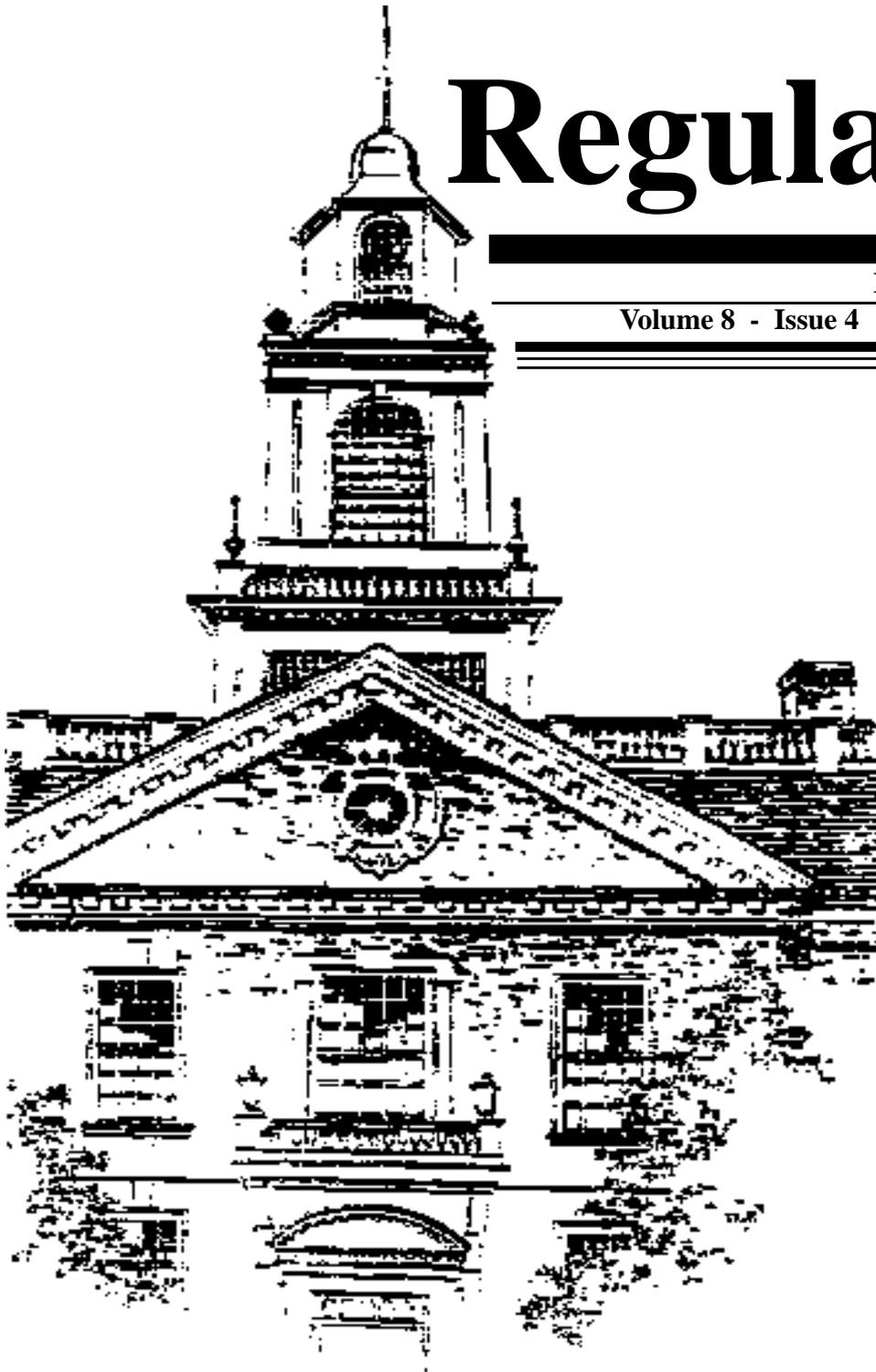

Delaware Register of Regulations



Issue Date: October 1, 2004

Volume 8 - Issue 4

Pages 501 - 606

IN THIS ISSUE:

Regulations:

Emergency

Proposed

Final

Governor

Appointments

General Notice

Calendar of Events &

Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before September 15, 2004.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the *Registrar* for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 17	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

Deborah A. Porter, Interim Supervisor; **Sandra F. Clark**, Administrative Specialist II; **Kathleen Morris**, Unit Operations Support Specialist; **Jeffrey W. Hague**, Registrar of Regulations; **Steve Engebretsen**, Assistant Registrar; **Victoria Schultes**, Administrative Specialist II; **Rochelle Yerkes**, Administrative Specialist II; **Rhonda McGuigan**, Administrative Specialist I; **Ruth Ann Melson**, Legislative Librarian; **Lisa Schieffert**, Research Analyst; **Judi Abbott**, Administrative Specialist I; **Alice W. Stark**, Legislative Attorney; **Ted Segletes**, Paralegal; **Deborah J. Messina**, Print Shop Supervisor; **Marvin L. Stayton**, Printer; **Don Sellers**, Printer.

TABLE OF CONTENTS

Cumulative Tables..... 506

EMERGENCY

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

203 Cancer Treatment Program 509

PROPOSED

DELAWARE RIVER BASIN COMMISSION

Proposed Amendment to the Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters..... 513

Proposed Amendment to the Water Quality Regulations, Water Code and Comprehensive Plan to Establish Pollutant Minimization Plan Requirements for Point and Non-Point Source Discharges of Toxic Pollutants Following Issuance of a TMDL by either the U. S. Environmental Protection Agency or a Member State, or an Assimilative Capacity Determination by the Delaware River Basin Commission..... 515

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

2500 Board of Pharmacy, Rule 16.0, Crimes Substantially Related to the Practice of Pharmacy..... 517

2000 Board of Occupational Therapy Practice, rule 7.0, Crimes Substantially Related to the Practice of Occupational Therapy..... 518

DEPARTMENT OF EDUCATION

742 Compensation of District Personnel Under Specific Project Proposals..... 520

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

DMMS; 9026.1, Food Stamp Program..... 521

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Electronic Red Light Safety Program..... 524

**DEPARTMENT OF STATE
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS**

Historic Preservation Tax Credit..... 526

FINAL

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

Gaming Control Board, Bingo, Charitable Gambling and Raffles..... 531
2100 Board of Examiners in Optometry..... 536

DEPARTMENT OF EDUCATION

260 General Appeal Procedure for the Child and the Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA..... 537
852 Child Nutrition..... 540
1105 School Transportation..... 541

PROFESSIONAL STANDARDS BOARD

323 Certification Computer Science Teacher..... 552
331 Certification Family and Consumer Services Teacher 553

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

20700.5-20700.5.8, Aquired Brain Injury Waiver Program..... 555

DEPARTMENT OF INSURANCE

301 Audited Financial Reports..... 557
1404 Long-term Care Insurance..... 562

**DEPARTMENT OF STATE
HUMAN RELATIONS COMMISSION**

1502 Fair Housing Regulations..... 591

MERIT EMPLOYEES RELATIONS BOARD

Classification Maintenance Review Appeal
Procedures..... 599

GOVERNOR

Appointments..... 602

GENERAL NOTICES**DEPARTMENT OF INSURANCE**

Forms and Rates Bulletin No. 29, Automobile
Liability Policies..... 604

**CALENDAR OF EVENTS/HEARING
NOTICES**

Delaware Rive Basin Commission, Notice of
Public Hearing..... 605

Dept. Of Administrative Services, Div. of
Professional Regulation,
Board of Pharmacy, Notice of Public Hearing 605
Board of Occupational Therapy Practice
Notice of Public Hearing..... 605

State Board of Education Monthly Meeting Notice..... 606

Dept. of Health and Social Services, Div. of
Social Services, Food Stamp Program Notice
of Public Comment Period..... 606

Dept. of Safety & Homeland Security, Notice of
Public Hearing..... 606

Dept. of State, Div. of Historical & Cultural Affairs,
Notice of Public Comment Period..... 606

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

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

DELAWARE STATE FIRE PREVENTION COMMISSION

State Fire Prevention Regulations.....	8 DE Reg.	6 (Prop.)
	8 DE Reg.	416 (Final)

DEPARTMENT OF ADMINISTRATIVE SERVICES**DIVISION OF PROFESSIONAL REGULATION (TITLE 24 DELAWARE ADMINISTRATIVE CODE)**

1900 Board of Nursing.....	8 DE Reg.	377 (Prop.)
2100 Board of Examiners in Optometry.....	8 DE Reg.	16 (Prop.)
3900 Board of Clinical Social Work Examiners.....	8 DE Reg.	218 (Prop.)
5300 Board of Massage and Bodywork.....	8 DE Reg.	390 (Prop.)

DEPARTMENT OF AGRICULTURE

Rule 8.3.3.5, Erythropietin.....	8 DE Reg.	329 (Final)
Standardbred Breeder's Fund Regulations.....	8 DE Reg.	336 (Final)

DEPARTMENT OF EDUCATION (TITLE 14 DELAWARE ADMINISTRATIVE CODE)

101 Delaware Student Testing Program.....	8 DE Reg.	17 (Prop.)
	8 DE Reg.	425 (Final)
106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II).....	8 DE Reg.	23 (Prop.)
	8 DE Reg.	431 (Final)
107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II).....	8 DE Reg.	23 (Prop.)
	8 DE Reg.	431 (Final)
108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II).....	8 DE Reg.	23 (Prop.)
	8 DE Reg.	431 (Final)
260 General Appeal Procedure for the Child and Adult Care Food Program of the United States Department of Agriculture CACFP/USDA	8 DE Reg.	221 (Prop.)
501 State Content Standards.....	8 DE Reg.	36 (Prop.)
	8 DE Reg.	445 (Final)
618 (Formerly Reg. 879) School Safety Audit.....	8 DE Reg.	344 (Final)
620 (Formerly Reg. 880) School Crisis Response Plans.....	8 DE Reg.	344 (Final)
705 Training Camp and Special Duty in the National Guard and/or Reserves.....	8 DE Reg.	396 (Prop.)
706 Credit for Experience for Full Time Service in the Armed Forces.....	8 DE Reg.	397 (Prop.)
718 Health Examinations for School District Employees.....	8 DE Reg.	37 (Prop.)
	8 DE Reg.	399 (Prop.)
805 The School Health Tuberculosis (TB) Control Program.....	8 DE Reg.	38 (Prop.)
	8 DE Reg.	400 (Prop.)
852 Child Nutrition.....	8 DE Reg.	224 (Prop.)
885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System	8 DE Reg.	345 (Final)
925 Children with Disabilities.....	8 DE Reg.	225 (Prop.)
	8 DE Reg.	402 (Prop.)
1105 School Transportation.....	8 DE Reg.	237 (Final)

PROFESSIONAL STANDARDS BOARD

323 Certification Computer Science Teacher.....	8	DE Reg.	247 (Prop.)
331 Certification Family and Consumer Sciences Teacher.....	8	DE Reg.	248 (Prop.)
368 Certification School Psychologist.....	8	DE Reg.	41 (Prop.)
1501 Knowledge, Skills And Responsibility Based Supplements For Educators.....	8	DE Reg.	73 (Final)
1502 Educator Mentoring.....	8	DE Reg.	347 (Final)
1505 Professional Growth Programs.....	8	DE Reg.	78 (Final)
1509 Meritorious New Teacher Candidate Designation.....	8	DE Reg.	446 (Final)
1528 Foreign Language Teacher Comprehensive.....	8	DE Reg.	80 (Final)
1529 Foreign Language Teacher Secondary.....	8	DE Reg.	80 (Final)
1533 Foreign Language Teacher Elementary.....	8	DE Reg.	80 (Final)
1537 Bilingual Teacher (Spanish) Secondary.....	8	DE Reg.	80 (Final)
1554 Standard Certificate Reading Specialist.....	8	DE Reg.	405 (Prop.)
1558 Bilingual Teacher (Spanish) Primary Middle Level.....	8	DE Reg.	80 (Final)
1577 (Formerly Reg. 368) Standard Certificate-School Psychologist	8	DE Reg.	448 (Final)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Assisted Living Facilities, Regulations for.....	8	DE Reg.	46 (Prop.)
	8	DE Reg.	85 (Final)

DIVISION OF PUBLIC HEALTH

Regulations Pertaining to the Testing of Newborn Infants for Metabolic, Hematologic and Endocrinologic Disorders.....	8	DE Reg.	100 (Final)
203 Cancer Treatment Program.....	8	DE Reg.	107 (Final)
463 Licensing and Registration of Operators of Public Water Supply Systems.....	8	DE Reg.	47 (Prop.)
	8	DE Reg.	453 (Final)

DIVISION OF SOCIAL SERVICES

Division of Social Services Manual (DSSM)

5311 Notification of Time and Place of Hearing.....	8	DE Reg.	351 (Final)
	8	DE Reg.	376 (Errata)
9068.1 Certification Period Length.....	8	DE Reg.	113 (Final)
20700.5-20700.5.8, Acquired Brain Injury Waiver Program.....	8	DE Reg.	250 (Prop.)
Child Care Subsidy Program: 11002.9 Definitions and Explanation Of Terms; 11004.4.1 Explanation of Certificates; 11006.4.2 Fee Paying Clients.....	8	DE Reg.	407 (Prop.)

DEPARTMENT OF INSURANCE

301 Audited Financial Reports.....	8	DE Reg.	252 (Prop.)
504 (Formerly Reg. No. 47) Education for Insurance Agents, Brokers, Surplus Lines Brokers and Consultants.....	8	DE Reg.	409 (Prop.)
606, (Formerly Reg. No. 31) Proof of Automobile Insurance.....	8	DE Reg.	55 (Prop.)
607, (Formerly Reg. No. 37) Defensive Driving Course Discount Automobiles and Motorcycles.....	8	DE Reg.	59 (Prop.)
	8	DE Reg.	460 (Final)
1404 Long-Term Care Insurance.....	8	DE Reg.	257 (Prop.)
1501 Medicare Supplement Insurance Minimum Standards.....	8	DE Reg.	62 (Prop.)
	8	DE Reg.	465 (Final)

DEPARTMENT OF LABOR

COUNCIL ON APPRENTICESHIP & TRAINING

Section 106.5, Standards of Apprenticeship.....	8	DE Reg.	65 (Prop.)
	8	DE Reg.	468 (Final)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

OFFICE OF THE SECRETARY

Green Energy Fund Program Regulation.....	8	DE Reg.	114 (Final)
---	---	----------------	-------------

CUMULATIVE TABLES

DIVISION OF AIR AND WASTE MANAGEMENT-AIR QUALITY MANAGEMENT SECTION		
Hazardous Waste, Regulations Governing.....	8 DE Reg.	352 (Final)
Reporting of a Discharge of a Pollutant or Air Contaminant.....	8 DE Reg.	126 (Final)
Solid Waste, Regulations Governing.....	8 DE Reg.	354 (Final)
DIVISION OF FISH & WILDLIFE		
4.0 Seasons & 7.0 Deer.....	8 DE Reg.	355 (Final)
3308 (Formerly NT-7) Fish Stocking Practices.....	8 DE Reg.	374 (Emer.)
DIVISION OF WATER RESOURCES		
Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, Regulations Governing.....	8 DE Reg.	283 (Prop.)
Surface Water Quality Standards.....	8 DE Reg.	154 (Final)
DEPARTMENT OF SAFETY AND HOMELAND SECURITY		
Board of Examiners of Private Investigators and Private Security Agencies.....	8 DE Reg.	325 (Final)
DEPARTMENT OF STATE		
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS		
Historic Preservation Tax Credit, Regulations Governing	8 DE Reg.	194 (Final)
OFFICE OF THE STATE BANKING COMMISSIONER		
708 (Formerly Reg. No. 5.770.0009) Establishment of a Branch Office by a Bank or Trust Company.....	8 DE Reg.	68 (Prop.)
	8 DE Reg.	472 (Final)
714 Establishment of a Mobile Branch Office by a Bank or Trust Company.....	8 DE Reg.	68 (Prop.)
	8 DE Reg.	473 (Final)
1113 Election by a Subsidiary Corporation of a Banking Organization of Trust Company to be Taxed in Accordance with Chapter 19 of Title 30.....	8 DE Reg.	68 (Prop.)
	8 DE Reg.	474 (Final)
GOVERNOR'S OFFICE		
Appointments	8 DE Reg.	361 (Final)
Executive Order No. 56, Establishing The Infant Mortality Task Force.....	8 DE Reg.	479 (Final)
Executive Order No .57, Declaring Friday, June 11, 2004 A Legal Holiday In Remembrance Of Former President Reagan.....	8 DE Reg.	360 (Final)
Executive Order No. 58, Relating to the Reestablishment of the Juvenile Justice Advisory Group.....	8 DE Reg.	477 (Final)

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

Statutory Authority: 16 Delaware Code,
Section 133 (16 Del.C. §133)

Nature of the Proceedings

The Delaware Department of Health and Social Services ("Department") has determined that a threat to the public welfare exists if revision to the Cancer Treatment Program Regulations, Section 4.0 Technical Eligibility, is not implemented without prior notice or hearing. Failure to retroactively (July 1, 2004) update this Section will result in delay in treatment and pose an unnecessary health risk to minors under 18 years of age, diagnosed with Cancer, who are otherwise eligible for benefits under the Cancer Treatment Program.

Nature of Proposed Revisions

Revisions indicated by underlined type and strike through.

Findings of Fact

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, this 15th day of September, 2004, that the proposed revision to the regulation be adopted on an emergency basis without prior notice or hearing, and shall become effective immediately and retroactively to July 1, 2004.

Vincent P. Meconi, Secretary
Department of Health and Social Services

203 Cancer Treatment Program**1.0 Purpose**

The Cancer Treatment Program (CTP) is a program of Delaware Health and Social Services (DHSS), Division of Public Health (DPH), intended to provide medical insurance coverage to Delawareans for the treatment of cancer. ~~The program serves Delawareans who have no health insurance.~~

2.0 Availability of Funds

2.1 Benefits will be available to enrollees provided that

funds for this program are made available to DHSS.

2.2 In the event that funds are not available, DHSS will notify enrollees and providers.

3.0 General application information

3.1 The application must be made in writing on the prescribed CTP form. An individual, agency, institution, guardian or other individual acting can make this request for assistance for the applicant with his knowledge and consent. The CTP will consider an application without regard to race, color, age, sex, disability, religion, national origin or political belief as per State and Federal law.

3.2 Each individual applying for the CTP is requested, but not required, to furnish his or her Social Security Number.

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

4.0 Technical Eligibility

4.1 The following are required for an adult applicant to receive benefits under this program. The adult applicant must:

4.1.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.

4.1.2 Be a Delaware resident.

4.1.3 Have been a Delaware resident at the time cancer was diagnosed.

4.1.4 Have no health insurance.

4.1.4.1 Examples of health insurance include comprehensive, major medical and catastrophic plans, Medicare, and Medicaid.

4.1.4.2 Excepted are the following types of insurance plans, which do not exclude eligibility for the CTP: dental, vision, dismemberment, drug, mental health, nursing home, blood bank, workman's compensation, accident, family planning, the Delaware Prescription Assistance Program, the Delaware Chronic Renal Disease program, and non-citizen medical coverage.

4.1.4.3 The CTP is the payer of last resort and will only provide benefits to the extent that they are not covered by the plans listed in 4.1.4.2.

4.1.5 Be over the age of 18 years.

4.1.6 Be diagnosed with any cancer on or after July 1, 2004, or be receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004.

4.2 The following are required for a minor (child under 18 years of age) to receive benefits under this program. The minor applicant must:

4.2.1 Need treatment for cancer in the opinion

of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for reoccurrence during or after remission.

4.2.2 Be a Delaware resident

4.2.3 Have been a Delaware resident at the time cancer was diagnosed.

4.2.4 Be diagnosed with any cancer on or after July 1, 2004. Coverage shall be retroactive up to 3 months prior to date of application, provided applicant meets medical requirements and applicant's parent(s) or legal guardian(s) meet financial eligibility requirements under 5.1. In no case will the minor applicant be eligible for benefits under this program before July 1, 2004.

4.2.5 The CTP is payer of last resort and will only provide benefits to the extent that they are not covered by other plans.

4.3 An inmate of a public institution shall be eligible for the CTP, provided that the benefits of the CTP are not otherwise provided in full or in part.

4.3.1 For the purposes of the CTP, the definitions of public institution and inmate shall be the same as used by the Delaware Medicaid program.

