed to ensure that occupational therapy assistants receive adequate supervision.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, Volume 12, Issue 5 on November 1, 2008.

Summary of the Evidence and Information Submitted

A public hearing on the proposed rule revisions was held on January 7, 2009. No written comment was submitted. Jan Gorecki stated that she supported the proposed revisions.

Findings of Fact

The Board carefully reviewed and considered the proposed rule revisions and the evidence and information submitted.

The Board addressed the circumstances where an occupational therapist supervises multiple part-time occupational therapy assistants or where supervisory relationships change frequently. The Board determined that these issues will be addressed in supervisory forms to be adopted in the near future. For example, the supervisory form may require the occupational therapist to attest that he or she is never supervising more than the specified number of occupational therapy assistants at any given time.

The Board thus concluded that the proposed amendments, which will require occupational therapists to notify the Board when a supervisory relationship begins and when it ends, will enforce compliance with Rule 1.3.3 and will consequently ensure that occupational therapy assistants receive adequate supervision. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

Therefore, the Board finds that adopting the amended rules and regulations as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 12, Issue 5 on November 1, 2008.

IT IS SO ORDERED this 4th day of February 2009 by the Delaware Board of Occupational Therapy Practice.

Nancy Broadhurst, Chairperson
Wendy Mears, Vice-Chairperson
Kimberly Pierson
Rosemarie Vanderhoogt

***Please note that no changes were made to the regulation as originally proposed and published in the November 2008 issue of the *Register* at page 631 (12 DE Reg. 631). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

2000 Board of Occupational Therapy Practice

DIVISION OF PROFESSIONAL REGULATION 3300 Board of Veterinary Medicine

Statutory Authority: 24 Delaware Code, Section 3306(a)(1) (24 **Del.C.** §3306(a)(1))
24 DE Admin. Code 3300

ORDER

The Board of Veterinary Medicine (“the Board”) was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §3306(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3306(a)(1), the Board has proposed a number of revisions to its rules and regulations. First, the Board proposes amendments to Rules 9.0 and 14.0, which address continuing education requirements for veterinarians and veterinary technicians. Provisions are added which expressly give the Board authority to conduct hearings and impose sanctions regarding licensees’ failure to comply with continuing education requirements. In addition, the proposed amendments provide for proration of continuing education requirements based on the period of licensure.

The Board also proposes several revisions to Rule 11.0, concerning qualifications for licensure by examination as a veterinary technician. Rule 11.1.2 is amended to clarify that an applicant, who has not graduated from an AVMA-accredited program, may qualify to take the examination, based on educational and/or experiential alternatives, only until October 2013. Further, qualifying practical experience must be related to animal care and handling under the direct supervision of a licensed veterinarian.

Finally, the Board proposes revisions to correct various typographical errors.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes were published in the Delaware *Register of Regulations*, Volume 12, Issue 6 on December 1, 2008.

Summary of the Evidence and Information Submitted

A public hearing on the proposed rule revisions was held on January 13, 2009. Written comment was submitted by Lynn M. Appel, Executive Director of the Delaware Veterinary Medical Association. In her correspondence, Ms. Appel pointed out two errors with respect to the statutory references in Rule 14.1.2.5.

Findings of Fact

The Board carefully reviewed and considered the proposed rule revisions and the evidence and information submitted.

The proposed amendments will expressly give the Board authority to sanction licensees who do not comply with continuing education requirements. The amendments also clarify the standards for licensure for veterinary technicians. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

The Board noted that, in her correspondence, Ms. Appel correctly pointed out typographical errors in Rule 14.1.2.5. Pursuant to 29 **Del.C.** §10118(c), the Board has the authority to make non-substantive changes to the proposed rules and regulations without repropounding the changes.

Therefore, the Board finds that adopting the amended rules and regulations as proposed, with non-substantive revisions set forth in the Exhibits to this Order, is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the final rules and regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the rules and regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 10th day of February 2009 by the Delaware Board of Veterinary Medicine.

Jeff Booth, V.M.D., President

Rachel Longfellow, L.V.T., Vice-President

Craig Metzner, D.V.M.

Courtney Manetti, D.V.M.

Lynn Nellius, L.V.T.

Lena Corder

3300 Board of Veterinary Medicine**1.0 Supervision (24 Del.C. §3303(10) and (11))**

- 1.1 Supervision refers to the oversight of any person performing non-licensed support activities and/or licensed veterinary technician activities by a licensed Delaware veterinarian. Oversight includes control over the work schedule of the person performing support and/or veterinary technician activities and any remuneration the person receives for performing such activities. Oversight does not include remuneration paid directly to support personnel or veterinary technicians by the public. Supervision of veterinary technicians and support personnel is based on the following:

- 1.1.1 The initial examination of the animal by the veterinarian is to be performed prior to the delegation of work to be performed by support personnel. The veterinarian may, however, authorize support or veterinary technician personnel to administer emergency measures prior to the initial examination.
- 1.1.2 The veterinarian shall develop a treatment plan to be referenced by support and/or veterinary technician personnel.
- 1.1.3 The veterinarian must authorize the work to be performed by support and/or veterinary technician personnel. Whether tasks are appropriate to be delegated may differ from case to case.
- 1.2 At no time may support personnel perform the following activities (24 **Del.C.** §3303(10)):
 - 1.2.1 Diagnosing.
 - 1.2.2 Prognosing
 - 1.2.3 Prescribing.
 - 1.2.4 Inducing Anesthesia
 - 1.2.5 Performing Surgery.
 - 1.2.6 Administration of Rabies vaccinations.
 - 1.2.7 Operative dentistry and oral surgery.
 - 1.2.8 Centesis of body structures (not to include venipuncture) in other than emergency situations.
 - 1.2.9 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters; see Section 1.5.1).
 - 1.2.10 Splinting or casting of broken bones in other than emergency situations.
 - 1.2.11 Euthanasia.
 - 1.2.12 Issue health certificates.
- 1.3 At no time may licensed veterinary technicians perform the following activities (24 **Del.C.** §3303(11)):
 - 1.3.1 Diagnosing.
 - 1.3.2 Prognosing.
 - 1.3.3 Prescribing.
 - 1.3.4 Performing Surgery (excluding the tacking/suturing of intravenous and urinary catheters and nasal cannulae to skin).
 - 1.3.5 Administration of Rabies Vaccinations.
 - 1.3.6 Operative dentistry and oral surgery.
 - 1.3.7 Centesis of body structures (not to include venipuncture and cystocentesis) in other than emergency situations.
 - 1.3.8 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters; see Section 1.6.2).
 - 1.3.9 Splinting or casting of broken bones in other than emergency situations.
 - 1.3.10 Euthanasia.
 - 1.3.11 Issue health certificates.
- 1.4 Levels of Supervision. All acts by support personnel and veterinary technicians not prohibited by Rule 1.2 and Rule 1.3 which constitute the practice of veterinary medicine under 24 **Del.C.** §3302(5) must be performed under the supervision of a licensed veterinarian(s). Levels of supervision are to include:
 - 1.4.1 Immediate Supervision - A licensed veterinarian is within direct eyesight and/or hearing range.
 - 1.4.2 Direct Supervision - A licensed veterinarian is physically present on the premises and is readily available.
 - 1.4.3 Indirect Supervision - A licensed veterinarian is not on the premises but is able to perform the duties of a veterinarian by maintaining communication with and is accessible to support personnel, such as by electronic means.

- 1.5 If the veterinarian concludes based on the initial examination (required by paragraph 1.1.1) that delegation is appropriate, support personnel may perform the following tasks only under the following supervision:
 - 1.5.1 Immediate supervision: intubation, urethral catheterization (except in the case of known urinary blockage or pre-existing urethral or urinary bladder disease); dental extractions with no periosteal elevation, no sectioning of tooth and no resectioning of bone.
 - 1.5.2 Direct supervision: anesthesia maintenance and dental procedures including, but not limited to, removal of calculus, soft deposits, plaque and stains, smoothing, filing, polishing of teeth.
- 1.6 If the veterinarian concludes based on the initial examination (required by paragraph 1.1.1) that delegation is appropriate, veterinary technicians may perform the following tasks only under the following supervision:
 - 1.6.1 Immediate supervision: induction of anesthesia.
 - 1.6.2 Direct supervision: intubation, anesthesia maintenance; arterial catheterization; urethral catheterization (except in the case of known urinary blockage or pre-existing urethral or urinary bladder disease); cystocentesis; dental extractions with no periosteal elevation, no sectioning of tooth and no resectioning of bone; and dental procedures including, but not limited to, removal of calculus, soft deposits, plaque and stains, smoothing, filing, polishing of teeth.
- 1.7 Veterinarians (24 **Del.C.** §3315(a)) and veterinary technicians (24 **Del.C.** §3320(e)) who are temporarily licensed shall be under the direct supervision of a licensed veterinarian.
- 1.8 Activities that may be performed under emergency conditions. Under conditions of emergencies, the following activities, which would be otherwise prohibited in the absence of veterinary supervision, may be performed by veterinary technicians or support personnel prior to the veterinarian's initial examination:
 - 1.8.1 application of tourniquets and/or pressure bandages to control hemorrhage,
 - 1.8.2 administration of pharmacological agents, only to be performed after communication with a veterinarian authorized to practice in Delaware, and such veterinarian is either present or en route to the distressed animal,
 - 1.8.3 administration of parenteral fluids,
 - 1.8.4 resuscitative procedures,
 - 1.8.5 application of temporary splints or bandages to prevent further injury to bones or soft tissues,
 - 1.8.6 application of appropriate wound dressings and external supportive treatment in severe wound and burn cases,
 - 1.8.7 external supportive treatment in heat prostration cases,
 - 1.8.8 and any other reasonable treatments necessary to an animal's welfare in an emergency situation.