4.4 The Medical Assistance Card is the instrument used to verify an individual's eligibility for benefits. Prior to rendering services, medical providers are required to verify client eligibility using the client's identification number by accessing one of the Electronic Verification Systems (EVS) options. Instructions for accessing EVS are described in the EVS section of the billing manual.

5.0 Financial Eligibility

5.1 To be eligible for the CTP the applicant must have countable household income that is less than 650% of the Federal Poverty Level (FPL).

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

5.3 Countable income includes but is not limited to:

5.3.1 Social Security benefits – as paid after deduction for Medicare premium

5.3.2 Pension – as paid

5.3.3 Veterans Administration Pension – as paid

5.3.4 U.S. Railroad Retirement Benefits – as paid

5.3.5 Wages – net amount after deductions for taxes and FICA Senior Community Service Employment – net amount after deductions for taxes and FICA

5.3.6 Interest/Dividends – gross amount

5.3.7 Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.

5.3.8 Credit Life or Credit Disability Insurance Payments – as paid

5.3.9 Alimony – as paid

5.3.10 Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses

5.3.11 Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses

5.3.12 Self Employment – countable income as reported to Internal Revenue Service (IRS)

5.3.13 Unemployment Compensation - as paid

5.4 Excluded income includes but is not limited to:

5.4.1 Annuity payments

5.4.2 Individual Retirement Account (IRA) distributions

5.4.3 Payments from reverse mortgages

5.4.4 Capital gains from the sale of principal place of residence

5.4.5 Conversion or sale of a resource (i.e. cashing a certificate of deposit)

5.4.6 Income tax refunds

5.4.7 Earned Income Tax Credit (EITC)

5.4.8 Vendor payments (bills paid directly to a third party on behalf of the individual)

5.4.9 Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)

5.4.10 Loan payments received by individual

5.4.11 Proceeds of a loan

5.4.12 Foster care payments made on behalf of foster children living in the home

5.4.13 Retired Senior Volunteer Program (RSVP)

5.4.14 Veterans Administration Aid and Attendance payments

5.4.15 Victim Compensation payments

5.4.16 German reparation payments

5.4.17 Agent Orange settlement payments

5.4.18 Radiation Exposure Compensation Trust Fund payments

5.4.19 Japanese-American, Japanese-Canadian, and Aleutian restitution payments

5.4.20 Payments from long term care insurance or for inpatient care paid directly to the individual

5.5 Determination of the household income will be based on the family budget group, which is the total number of persons whose income is budgeted together. This will always include the following:

5.5.1 Married couples if they live together; and,

5.5.2 Unmarried couples who live together as husband and wife.

5.5.3 Couples will be considered as living together as husband and wife if:

5.5.3.1 They say they are married, even if the marriage cannot be verified; or,

5.5.3.2 They are recognized as husband and wife in the community; or,

5.5.3.3 One partner uses the other's last name;

or,

5.5.3.4 They state they intend to marry.

5.6 In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's income and those of his/her children are always budgeted together. The income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

5.6.1 CTP benefits would be denied to any of the recipients by maintaining separate budget groups.

5.6.2 The caretaker chooses to have his/her income and those of his/her children considered with the income of any other people in the home.

6.0 Residency

6.1 A Delaware resident is an individual who lives in Delaware with the intention to remain permanently or for an indefinite period, or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

6.2 Factors that may be taken into account when determining residency are variables such as the applicant's age, location of dwellings and addresses, location of work, institutional status, and ability to express intent.

6.3 Eligibility:

6.3.1 Will not be denied to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.

6.3.2 Will not be denied because of a durational residence requirement.

6.3.3 Will not be denied to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.

6.3.4 Will not be terminated due to temporary absence from the State, if the person intends to return when the purpose of the absence has been accomplished.

6.4 When a State or agency of the State, including an entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

7.0 Verification of eligibility information

7.1 The CTP may verify information related to eligibility. Verification may be verbal or written and may be obtained from an independent or collateral source.

7.2 Documentation shall be date stamped and become part of the CTP case record.

7.3 Verifications received and/or provided may reveal a new eligibility issue not previously realized. Additional verifications may be required.

7.4 Failure to provide requested documentation may

result in denial or termination of eligibility.

8.0 Disposition of applications

8.1 The CTP will dispose of each application by a finding of eligibility or ineligibility, unless:

8.1.1 There is an entry in the case record that the applicant voluntarily withdrew the application, and that the CTP sent a notice confirming the applicant's decision;

8.1.2 There is a supporting entry in the case record that the applicant is deceased; or

8.1.3 There is a supporting entry in the case record that the applicant cannot be located.

9.0 Changes in circumstances and personal information

9.1 Enrollees are responsible for notifying the CTP of all changes in his circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his/her behalf during periods of ineligibility.

9.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.

10.0 Termination of eligibility

10.1 Eligibility terminates:

10.1.1 When the enrollee attains other medical insurance, including Medicare, Medicaid, and the Medicaid Breast and Cervical Cancer treatment program.

10.1.2 When the enrollee is no longer receiving treatment for cancer as defined in 4.1.1.

10.1.3 When the enrollee no longer meets the technical or financial eligibility requirements.

10.1.4 12 months after the date that cancer treatment is initiated.

10.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with another cancer for which coverage has not been previously provided.

11.0 Coverage and benefits

11.1 Coverage is limited to the treatment of cancer as defined by DHSS.

11.2 There is no managed care enrollment.

11.3 Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will determine a fair rate.

11.4 Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.

11.5 Benefits for patients enrolled prior to September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.

11.6 The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

11.7 Eligibility may be retroactive to the day that cancer treatment was initiated provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided for the time period that the applicant is determined to have been eligible for the CTP.

11.8 In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

12.0 Cancer treatment services which are not covered

12.1 The cost of nursing home or long-term care institutionalization is not covered. (The cost of cancer treatment services within a nursing home or long term care institution is a covered benefit.)

12.2 Services not related to the treatment of cancer as determined by DHSS are not covered.

12.3 Cancer treatment services for which the enrollee is eligible to receive by other health plans as listed in 4.1.4.2 are not covered.

13.0 Changes in program services

13.1 When changes in program services require adjustments of CTP benefits, the CTP will notify enrollees who have provided an accurate and current name, and address or telephone number.

14.0 Confidentiality

14.1 The CTP will maintain the confidentiality of application, claim, and related records as required by law.

15.0 Review of CTP decisions

15.1 Any individual who is dissatisfied with a CTP decision may request a review of that decision.

15.2 Such request must be received by the CTP in writing within 30 days of the date of the decision in question.

15.3 The CTP will issue the results of its review in writing. The review will be final and not subject to further appeal.

Symbol Key

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

Proposed Regulations

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

**DELAWARE RIVER BASIN
COMMISSION****Proposed Amendment to the Water Quality Regulations,
Water Code and Comprehensive Plan to Classify the
Lower Delaware River as Special Protection Waters****Agency: Delaware River Basin Commission**

Summary: The Delaware River Basin Commission ("Commission" or "DRBC") will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to classify as Special Protection Waters the reach of the main stem Delaware River known as the "Lower Delaware." The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile ("RM") 209.5 to the head of tide at Trenton, New Jersey, RM 133.4.

Background. The Special Protection Waters regulations, consisting of Section 3.10.3.A.1. of the Water Quality Regulations (also, "Regulations"), are intended to maintain the quality of interstate waters where existing water quality is better than the established stream quality objectives. They consist in large part of a series of policies relating to: water quality management (§3.10.3.A.2.b.), allowable discharges (§3.10.3.A.2.c.), wastewater treatment facilities (§3.10.3.A.2.d.), the control of non point sources of pollution (§3.10.3.A.2.e.), and inter governmental responsibilities (§3.10.3.A.2.f). Other sections of the rule include definitions (§3.10.3.A.2.a.), a list of waters classified

as Special Protection Waters (§3.10.3.A.2.g.), a table defining existing water quality with numeric values for a series of different parameters in each of the river sections classified as Special Protection Waters (Table 1), and a table describing the location of the Boundary and Interstate Special Protection Waters Control Points, which are the locations used to assess water quality for purposes of defining and protecting existing water quality (Table 2).

To be protected as Special Protection Waters, stream reaches must be classified as either "Outstanding Basin Waters" or "Significant Resource Waters." "Outstanding Basin Waters" are defined as "interstate and contiguous intrastate waters that are contained within the established boundaries of national parks; national wild, scenic and recreational rivers systems; and/or national wildlife refuges that are classified by the Commission under Subsection 2.g.1. [of the Regulations] as having exceptionally high scenic, recreational and ecological values that require special protection" (§ 3.10.3.A.2.a.1.). "Significant Resource Waters" are defined as "interstate waters classified by the Commission under Subsection 2.g.2. [of the Regulations] as having exceptionally high scenic, recreational, ecological, and/or water supply uses that require special protection" (§ 3.10.3.A.2.a.2.).

In accordance with Section 3.10.3.A.2. of the Regulations, the Delaware Riverkeeper Network submitted to the Commission in April 2001 a nomination petition requesting that the Commission classify the Lower Delaware River as Special Protection Waters. The Commission initiated a five year monitoring program in May of 2000 to characterize existing water quality in the Lower Delaware. Four years of data have been collected and analyzed. Data collection and analysis for the fifth year will be completed in

2004.

A series of studies, plans, and policies and a federal designation document the scenic, recreational, ecological and water supply values and uses of the Lower Delaware and support the goal of preserving these qualities. The four years of data and findings set forth in the report entitled, *Delaware Eligibility Determination for DRBC Declaration of Special Protection Waters* (DRBC, August 2004) demonstrate that water quality in the Lower Delaware River generally is better than the water quality criteria. The *Lower Delaware National Wild & Scenic River Study Report* (National Park Service, Northeast Region, 1999) documents that the Lower Delaware River includes islands, wetlands, and diverse ecosystems that support rare and endangered plant and animal species and constitute scenic and recreational amenities. The *Lower Delaware River Management Plan* (Lower Delaware River Wild and Scenic River Study Task Force and Local Government Committee, with assistance from the National Park Service, August 1997) (LDRMP) contains goals relating to water quality, natural resources, historic resources, recreation, economic development and open space preservation for the Lower Delaware River. Goal 1 of the LDRMP calls for maintaining, and where practical, improving existing water quality in the main stem of the Lower Delaware River and its tributaries. On November 1, 2000, the President of the United States signed Public Law 106 418, designating portions of the Lower Delaware River as part of the National Wild and Scenic Rivers System. The system was established by Congress in 1968 to preserve the character of rivers with "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values" and to ensure that designated rivers remain free flowing (P.L. 106 418, 10e Congress). The *Water Resources Plan for the Delaware River Basin* (DRBC Watershed Advisory Committee, September 2004) ("Basin Plan"), which is supported by each of the Commission's signatories, directs, "[w]here water quality is better than standards for the protection of aquatic life and wildlife, implement anti degradation regulations, policies and/or other mechanisms to maintain or improve existing water quality."

Proposed Amendments. The Commission proposes to amend the Special Protection Waters regulations by adding one section of the main stem Delaware River to the list of stream reaches classified as Outstanding Basin Waters (see §3.10.3.A.2.g.1) and two sections of the main stem Delaware River to the list of stream reaches classified as Significant Resource Waters (see §3.10.3.A.2.g.2). The section of the main stem proposed to be classified as "Outstanding Resource Waters" is the reach extending from RM 171.4, a point just south of the Gilbert Generating Station in Holland Township, New Jersey, to RM 141.8, at Washington Crossing, Pennsylvania. The sections of the main stem proposed to be classified as "Significant Resource Waters"

extend from RM 209.5, the downstream boundary of the Delaware Water Gap National Recreation Area, to RM 171.4, the location of which is noted above, and from RM 141.8 at Washington Crossing, Pennsylvania, to RM 133.4, the location of the head of tide at Trenton, New Jersey.

The proposed amendments do not at this time include additions to Table 1, defining existing water quality in each classified reach with numeric values for a series of different parameters, or to Table 2, describing the location of the Boundary and Interstate Special Protection Waters Control Points. These amendments will be made at a later date, when analysis of a fifth year of water quality data for the Lower Delaware has been completed. Thus, the Commission proposes to add to Section 3.10.3.A.2.g. a new section 6), providing that the regulations that depend for enforcement upon the use of approved numeric values for existing water quality will not apply, under the proposed amendments, to regulated activities within the drainage area of the Lower Delaware River and that all other provisions of Section 3.10.3.A.2. shall apply for the Lower Delaware River upon the effective date of the proposed amendments. Provisions of the Special Protection Waters regulations that will apply within the drainage area to the Lower Delaware River include but are not limited to the following: Subsections 3.10.3.A.2.c.1. through 3., in part requiring an analysis of alternatives to new or expanded discharges; Subsections 3.10.3.A.2.d.1. through 7., setting forth requirements for wastewater treatment facilities; and Subsections 3.10.3.A.2.e.1. and 2., conditioning project approval on the existence of an approved Non Point Source Pollution Control Plan for the project area and requiring that approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by non point source control plans approved by the Commission.

Dates: The public hearing will be held on October 27, 2004 at approximately 2:00 P.M. as part of the Commission's regularly scheduled business meeting. This time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 P.M. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event all those who wish to testify cannot be heard on October 27, the hearing will be continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609 883 9500, extension 224. Written comments will be accepted through Tuesday, November 30, 2004.

Addresses: The public hearing will be held in the Kirby

Auditorium of the National Constitution Center, 525 Arch Street, Independence Mall, Philadelphia. Written comments should be addressed to the Commission Secretary as follows: by e mail to 12aula.schmitt@drbc.state.nj.us; by fax to Commission Secretary dial 609 883 9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628 0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628 0360.

Additional Information, Contacts: The full text of the draft resolution containing the proposed rule change, a map illustrating the proposed stream classifications for the Lower Delaware, a map illustrating the Wild and Scenic Rivers System designations in the Lower Delaware, and reports about the Lower Delaware will be posted no later than October 1, 2004 on the Commission's web site, <http://www.drbc.net>. The Commission will hold two informational meetings on the proposed rulemaking. One meeting will be held on Thursday, October 14, 2004 from 7:00 to 9:00 P.M. at the Delaware and Raritan Canal Commission office at the Prallsville Mills Complex, 33 Risler Street (Route 29) in Stockton, New Jersey. Another will be held on Wednesday, October 20, 2004 from 7:00 to 9:00 P.M. in Room 315 of the Acopian Engineering Building at Lafayette College, located on High Street in Easton, Pennsylvania. Directions to the meeting locations will be posted on the Commission's web site, <http://www.drbc.net> in advance of the meeting dates. Please contact Pamela Bush, tel. 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

Pamela M. Bush, Esquire
Commission Secretary
September 14, 2004

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment to the Water Quality Regulations, Water Code and Comprehensive Plan to Establish Pollutant Minimization Plan Requirements for Point and Non-Point Source Discharges of Toxic Pollutants Following Issuance of a TMDL by either the U. S. Environmental Protection Agency or a Member State, or an Assimilative Capacity Determination by the Delaware River Basin Commission.

Agency: Delaware River Basin Commission

Summary: The Delaware River Basin Commission ("Commission" or "DRBC") will hold a public hearing to receive comments on a proposed amendment to the Commission's Water Quality Regulations, Water Code and

Comprehensive Plan to establish pollutant minimization plan requirements for point and non-point source discharges of toxic pollutants following issuance of a total maximum daily load (TMDL) under Section 303(d) of the Clean Water Act (CWA) by either a member state or the U. S. Environmental Protection Agency (EPA), or issuance of an assimilative capacity determination by the Commission.

A TMDL establishes the maximum loading of a pollutant that a water body can receive without causing an impairment of the water quality standard, which includes designated uses, water quality criteria calculated to protect those uses and anti degradation requirements. When water quality standards are not attained, despite the technology-based control of industrial and municipal wastewater (point sources), the CWA requires that the impaired waters be identified on the state's Section 303(d) list and that a TMDL be developed for the pollutant or pollutants causing the impairment. A determination of the assimilative capacity of a water body for a given pollutant under Section 4.30.7 of the Commission's Water Quality Regulations is similar to the establishment of maximum total loading for a water body in a TMDL. The Commission may issue an assimilative capacity determination whenever a stream quality objective (the Commission's term for a numeric water quality criterion) is not being attained.

A TMDL or assimilative capacity determination does not in and of itself result in any improvement in water quality. Rather, the total loading or assimilative capacity must be allocated among the various sources contributing to the water quality impairment, and each discharger must reduce its discharge to achieve its allocated load. For point source discharges, the individual load allocation typically is converted to an effluent limitation in a National Pollutant Discharge Elimination System (NPDES) permit issued under Section 402 of the Clean Water Act. For non-point sources, the load allocation typically is achieved through Best Management Practices (BMPs).

For certain toxic pollutants in water bodies within the Delaware River Basin, ambient and/or effluent monitoring shows that loadings are many times higher than the levels required to ensure that water quality standards are met. Substantial reductions in loadings of such pollutants from all point and non-point sources are needed to protect the designated uses. However, the process of developing and allocating a total load or determining the assimilative capacity of the water body for the pollutant may take the regulatory agencies many years. As has become apparent in the case of the TMDLs for polychlorinated biphenyls (PCBs) in the Delaware Estuary, issued by EPA on December 15, 2003 on behalf of the states of Delaware, New Jersey and Pennsylvania, it may be many more years before the states are able to incorporate implementing provisions into NPDES permits for point sources and require implementing BMPs for non-point sources. For PCBs, and possibly for other

persistent bioaccumulative toxic chemicals, still more time - in some cases decades - will be needed before dischargers achieve sufficient load reductions to achieve the water quality standards. The proposed rule is intended to accelerate real improvements in water quality by authorizing the Commission to require point and non-point source dischargers to initiate load reduction efforts sooner. No numeric targets are proposed. Rather, the rule is based on concepts of pollution prevention and sustainability and the recognition that dischargers that are familiar with their own operations may be best situated to identify opportunities for achieving prompt loading reductions in a cost-effective manner. To comply with the rule, dischargers must plan and implement measures for achieving the maximum practicable reduction of pollutant discharges to the air, soil and water.

The proposed rule is primarily a gap-filling measure. For point sources, it will cease to apply to any discharge upon the next issuance by the state or EPA of a NPDES permit or permit renewal with respect to that discharge. For non-point discharges, the Commission's intention is to apply the rule only where existing state and federal programs will not ensure implementation of the TMDL or assimilative capacity determination.

The rule has four principal parts. Section A addresses the scope of the rule - both the pollutants and the entities intended to be regulated. Section B sets forth procedures for submission, review, implementation and continuation of Pollutant Minimization Plans ("PMPs" or "plans") required under the rule, including the relationship of the rule to the NPDES permit program. Section C lists the elements required to be included in a PMP, and Section D sets forth the requirement that dischargers submit a report annually, quantifying changes in pollutant loadings since initiation of the PMP and describing measures under way or completed to reduce loadings. Additional sections include a waiver provision and a provision for the development of guidance to assist dischargers in developing PMPs under the rule.

Scope of the Proposed Rule. The scope of the proposed rule is limited to toxic chemicals listed in Section A.1 of the rule. The proposed rule lists one pollutant - polychlorinated biphenyls or "PCBs," for which the EPA issued a TMDL for the Delaware Estuary on December 15, 2003. Additional pollutants may be added to the rule only through notice and comment rulemaking.

Classes of dischargers or individual dischargers proposed to be subject to the rule may be added by amendment or by a directive of the Commission's Executive Director, upon approval by the Commission. Two classes of PCB dischargers are initially proposed to be included: those listed in Group 1 of Tables 3-2 through 3-5 of Appendix 3 of the document, *US. Environmental Protection Agency Regions II and III, Total Maximum Daily Loads for Polychlorinated Biphenyls (PCBs) for Zones 2-5 of the Tidal*

Delaware River (December 15, 2003); and those listed in Group 2 of the same tables in the event that the presence of PCB congeners is confirmed through monitoring in accordance with the requirements set forth in Appendix 3 of the same document.

Procedures for Submission, Review, Implementation and Continuation of PMPs. The proposed rule requires dischargers to submit a PMP to the Commission and the permitting agency, if any, within three months of publication of a final rule or issuance of a directive by the Executive Director. The Commission staff, in consultation with the permitting agency staff (if applicable), will review each PMP for completeness, and the executive director will issue a completeness determination, confirming that a PMP contains all components required by the rule, or identifying deficiencies in the PMT. Where a deficiency is identified, a discharger has 30 days to submit a revised PMP reflecting a good faith effort to cure the deficiency. The rule sets forth procedures for subsequent revisions if necessary, and allows the executive director to seek penalties against a discharger for repeated failure to comply, or grant a waiver from a requirement of the rule for good cause shown. The discharger must commence implementation of its plan as submitted within 60 days of receipt of a determination of completeness.

Upon issuance of a final new or renewed NPDES permit by EPA or a member state after the imposition of a PMP requirement under the proposed rule, the permit supersedes any provisions of the PMP that relate to the NPDES-permitted discharge.

PMPs for point source discharges will receive a thorough substantive review at the time of NPDES permit issuance or reissuance. Due to limited agency resources, earlier substantive review of PMPs by the Commission or the member states is authorized but not required. The rule provides that if the Commission determines at any time that a PMP is not likely to achieve the maximum practicable reduction of pollutant discharges to the air, soil or water, it may require the discharger to submit a revised PMP to more aggressively reduce pollutant loading.

The initial term of the PMP is to be five years. The term of any PMP that is not superseded by a NPDES permit within five years may be extended by the Executive Director, following a review by the commission staff in consultation with the staff of the appropriate state environmental agency.

Plan Elements. Interested parties are referred to the text of the rule for the required elements of a PMP. Notably, these elements include strategies for tracking down unknown sources of the pollutant, as well as for minimizing releases of the pollutant where sources are found. Plans also must include a description of the procedures to be used to measure, demonstrate and report progress in reducing

potential and actual discharges of the pollutant, including annual sampling and analysis of discharges using a prescribed analytical method if one is listed in the rule. In the case of PCBs, dischargers are required to measure loadings annually using EPA Method 1668, Revision A. Dischargers are encouraged to use less complex and expensive analytical methods where possible for purposes of screening or identifying pollutant sources.

Annual Report. Annual sampling and reporting using a uniform method are required in order for dischargers and regulators to determine the effectiveness of a PMP in reducing pollutant loadings to a waterway.

Dates: The public hearing will be held on October 27, 2004 at 11:00 A.M. as part of the Commission's regularly scheduled business meeting. The hearing will end 60 to 90 minutes later, at the discretion of the Commission chair. If necessary, the hearing will be continued at a date and location announced by the Commission chair, until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609-883-9500, extension 224. Written comments will be accepted through Friday, November 19, 2004.

Addresses: The full text of the proposed rule will be posted no later than October 1, 2004 on the Commission's web site, <http://www.drbc.net>. The public hearing will be held in the Kirby Auditorium at the National Constitution Center, 525 Arch Street, Independence Mall, Philadelphia. Written comments should be addressed to the Commission Secretary as follows: by e-mail to paula.schmitt@drbc.state.ni.us; by fax to Commission Secretary - dial 609-8839522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 086280360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

Further Information, Contacts: Please contact Pamela Bush, 609-883-9500 ext. 203, with questions about the proposed rule or the rulemaking process.

Pamela M. Bush, Esquire,
Commission Secretary
September 14, 2004

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

24 DE Admin. Code 2500

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

The Delaware Board of Pharmacy in accordance with 24 Del.C. §2509 has proposed changes to its rules and regulations as mandated by Senate Bill 229. The proposal identified crimes that are substantially related to the practice of pharmacy.

A public hearing will be held on the proposed changes on November 10, 2004 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed Regulation. Written comment can be submitted at any time prior to the hearing in care of David Dryden, Executive Secretary, at the above address. In addition to publication in the *Register of Regulations*, copies of the proposed regulation can be obtained from David Dryden, Executive Secretary, by calling (302) 739-4798. Notice of the hearing and the nature of the proposal are also published in two Delaware newspapers of general circulation.

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

Proposed Rules and Regulations

16.0 Crimes substantially related to the practice of pharmacy.

16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal the following crimes, is deemed to be a crime substantially related to the practice of pharmacy in the State of Delaware without regard to the place of conviction:

16.1.1 Unlawfully administering a controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.

16.1.2 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 Del.C. §4753A.

16.2 Crimes substantially related to the practice of pharmacy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT

AMENDED, THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE RULES AND REGULATIONS FOR THE BOARD OF PHARMACY IS AVAILABLE AT:
<http://www.state.de.us/research/AdminCode/title24/2500%20Board%20of%20Pharmacy.shtml#TopOfPage>

DIVISION OF PROFESSIONAL REGULATION BOARD OF OCCUPATIONAL THERAPY

24 DE Admin. Code 2000

Statutory Authority: 24 Delaware Code,
Section 2006(b) (24 Del.C. §2006(b))

PUBLIC NOTICE

The State Board of Occupational Therapy Practice in accordance with 24 Del.C. §2006 (b) has proposed changes to its rules and regulations as mandated by Senate Bill 229. The proposal identifies crimes that are substantially related to the practice of occupational therapy.

A public hearing will be held at 4:30 p.m. on November 17, 2004, in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board of Occupational Therapy Practice, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

Proposed Rules and Regulations

7.0 Crimes substantially related to practice of occupational therapy

7.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the practice of occupational therapy in the State of Delaware without regard to the place of conviction:

7.1.1 Unlawful harm to law enforcement or seeing eye dogs. 7 Del.C. §1717

7.1.2 Aggravated menacing. 11 Del.C. §602(b)

7.1.3 Reckless endangering. 11 Del.C. §604

7.1.4 Abuse of a pregnant female in the second degree. 11 Del.C. §605

7.1.5 Abuse of a pregnant female in the first

degree. 11 Del.C. §606

7.1.6 Assault in the third degree. 11 Del.C. §

611

7.1.7 Assault in the second degree. 11 Del.C. §

612

7.1.8 Assault in the first degree. 11 Del.C. § 613

7.1.9 Abuse of a sports official. 11 Del.C. § 614

7.1.10 Assault by abuse or neglect. 11 Del.C. §

615

7.1.11 Terroristic threatening. 11 Del.C. §

621(a)(b)

7.1.12 Unlawful administering drugs. 11 Del.C. §

625

7.1.13 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. § 626

7.1.14 Prohibited acts as to substances releasing vapors or fumes. 11 Del.C. § 627

7.1.15 Vehicular assault in the first degree. 11 Del.C. § 629

7.1.16 Criminally negligent homicide. 11 Del.C. §

631

7.1.17 Manslaughter. 11 Del.C. § 632

7.1.18 Murder by abuse or neglect in the second degree. 11 Del.C. § 633

7.1.19 Murder by abuse or neglect in the first degree. 11 Del.C. §634

7.1.20 Murder in the second degree. 11 Del.C. §

635

7.1.21 Murder in the first degree. 11 Del.C. § 636

7.1.22 Sexual harassment. 11 Del.C. § 763

7.1.23 Unlawful sexual contact in the second degree. 11 Del.C. §768

7.1.24 Unlawful sexual contact in the first degree. 11 Del.C. § 769

7.1.25 Rape in the fourth degree. 11 Del.C. §770

7.1.26 Rape in the third degree. 11 Del.C. § 771

7.1.27 Rape in the second degree. 11 Del.C. § 772

7.1.28 Rape in the first degree. 11 Del.C. § 773

7.1.29 Sexual extortion. 11 Del.C. § 7767

7.1.30 Bestiality. 11 Del.C. § 777

7.1.31 Continuous sexual abuse of a child. 11 Del.C. § 778

7.1.32 Dangerous crime against a child. 11 Del.C. § 779

7.1.33 Unlawful imprisonment in the first degree. 11 Del.C. § 782

7.1.34 Kidnapping in the second degree. 11 Del.C. § 783

7.1.35 Kidnapping in the first degree. 11 Del.C. §

783A

7.1.36 Acts constituting coercion. 11 Del.C. § 791

7.1.37 Burglary in the second degree. 11 Del.C. §

825

- 826 7.1.38 Burglary in the first degree. 11 Del.C. §
- 831 7.1.39 Robbery in the second degree.11 Del.C. §
- 832 7.1.40 Robbery in the first degree. 11 Del.C. §
- § 835 7.1.41 Carjacking in the second degree. 11 Del.C.
- 836 7.1.42 Carjacking in the first degree.11 Del.C. §
- 7.1.43 Extortion.11 Del.C. § 846
- 7.1.44 Identity theft.11 Del.C. § 854
- 7.1.45 Forgery. 11 Del.C. § 861
- 871 7.1.46 Falsifying business records. 11 Del.C. §
- 903 7.1.47 Unlawful use of a credit card.11 Del.C. §
- 7.1.48 Insurance fraud.11 Del.C. § 913
- 7.1.49 Health care fraud. 11 Del.C. § 913A
- 7.1.50 Dealing in children.11 Del.C. § 1100
- 7.1.51 Abandonment of a child.11 Del.C. § 1101
- 7.1.52 Endangering the welfare of a child.11
Del.C. § 1102
- 7.1.53 Endangering the welfare of an
incompetent person. 11 Del.C. § 1105
- 7.1.54 Unlawfully dealing with a child. 11
Del.C. § 1106
- 7.1.55 Sexual exploitation of a child. 11 Del.C. §
1108
- 7.1.56 Unlawful dealing in child pornography. 11
Del.C. § 1109
- 7.1.57 Possession of child pornography.11 Del.C.
§ 1111
- 7.1.58 Sexual offenders; prohibitions from school
zones. 11 Del.C. § 1112
- 7.1.59 Sexual solicitation of a child.11 Del.C. §
1112A
- 7.1.60 Terroristic threatening of public officials
or public servants. 11 Del.C. § 1240
- 7.1.61 Abetting the violation of driver's license
restrictions. 11 Del.C. § 1249
- 7.1.62 Offenses against law enforcement animals.
11 Del.C. §1250
- 7.1.63 Felony hate crimes. 11 Del.C. § 1304
- 7.1.64 Felony stalking. 11 Del.C. § 1312A
- 7.1.65 Felony cruelty to animals. 11 Del.C. §
1325
- 7.1.66 Felony maintaining a dangerous animal.11
Del.C. § 1327(a)
- 7.1.67 Felony violation of privacy. 11 Del.C. §
1335(a)
- 7.1.68 Adulteration.11 Del.C. § 1339
- 7.1.69 Promoting prostitution in the second
degree. 11 Del.C. §1352
- 7.1.70 Promoting prostitution in the first
degree.11 Del.C. §1353
- 7.1.71 Obscenity.11 Del.C. § 1361
- 7.1.72 Carrying a concealed deadly weapon.11
Del.C. § 1442
- 7.1.73 Felony unlawful dealing with a dangerous
weapon.11 Del.C. §1445(a)
- 7.1.74 Felony possession of a deadly weapon
during the commission of a felony. 11 Del.C. § 1447
- 7.1.75 Possession and purchase of deadly
weapons by persons prohibited. 11 Del.C. § 1448
- 7.1.76 Possession of a weapon in a Safe School
and Recreation Zone. 11 Del.C. § 1457(a)
- 7.1.77 Duty to report child abuse or neglect. 16
Del.C. § 903
- 7.1.78 Abuse, neglect, mistreatment or financial
exploitation of residents or patients in a nursing or similar
facility. 16 Del.C. §1136
- 7.1.79 Falsification or destruction of records
related to maintenance medical treatment. 16 Del.C. § 2513
- 7.1.80 Manufacture, delivery or possession with
intent to deliver Schedule I or II narcotic drugs. 16 Del.C. §
4751
- 7.1.81 Manufacture, delivery or possession with
intent to deliver Schedule I , II, III, IV, or V non-narcotic
drugs.16 Del.C. §4752
- 7.1.82 Possession, consumption,or use of
controlled substances.16 Del.C. §4753
- 7.1.83 Trafficking in marijuana, cocaine, illegal
drugs, metamphetamines, L.S.D., or designer drugs. 16
Del.C. § 4753A.
- 7.1.84 Possession, consumption, or use of on-
narcotic controlled substances classified in Schedule I, II,
III, IV, or V. 16 Del.C. § 4754
- 7.1.85 Crimes by persons who are controlled
substance registrants. 16 Del.C. § 4755
- 7.1.86 Crimes related to controlled substances. 16 Del.C. §
4756
- 7.1.87 Distribution of controlled substances to
persons under 21 years of age.16 Del.C. §4761
- 7.1.88 Distribution, delivery or possession of a
controlled substance within 1,000 feet of school property. 16
Del.C. § 4767
- 7.1.89 Distribution, delivery or possession of a
controlled substance within 300 Feet of park, recreation area,
church, synagogue or other place of worship.16 Del.C. §
4768
- 7.1.90 Obtaining benefit under false pretense. 31
Del.C. § 1003
- 7.1.91 Falsification of reports, statements, or
documents. 31 Del.C. §1004
- 7.1.92 Kickback schemes and solicitation. 31
Del.C. §1005
- 7.1.93 Conversion of benefit payment. 31 Del.C.

§ 1006

7.1.94 Intentional abuse, neglect, mistreatment, or exploitation of an infirm adult. 31 **Del.C.** § 3913

7.2 Crimes substantially related to the practice of occupational therapy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

PLEASE NOTE: AS THE REST OF THE SECTIONS WERE NOT AMENDED, THEY ARE NOT BEING PUBLISHED. A COMPLETE SET OF THE RULES AND REGULATIONS FOR THE BOARD OF PHARMACY IS AVAILABLE AT:
<http://www.state.de.us/research/AdminCode/title24/2000%20Board%20of%20Occupational%20Therapy.shtml#TopOfPage>

DEPARTMENT OF EDUCATION

14 DE Admin. Code 742

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

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

742 Compensation of District Personnel Under Specific Project Proposals

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 742 Compensation of District Personnel Under Specific Project Proposals in order to add a reference to charter schools and change the title and the regulation so the regulation refers only to federal projects.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses staff compensation issues not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses staff compensation not issues of an equitable education.

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

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

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

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

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

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

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

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

742 Compensation of School District and Charter School Personnel Under Specific Project Proposals Federal Projects

1.0 A school district or charter school may use ~~Federal or local~~ federal funds to:

1.1 Employ additional administrative, supervisory and teaching personnel, or other necessary personnel beyond those allocated in **Delaware Code**, Title 14, in order to implement a federally ~~or locally~~ supported project.

1.2 Extend the employment of a ten or eleven month employee through the eleventh and twelfth month for purposes of conducting a federally ~~or locally~~ supported program. Part-time assignments shall be paid a pro-rata share.

1.3 Employ teachers of the school district or charter school during the school year for additional hours each week to support such activities as extra time instruction federally supported programs.

1.4 Employ full-time instructional personnel who are qualified for administrative or supervisory positions to carry on administrative or supervisory activities of a federally supported program beyond the regular school day or school week.

1.5 Pay a salary equal to the combined State and local salary of other persons in similar assignments at the same rank.

1.6 Pay an hourly rate for a part-time assignment as an amount pro-rated against the annual salary for the same rank and assignment and in accordance with the qualifications of the individual so assigned and in accordance with previous sections of this statement.

2.0 A district shall:

~~2.1 Where applicable include a description of the position in the project proposal as presented to the Department of Education for approval.~~

~~2.2 In describing any new or additional position, align it with a recognized rank as described in Delaware Code, Title 14; or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.~~

~~2.3 Include in the benefits of the employee all of those benefits that accrue to an employee of the State or the local school district except that the benefit of the provisions of 14 Del.C. Ch. 14 shall not apply to any person whose salary is paid from Federal funds in whole or in part.~~

~~2.4 Seek and obtain approval of a Federally-funded project through the office of the appropriate coordinator in the Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.~~

~~2.5 Comply with the maximum hourly compensation rates as published by the Department of Education unless there is authorization to pay at a per diem rate.~~

See 3 DE Reg. 755 (12/1/99)

2.0 A school district or charter school shall not:

~~2.1 Supplant funds for a local or state position by substituting federal funds for payment of that position.~~

~~2.2 Pay a salary to cover paid vacation days during intended federal employment when that federal employment is an extension of a ten or eleven-month school year as assigned and paid by the state.~~

3 DE Reg. 755 (12/1/99)

3.0 A district shall not:

~~3.1 Supplant funds for a local or State position by substituting Federal funds for payment of that position.~~

~~3.2 Pay a salary to cover paid vacation days during intended Federal employment when that Federal employment is an extension of a ten or eleven-month school year as assigned and paid by the State.~~

3.0 For federal project proposals that require the approval of the Department of Education, the applicant shall:

~~3.1 Describe any new or additional position, align it with a recognized rank as described in Delaware Code Title 14 or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.~~

~~3.2 Include in the benefits of the employee all of those benefits that accrue to an employee of the state or the local school district or charter school except that the benefit of the provisions of 14 Del.C. Ch. 14 shall not apply to any person whose salary is paid from federal funds in whole or in part.~~

~~3.3 Seek and obtain approval of the project through the Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.~~

~~4.0 Local school districts shall comply with the maximum hourly compensation rates as published by the Department of Education.~~

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 107 (31 Del.C. §107)

PUBLIC NOTICE

Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by October 31, 2004.

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

Summary Of Proposed Changes

Citation

7 CFR 273.7(j): Certification of Eligible Households – Work Provisions – Voluntary Quit and Reduction of Work Effort

Previous regulations required States to impose voluntary quit sanctions only on active individuals. When an individual was not getting benefits, States had to wait until the individual reapplied for benefits to impose the sanction. The regulations were changed to allow States to impose voluntary quit sanctions even if the household's certification had ended and the household did not reapply for benefits. This means the sanctions can be applied while the case is closed.

DSS PROPOSED REGULATION #04-08

REVISIONS:

9026 Voluntary Quit [273.7(n)]

No individual who voluntarily quit his/her most recent job or reduced work hours to less than 30 hours per week, without good cause will be eligible to participate in the Food Stamp Program as specified below.

At the time of application, explain to the applicant the consequences of the individual quitting his or her job without good cause.

9026.1 Application Processing

1) When a household files an application for participation or when a participating household reports the loss of a source of income, determine whether any household member voluntarily quit a job. Benefits will not be delayed beyond the normal processing times specified in DSSM 9028 pending the outcome of this determination. This provision applies only if the employment involved 30 hours or more per week or provided weekly earnings at least equivalent to the Federal minimum wage multiplied by 30 hours; the quit occurred within 60 days prior to the date of application or anytime thereafter; and the quit was without good cause. Changes in employment status that result from reducing hours of employment while working for the same employer, terminating a self employment enterprise or resigning from a job at the demand of the employer will not be considered as a voluntary quit for the purpose of this

subsection.

An employee of the Federal Government or of a state or local government, who participates in a strike against such government and is dismissed from his or her job because of participation in the strike, will be considered to have voluntarily quit a job without good cause.

2) In the case of an applicant household, determine whether any currently unemployed (i.e., employed less than 30 hours per week or receiving less than weekly earnings equivalent to the Federal minimum wage multiplied by 30 hours) household member who is required to register for work has voluntarily quit his or her most recent job within the last 60 days. If DSS learns that a household has lost a source of income after the date of application but before the household is certified, determine whether a voluntary quit occurred.

3) In the case of a participating household, determine whether any household member voluntarily quit his or her job or reduced work his or her hours, while participating in the Program.

4) If the determination of voluntary quit is established, determine if that member is the head of the household per DSSM 9014 or another household member.

5) Upon a determination that the head of household/individual voluntarily quit employment, determine if the voluntary quit was with good cause as defined in DSSM 9026.3. In the case of an applicant household, if the voluntary quit was without good cause, the household's application for participation will be denied and the appropriate period of ineligibility imposed per DSSM 9021.2.

Provide the applicant household with a notice of denial informing the household of the following items:

- The proposed disqualification period,
- Its right to reapply at the end of the period of ineligibility,
- Its right to a fair hearing.

If DSS determines that the head of a participating household/individual voluntarily quit his/her job or reduced his/her work hours while participating in the program or discovers a quit or reduction of work hours which occurred within sixty (60) days prior to application or between application and certification, provide a notice of adverse action within ten (10) days after the determination of a voluntary quit is made. The notification must contain the proposed period of ineligibility and must specify that the household may reapply at the end of the sanction. The periods of ineligibility are imposed according to DSSM 9021.2, and is effective upon the issuance of the notice of denial.

~~For those households which leave the program before the sanction can be levied, do not impose the sanction until the household returns to the program.~~

If a voluntary quit or reduction in work effort

occurs in the last month of a certification period, or it is determined in the last 30 days of the certification period, the individual must be denied recertification for a period equal to the appropriate mandatory disqualification period. The beginning of the disqualification starts with the first day after the last certification period ends and continues for the length of the disqualification period, regardless of whether the individual reapplies for food stamps.