10 DE Reg. 884 (11/01/06)

***Please note that no additional changes were made to the regulation as originally proposed and published in the December 2008 issue of the *Register* at page 761 (12 DE Reg. 761). Therefore, the rest of the sections are not being republished. A copy of the final regulation is available at**
3300 Board of Veterinary Medicine

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER ONE**

Jan. 30, 2009

TO: Heads of All State Departments and Agencies
RE: Ban on Gifts by Lobbyists and Vendors to Leaders of the Executive Branch

WHEREAS, Delawareans expect and deserve public servants who act at all times in the best interest of the State and its citizens, and not in their own interests or improperly on behalf of special interests;

WHEREAS, pursuant to Title 29, Chapter 58 of the Delaware Code, Executive Branch employees are governed by the State Employees', Officers' and Officials' Code of Conduct, and certain Executive Branch employees are further required to disclose to the State Public Integrity Commission their receipt of gifts, honoraria, reimbursements or other items or payments;

WHEREAS, Governors have the authority to hold senior Executive Branch leaders to a higher standard than that required by Delaware law; and

WHEREAS, it is in the public interest that senior Executive Branch leaders be prohibited from accepting gifts that might create the appearance of impropriety or call into question the actions of senior leaders of the Executive Branch;

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER, on this, the 30th day of January, 2009, that:

1. All Cabinet level officials, division directors, and professional staff members of the Governor's Office shall comply with the applicable ethics requirements outlined in Title 29, Chapter 58 of the Delaware Code, including its prohibition on the acceptance of any gift that may result in the impairment of independence of judgment in the exercise of official duties, an undertaking to give preferential treatment to any person, the making of a governmental decision outside official channels, or any adverse effect on the confidence of the public in the integrity of the government of the State.

2. All Cabinet level officials, division directors, and professional staff members of the Governor's Office shall not accept any gift from any lobbyist registered pursuant to the requirements of 29 **Del.C.** §5832.

3. All Cabinet level officials, division directors, and professional staff members of the Governor's Office shall not accept any gift that they know to be provided by a person, entity or organization that has entered or is seeking to enter a contract with any State agency for the purchase or sale of materiel, nonprofessional services, public works or professional services, or provided by the lawyers or representatives of such person, entity or organization. Except as otherwise stated, the definitions set forth in 29 **Del.C.** §6902 shall apply to the terms used in this Paragraph.

4. For purposes of Paragraphs 2 and 3 of this Order, "gift" has the definition set forth in 29 **Del.C.** §5812(h), except that "gift" shall not include any: (i) unsolicited item that is freely available to the public, promptly returned, or donated to charity; (ii) item of immaterial monetary value, such as informational material, card, t-shirt, honorary degree or award, plaque or framed certificate with the recipient's name; (iii) item accepted on behalf of the State that shall remain the property of the State; (iv) drinks, snacks or meals with a value of \$39 or less consumed on the premises; (v) complimentary attendance at or invitations to publicly advertised or regularly scheduled functions of a non-profit organization, civic or government group, or association of businesses or trade groups; and (vi) item for which the State Public Integrity Commission has granted a waiver pursuant to 29 **Del.C.** §5807.