Example:

It is determined that a participating individual quit his job without good cause in the last month of the certification period. The individual does not reapply for benefits. The individual is disqualified for three months starting with the first day after the certification period ended.

- If the individual reapplies before the three month period has ended, the individual is denied benefits due to the voluntary quit sanction.
- If the individual reapplies after the three month period has ended, the disqualification period has been served and eligibility can be determined.

Each household has a right to a fair hearing to appeal a reduction or termination of benefits due to a determination that the household's head voluntarily quit his/her job without good cause. If the participating household requests a fair hearing and the Division's determination is upheld, the disqualification period begins with the first month after the hearing decision is rendered.

Household heads who have been disqualified for quitting a job will carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it per DSSM 9021.4.

6) If an application for participation is filed in the third month of disqualification, use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

9026.2 Exemptions From Voluntary Quit Provisions

Persons exempt from the full-time work registration provisions are also exempt from voluntary quit provisions (See DSSM 9018.3).

9026.3 Good Cause

Good cause for leaving employment includes the good cause provisions found in DSSM 9025 and resigning from a job that does not meet the suitability criteria specified at DSSM 9022. Good cause for leaving employment also includes:

- 1) Discrimination by an employer based on age,

race, sex, color, disability, religious beliefs, national origin, or political beliefs;

2) Work demands or conditions that under continued employment would be unreasonable, such as working without being paid on schedule;

3) Acceptance by the head of household of employment, or enrollment at least halftime in any recognized school, training program or institution of higher education, that requires the head of household to leave employment;

4) Acceptance by another household member of employment or enrollment at least half time in any recognized school, training program, or institution of higher education in another county which requires the household to move and thereby requires the head of household to leave employment;

5) Resignations by persons under the age of 60 which are recognized by the employer as retirement;

6) Employment which becomes unsuitable by not meeting the criteria specified in DSSM 9022 after the acceptances of such employment;

7) Acceptance of a bona fide offer of employment of more than 30 hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by 30 hours which, because of circumstances beyond the control of the head of household, subsequently either does not materialize or results in employment of less than 30 hours a week or weekly earnings of less than the federal minimum wage multiplied by 30 hours; and

8) Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food stamp benefits between jobs, particularly in cases where work may not yet be available at the new job site. Even though employment at the new site has not actually begun, the quitting of previous employment will be considered as with good cause if it is part of the pattern of that type of employment.

9026.4 Voluntary Quit Verification

To the extent that the information given by the household is questionable as defined in DSSM 9033, request verification of the household's statements. The primary responsibility for providing verification as provided in DSSM 9035 rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, assistance will be offered to the household to obtain the needed verification. Acceptable sources of verification include but are not limited to the previous employer, employee associations, union representatives, and grievance committees or organizations. Whenever documentary evidence cannot be obtained, substitute a collateral contact.

The Division is responsible for obtaining verification from acceptable collateral contacts provided by the household. If the household and the Division are unable to obtain requested verification from these or other sources because the cause for the quit resulted from circumstances that for good reason cannot be verified, such as a resignation from employment due to discrimination practices or unreasonable demands by an employer or because the employer cannot be located, the household will not be denied access to the Food Stamp Program.

9026.5 Ending a Voluntary Quit Or A Reduction In Work Hours Disqualification

Following the end of the disqualification period, as defined in DSSM 9021.2, a household may begin participation in the program if it applies again and is determined eligible.

Eligibility may be reestablished during a disqualification period and the household will, if otherwise eligible, be permitted to resume participation if the violator becomes exempt from the work registration requirements through DSSM 9018.3, other than through exemptions based on items (3) and (5) of that sections. Should a household which has been determined to be non-compliant without good cause split into more than one household, the sanction will follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household is ineligible for the balance of the period of ineligibility.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

Statutory Authority: 21 Delaware Code,
Section 4101(d) (21 Del.C. §4101(d))

PUBLIC NOTICE

Notice is hereby given that the Secretary of the Department of Safety and Homeland Security, formerly the Secretary of the Department of Public Safety, in accordance with 21 Del.C. §4101(d) and 73 Del. Laws, c. 350, sec. 92 intends to promulgate regulations. These regulations will regulate the administration of the Electronic Red Light Safety Program in unincorporated areas of the State of Delaware. The Electronic Red Light Safety Program through the use of traffic light signal monitoring systems will impose monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals. A public hearing will be held on Monday, November 1, 2004 at 11:00 A.M. in the second floor main conference room (rm. 205) of the Safety and Homeland Security Building, 303

Transportation Circle, Dover, DE. The Secretary of Safety and Homeland Security will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Department of Safety and Homeland Security, in care of William G. Bush, IV, at P.O. Box 818, Dover, DE 19903-0818 on or before November 1, 2004. Anyone wishing to obtain a copy of the proposed regulations may do so by sending a written request to the Department of Safety and Homeland Security, P.O. Box 818, Dover, DE 19903-0818 or may obtain a copy in room 220 of the Safety and Homeland Security Building, 303 Transportation Circle, Dover, DE. This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

Electronic Red Light Safety Program (ERLSP)

1.0 Statement of Purpose

The purpose of these regulations are to provide for the establishment and administration of a program in unincorporated areas of the State of Delaware imposing monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals. These regulations are being promulgated in accordance with 21 Del.C. §4101(d) and 73 Del. Laws, c. 350, sec. 92.

2.0 Locations of Traffic Light Signal Monitoring Systems

There shall be up to 10 locations in unincorporated areas of the State of Delaware where traffic light signal monitoring systems shall be installed and operated.

3.0 Nestor Traffic Systems, Inc.

The Department of Transportation has selected Nestor Traffic Systems, Inc. to provide traffic light signal monitoring systems for unincorporated areas of the State of Delaware and to assist in administering the Electric Red Light Safety Program in unincorporated areas of the State of Delaware. Nestor Traffic Systems, Inc. and its employees may participate in the administration of the Electronic Red Light Safety Program.

4.0 Fines

The owner or operator of a vehicle that commits a violation by failing to comply with a traffic light signal, as evidenced by information obtained from a traffic light signal monitoring system, shall be subject to a civil assessment in the amount of \$75.

5.0 Violation Criteria

For a violation to occur, the front of a vehicle must be behind the stop line marked on the pavement at the time the traffic light signal turns red and must then continue into the intersection while the traffic light signal is red.

6.0 Determination of Violation

An employee of the Delaware State Police shall review video evidence from a traffic light signal monitoring system and make a determination as to whether a violation has occurred. If a determination is made that a violation has occurred, a Notice of Violation shall be sent to the registered owner of the vehicle that committed the violation.

7.0 Exemptions

The following vehicles are exempt from receiving a notice of violation:

- 7.1 Emergency vehicles with active emergency lights;
- 7.2 Vehicles moving through the intersection to avoid or clear the way for a marked emergency vehicle;
- 7.3 Vehicles under police escort; and
- 7.4 Vehicles in a funeral procession.

8.0 Notice of Violation Content

A Notice of Violation shall contain:

- 8.1 A civil violation number;
- 8.2 The name and address of the registered owner of the vehicle that committed the violation;
- 8.3 The registration number of the motor vehicle involved in the violation;
- 8.4 The violation charges;
- 8.5 The location where the violation occurred;
- 8.6 The date and time of the violation;
- 8.7 The date the notice of violation is mailed;
- 8.8 Four images that demonstrate proof of a violation.

This shall include:

- 8.8.1 An image showing the vehicle behind the stop line, light is red;
- 8.8.2 An image showing vehicle within intersection, light is red;
- 8.8.3 An image showing a close-up of the license plate; and
- 8.8.4 An image showing the rear of vehicle, with license plate;
- 8.9 The amount of the civil assessment imposed and the date by which the civil assessment should be paid;
- 8.10 Information advising an owner or operator of a vehicle regarding the manner, time and place by which liability as alleged in a Notice of Violation may be contested and warning that the failure to pay the civil assessment or to contest liability within 30 days of the mailing of the Notice of Violation is an admission of liability and may result in a judgment being entered against the owner or operator and/or the denial of the registration or the renewal of the registration of any of the owner's vehicles; and
- 8.11 Notice concerning a person's ability to rebut the presumption that he or she was the operator of the vehicle at the time of the alleged violation and the means for rebutting the presumption.

9.0 Affidavits

9.1 If the registered owner of a vehicle whom has received a notice of violation contends that he/she was not the operator of the vehicle at the time of the violation, he/she will be required to submit an affidavit denying that he/she was an operator and shall provide the name and address of the operator at the time of the violation.

9.2 If the registered owner is a leasing company that rents/leases vehicles, that leasing company must provide by affidavit the name and address of the person or entity who rented/leased or otherwise had care, custody, or control of the vehicle at the time of the violation.

9.3 If a vehicle, or its plates were stolen at the time of the alleged violation, the registered owner must provide an affidavit denying he/she was an operator and provide a certified copy of the police report/log reflecting such theft.

9.4 An affidavit must be provided by the registered owner of a vehicle receiving a Notice of Violation within 30 days of the mailing date of the Notice of Violation.

9.5 Upon receipt of an affidavit by the State of Delaware or Nestor Traffic Signals, Inc., the newly implicated person will be mailed a notification informing him/her of the violation.

10.0 Payment of Civil Assessment

A person electing to pay a civil assessment should make payment by check or money order to ERLSP. Payment should be made by mail to: P.O. Box 2018, Winchester, VA 22604 or at such other address as specified on the Notice of Violation.

11.0 Procedures to Contest a Violation

A hearing to contest a violation will be heard in the Justice of the Peace Court for the State of Delaware. A person receiving a Notice of Violation may request a hearing to contest a violation by sending such request to the address provided with or on the Notice of Violation within 30 days of the date the Notice of Violation was sent to the owner or operator of the vehicle. If a request for a hearing is not made within 30 days of the Notice of Violation being sent to the owner or operator of the vehicle, that person or entity has waived the right to contest the violation.

12.0 Failure to Pay Civil Assessment

If the owner or operator of a vehicle does not pay a civil assessment within 30 days of the Notice of Violation being sent to the owner or operator of the vehicle or does not successfully contest a violation, the Division of Motor Vehicles may refuse to register and/or deny the renewal of the registration of any of the owner's vehicles. Additionally, the Department of Transportation may pursue a civil action, including seeking judgment and execution on a judgment against the owner or operator of the vehicle.

DEPARTMENT OF STATE
DIVISION OF HISTORICAL AND
CULTURAL AFFAIRS

Statutory Authority: 30 Delaware Code,
Section 1815(b), (30 Del.C. §1815(b))

PUBLIC NOTICE

Title:

Amendments to the Regulations Governing the Historic Preservation Tax Credit

Brief Synopsis:

The Historic Preservation Tax Credit Act (30 Del.C. Ch. 18, Subch. II) was first enacted by the General Assembly in 2001 and was amended in 2002, 2003 and 2004. Program regulations were adopted in July, 2002 (6 DE Reg. 108 (7/1/02)) and were amended in July, 2004 (8 DE Reg. 194 (7/1/04)). The 2004 amendments allowed for phasing of rehabilitation projects. The purpose of the following proposed regulatory amendments is to implement the code changes of 2004 and to clarify various sections of the regulations. As to the phasing of projects under this program, the proposed amendments modify six sections of the regulations (§3.0, §5.4, §6.1, §6.3, §6.4, §6.5, §7.1). As to clarification of the regulations, the proposed amendments modify eight sections of the regulations (§1.0, §3.0, §4.1, §4.2, §4.4, §5.1, §5.2, §5.3, §5.5, §5.6, §5.7, §5.8, §5.9, §5.10, §5.11, §6.2, §6.3, §6.4). The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified historic property.

Statutory Basis or Legal Authority to Act:

30 Del.C. §1815(b)

Other Regulations that may be Affected by the Proposal:

The State Bank Commissioner and the Division of Revenue will adopt regulations or issue guidelines for tax elements of the Historic Preservation Tax Credit Act.

Notice of Public Comment:

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 Del.C. §1815(b). The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Comments should be submitted to the Division in care of Daniel R. Griffith, Director, Division of Historical and Cultural Affairs, 21 The Green, Suite B, Dover, DE 19901. The final date to submit

comments is October 31, 2004. Anyone wishing to obtain a copy of the proposed amendments to the rules and regulations should notify Daniel R. Griffith at the above address or call 302-739-5685. This notice will be published in two newspapers of general circulation.

Prepared by:

Daniel R. Griffith, Director
302-739-5685
September 15, 2004

Proposed Regulations Governing the Historic Preservation Tax Credit Act:

1.0 Scope

A person or business entity that owns and rehabilitates a certified historic property may receive a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations and those that may be promulgated by the Division of Revenue or the State Bank Commissioner. Any person eligible for credits under this Chapter, except a person engaged in a resident curator relationship, may transfer, sell or assign any or all unused credits. ~~except a person engaged in a resident curator relationship~~.

6 DE Reg. 108 (7/2/02)

2.0 Statutory Authority

These regulations are created pursuant to 30 Del.C. Ch. 18, Subch. II which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

3.0 Definitions

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

“Act” means the 30 Del.C. Ch. 18, Subch. II.

“Application” means the Delaware Historic Preservation Tax Credit application that shall consist of ~~three~~ four parts, as follows: the Request for Certification of Historic Property (Part 1); the Request for Certification of Rehabilitation (Part 2); ~~and~~ the Request for Certification of Completion (Part 3), and the Request for Credit Award.

“Certified historic property” or “qualified property” means a property located within the State of Delaware that is:

- individually listed in the National Register of

- Historic Places; or
- located in a historic district listed in the National Register of Historic Places and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or
- individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or
- located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

"Certification of Completion", "Completion Certificate" or "Certificate of Completion" means the certificate issued by the Delaware State Historic Preservation Officer attesting that certified rehabilitation, or, if applicable, phase thereof, has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (whether or not such project would be eligible for such federal tax credit) has been obtained.

"Certified rehabilitation" means rehabilitation of a certified historic structure property or portion thereof that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with ~~the Standards of~~ the Secretary of the Interior's Standards for Rehabilitation (36 CRF, part 67) or such other standards as the Delaware State Historic Preservation Office shall from time to time adopt.

"Credit award" means the amount of qualified expenditures as determined by the State Office as part of the Part 2 approval multiplied by the appropriate ~~amount~~ percentage as determined in 30 Del.C. §1813.

"Delaware State Historic Preservation Officer" means the person designated and appointed in accordance with 16 USC §470a(b)(1)(a).

"Federal tax credit" means the Federal Rehabilitation Tax Credit as defined in the United States Tax Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47.

"Fiscal Year" means the State's of Delaware's fiscal year.

"National Register of Historic Places" or "National Register" means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture

that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

"Office" or "State Office" means the Delaware State Historic Preservation Office.

"Owner-occupied historic property" means any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used, or within a reasonable period will be used, by such taxpayer as the taxpayer's principal residence. ~~"Reasonable period" shall mean within six months of the issuance of the Certification of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause.~~ Such property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

"Person" means any individual, any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations) whether or not for profit, any form of partnership which is lawful within the State of Delaware (including limited liability partnerships) whether or not for profit, any trust or estate, and any lawful joint venture. "Person" shall also mean any governmental entity, pass-through entity, or person under a lease contract for five years or longer.

"Phased rehabilitation" means any certified rehabilitation of a certified historic property reasonably expected to be completed in two or more distinct stages of development as more fully described in Treasury Regulation 1-48-12(b)(v) or any successor provision.

"Property" means real estate and shall include any building or structure, including multiple-unit structures.

"Qualified expenditure" means any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

- acquisition of real property or acquiring an interest in real property;
- any addition to an existing structure except where the combined square footage of all additions is 20% or less than the total square footage of the historic portion of the property and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:
 - preserving the character-defining features of the certified historic property,
 - adequately differentiating the new construction from the existing structure, and
 - complying with requirements regarding safety and accessibility in a manner

reasonably designed to minimize any adverse impact on the certified historic property;

- paving or landscaping costs which exceed 10% of the total qualified expenditures;
- sales and marketing costs; or
- expenditures not properly charged to a capital account, including in the case of owner-occupied property, expenditures that would not properly be charged to a capital account where the owner using such property is a trade or business.

“Reasonable period” means that an owner must occupy the rehabilitated property as their principal residence within six months of the issuance of the Certificate of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause.

“Resident Curator” means a person who has entered into a contractual agreement with the owner of a qualified property in which the person agrees to pay for full restoration of the owner’s qualifying property in exchange for a life tenancy in the property without remunerative compensation to the owner for the life tenancy.

“Substantial rehabilitation” or **“full restoration”** means rehabilitation of a certified historic property for which the qualified expenditures, during the 24-month period, or the 60-month period for a phased rehabilitation, selected by the taxpayer and ending with or within the taxable year, exceed:

- for income-producing property, and non-income producing property other than owner-occupied historic property, the current standard required by Section 47(c)(1)(C) Internal Revenue Code; and
- for owner-occupied historic property or property under contract with a resident curator, \$5,000.

“Taxpayer” means any person as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either 30 Del.C. Ch. 11 or 30 Del.C. Ch. 19.

6 DE Reg. 108 (7/1/02)

8 DE Reg. 194 (7/1/04)

4.0 Procedures for Certification of Historic Property

4.1 A taxpayer may request that a property in a National Register listed or locally designated historic district be certified by the Delaware State Historic Preservation Officer as a certified historic property by filing the Part 1 application with the State Office. The Part 1 application shall be filed on standard forms available from the State Office. ~~An incomplete application will not be processed until all required application information has been received. The State Office will notify the taxpayer of the additional~~

~~information needed to undertake or complete the review.~~

4.2 An incomplete Part 1 application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete the review.

4.3 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete Part 1 application is received meets the definition of certified historic property and will notify the taxpayer of the decision.

4.4 ~~Taxpayers of properties~~ If a property is individually listed in the National Register, do not need to submit submission of a Part 1 application is not required. The name of the historic property and its date of listing in the National Register must be provided in the Part 2 application.

6 DE Reg 108 (7/1/02)

5.0 Procedures for Certification of Rehabilitation

5.1 A taxpayer may request a determination by the Delaware State Historic Preservation Officer that a proposed ~~substantial~~ rehabilitation plan meets the criteria for certification by filing a Part 2 application with the State Office. The Part 2 application shall be filed on standard forms available from the State Office.

5.2 A taxpayer must submit Part 1 of the application prior to, or with, Part 2. ~~The Part 2 of the~~ application will not be processed until an adequately documented and approved Part 1 application, where required as outlined in Section 4.0 of these regulations, is on file.

5.3 An incomplete Part 2 application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete review.

5.4 A taxpayer requesting approval of a phased rehabilitation plan shall provide the State Office with a description of the phases and their completion dates when submitting the Part 2 application. The Delaware State Historic Preservation Officer will notify the taxpayer if the phased rehabilitation plan is approved. The final completion date for a phased rehabilitation is binding unless the taxpayer requests a change in writing. For a phased rehabilitation, the taxpayer has 60 months to meet the substantial rehabilitation test.

5.4.5 The Delaware State Historic Preservation Officer shall determine whether the proposed ~~substantial~~ rehabilitation for which a complete application is received under Section 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the taxpayer notice of the determination ~~and of the credit award.~~ The State Office may require modifications to the plan in order to meet the definition of a certified rehabilitation.

5.5.6 A Request for Credit Award application must be submitted with the Part 2 application. The Part 2

~~application~~ A taxpayer must also provide cost estimates of qualified expenditures prepared by a licensed architect, engineer, or contractor or a certified construction cost estimator. ~~for the proposed rehabilitation. This information will be used to determine the credit award for approved Part 2 applications.~~

5.5.7 The amount of tax credit applied against the qualified expenditures in accordance with 30 Del.C. §1813 shall represent the credit award. The cost estimate supplied by the taxpayer in accordance with Section 5.6 will be used to determine the credit award for approved Part 2 applications.

5.5.8 Credits will be awarded in chronological order based upon the date and time on which each application receives Part 2 approval from the State Office. The State Historic Preservation Officer shall notify the taxpayer of the amount of the credit award.

5.5.9 In the alternative, the Delaware State Historic Preservation Officer may ~~certify a rehabilitation plan and~~ issue a Part 2 approval to any taxpayer who has obtained a ~~Part 1 and~~ Part 2 certification from the federal government pursuant to 36 CFR 67. ~~where applicable.~~ Under this provision, a taxpayers must file the State of Delaware Part 2 cover form containing as well as the information required under Section 5.5.6 of these regulations.

5.5.10 All taxpayers must begin construction on the approved ~~Part 2~~ certified rehabilitation plan within one year of receiving the Part 2 approval. ~~Taxpayers, having received Part 2 approval, must notify the State Office in writing of the start date of the rehabilitation work.~~ If construction on the rehabilitation plan is not substantially commenced and ~~is being~~ diligently pursued within this time period, the taxpayer will forfeit the awarded credits, and the credits awarded to such taxpayer will become available for award to other taxpayers. Substantially commenced and diligently pursued means that at a minimum 25% of the estimated rehabilitation costs must have been expended. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.

~~5.40.11~~ The project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work is consistent with the approved ~~Part 2~~ certified rehabilitation plan, ~~or and if~~ the project has substantially commenced and is being diligently pursued.

6 DE Reg. 108 (7/1/02)

6.0 Procedures for Certification of Completion

6.1 Upon completion of a certified rehabilitation, or an approved project phase thereof, the taxpayer must submit a Part 3 application with required documentation and a final accounting of qualified expenditures, to the Delaware State Historic Preservation Office. ~~The completed project may be inspected by the Delaware State Historic Preservation~~

~~Officer or his/her designated representative to determine if the work meets the definition of a certified rehabilitation.~~

6.2 An incomplete Part 3 application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete the review. The completed project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work meets the definition of a certified rehabilitation.

6.2.3 Upon approval by the State Office that the completed rehabilitation, or an approved phase thereof, meets the definition of a certified rehabilitation, the State Office shall submit the documentation of qualified expenditures to the Division of Revenue ~~or the State Bank Commissioner, as appropriate~~, and request a determination of the value of the tax credit for the completed project or an approved phase.

6.3.4 Upon receipt from the Division of Revenue of the certification of the value of the tax credit for the project, or an approved phase thereof, associated with the Certificate of Completion by the Division of Revenue or the State Bank Commissioner, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion to the taxpayer. For approved phased rehabilitations, each phase must receive a Certificate of Completion indicating that each phase is a certified rehabilitation in order for the overall project to be considered to be a certified rehabilitation.

6.5 In the case of approved phased projects, more than one Certificate of Completion may be awarded to a single rehabilitation project. Credits issued to the initial assignee, or in the case of a tax-exempt assignee, to the first taxable transferee after the associated phase completion, shall be subject to revocation and repayment to the Delaware Division of Revenue or the Office of the State Bank Commissioner if, under regulations issued by the State Office, a phased rehabilitation is not completed by the agreed upon completion date indicating that the applicant for the credit award is unable or unwilling to complete it, or in the event that the project does not meet the certification requirements previously agreed to with the State Office.

6.4.6 In no event shall the credit claimed by a taxpayer exceed the approved Part 2 credit award.

6 DE Reg. 108 (7/1/02)

7.0 Fees for Processing Rehabilitation Certification Request

7.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over \$100,000 is \$250 for each separate application. The fee from a single taxpayer for multiple projects submitted at the same time shall not exceed \$2,500. Final action will not be taken on any application until the appropriate remittance is received. No

fee will be charged for rehabilitation projects where the qualified expenditures are under \$100,000.

7.2 The fee, where applicable, must be submitted with the Part 3 application. For phased projects, the fee must be submitted with the first Part 3 submitted. All checks shall be made payable to the State of Delaware.

8.0 Resident Curator Program

8.1 Curatorship property is subject to periodic inspection by the State Office during the tax years in which the credit is applicable.

8.2 Improvements to curatorship property must be completed within five years from the date of execution of the contract between the owner and the resident curator.

8.3 Curatorship property must not be used for commercial purposes.

8 DE Reg. 194 (7/1/04)

9.0 Administrative Review

9.1 A taxpayer whose application has been disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.

9.2 The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee determines that the application filed meets the standards set forth in these regulations the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in these regulations, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the taxpayer of the Secretary's determination.

9.3 A taxpayer whose application has been disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29 **Del.C.** §10101 et. seq.

9.4 An appellant who has exhausted all administrative remedies shall be entitled to judicial review in accordance with 29 **Del.C.** Ch. 101, Subch. V of the Administrative Procedures Act.

6 DE Reg. 108 (7/1/02)

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
GAMING CONTROL BOARD**

Statutory Authority: 28 Delaware Code,
Section 1503 (28 **Del.C.** §1503)
24 **DE Admin. Code** 401

ORDER

Pursuant to 29 **Del.C.** §10118 and 28 **Del.C.** §1503, the Delaware Gaming Control Board ("Board") hereby issues this Order, adopting a proposed amendment to the Board's Bingo Rules. Following notice and a public hearing held on August 5, 2004 on the proposed Rule, the Board makes the following findings and conclusions:

Summary Of Evidence

1. The Board posted public notice of the proposed rule revision in the May 1, 2004 Register of Regulations and in two Delaware newspapers of general circulation. The proposal contained a proposed amendment to Bingo Regulation 2.3 to provide that all bingo applications, original and supplemental, shall be filed at least six weeks before the scheduled event.

2. The Board received no comments from the public either in writing or at the public hearing.

Findings Of Fact

3. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing regarding the proposed rule amendment. The Board received no public comments.

4. The Board finds that the proposed amendment to Bingo Regulation 2.3 should be adopted in its proposed form.

Conclusion

5. The proposed rule amendment was promulgated by the Board in accord with its statutory duties and authority as set forth in 28 **Del.C.** §1503. The proposed rule will provide for clear guidelines for the submission of all bingo applications and allow the Board sufficient time to review all applications at its regularly scheduled meetings.

6. The Board deems these rules as proposed to be necessary for the effective enforcement of 28 **Del.C.** chapter 11 and for the full and complete regulation of bingo.

7. The Board concludes that the promulgated amendment to Bingo Regulation 2.3 will be adopted and will now provide as follows:

2.3 All original and supplemental applications shall be filed with the Secretary of the Board at least six (6) weeks prior to the date of the occasion. All supplemental applications shall be filed fifteen (15) days prior to the first date of the occasion.

8. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on October 1, 2004.

IT IS SO ORDERED this 2nd day of September, 2004.

Frank Long, Chairman
John Mancus, Vice-Chairman
Ronald Mosher
Roland Neeman
Thomas R. Trader

401 Regulations Governing Bingo

1.0 Definitions

"Bingo" A game of chance played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers as objects similarly numbered are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a-card.

"Bingo Statute" The statutory law concerning bingo, as contained in **28 Delaware Code, Section 1101 et. seq.**

"Board" The Delaware Gaming Control Board.

"Color Coded" A different color for each of the five letters of the word "BINGO."

"Cookie Jar Bingo" A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to entry into a later drawing for the total funds deposited by all other players in the cookie jar or container.

2 DE Reg. 1224 (1/1/99)

"Districts" Those districts mentioned in Article II, 917A of the Delaware Constitution.

"Equipment" The receptacle and color coded numbered objects to be drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address systems, tables, chairs, and other articles essential to the operation, conduct and playing of bingo.

"Game" The game of bingo.

"Instant Bingo" A game of chance played with sealed or covered cards which must be opened in some fashion by the holder such that the cards reveal instantly whether the holder has won a prize. This type of game includes but is not limited to games commonly known as "rip-offs" or "Nevada pull-tabs."

2 DE Reg. 1224 (1/1/99)

"Member in Charge" A bona fide, active member of the "Qualified Organization" in charge of, and primarily responsible for the conduct of the game on each occasion.

"Occasion" A single gathering or session at which a series of successive bingo games (regular, special, or otherwise) is played, not to exceed forty (40) in number.

"Proceeds" The gross income received from all activities engaged in or on occasion when bingo is played, less only, such actual expenses incurred as are authorized in the Bingo Statute and these Rules and Regulations.

"Qualified Organization" A volunteer fire company, veterans organization, religious or charitable organization, or fraternal society that is operated in a manner so as to come within the provisions of Section 170 of the U.S. Secretary of the Treasury.

2.0 Applications For Bingo License.

2.1 original applications shall be filed upon:

2.1.1 the first application of an organization for a license;

2.1.2 after the first application and upon a subsequent change in the organization's charter or bylaws;

2.1.3 in the event of a subsequent application after a prior refusal, suspension, or revocation by the Board.

2.2 Supplemental applications for bingo licenses shall be filed in all instances except those covered by the original application. All promotional give-away events, as defined under 28 Del.C. §1139(h)(2), must be listed on an applicant's application for licensure, giving the dates of the promotional give-away events. If the event is not listed on the application, no promotional give-away event can be conducted.

2.3 All original and supplemental applications shall be filed with the Secretary of the Board at least six (6) weeks prior to the date of the occasion. ~~All supplemental applications shall be filed fifteen (15) days prior to the first date of the occasion.~~

2.4 No applications (original or supplemental) shall be accepted unless the applicant, at the time of the filing, attaches a check or money order for the full amount of the fees payable by law for each occasion requested. In the event an application is refused by the Board, the application fees shall be refunded in full to the applicant. There shall be a license fee of \$15 for each occasion on which bingo is conducted under a license.

2.5 No application shall be received by the Commission unless it clearly shows that the applicant is located in and seeks to conduct the game in a district which has approved the licensing of bingo by referendum, and on premises owned or regularly leased by the applicant. If the applicant desires to conduct games on premises specially leased for the occasion, a separate written request therefor (together with supporting reasons) shall accompany the application. The Board reserves the right to accept or reject

any application for the conduct of games on specially leased premises. Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensees, records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

2 DE Reg. 1224 (1/1/99)

3.0 Bingo Licenses

3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.

3.2 The Board may issue a license only after it determines that:

3.2.1 The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.

3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.

3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.

3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.

3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.

3.3 The license shall be issued in triplicate. The original thereof shall be transmitted to the applicant. Two copies shall be retained by the Commission for its files.

3.4 If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.

3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The

licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.

3.6 No license shall be effective for a period of more than one year from the date it was issued.

3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.

3.8 No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.

3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws**, 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July 14, 1998 whose license lapses for six (6) months or more due to non-renewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).

3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

2 DE Reg. 1224 (1/1/99)

3 DE Reg. 1692 (6/1/00)

4 DE Reg. 334 (8/1/00)

4.0 Conduct of Bingo.

4.1 The officers of a licensee shall designate a bona fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.

4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a

function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.

4.3 No person under the age of eighteen (18) shall be permitted in any bingo game, the prize for which is money. No person under the age of 18 shall be permitted to participate in any instant bingo game. No person under the age of sixteen (16) shall participate in any game of bingo nor shall such person conduct or assist in the conduct of the playing of any game of bingo, except that persons no younger than the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.

4.4 No organization licensed prior to enactment of 71 **Del. Laws** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).

4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.

4.6 (Deleted.)

4.7 No prize greater in an amount or value than \$250 shall be offered or given any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed \$1,000. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than \$500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed \$500 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.

4.7.1 Any amounts in any cookie-jar bingo games shall not be included in the limitations of this section

or in any prize money limitations. A bingo licensee may not have more than two \$500 cookie jar bingo pots at any one time which are to be awarded to players. The licensee must award the first cookie jar bingo pot before it may start a third cookie jar bingo pot. In the event that a licensee has a first cookie jar bingo pot of \$500 and then accrues a second cookie jar bingo pot of \$500, the licensee must award the first cookie jar pot to a player on the occasion at which the second cookie jar pot reaches the \$500 limit. On such occasion, if the first cookie jar pot is not awarded by the end of the occasion, the licensee shall conduct a final special bingo game of "full card" or "black out" bingo using a separate, single card, and the first \$500 cookie jar shall be won by the player or players who first covers all spaces on their entire card.

4.8 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.

4.9 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.

4.10 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.

4.11 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.

4.12 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided equally as possible; and when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.

4.13 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.

4.14 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately

before each game is begun.

4.15 No arrangement of numbers shall be required to be covered in order to win the game other than the following:

- 4.15.1 one unspecified horizontal row;
- 4.15.2 one unspecified vertical row;
- 4.15.3 one unspecified full diagonal row;
- 4.15.4 one unspecified row (horizontal, vertical, or diagonal);
- 4.15.5 Two or more of the foregoing, forming a specified arrangement;
- 4.15.6 The entire card;
- 4.15.7 Four corners;
- 4.15.8 Eight spaces surrounding the free space.

4.16 Within the limits contained in 28 **Del.C.** §1132(b), alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.

4.17 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.

4.18 No licensee shall conduct more than forty (40) games on a single occasion.

4.19 In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.

4.20 Within the limits contained in 28 **Del.C.** §1132(6), the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.

4.21 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.

4.22 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.

4.23 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.

4.24 A licensee may charge an admission fee to a game event in any room or area in which a game is to be

conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.

4.25 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.

4.26 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

2 DE Reg. 1224 (1/1/99)

2 DE Reg. 1761 (4/1/99)

5.0 Reports After Games

5.1 When no game is held on any date when a licensee is authorized to hold such game, a report to that effect shall nonetheless be filed with the Secretary of the Board.

5.2 If a licensee fails to file a report within the time required or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to it and any existing license shall be suspended until such time as the default has been corrected.

6.0 Suspension and Revocation of Licenses

6.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The Commission may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.

6.2 When suspension or revocation proceedings are begun before the Commission, it shall hear the matter and make written findings in support of its decision. The licensee shall be informed of the decision and of the effective date of the suspension or revocation.

6.3 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

6.4 Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to

the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

7.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

2 DE Reg. 1224 (1/1/99)

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS IN OPTOMETRY
24 DE Admin. Code 2100**

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

ORDER

Pursuant to 29 Del.C. §10118 and 24 Del.C. §2104(a)(1) and for the reasons stated hereinafter, the Delaware Board of Examiners in Optometry (“the Board”) issues this Order adopting its proposed amendment to Board Rule 3.1.

Nature Of The Proceedings

The Board proposes to amend Rule 3.1 to add a provision clarifying that an internship is to be done in a private practice setting in the State of Delaware, or other Board approved setting, under the supervision of a licensed optometrist or ophthalmologist to ensure that the clinical setting for the intern is in keeping with the standard of care in Delaware. Notice of the public hearing on the Board’s proposal was published in the Delaware *Register of Regulations* on July 1, 2004, and in two Delaware newspapers of general circulation, all in accordance with 29 Del.C. §10115. The public hearing was held as noticed on August 26, 2004. The Board deliberated on the proposed amendment following the public hearing and unanimously voted to adopt the rule revision as published.

Summary Of Evidence

The Board received no written comments in response to the notice of its intention to amend Rule 3.1 regarding internships. No public comment was received at the August 26, 2004 public hearing.

Findings Of Fact And Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission’s Rules. The Commission received no written or verbal comments on the proposed amendment.

The Board finds that the proposed amendment to the Rule 3.1 is necessary for the Board to ensure that the practitioner’s clinical experience and skills are in keeping with the standard of care in Delaware.

The Board also finds that adopting the rule as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health of the general public, particularly the recipients of optometric services.

The Board concludes that the proposed amendment to Rule 3.1 is necessary for the enforcement of 24 Del.C. Ch. 21, and for the full and effective performance of the Board’s duties under that Chapter.

NOW, THEREFORE, by a unanimous vote of a quorum of the Board of Examiners of Optometry,

IT IS HEREBY ORDERED THAT:

1. The proposed amendment to the Board’s Rules and Regulations is approved and adopted in the exact text attached hereto as Exhibit “A”.
2. The effective date of this Order is ten (10) days from the date of its publication in the *Register of Regulations*, pursuant to 29 Del.C. §10118(e).
3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

BY ORDER OF THE BOARD OF EXAMINERS IN OPTOMETRY

(as authenticated by a quorum of the Board)

Dr. Carl Maschauser, President, Professional Member

Dr. Sonja Biddle, Professional Member

Dr. Allan Tocker, Professional Member

Nichole Anderson, Public Member

Ruth Banta, Public Member

3.0 Internship

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

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

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

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

3.1.4 For purposes of this Section and 29 **Del.C.** §2110, the term "duration" shall be defined as "a period of no less than six (6) months and no greater than the period ending on the date of the next Board meeting following the end of the six (6) month period." No intern may practice on a temporary license beyond the duration of the internship.

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

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

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

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

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

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

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

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

3.5.3 A supervisor shall at all times effectively

supervise and direct the intern.

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

2 DE Reg 85 (5/1/99)

7 DE Reg. 912 (1/1/04)

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

<http://www.state.de.us/research/AdminCode/title24/2100%20Board%20of%20Examiners%20in%20Optometry.shtml#TopOfPage>

DEPARTMENT OF EDUCATION

14 DE Admin. Code 260

Statutory Authority: 14 Delaware Code,
Section 122(e) (14 **Del.C.** §122(e))

REGULATORY IMPLEMENTING ORDER

260 General Appeal Procedures for the Child and Adult Care Food Program of the United States Department of Agriculture CACEP/USDA

I. Summary Of The Evidence And Information Submitted

The Secretary of Education intends to amend 14 **DE Admin Code** 260 General Appeal Procedures for the Child and Adult Care Food Program of the United States Department of Agriculture CACEP/USDA. The amendments are necessary in order to bring the state's regulations in line with the requirements of the federal statute.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 26, 2004 in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 260 in order to bring the state's regulations in line with the requirements of the federal statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 260. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 260 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 260 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** 260 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 260 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 September 16, 2004. 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 16th day of September 2004.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

~~260 General Appeal Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA~~

~~1.0 When a participating institution or agency seeks to appeal actions taken by the Delaware Department of Education pursuant to findings based on monitoring or administrative reviews the following shall apply:~~

~~1.1 The institution or agency shall be advised in writing of the grounds on which the Delaware Department of Education has based its action. The notice of action, which shall be sent by certified mail, return receipt requested shall also include a statement indicating that the institution has the right to appeal the action.~~

~~1.2 To initiate an appeal procedure, a written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action, and the Delaware Department of Education shall acknowledge the receipt of the request for appeal within 10 calendar days. Then, the following procedures shall pertain:~~

~~1.2.1 Within five (5) days of receipt of an appeal for review, the Delaware Secretary of Education, or his/her designee, shall appoint a review official who shall be selected from the approved list of hearing officers. The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section.~~

~~1.2.2 The appellant may refute the charges contained in the notice of action in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the Delaware Department of Education shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.~~

~~1.2.2.1 If the appellant does not specifically request a hearing in the letter of request for review, and the review official determines that a review of documentation is sufficient for resolution, the appellant and the Delaware Department of Education shall be advised of the official's determination.~~

~~1.2.2.2 If the appellant has requested a hearing, the appellant and the Delaware Department of Education shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.~~

~~1.2.3 Any information on which the Delaware Department of Education's action was based shall be available to the appellant for inspection from the date of receipt of the request for review.~~

~~1.2.4 The review official shall make a determination based on information provided by the Delaware Department of Education and the appellant, and on Program regulations.~~

~~1.2.5 Within 60 calendar days of the Delaware Department of Education's receipt of the request for review,~~

the review official shall inform the State agency and the appellant of the determination of the review.

1.2.6 The Delaware Department of Education's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent dangers to the health or welfare of participants.

1.2.7 The determination by the Delaware Department of Education's review official is the final administrative determination to be afforded to the appellant.

1.2.8 Appeals shall not be allowed on decisions made by the Food and Consumer Services, U.S. Department of Agriculture, on requests for exceptions to the claims submission deadlines stated in 7CFR Sec. 226.10(e) or requests for upward adjustments to claims.

1.2.9 In cases where an appeal results in the dismissal of a claim against an institution, which was asserted by the Delaware Department of Education, based upon Federal audit findings of the Food and Consumer Services, U.S. Department of Agriculture, may assert a claim against the Delaware Department of Education in accordance with the procedures outlined in 7CFR Sec. 226.14(e).

Authority: 7 CFR Sec. 226.6 State Agency Administrative Responsibilities, (k) Institution appeal procedures.