5. Executive Order Number 8, dated January 18, 2001, is hereby rescinded.

Jack A. Markell,
Governor

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER TWO**

February 12, 2009

TO: Heads of all State Departments and Agencies
RE: Reallocation of State Private Activity Bond Volume Cap for Calendar Year 2008

WHEREAS, pursuant to 29 Del. C. § 5091, the State's private activity bond volume cap ("Volume Cap") for 2008 under Section 146 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

WHEREAS, pursuant to Executive Order Number One Hundred Six, \$131,050,000 Volume Cap for 2008 which had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, the allocation of Volume Cap in Executive Order One Hundred Six is subject to modification by further Executive Order; and

WHEREAS, the State's Volume Cap for 2008 was allocated among the various State and local government issuers by 29 Del. C. § 5091(a); and

WHEREAS, New Castle County has reassigned \$45,865,000 of its unallocated Volume Cap for 2008 to the State of Delaware; and

WHEREAS, Kent County has reassigned \$26,210,000 of its unallocated Volume Cap for 2008 to the State of Delaware; and

WHEREAS, Sussex County has reassigned \$26,210,000 of its unallocated Volume Cap for 2008 to the State of Delaware; and

WHEREAS, the City of Wilmington has reassigned \$32,760,000 of its unallocated Volume Cap for 2008 to the State of Delaware; and

WHEREAS, the Delaware Economic Development Authority has \$65,525,000 of unused Volume Cap for 2008, as previously allocated by Executive Order One Hundred Six; and

WHEREAS, the Secretary of Finance recommends: (i) that the \$131,045,000 unallocated Volume Cap for 2008 reassigned to the State of Delaware by other issuers be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the \$60,525,000 of unallocated Volume Cap reassigned by the Delaware Economic Development Authority be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendation of the Secretary of Finance.

NOW, THEREFORE, I, JACK A. MARKELL, by the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The \$131,045,000 of unallocated Volume Cap for 2008 that has been reassigned by New Castle County, Kent County, Sussex County and the City of Wilmington to the State of Delaware is hereby sub-allocated to the Delaware State Housing Authority for carry forward use, in addition to the \$65,525,000 previously sub-allocated to the Delaware State Housing Authority for 2008 under Executive Order One Hundred Six. Additionally, the \$60,525,000 of Volume Cap for 2008 previously allocated to the Delaware Economic Development Authority is allocated to the Delaware State Housing Authority, providing the Delaware State Housing Authority with a total carry forward amount of \$257,095,000.

2. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

Jack A. Markell,
Governor

DELAWARE RIVER BASIN COMMISSION

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, March 11, 2009 beginning at 10:30 a.m. at the Commission's office building, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, February 19, 2009 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****SUMMARY OF PROPOSED AMENDMENTS**

The proposal amends the Title XIX Medicaid State Plan, the Title XXI Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) regarding the income disregards utilized in the Medicaid income eligibility determination process. Currently, individuals eligible for coverage under the Medicaid program are allowed disregards for certain types of income in the determination of their eligibility. The proposed change will add a disregard for income earned from temporary employment with the United States Census Bureau in completing a Decennial Census. In the past, the Census Bureau has successfully recruited program participants to help fill these vacancies, and wishes to do the same for the upcoming 2010 Census.

Statutory Authority

- Section 1902(r)(2) of the Social Security Act, The methodology to be employed in determining income and resource eligibility...;
- Section 1931 of the Social Security Act, Assuring coverage for certain low-income families

Basis

CMS, State Health Officials Letter dated February 18, 2000, Eligibility for Those Individuals and Families Who Were Temporarily Hired for the 2000 Census Bureau

Background

Delaware received a request from the United States Census Bureau asking that income from temporary census employment be excluded. The Centers for Medicare and Medicaid Services (CMS) is encouraging states to exclude the earned income of temporary census workers for purposes of eligibility. Doing so would mean that temporary income from census employment would not result in recipients losing access to medical assistance. The exclusion of this income will allow the Census Bureau to hire people to work in the neighborhoods in which they live to ensure the workforce reflects the diversity of the United States population.

Over the course of the 2010 Census, the Census Bureau currently expect to recruit more than 3 million applicants and hire more than 900,000 employees nationwide. Although Local Census Offices will require some staff from the fall of 2008 through the end of 2010, most positions are part of either the Address Canvassing or Nonresponse Follow-up operations occurring in 2009 and 2010, respectively. In 2009, over 100,000 people will be employed as part of the decennial census. Almost 600,000 people will be employed solely for the Nonresponse Follow-up operation in 2010.