See 5 DE Reg. 461 (8/1/01)

260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA

1.0 Institutions participating in the Delaware CACFP may request an Administrative Review of the following actions:

1.1 Denial of a new or renewing institution's application for participation;

1.2 Denial of an application submitted by a sponsoring organization on behalf of a facility;

1.3 Proposed termination of an institution's agreement;

1.4 Proposed disqualification of a responsible principal or responsible individual;

1.5 Suspension of an institution's participation;

1.6 Denial of an institution's application for start-up or expansion payments;

1.7 Denial of all or a part of an institution's claim for reimbursement except for a denial based on a late submission under 7 CFR §226.10(e);

1.8 Demand for the remittance of an overpayment; and

1.9 Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

2.0 Notwithstanding the provisions of Section 1.0 above, institutions participating in the Delaware CACFP may not request an Administrative Review of the following actions:

2.1 A determination that an institution is seriously deficient;

2.2 Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list; or

2.3 Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by any publically funded program.

3.0 Except where the abbreviated administrative review procedures apply as set forth below, administrative reviews will be conducted as follows:

3.1 The Department of Education ("Department") must give notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action. Notice shall be given to the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals by U. S. Mail postage prepaid. As used herein, "Petitioner" means a participating institution or agency, or its responsible principals or responsible individuals, as appropriate under the circumstances.

3.2 A request for administrative review must be submitted to the Department in writing not later than 15 days after the date the notice of action is received.

3.3 The petitioner may retain legal counsel or may be represented by another person if permitted by law.

3.4 Any information on which the Department's action was based will be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative review.

3.5 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation must be submitted to and received by the review official not later than 30 days after the petitioner received the notice of action.

3.6 A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative review. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony

and to answer questions posed by the administrative review official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days notice of the time and place of the hearing.

3.7 The administrative review official shall be independent and impartial. The administrative review official may be an employee of the Department, but must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative review official directly, but all such contacts must include the participation of a representative of the Department if the Department chooses to participate.

3.8 The administrative review official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon federal and Delaware laws, regulations, policies and procedures governing the CACFP/USDA.

3.9 The decision of the administrative review official shall be issued to the Department and petitioner within 60 days of the Department's receipt of the written request for an administrative review. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not, solely in itself, constitute grounds for reversing the Department's action. The decision of the administrative review official is the final administrative determination to be afforded to the petitioner.

3.10 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same.

3.11 The Department shall conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the discretion of the administrative review official, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

4.0 Notwithstanding any of the foregoing to the contrary, administrative review will be limited to a review of written submissions concerning the accuracy of the Department's determination if the application was denied or the Department proposes to terminate the institution's agreement because:

4.1 The information submitted on the application was

false; or

4.2 The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is

4.2.1 On the National Disqualified List; or

4.2.2 Ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or

4.2.3 Has been convicted for any activity that indicates a lack of business integrity.

5.0 The Department's administrative responsibilities to a participating institution shall remain in effect during the administrative review as follows:

5.1 Overpayment demand. During the period of the administrative review, the Department is prohibited from taking action to collect or offset the overpayment. However, the Department must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the Department's action.

5.2 Program payments. The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution shall be treated in accordance with the provisions of 7 CFR §226.6 (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively.

DEPARTMENT OF EDUCATION

14 DE Admin. Code 852

REGULATORY IMPLEMENTING ORDER

852 Child Nutrition

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 852 Child Nutrition in order to add the appropriate references to the federal legislation concerning nutrition standards and to correct the grammar.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 26, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. In response to the Councils' concern that the regulation did not include charter schools, the Department does not believe that it has the authority to

include charter schools within this regulation.

In response to the Councils' concern about the sale of soft drinks in schools, the regulation is designed to reinforce Federal regulation 7CFR Ch.11§ 210.11(2)(b) Competitive Food Service which prohibits the sale of foods of minimal value in the food service areas during the lunch period.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 852 in order to add the appropriate references to the federal legislation concerning nutrition standards and to correct the grammar.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 852. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 852 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 852 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** 852 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 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 September 16, 2004. 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 16th day of September 2004.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

852 Child Nutrition

1.0 Each school district shall have a Child Nutrition Policy which at a minimum shall provide that:

1.1 Meals served to children ~~will be~~ are nutritious and well balanced as defined by USDA 7CFR Part 210.10 Nutrition Standards for Lunches and Menu Planning Methods and USDA 7CFR Part 220.8 Nutrition Standards

for Breakfast and Menu Planning Alternatives.

1.2 The foods sold in addition to meals ~~be~~ are selected to promote healthful eating habits and exclude those foods of minimal nutritional value as defined by the Food and Nutrition Service, USDA 7 CFR Part 210, Appendix B.

1.3 Purchasing practices ensure the use of quality products.

1.4 Students have adequate time to eat breakfast and lunch.

1.5 Nutrition education ~~be an integral~~ is part of the curriculum from preschool to twelfth grade.

1.6 Food service personnel use training and resource materials developed by the Department of Education and the United States Department of Agriculture to motivate children in selecting healthy diets.

DEPARTMENT OF EDUCATION

14 **DE Admin. Code** 1105

REGULATORY IMPLEMENTING ORDER

1105 School Transportation

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1105 School Transportation. A new section, 22.0, has been added to include the responsibilities of non-public, non-profit schools for the administration of their transportation systems under the rules and regulations of the Department of Education. Some additional language is included in the final version to further clarify the issues in 22.3 and 22.4. Section 13.2.1 was also amended in order to allow for a different payment schedule for school districts that begin school before September 1st. Instead of changing the payment date for everyone as appeared in the proposed regulation, the final version allows for differences in the district pay schedules.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 26, 2004 in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities.

In response to the comments that the nonpublic school standards, Section 22.3 have no analogous exception as in 8.7, the Department has added an eligibility exception statement in Section 22.3 similar to the statement in section 8.7 for families of nonprofit, nonpublic school students who are unable to walk or should not walk from home to school

and return.

In response to the concern about Section 19.0 based on 14 **Del.C.** §3124 the Department's response remains the same as in the April 2004 reply to the Councils that "the comments are not specific to the amendments being considered and in addition the concerns that were expressed about the regulation largely reflect the statutory provisions".

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1105 in order to add a new section, 22.0, to include the responsibilities of non-public, non-profit schools for the administration of their transportation systems under the rules and regulations of the Department of Education. Section 13.2.1 was also amended in order to allow for a different payment schedule for school districts that begin school before September 1st.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1105. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 1105 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1105 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** 1105 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch 29 on September 16, 2004. 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 16th day of September 2004.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

STATE BOARD OF EDUCATION
Dr. Joseph A. Pika, President

Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Clairbourne D. Smith

1105 School Transportation

1.0 Responsibilities of Local Superintendents: Local District Superintendents or their designees shall assume the following responsibilities concerning the transportation of students:

1.1 Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.

1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.

1.3 Provide resource material and encourage teachers to include instruction in passenger safety in the school curriculum.

1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant, and of the emergency drills.

1.5 Provide supervision for those students whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.

1.6 Promote public understanding of, and support for the district's school transportation program.

1.7 Assume prime responsibility for student conduct.

2.0 Conditions for School Bus Contractors: School Bus Contractors shall agree to the following conditions in their contracts:

2.1 Follow all applicable federal, state, and local school bus regulations and policies.

2.2 Communicate effectively with the district transportation supervisor.

2.3 Dismiss a school bus driver when it can be shown that the driver is not satisfactorily performing driver tasks. District transportation supervisors may restrict a driver from operating in their school district.

2.4 Pay drivers and aides and provide substitute drivers and aides.

3.0 Responsibilities of School Bus Drivers: Local school districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:

3.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.

3.2 Statements listing the following specific responsibilities of the bus driver:

- 3.2.1 Operate the school bus in a safe and efficient manner.
 - 3.2.2 Conduct pre-trip and post-trip checks on the vehicle.
 - 3.2.3 Establish and maintain rapport with passengers.
 - 3.2.4 Maintain discipline among passengers.
 - 3.2.5 Meet emergency situations effectively.
 - 3.2.6 Communicate effectively with district and school staff.
 - 3.2.7 Maintain effective contact with the public.
 - 3.2.8 Complete reports as required by the state or school district.
 - 3.2.9 Complete required training programs satisfactorily.
 - 3.2.10 Refrain from using profane or indecent language or tobacco while on duty.
 - 3.2.11 Dress appropriately.
 - 3.2.12 Pickup and drop-off students at designated stops.
 - 3.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the Delaware Code and in federal requirements.
 - 3.2.14 Report suspected cases of child abuse to the school principal or designated official.
 - 3.2.15 Notify the district transportation supervisor of any school bus accident.
- 3.3 A statement requiring a report of a physical examination on forms designated by the Department of Education.

4.0 Qualifications and Responsibilities of School Bus Aides

4.1 Qualifications for School Bus Aides include the following and shall apply to all new applicants and for any person whose employment as an aide has lapsed for a period of over one year.

- 4.1.1 Be at least 18 years of age.
- 4.1.2 Be fingerprinted to allow a criminal history check at both state and federal level and meet the same requirements (pre-licensing) specified for school bus drivers in the **Del.C.**
- 4.1.3 File with the district transportation supervisor a notarized affidavit (the same as the school bus driver affidavit) attesting to acceptable criminal history pending an official state and federal criminal record report.
- 4.1.4 Submit to the federal drug and alcohol testing procedures established for school bus drivers.

4.2 Local school districts shall have a policy concerning school bus aides which, at a minimum, lists the following responsibilities:

- 4.2.1 Assist in loading and unloading of

students, including lift operation.

- 4.2.2 Ensure that students and equipment are properly strapped in seats. Adjust, fasten, and release restraint devices for students and equipment, as required. Monitor overall safety of students and equipment.
- 4.2.3 Ensure that all students remain seated at all times.
- 4.2.4 Assist the driver during unusual traffic conditions; act as a lookout if necessary when bus must be backed.
- 4.2.5 Assist the driver in the enforcement of all state and school district bus safety regulations.
- 4.2.6 Perform record keeping tasks related to student attendance and bus assignment.
- 4.2.7 Monitor and report student misbehavior according to established procedure.
- 4.2.8 Assist the driver in keeping the interior of the bus clean.
- 4.2.9 Assist students with disabilities with personal needs associated with their disabilities.
- 4.2.10 Assist in bus evacuation drills.
- 4.2.11 Work cooperatively with all school personnel and parents.
- 4.2.12 Perform other duties as assigned by the district transportation supervisor or designee.

5.0 Student Conduct on School Buses: School Districts shall have a policy concerning the behavior of students on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension of bus riding privileges.

- 5.1 Obey the driver promptly, and be courteous to the driver and to fellow students. Students are to conduct themselves while on the bus in such a way that it will not distract the driver from the job of driving.
- 5.2 Be at their bus stop on time for pickup.
- 5.3 Wait for the bus on the sidewalk or shoulder, not the roadway.
- 5.4 Keep a safe distance from the bus while it is in motion.
- 5.5 Enter the bus without crowding or disturbing others and occupy their seats immediately.
- 5.6 Get on or off the bus only when it is stopped.
- 5.7 Remain seated and facing forward. No student shall occupy a position in the driver area in front of a stanchion, barrier, or white floor line that may distract the driver's attention or interfere with the driver's vision.
- 5.8 Stay out of the driver's seat. Also, unnecessary conversation with the driver is prohibited while the bus is in motion.
- 5.9 Follow highway safety practices in accordance with the Motor Vehicle Laws of the State of Delaware and walk on the side of the road facing traffic when going to or from the bus or bus stop along the highway. Before crossing the

road to board the bus or after being discharged from the bus cross only upon an audible clearance signal from the driver.

5.10 Do not cross the road until it is clear of all traffic or that traffic has come to a complete stop and then walk in front of the bus far enough to be seen by the driver at all times.

5.11 Observe classroom conduct when on the bus.

5.12 Do not call out to passers-by or open the bus windows without permission from the driver, nor extend head or arms out of the windows.

5.13 Do not leave the bus without the driver's consent, except on arrival at their regular bus stop or at school.

5.14 Keep the bus clean, sanitary, and orderly and not damage or abuse the equipment.

5.15 Do not smoke, use profanity or eat or drink on the bus.

5.16 Do not throw articles of any kind in, out, or around the bus.

5.17 Other forms of misconduct that will not be tolerated are acts such as, but not limited to, indecent exposure, obscene gestures, spitting, and others that may be addressed in the school code of conduct.

6.0 Procedures for Operating Buses: Each school district shall adopt the following procedures for the operation of their school buses:

6.1 No person other than a pupil, teacher, school official, aide or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents involved in Department of Education educational programs that provide for transportation and others approved by the district transportation supervisor.

6.2 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to wait for pupils unless they can be seen making an effort to reach the bus stop.

6.3 The driver shall maintain discipline on the bus, and shall report cases of disobedience or misconduct to the proper school officials. No pupils may be discharged from the bus for disciplinary reasons except at the home or school. The principal or designated school official shall be notified of such action immediately. Any change to the action taken by the driver or any further disciplinary action to be taken is the responsibility of the principal or designated school official.

3 DE Reg. 942 (1/1/00)

6.4 Pupils shall have definite places to get on and leave the bus, and should not be allowed to leave the bus at any place other than the regular stop without written permission from their parents, and approval by the principal or designated school official, except in cases of emergency. Districts may adopt a more restrictive policy.

6.5 Buses shall be brought to a full stop before pupils

are allowed to get on or off. Pupils are not permitted to ride outside or in any hazardous location in the bus including the area ahead of the stanchions, barriers, or white floor line designating the driver-area.

6.6 Buses shall not stop near the crest of hills, on curves, or on upgrades or downgrades of severe inclination. When stopped for the purpose of receiving or discharging pupils, the bus shall always be stopped on the right side of the road and as far off the paved or main traveled portion of the highway as the condition of the shoulder permits.

6.7 Pupils who must cross the road to board the bus or after leaving the bus shall cross at a distance in front of the bus and beyond the crossing control arms so as to be clearly seen by the driver and only upon an audible clearance by the driver. The driver shall attempt to signal pupils to cross by instructions through the external speaker of the public address system.

6.8 All loading and unloading of pupils shall be made from the service door. The rear exit door is not to be used except in cases of emergency or emergency drills. No object shall be placed in the bus that restricts the passage to the emergency door or other exits.

6.9 No one but the driver shall occupy the driver's seat. Pupils shall remain behind the white floor line.

6.10 Seats may be assigned to pupils by the driver, subject to the approval of a school official.

6.11 The doors of the bus shall be kept closed while the bus is in motion, and pupils shall not put their head or arms out of open windows.

6.12 When the bus is stopped on school grounds, students are aboard, and the motor is running, the transmission shall be in neutral (clutch disengaged) and the parking brake set. While on school grounds, drivers shall not leave their seat while the motor is running or leave the key in the ignition switch.

6.13 Fuel tanks shall not be filled while the engine is running or while pupils are in the bus.

6.14 Weapons of any kind are not permitted on a school bus.

6.15 Animals are not permitted on school buses; however, a service animal is permitted if a physician certifies that it is required.

6.16 A school bus shall not be used for hauling anything that would make it objectionable for school use or unsafe for passengers.

6.17 Band instruments, shop projects and other school projects shall not be permitted on the bus if they interfere with the driver or other passengers. The aisle, exits, and driver's vision shall not be blocked.

6.18 Bus stops on roadways with three or more lanes (with oncoming traffic) must be made on the right side of the road. Students shall not be required to cross more than two lanes of traffic when entering or leaving the bus.

6.19 Headlights or daytime running lights shall be

on at all times when the bus is in motion.

6.20 On the bus route every effort should be made to load children before turn-arounds are made and unload them after the turn-around is made.

6.21 Backing of school buses is prohibited, except in unusual circumstances:

6.21.1 A school bus shall not be driven backwards on school grounds unless an adult is posted to guard the rear of the bus.

6.21.2 When backing is unavoidable extreme caution must be exercised by the bus operator and an outside observer should be used if possible.

7.0 Accident Reports: All drivers or contractors shall complete accident reports and submit them to the district person in charge of transportation in order to assure accurate information pertaining to school bus accidents.

7.1 The following information shall be included on all school bus accident reports and be maintained in the district transportation files:

7.1.1 A description, preferably using diagrams, of the damage to each vehicle in addition to estimates of damage costs.

7.1.2 A description of all personal injuries.

7.1.3 A list of passengers and witnesses.

7.1.4 Name, address and telephone number of the driver.

3 DE Reg. 942 (1/1/00)

7.1.5 Follow-up information, such as the actual cost of repairs, should be added to the accident report wherever it is filed; i.e., in federal, state or local offices, so that the record of the accident is complete. Other pertinent information relating to the accident that should be added later, if the information is readily available, includes:

- Disposition of any litigation.
- Disposition of any summonses.
- Net effects of all personal injuries sustained, including medical care given, physician's fees, hospital expenses, etc.
- Amount of property damage other than to vehicles involved.
- Any corrective actions taken against the school bus driver, e.g., training, suspension, or dismissal.
- A summation of the driver's total accident record so that each completed report form will contain a listing of the total number of accidents that the driver has had.

8.0 Transportation Benefits: Transportation benefits shall be provided for pupils in grades K-6 whose legal residences are one (1) mile or more from the public schools to which they would normally be assigned by the district

administrations and for pupils in grades 7-12 whose legal residences are two (2) miles or more from the public schools to which they would normally be assigned by the district administrations.

8.1 For the purpose of these regulations, the "legal residence" of the pupil is deemed to be the legal residence of the parent(s), legal guardian(s), or ~~caregiver~~ Relative Caregiver as described in 14 **Del.C.** §202(e)(3). Daycare facilities may be designated as a pupil's residence for pickup and drop off.

8.2 To determine pupil eligibility for transportation benefits, measurement shall be by the most direct route provided by a public road or public walkway. The measurement shall be from the nearest point where a private road or walkway connects the legal residence of the pupil with the nearest public entrance of the school building to which the pupil is normally assigned by the school district administration.

8.3 All school bus routes shall be measured from the first pick-up point to the respective schools served in the approved sequence, and then by the most direct route back to the first pick-up point.

8.4 Additional bus routes required after the opening of school shall be approved by the Department of Education and supported by evidence of need to include: enrollment number changes, descriptions of existing routes in the area of proposed additional service, the run times, and actual loads. A description of the proposed route shall also accompany the request.

8.5 Transportation for eligible pupils may be provided from locations other than their legal residence provided that:

8.5.1 Such pickup and discharge points as approved by the district administration are in excess of the relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the district administration.

8.5.2 Such transportation to be provided be on the same bus and/or route to and from the school attended by the pupil (i.e. each student is entitled to one seat on one bus) except that permission may be granted on a year-by-year basis by the district administration for eligible pupils to ride other buses if seats are available and does not create additional expense to the State.

8.5.3 The limitation pertaining to "same bus and route" indicated above is not applicable to pupils attending vocational-technical schools or kindergartens operating one-half day sessions.

8.6 A spur to a bus route (where a bus leaves a main route) shall not be scheduled unless the one-way distance is greater than ½ mile. Requests for exception due to a unique traffic hazard from a parent must be in writing, approved by the local school board, and submitted through the Chairman of the Unique Hazard Committee for review.

8.7 Students otherwise ineligible to ride a bus may ride if a physician certifies that a student is unable or should not walk from home to school and return.

9.0 Bus Capacities: Bus capacities for children in grades K-6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades 7-12 secondary pupils the capacity shall be established on the basis of 15 inches per child. A mixture of the criteria will be used to plan loads when pupils come from both of the above groups. Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

10.0 Loading and Unloading: Each school shall have a loading and unloading dock or area, rather than load or discharge passengers onto the street. On school grounds all other traffic is prohibited in the loading and unloading area during school bus loading/unloading operations.

11.0 Unique Hazards: Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the State.

11.1 Procedures for handling Unique Hazards requests.

11.1.1 When the request for relief originates with parents of pupils affected or vested officials, such as State and local police representatives, Safety Council representatives, and legislators, it shall be presented in writing to the local school authorities.

11.1.1.1 The local school administration shall make every effort to resolve problems identified by the parents, vested officials, or by the local district staff.

11.1.1.2 If the problem cannot be resolved by the local school administration, the request shall be forwarded to the local board of education for appropriate action. If the local board of education has explored all of the local alternatives to resolve the problem without success, a request by board action shall be made to the Chairman of the Unique Hazards Committee (Education Associate for School Transportation).

11.2 The request to the Unique Hazards Committee must include:

11.2.1 The original request from the parents, vested officials, or the district staff.

11.2.2 A statement of the specific hazard and area involved including maps showing the specific location, points of concern and schools attended.

11.2.3 Number and grades of children involved.

11.2.4 School schedule and the time children would normally be walking to and from school in the area of

concern.

11.2.5 List any actions to resolve the problem taken by the local school administration.

11.2.6 List any actions to resolve the problem taken by the local board of education.

11.3 The Unique Hazards Committee will process the request and report its findings and recommendations to the Department of Education for their consideration and action. A copy of the report will also be forwarded to the local board of education involved. 11.2.7 List any actions to resolve the problem taken by the town, the city or county.

11.4 The Unique Hazards Committee consists of representatives from the Department of Transportation; the New Castle County Crossing Guard Division; Delaware Safety Council; Traffic Control Section, the Delaware State Police; and the Department of Education Associate for School Transportation (Chairman).

11.5 Unique Hazards Committee Recommendations Appeal Process

11.5.1 Appeals to the Unique Hazards Committee recommendations approved by the State Department of Education must be in writing and from the local board of education.

11.5.2 The local school board shall, before making an appeal, make every effort to resolve the problem. If, in the opinion of the local board of education, reconsideration is needed by the Unique Hazards Committee, the appeal, along with pertinent information, should be forwarded to the Chairman of the Unique Hazards Committee.

11.5.3 The Unique Hazards Committee will submit to the State Department of Education its recommendations regarding the appeal for reconsideration by the local board of education. A copy of the report will also be forwarded to the local board of education involved.

12.0 Contingency Plans: Each school district shall have contingency plans for inclement weather, accidents, bomb threats, hostages, civil emergencies, natural disasters, and facility failures (environmental/water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies. The school transportation supervisor, school administrators, teachers, drivers, maintenance and service personnel, students, and others shall be instructed in the procedure to be followed in the event of the contingencies provided for in the plans.

13.0 Reimbursements for School Bus Ownership and or Contracts: School buses may be either state owned/district operated or contracted.

13.1 Reimbursements for buses operated by the district shall be on the basis of the formula for district operated buses unless otherwise approved by the Department

of Education.

13.1.1 Drivers employed by the district shall be paid on the regular payroll of the district. When drivers are employed in a dual capacity there shall be strict accounting for salary division.

13.2 Reimbursement for buses operated on contract shall be on the basis of the approved formula or of a bid if the amount should be less.

13.2.1 Contractors shall be paid regularly **[at the end in the middle]** of the month. The total contract shall be paid in ten (10) installments, with the first payment **[at the end in the middle]** of September. **[For those school districts opening before September 1, payments may be made as early as thirty (30) days following the start of the school year with follow-up monthly payments to be made no earlier than the date used for the first payment.]**

13.3 Any transportation costs caused by grade reorganizations and/or pupil re-assignments during the school term after October 1, other than the occupancy of a new school building, shall be at the expense of the local school district unless approved by the Department of Education.

13.4 Bills unpaid from Transportation funding lines that have not been encumbered as of June 30, shall be the responsibility of the local school district.

13.5 Reimbursement to the local school district for contracts or for district-owned or leased buses shall be made on the basis of a Department of Education formula approved by the State Board of Education. This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education and the State Board of Education.

13.6 Contract allowances for buses when there are Emergency Days (forgiven by the Department of Education with the consent of the State Board of Education), Specially Declared Holidays or Strikes by Teachers.

13.6.1 School bus contractors and school districts shall be paid the normal rate of pay as provided for in their contract, less the allowance for maintenance and administration. Driver (including layover allowance) and aide allowances shall be paid.

13.6.2 School bus contractors and school districts with buses assigned to midday kindergarten or vocational-technical trips shall be paid the normal rate of pay as provided for in their contract, less the allowance for fuel.

13.6.3 The additional mileage allowance for contractor and school district buses will not include fuel and maintenance allowances.

13.6.4 The Delmar School District shall be reimbursed on the basis of the additional days necessary to operate as a result of the agreement with the Wicomico County Board of Education for the Delmar, Maryland

elementary schools.

14.0 Transportation Formulas for Public School Districts Operating District, Lease, or Lease Purchase Buses Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.

14.1 The following items may be used for the purpose of providing pupil transportation in accordance with the regulations of the Department of Education.

14.1.1 Advertising including equipment, routes, supplies, and employees.

14.1.2 Communication systems including two-way radios, cellular phones, and AM-FM radio.

14.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.

14.1.4 Leasing/rental including tools, equipment, storage facilities, buses, garage space, and office space.

14.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.

14.1.6 Safety materials including audio-visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.

14.1.7 Salary/wages including attendants (aide) as approved by the Department of Education when required in a student's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.

14.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap, tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.

14.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.

14.2 Special 01-60 state funds are provided to school districts for training supplies. This account may also be used for reimbursements for state provided equipment and services.

14.3 Examples of Programs Excluded from State Reimbursement:

14.3.1 Extracurricular Field trips

14.3.2 Transportation of pupils from one school to another for special programs (e.g., music festivals, Christmas programs, etc.)

14.3.3 Transportation of pupils to and from

athletic contests, practices, tutoring, band events, etc.

14.3.4 Post-secondary classes

14.3.5 Federal programs

14.3.6 Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept.

14.3.7 Choice school transportation outside of the school district or outside of the attendance area of school that the bus normally serves.

14.3.8 Charter school transportation outside of the school district.

15.0 Transportation Allowances for Individuals:

Requests for transportation allowances shall be made in writing to the Department of Education by districts with justification. This information is necessary in order for the Department to determine a pupil's eligibility. The responsibility for establishing a claim for transportation allowances rests upon the district and claimant.

15.1 All requests shall be signed by the parent or guardian and certified by the superintendent, principal or the principal teacher of the school to be attended. In case of a car pool, only the driver shall be paid.

15.2 Payments or reimbursements for transportation by private means shall be on the following basis:

15.2.1 When adequate public services is available, the public service rates shall be used.

15.2.2 When public service is not available and it is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

15.2.3 Districts shall maintain a monthly record of mileage traveled on a form provided by the Department of Education.

15.2.4 Any exception or variation must be approved by the Department of Education.

16.0 Cost Records: Cost Records shall include the following costs directly attributable to the transportation of eligible students on district school buses:

16.1 Total expenditures by funding code.

16.2 Wages of the Drivers.

16.3 Bus maintenance costs (expenditure for all bus supplies, repairs and routine service).

16.4 Cost of accidents, including bus repairs.

16.5 Indirect costs (all those costs not included in above categories and all costs associated with those who supervise the school transportation operation).

17.0 Bus Replacement Schedules: The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a

bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.

17.1 The following age and mileage requirements apply:

17.1.1 12th year must be replaced (it may then be used as a spare); or

17.1.2 150,000 miles no matter age of bus; or

17.1.3 7 years plus 100,000 miles; or

17.1.4 may be replaced after 10 years.

17.2 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.

17.3 School buses purchased with state-allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.

In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State-allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

18.0 School Bus Inspections: The Delaware Motor Vehicle Division has two periods of time when all school bus owners shall have their buses inspected each year, once during January or February and the second yearly inspection during June, July, or August.

19.0 Transportation for Students with Disabilities: Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving

tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by the parent or legal guardian or other person who has control of the child to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these

regulations is defined as the residence of the parent, legal guardian or other persons in the state having control of the child with disabilities and with whom the child actually resides.

19.10 School Transportation Aides: With the approval of the Department of Education, a state funded school bus aide may be provided on school buses serving special schools/programs for children with disabilities.

3 DE Reg. 1548 (5/1/00)

20.0 Transportation for Alternative Programs: Costs for transportation shall be paid by the state from funds appropriated for student transportation if transportation is provided by extending already existing routes. Shuttle services that extend existing routes will be allowed. Additional routes established to transport students to and from the Alternative Programs or other special transportation designs will not be paid by the state from the school transportation appropriation and shall be included in the Alternative Program budget and be paid from the state allocation for alternative programs and/or the districts 30% share. Planning committees for these programs shall include the transportation supervisors who will be providing services. In addition, those supervisors must coordinate planning with and submit their transportation plans to the Education Associate for School Transportation at the Department of Education.

21.0 Drugs and Alcohol Testing

21.1 Content:

21.1.1 Pursuant to 14 **Del.C.** 2910, this regulation shall apply to the contracting for a program of drug and alcohol testing services necessary to enable public school districts, charter schools, and any person or entity that contracts with a school district or charter school to provide transportation for State public school students, to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law.

21.1.2 School bus aides shall be subject to the same federal and state drug and alcohol testing requirements as school bus drivers. They shall use non-DOT forms, and the employer shall follow the same procedures set forth herein.

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

“**Alcohol**” means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular exercising weight alcohols, including methyl or isopropyl alcohol.

“**CDL**” means a commercial drivers license issued pursuant to 21 **Del.C.** Chapter 26.

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

“**DOT**” means the United States Department of Transportation.

“**Drug**” means the controlled substances for which tests are required under the provisions of 49 U.S.C. 49 31306 CFR Part 382 and 49 CFR Part 40, and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

“**Employer**” means school bus contractors or school districts and charter schools when they directly employ school bus drivers.

“**Negative result**” means a verified negative drug test result or an alcohol test result lower than the Federal standard as defined by the provisions of 49 U.S.C. 31306, 49 CFR Part 382 and 49 CFR Part 40.

“**Positive result**” means a verified positive, adulterated, or substituted drug test result, an alcohol test result equal to or greater than the Federal standard or a refusal to take a drug or alcohol test as defined by the provisions of 49 U.S.C. 31306, 49 CFR Part 382 and 49 CFR Part 40.

21.3 Federal Regulations: Employers shall comply with the drug and alcohol testing regulations issued by the Secretary of Transportation of the United States pursuant to 49 U.S.C. ' 31306 and located at 49 CFR Part 382 and 49 CFR Part 40.

21.4 Drug and Alcohol testing program requirements:

21.4.1 The employer shall:

21.4.1.1 Be responsible for compliance with all federal and state regulations;

21.4.1.2 Maintain drug and alcohol testing records for their school bus drivers and aides.

21.4.1.2.1 Documentation of drug and alcohol testing results shall flow directly from the Consortium/Third Party Administrator Medical Review Officer (C/TPA/MRO), as defined by the provisions of 49 CFR Part 382 and 49 CFR Part 40, to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.4.2 The Department shall:

21.4.1.2.2 Documentation of results shall be addressed to the individual, or employer, and the transportation supervisors for the school district, charter school or Department so as to ensure confidentiality.

21.4.2.1 Bid the contract for the drug and alcohol testing program;

21.4.2.2 Monitor the drug and alcohol testing program;

21.4.3 Any school bus driver or aide who is not in compliance with federal and state drug and alcohol testing requirements shall not perform driver or aide duties until they have satisfied the federal and state requirements.

21.4.3.1 Any school bus driver or aide who has

a positive drug or alcohol test result shall comply with DOT regulations regarding a Substance Abuse Professional (SAP) evaluation, treatment and return-to-duty testing before another pre-employment test is allowed.

21.4.3.2 An employer who hires a school bus driver or aide who has previously failed a drug or alcohol test shall ensure that all follow-up drug and/or alcohol testing recommended by the SAP evaluation is implemented.

21.5 Pre-employment Testing

21.5.1 School bus drivers with no CDL and aides with no prior experience must have a negative pre-employment drug test, and the employer must receive a negative result before the prospective employee can operate a school bus or serve as an aide.

21.5.2 Bus drivers with a CDL and school bus aides with past experience shall follow DOT rules and regulations to determine the necessity for pre-employment drug testing.

21.5.3 Employers shall provide Federal Drug Testing Custody and Control (CCF) forms to new school bus drivers and non-DOT forms to school bus aides who shall take the forms to the appropriate collection facility where the driver or aide shall be administered a drug test. Forms shall note the employer and school district or charter school.

21.5.4 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.5.5 Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.5.6 Employers shall notify prospective school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

21.6 Random Testing

21.6.1 Employers shall provide the C/TPA/MRO a quarterly list of eligible drivers and aides to be drug and alcohol tested no later than one week before the testing quarter. The list shall note the primary school district or charter school of the drivers and aides. Copies of the lists shall be provided to the school district or charter school transportation supervisors.

21.6.2 The C/TPA/MRO shall send the employer lists of drivers and aides to be tested by the end of the first week of the quarter.

21.6.3 Employers shall provide CCF and alcohol testing forms to the drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug test or a drug and alcohol test. Forms shall note the employer and the school district or charter school.

21.6.4 Employers shall complete the required random tests before the end of the calendar quarter.

21.6.5 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.6.6 Notification of positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive results forms shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.6.7 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and Department.

21.7 Post-Accident and Reasonable Suspicion Testing

21.7.1 Employers shall provide CCF and alcohol testing forms to the school bus drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug and/or alcohol test. Forms shall note the employer and school district and charter school.

21.7.2 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.7.3 Notification of positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive result form shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.7.4 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

22.0 The nonpublic, nonprofit schools shall be responsible for the administration and supervision of the family transportation allowance provided by the State Department of Education.

22.1 The nonprofit, nonpublic school shall act as the administrator and fiscal agent. If the nonpublic, nonprofit school chooses to use an agent to receive payment other than the nonpublic, nonprofit school, written authorization from the governing board of the nonpublic, nonprofit school, such as the board of trustees or the school board, specifying such agent shall be forwarded to the Education Associate for School Transportation in the Department of Education. The use of an agent to accept payment shall not relieve the nonpublic, nonprofit school from its responsibility to administer and supervise the transportation program, to maintain records, or to submit such reports as may be required.

22.2 Those nonpublic, nonprofit schools with families requesting transportation allowances shall have a Federal ID number. ~~[- The nonpublic, nonprofit school shall submit the initial transportation form, provided by the Department of Education, no later than August 31st~~

~~of each year.]~~

22.3 Transportation allowances shall be made only for those eligible students (Delaware residents attending Delaware schools) who meet residence-to-school proximity guidance of one (1) mile or more for grades K-6 and two (2) miles or more for grades 7-12 and who make application to the nonpublic, nonprofit school for such transportation allowances. These applications for transportation allowances shall be signed by the parent, guardian, or Relative Caregiver and certified by a school administrator. [Families of a student who would not otherwise be eligible for the allowance may receive the allowance if a physician certifies that the student is unable to walk or should not walk from home to school and return.] The responsibility for establishing a claim for transportation allowances rests upon the claimant, and all records of this request shall be kept on file in the nonpublic, nonprofit school office. Such records shall be made available for audit by a representative of the Department of Education or the State Auditors.

22.4 The State shall provide the transportation funds to the nonpublic, nonprofit school or designated agent for eligible families. The family shall direct the nonpublic, nonprofit school or designated agent how the funds are to be dispersed [e.g; some or all of the funds to the parent, guardian or Relative Caregiver for tuition, for school-provided transportation costs, for an allowance, etc.] The nonpublic, nonprofit school shall ensure that its tuition, transportation fees, and other costs of attendance are independent of the allowances.

22.5 Payment shall be made only on the basis of one trip to and one trip from nonpublic, nonprofit school daily. Families who transport more than one child to the same school by private conveyance shall be reimbursed on the basis of the number of trips rather than on the number of children transported. No family shall qualify for more than one reimbursement for students it transports to a single school except for families with two or more children, one of whom is enrolled in a half day kindergarten program. In the event of car pools, each family is entitled to reimbursement, but a family shall not receive more than the annual allowance.

22.6 [The nonpublic, nonprofit school shall submit the initial transportation form, provided by the Department of Education, no later than August 31st of each year.] The nonpublic, nonprofit school or designated agent shall submit the final transportation form provided by the Department of Education no later than October 3rd of each year. All information shall be based on September 30th enrollment and eligibility. After the submission of the final transportation form no further adjustments for eligibility shall be made for the remainder of the school year.

22.7 Upon receipt of the initial form required by the

Department of Education the first payment shall be made at the end of September. Upon receipt of the final form the remaining payments will be made at the end of October, January, and April. The school shall return funds not distributed to parents, guardians or Relative Caregivers to the State of Delaware.

PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 323

REGULATORY IMPLEMENTING ORDER

323 Certification Computer Science Teacher

Effective July 1, 1993

I. Summary Of The Evidence And Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal Regulation 323 from Title 14 of the **Delaware Administrative Code**. The regulation concerns the requirements for certification of educational personnel. As part of a continuing effort to reduce the number of regulations which govern virtually every aspect of State government, it is recommended that the above-referenced regulation be repealed.

Notice of the proposed repeal of the regulations was published in the News Journal and Delaware State News on July 20, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. Written comment was received from the Governor's Advisory Council for Exceptional Citizens expressing the importance of computer proficiency/literacy for students, and the increasing need for students to develop computer skills. The regulation concerns computer science and computer programming, not computer proficiency or literacy, which are embedded throughout the curriculum at the elementary level, and which are taught through the business education, mathematics, and technology education curricula at the middle and high schools, in addition to being embedded throughout the curriculum. Students are required to demonstrate proficiency in computer literacy, but are not required to take a specific course. Fewer than 20 certificates are in existence, and none has been issued for this area in over four years.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal this regulation as the incidence of issuance of certificates

pursuant to this regulation is extremely low, and all individuals are eligible to hold other certificates.

III. Decision To Repeal The Regulations

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulation should be repealed. Therefore, pursuant to 14 **Del. C.** §1203 and § 1205(b), the regulations attached hereto as Exhibit "B" are hereby repealed.

IV. Text And Citation

The text of the regulations 323, attached hereto as Exhibit "B" are repealed, and said regulations shall be deleted from the **DE Admin. Code**.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 2ND DAY of SEPTEMBER, 2004

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 16th Day of September, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Richard M. Farmer, Jr.
 Mary B. Graham, Esquire
 Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

~~323 Certification Computer Science Teacher~~
~~Effective July 1, 1993~~

~~1.0~~ The following shall be required for a Standard License for all teachers assigned to teach computer programming grades 9-12 or any aspect of computer science, and is valid in grades 7-8.

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

~~1.2~~ Professional Education

~~1.2.1~~ Completion of an approved teacher education program in Computer Science or,

~~1.2.2~~ A current, valid Standard License in any area of secondary education or,

~~1.2.3~~ A minimum of 24 semester hours to include Human Development, Methods of Teaching Computer Science, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the secondary (9-12) level in an accredited secondary school and,

~~1.3~~ Specific Teaching Field

~~1.3.1~~ A major in Computer Information Science or,

~~1.3.2~~ A minimum of 12 semester hours of Computer Science course work to include a one-semester course in each of the following areas:

~~1.3.2.1~~ Data Structures and File Processing

~~1.3.2.2~~ Pascal Programming

~~1.3.2.3~~ Assembly Language

~~1.3.2.4~~ Operating Systems and,

~~1.3.2.5~~ A minimum of 6 semester hours of elective course work in Computer Science from courses designated with a Computer Science or Computer Information Science symbol.

~~2.0~~ The following shall be required for a Limited Standard License

~~2.1~~ This License may be issued for a 3-year period at the request of a Delaware public school district to a person who meets the requirements listed below, and who is employed as a teacher of Computer Science/Programming or related areas, to allow for the completion of the requirements stated in 1.0.

~~2.1.1~~ Requirements as stated in 1.1 and 1.2.2, and course work in 3 of the 4 required areas listed in 1.3.2 and,

~~2.1.2~~ Three years of successful classroom teaching experience at the secondary level in an accredited secondary school, while holding a Standard License in the content area taught.

~~3.0~~ Present Computer Teachers Protected

~~3.1~~ Those teachers authorized prior to the adoption of this License by the Delaware State Board of Education (4/89) to teach computer science or programming, and who have the recommendation of the district superintendent shall be authorized to continue in such a teaching assignment in the school district where the assignment was authorized. Authorization to teach in this circumstance does not constitute a License in the area of computer science, nor is

such authorization transferable to any other school district. Courses taught for computer literacy or word processing skills do not require certification in computer science.

~~4.0~~ Licenses that may be issued for this position include Standard and Limited Standard.

PROFESSIONAL STANDARDS BOARD

14 DE Admin. Code 331

REGULATORY IMPLEMENTING ORDER

331 Certification Family And Consumer Sciences Teacher

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 DE Admin. Code 331 Certification Family and Consumer Sciences Teacher. This regulation applies to the certification of educational personnel pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation due to changes in statute regarding licensure and certification of educators. The regulation will be renumbered 1566 to reflect its movement to the Professional Standards section of the Department regulations.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on July 20, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received. Verbal comments resulted in revising the names of some of the course titles from those originally published, and changing the number of credits required from 36 to 39.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute regarding the licensure and certification of educators.