Census work provides valuable job skills that could lead to permanent employment elsewhere (enumerators complete four to five days of paid training). Some of the skills involved in Census work include:

- Using handheld computers,
- Following detailed instructions,
- Completing paperwork,
- Working independently,
- Public contact skills, and
- Work during nights, weekends, and/or normal business hours depending on the operation.

Preliminary activities related to the 2010 Census have already begun in some states.

Summary of Proposal

The proposed rule allows the Division of Medicaid and Medicaid Assistance (DMMA) to exercise the federal option, in years in which there is a federal census, to exclude earned income paid by the Census Bureau to temporary census workers from the determination of the individual's eligibility for the following programs:

- Delaware Medical Assistance Program (DMAP);
- Delaware Healthy Children Program (DHCP).

Previous policy/state plan language specifically excluded wages from temporary employment related to Census 2000 activities. This exclusion was applied to the last federal census, but the reference was time-limited. These amendments will make the exclusion permanent.

Please note that this exclusion applies to temporary census workers only; income received by permanent census workers will be treated as countable income in the above programs.

Food and Nutrition Service (FNS) will not allow states to exclude income received by temporary census workers in determining eligibility and benefits for the Food Supplement Program. Delaware's Temporary Assistance for Needy Families (Delaware TANF) Program has also opted not to provide this exclusion.

The Child Care Subsidy Program has had this wage exclusion for temporary Census activities at DSSM 11003.9.1 since October 2005 and will remain in place.

The provisions of the state plan amendments are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

DEPARTMENT OF INSURANCE

PUBLIC NOTICE

Docket No. 1079

1212 Valuation of Life Insurance Policies

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amendments to Department of Insurance **Regulation 1212** relating to **Valuation of Life Insurance Policies**. The docket number for this proposed regulation is 1079.

The Delaware Code authority for the change is 18 **Del.C.** §§ 312, 1113 and 29 **Del.C.** Chapter 101. The text can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov and clicking on the link for "Proposed Regulations."

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Monday, April 6, 2009 by delivering said comments to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or emailed to mitch.crane@state.de.us.

Since the wording of the attached emergency regulation is identical to the wording the Department intends to adopt as a final regulation, public comment on the emergency regulation shall be deemed to be public comment on the proposed regulation as would otherwise be permitted under 29 **Del.C.** § 10115.

IT IS SO ORDERED this 17th day of February, 2009

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

DEPARTMENT OF INSURANCE

PUBLIC NOTICE

Docket No. 1080

1215 Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities

INSURANCE COMMISSIONER KAREN WELDIN STEWART hereby gives notice of proposed amendments to Department of Insurance **Regulation 1215** relating to **Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities**. The docket number for this proposed regulation is 1080.

The Delaware Code authority for the change is 18 **Del.C.** §§ 311, and 1113. The text can also be viewed at the Delaware Insurance Commissioner's website at www.delawareinsurance.gov and clicking on the link for "Proposed Regulations."

Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendment. Any written submission in response to this notice and relevant to the proposed change must be received by the Department of Insurance no later than 4:30 p.m., Monday, April 6, 2009 by delivering said comments to Mitch Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or emailed to mitch.crane@state.de.us.

Since the wording of the attached emergency regulation is identical to the wording the Department intends to adopt as a final regulation, public comment on the emergency regulation shall be deemed to be public comment on the proposed regulation as would otherwise be permitted under 29 **Del.C.** § 10115.

IT IS SO ORDERED this 17th day of February, 2009

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT****NOTICE OF PUBLIC HEARING****REGISTER NOTICE SAN # 2008-30****Title of the Regulations:***1302 Regulations Governing Hazardous Waste (DRGHW)***Brief Synopsis Of The Subject, Substance and Issues:**

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State must periodically seek authorization from the EPA to administer the program, and Delaware is preparing the 7th such program reauthorization. For Delaware's Hazardous Waste program to be authorized, the EPA has requested minor, miscellaneous corrections to align the State's program with the Federal program.

Notice of Public Comment:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday March 24, 2009 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

Prepared By:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
3800 BOARD OF DIETETICS/NUTRITION
PUBLIC NOTICE**

The Delaware State Board of Dietetics/Nutrition in accordance with 24 **Del.C.** §3805(a) has proposed amendments to its rules and regulations as the result of the enactment in the 144th General Assembly of House Bill 38, as amended, providing for the licensure of dieticians and nutritionist in the State of Delaware.

A public hearing will be held on April 17, 2009 at 1:45 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware State Board of Dietetics/Nutrition, 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.