III. Decision To Adopt The Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 Del.C. §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 Del.C. §122(e), the regulation hereby amended shall be in

effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text And Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1566 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 2ND DAY OF SEPTEMBER, 2004

Harold Roberts, Chair	Sharon Brittingham
Norman Brown	Heath Chasanov
Edward Czerwinski	Angela Dunmore
Karen Gordon	Barbara Grogg
Bruce Harter	Valerie Hoffmann
Leslie Holden	Carla Lawson
Mary Mirabeau	Gretchen Pikus
Karen Schilling Ross	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

IT IS SO ORDERED This 16th Day Of September, 2004

STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Richard M. Farmer, Jr.
 Mary B. Graham, Esquire
 Valarie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

~~331-1566 Standard Certificate in Family and Consumer Sciences Teacher~~

~~Effective July 1, 1993
 (Formerly Home Economics)~~

~~1.0 The following shall be required for the Standard license in grades 9-12 and is valid in grades 5-8 in a middle level school~~

~~1.1 License 1 - Comprehensive~~

~~1.1.1 Bachelor's degree from an accredited college or university and;~~

~~1.2 Professional Education~~

~~1.2.1 Completion of an approved teacher education program in Family and Consumer Science/ Comprehensive or;~~

~~1.3 Specific Teaching Field~~

~~1.3.1 Completion of a major in Family and Consumer Science/ Comprehensive or;~~

~~1.3.2 Completion of an approved teacher education program in Family and Consumer Science / Comprehensive or;~~

~~1.3.3 A minimum of 36 semester hours in Family and Consumer Science with at least one course in each of the following areas:~~

~~1.3.3.1 Housing/Home Furnishings/Home Equipment, Consumer/Family Economics, Home Management, Child Development, Family Life/Parenthood Education, Foods/Nutrition, Textiles/Clothing, and Computer Literacy.~~

1.0 Content.

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

~~2.0 License II - Specialized Areas~~

~~2.1 Bachelor's degree from an accredited college and;~~

~~2.2 Professional Education~~

~~2.2.1 Completion of an approved teacher education program in Family and Consumer Science or;~~

~~2.2.2 A minimum of 24 semester hours to include Human Development/Learning, Methods of Teaching Family and Consumer Science (including clinical experience), Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching evenly divided between the middle and high school levels and;~~

~~2.3 Specific Teaching Field~~

~~2.3.1 License II A: Child Care and Guidance, Management and Services~~

~~2.3.1.1 A minimum of 36 semester hours distributed as follows: 21 semester hours covering the following areas: Child Development, Care and Guidance; Child Care Management (Preschool Education); Family Life/Parenthood Education, Computer Literacy, and 15 semester hours from the other areas of Family and Consumer Sciences listed in 1.3.3.~~

~~2.3.2 License II B: Food Production, Management, and Services~~

~~2.3.2.1 A minimum of 36 semester hours distributed as follows:~~

~~2.3.2.1.1 21 semester hours covering the following areas: Food Sciences, Human Nutrition, Food Service, Institutional Management, Computer Literacy and; Fifteen semester hours from the other areas of Family and~~

Consumer Sciences listed in 1.3.3.

2.3.3 License II C: Clothing, Apparel, and Textiles Management, Production and Services

2.3.3.1 A minimum of 36 semester hours distributed as follows:

2.3.3.1.1 21 semester hours covering the following areas:

2.3.3.1.1.1 Commercial — Garment and Apparel, Fashion Design, Clothing Construction, Textiles and Clothing Retail, Textiles Testing, Custom Tailoring and Alteration, Fashion/Fabric Coordination, Computer Literacy, and

2.3.3.1.1.2 15 semester hours from the other areas of Family and Consumer Sciences in 1.3.3.

2.3.4 License II D: Institutional, Home Management, and Supporting Services

2.3.4.1 A minimum of 36 semester hours distributed as follows:

2.3.4.1.1 21 semester hours covering the following areas:

2.3.4.1.1.1 Companion to the Aged, Consumer Assisting, Custodial Services, Executive Housekeeping, Homemaker's Aide, Computer Literacy, and 15 semester hours from the other areas of Family and Consumer Sciences in 1.3.3.

2.0 Definitions.

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

“Department” means the Delaware Department of Education.

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

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

1.0 The following shall be required for the Standard license in grades 9-12 and is valid in grades 5-8 in a middle level school

1.1 License I — Comprehensive

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

3.1 The limited Standard license may be issued upon request of a Delaware public school district for a teacher employed in one of these positions who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

3.0 In accordance with 14 Del.C. §1220(a), the Department

shall issue a Standard Certificate as a Family and Consumer Sciences Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Graduating from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in Family and Consumer Sciences; or

3.2 Graduating from a state approved educator preparation program offered by a regionally accredited college or university, with a major in Family and Consumer Sciences, where the state approval body employed the appropriate NCATE specialty organization standards; or

3.3 ~~1.2.2~~ A minimum of ~~24~~ **[36 39]** semester hours with at least one course in each of the following areas:

3.3.1 ~~[Human Development/]~~Learning Adult Development [/ and] Aging;

3.3.2 Methods of Teaching Family and Consumer Science[s] ~~(including clinical experience);~~

3.3.3 Identifying/Treating Exceptionalities;

3.3.4 Effective Teaching Strategies;

3.3.5 Multicultural Education; ~~student teaching evenly divided between the middle and high school levels and;~~

3.3.6 ~~[Family — Consumer Economics/]~~ Resource Management;

3.3.7 ~~[Life Span Development/Human Development/]~~Child Development~~[/Adult Development];~~

3.3.8 Adolescent Development;

3.3.9 Family ~~[Life/]~~Human Sexuality;

3.3.10 ~~[Foods/]~~ Nutrition~~[/Food Principles];~~

3.3.11 Textiles/Clothing; and

3.3.12 Curriculum and Evaluation for Family and Consumer Sciences.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

Acquired Brain Injury Waiver Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual

(DSSM) regarding the Acquired Brain Injury Waiver Program (ABIWP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware by August 31, 2004.

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

Summary Of Proposed Changes

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The proposed set forth the rules and regulations governing the administration of the ABIWP, and describe the types of services available under the program. The regulations being proposed would also define the eligibility criteria that must be met by applicants for the services and the scope of services available to eligible applicants.

The earliest effective date for the ABIMWP is October 10, 2004.

DSS PROPOSED REGULATION #04-18

20700.5 Acquired Brain Injury Medicaid Waiver Program

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a home and community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The earliest effective date for the ABIMWP is October 10, 2004.

20700.5.1 Eligibility Criteria

To be eligible for the ABIMWP, an individual must:

1. be a Delaware resident
2. be between 18 and 64 years of age (persons who enter the waiver before age 65 may remain in the waiver after age 65)

3. meet the financial and medical criteria for the DSS Long Term Care Medicaid Program and meet nursing facility admission criteria.

Medical eligibility is determined by the Pre-Admission Screening Unit of DSAAPD.

Financial eligibility is determined by DSS.

Program eligibility is determined by DSAAPD. An individual must meet all of the following criteria:

a have an injury to the brain which is not hereditary or congenital (Acquired Brain Injury)

b have a need of one waiver service, in addition to case management, on a monthly basis

c have a physical, cognitive and/or behavioral symptom of an acquired brain injury and currently reside in a nursing facility or is at risk for placement in a nursing facility

d have completed or would no longer benefit from intensive, inpatient, post-trauma or rehabilitation programs

e accept and maintain case management services

20700.5.2 Number of Recipients

There is a maximum number of recipients who may be served under the ABIMWP each fiscal year. The total unduplicated number of recipients served under the program cannot exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS). DSAAPD will monitor the number of individuals receiving ABIMWP services so the maximum number will not be exceeded.

20700.5.3 Cost Effective Requirement

In order for an applicant to be eligible for the ABIMWP, the applicant's cost of care cannot exceed the cost of their care if the same applicant was institutionalized. An average monthly cost for institutionalized individuals is used to determine the amount that may be spent on ABIMWP recipients. A DSAAPD worker determines cost effectiveness.

20700.5.4 Approval

Upon approval, DSS will send a notice of approval to the applicant or the applicant's representative and the ABIMWP provider. The notice to the provider will include the effective date of Medicaid coverage, the patient pay amount, and the Medicaid identification number.

20700.5.5 Post Eligibility Budgeting

See DSSM 20720 and 20995.1 for patient pay calculation.

For recipients residing in Assisted Living facilities, the personal needs allowance is equal to the current Adult Foster Care rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the assisted living provider.

For recipients residing in community-based settings, the personal needs allowance is equal to 250% of the Federal SSI Benefit Rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the provider who is providing the most costly service.

20700.5.6 Days Appropriate for Billing

The waiver provider may not bill for any day that the recipient is absent from the program or facility for the entire day. The waiver provider may bill for services for any day that the recipient is present in the facility or program for any part of the day.

If the recipient resides in an assisted living facility, the waiver provider may not bill Medicaid for room and board.

20700.5.7 Hospitalization or Illness

Waiver services will terminate upon hospitalization. There are no Medicaid bed hold days for hospitalization. DSS will redetermine eligibility for continued Medicaid coverage. Waiver services may restart after hospital discharge as determined by DSAAPD staff.

If the recipient is a resident of an assisted living facility, the waiver provider shall not provide services to a recipient that has been bedridden for seven (7) consecutive days unless a physician certifies that the individual's needs may be safely met by the service agreement. If a physician certification is not obtained, waiver services will terminate and DSS will redetermine eligibility for continued Medicaid coverage.

20700.5.8 ABIMWP Services

Acquired brain injury waiver services will include the following:

Case Management

Personal Care

Respite Care

Adult Day Expanded Services

Specialized Medical Equipment and

Supplies

Personal Emergency Response Systems

(PERS)

Assisted Living Program

Behavioral and/or Cognitive Services

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Sections 311 and 2304
(18 Del.C. §§311 and 2304))

ORDER**301 Audited Financial Reports
[Formerly Regulation 50]**

A public hearing was held on September 1, 2004 to receive comments on amendments to Regulation 301 relating to audited financial reports from licensed insurers. By my order of August 17, 2004, Deputy Insurance Commissioner F.L. Peter Stone was appointed hearing officer to receive comments and testimony on the proposed amendments to the regulation. Public notice of the hearings and publication of proposed Regulation 301 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law. Four persons attended the public hearing. There were no written comments received by the Department.

Summary Of The Evidence And Information Submitted

Steve White, Chief Financial Examiner for the Delaware Department of Insurance spoke in support of the proposed changes. He said that this has been the first amendment in ten years and would bring Delaware into conformity with the model regulation approved by the National Association of Insurance Commissioners ("NAIC"). He further noted that by amending the regulation, the Delaware Department of Insurance would not face accreditation problems from the NAIC. The Hearing Officer has recommended approval of the proposed changes to the regulation.

Findings Of Fact

The purpose for a public hearing on a proposed regulatory change is to determine the necessity for the change and whether the language proposed to effect that change needs to be changed or modified for purposes of clarity or efficiency. I find that the proposed changes reflect the standards for financial review adopted by the NAIC over the last ten years. In the absence of any opposition to the proposed changes recommended by the Department I find that the changes are desirable and appropriate.

Decision

Based on the provisions of 18 Del.C. §§311 and 526, and the record in this docket, I adopt the FINAL REPORT

AND RECOMMENDATION OF THE HEARING OFFICER dated September 7, 2004 and order that Regulation 301 be amended as provided for in the notice published in the Delaware Register of Regulations 8 DE Reg. 252 (8/1/04).

I order that the proposed change shall become effective on October 12, 2004.

Donna Lee H. Williams, Insurance Commissioner

DATED: September 7, 2004

301 Audited Financial Reports

1.0 Authority

1.1 This Regulation is promulgated and adopted pursuant to 18 Del.C. §§311, 322(a), 324 and 526, and 29 Del. C. §10117.

2.0 Purpose and Scope

2.1 The purpose of this Regulation is to improve the Delaware Insurance Department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

2.2 Every insurer (as defined in Section 3.0) shall be subject to this regulation. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of such calendar year shall be exempt from this Regulation for such year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities except those insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so ~~accepted~~ exempt.

2.3 Foreign or alien insurers filing audited financial reports in another state, pursuant to such other state's requirements of audited financial reports ~~are exempt from filing in Delaware unless such filing is specifically requested by the Commissioner. Any foreign or alien insurer receiving a copy of any notification of adverse financial condition report must file such report with the Commissioner within the time specified in Section 10.0 that has been found by the Commissioner to be substantially similar to the requirements herein, are exempt from this regulation if:~~

2.3.1 A copy of the Audited Financial Report, Report on Significant Deficiencies in Internal Controls, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in Sections 4, 11 and 12, respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of

Insurance).

2.3.2 A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the commissioner within the time specified in Section 10.

2.4 This regulation shall not prohibit, preclude or in any way limit the Commissioner from ordering and/or conducting and/or performing examinations of insurers under the rules and regulations of the Delaware Insurance Department and the practices and procedures of the Delaware Insurance Department.

3.0 Definitions

"**Audited financial report**" means and includes those items specified in Section 5.0 of this rule.

"**Accountant**" ~~and~~ or "Independent Certified Public Accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of CPAs and in all states in which he, she or they are licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

"**Indemnification**" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

"**Insurer**" means a licensed insurer as defined in Title 18 Del. C. Ch.5 or authorized insurer as defined in Title 18 Del. C., Ch.19.

4.0 Filing and Extensions for Filing of Annual Audited Financial Reports

~~4.1~~ All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer. ~~4.2~~ Extensions of the June 1 filing date may be granted by the Commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

5.0 Contents of Annual Audited Financial Report

5.1 The ~~a~~Annual ~~a~~Audited ~~f~~Financial ~~r~~Report shall

report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile

5.2 The annual Audited Financial Report shall include the following:

5.2.1 Report of independent certified public accountant.

5.2.2 Balance sheet reporting admitted assets, liabilities, capital and surplus.

5.2.3 Statement of operations.

5.2.4 Statement of cash flows.

5.2.5 Statement of changes in capital and surplus.

5.2.6 Notes to financial statements. These notes shall be those required by the appropriate NAIC *Annual Statement Instructions* and ~~any other notes required by generally accepted accounting principles and shall also include: the NAIC *Accounting Practices and Procedures Manual*.~~ The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 18 Del. C. § 526 with a written description of the nature of these differences.

~~5.2.6.1 A reconciliation of differences, if any, between the audited statutory financial statements and the Annual Statement filed pursuant to 18 Del. C. §526 of the Delaware Insurance Statute with a written description of the nature of these differences.~~

~~5.2.6.2 A summary of ownership and relationships of the insurer and all affiliated companies.~~

5.2.7 The financial statements included in the ~~a~~Audited ~~f~~Financial ~~r~~Report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the ~~a~~Annual ~~s~~Statement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

6.0 Designation of Independent Certified Public Accountant

6.1 Each insurer required by this regulation to file an annual audited financial report must within sixty (60) days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm (generally referred to in this rule as the "accountant") retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified

public accountant on the effective date of this regulation shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

6.2 The insurer shall obtain a letter from the accountant, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the Insurance Code and the ~~r~~Rules and ~~r~~Regulations of the Insurance Department of the state of domicile that relate to accounting and financial matters and affirming that ~~accountant~~ he will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that Department, specifying such exceptions as he or she may believe appropriate.

6.3 If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall within five (5) business days notify the Department of this event.

6.3.1 The insurer shall also furnish the Commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion.

6.3.2 The disagreements required to be reported in response to this Section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction.

6.3.3 Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

6.3.4 The insurer shall also in writing request such former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish such responsive letter from the former accountant to the Commissioner together with its own.

7.0 Qualifications of Independent Certified Public Accountant

7.1 The Commissioner shall not recognize any person or firm as a qualified independent certified public accountant ~~that is not in good standing with the American Institute of CPAs and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a~~

~~chartered accountant, if the person or firm:~~

7.1.1 Is not in good standing with the American Institute of CPAs and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

7.1.2 Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as *indemnification*) with respect to the audit of the insurer.

7.2 Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Delaware Board of Public Accountancy, or similar code.

7.3 A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under 18 Del. C. Ch. 59, the mediation or arbitration provisions shall operate at the option of the statutory successor.

7.4 The time during which an accountant may serve shall be subject to the following provisions:

7.4.1 No partner or other person responsible for rendering a report may act in that capacity for more than seven (7) consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two (2) years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:

7.4.1.1 Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

7.4.1.2 Premium volume of the insurer; or

7.4.1.3 Number of jurisdictions in which the insurer transacts business.

~~7.3.4 The requirements of this paragraph shall become effective two (2) years after the enactment of this rule.~~

7.54 The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual Audited Financial Report, prepared in whole or in part by, any natural person who:

7.54.1 Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

7.54.2 Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or

7.54.3 Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.

~~7.65~~ The Insurance Commissioner, as provided in the Delaware Administrative Procedures Act, 29 Del. C. Ch. 101, and 18 Del.C. Ch. 3, may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual ~~a~~Audited fFinancial ~~R~~eport made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.

8.0 Consolidated or Combined Audits

8.1 An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

8.1.1 Amounts shown on the consolidated or combined ~~a~~Audited fFinancial ~~r~~eport shall be shown on the worksheet;:-

8.1.2 Amounts for each insurer subject to this section shall be stated separately;:-

8.1.3 Noninsurance operations may be shown on the worksheet on a combined or individual basis;:-

8.1.4 Explanations of consolidating and eliminating entries shall be included;:- and

8.1.5 A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the ~~a~~Annual ~~s~~tatements of the insurers.

9.0 Scope of Examination and Report of Independent Certified Public Accountant

~~9.1~~ Financial statements furnished pursuant to Section 5.0 hereof shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. Consideration should also be given to such other procedures illustrated in the *Financial Condition Examiner's Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

10.0 Notification of Adverse Financial Condition

10.1 The insurer required to furnish the annual Audited Financial Report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of the Delaware Insurance Statute as of that date. ~~10.1.1~~ An insurer that ~~who~~ has received a report pursuant to this paragraph shall forward a copy of the report to the Commissioner within five (5) business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. ~~10.1.2~~ If the independent certified public accountant fails to receive such evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five (5) business days.

10.2 No independent public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if such statement is made in good faith in compliance with the section 10.1 above paragraph.

10.3 If the accountant, subsequent to the date of the Audited Financial Report filed pursuant to this regulation, becomes aware of facts which might have affected his or her report, the Department notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

11.0 Report on Significant Deficiencies in Internal Controls

~~11.1~~ In addition to the annual audited financial statements, each insurer shall furnish the Commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. ~~11.2~~ No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within sixty (60) days after the filing of the annual audited financial statements. ~~11.3~~ The insurer is required to provide a

description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

12.0 Accountant's Letter of Qualifications

12.1 The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

12.1.1 That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the Delaware Board of Public Accountancy, or similar code;

12.1.2 The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this regulation shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

12.1.3 That the accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with this regulation and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

12.1.4 That the accountant consents to the requirements of Section 13.0 of this regulation and that the accountant consents and agrees to make available for review by the Commissioner, or the Commissioner's ~~his~~ designee or ~~his~~ appointed agent, the workpapers, as defined in Section 13.0;

12.1.5 A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; and

12.1.6 A representation that the accountant is in compliance with the requirements of Section 7.0 of this regulation.

13.0 Definition, Availability and Maintenance of CPA Workpapers

13.1 Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's ~~his~~ examination of the financial statements of an insurer. ~~13.1.1~~ Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries

prepared or obtained by the independent certified public accountant in the course of his examination of the financial statements of an insurer and which support the accountant's his opinion thereof.

13.2 Every insurer required to file an Audited Financial Report pursuant to this regulation, shall require the accountant to make available for review by Department examiners, all workpapers prepared in the conduct of the accountant's his examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Insurance Department or at any other reasonable place designated by the Commissioner. ~~13.3~~ The insurer shall require that the accountant retain the audit workpapers and communications until the Insurance Department has filed a Report on Examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.

13.4~~3~~ In the conduct of the aforementioned periodic review by the Department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the Department. Such reviews by the Department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the Department.

14.0 Exemptions and Effective Dates

14.1 Upon written application of any insurer, the Commissioner may grant an exemption from compliance with this regulation if the Commissioner finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this regulation, such insurer may request in writing a hearing on its application for an exemption. Such hearing shall be held in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, and 18 Del.C. Ch. 3 Section 3-0.

14.2 Domestic insurers retaining a certified public accountant on the effective date of this regulation who qualify as independent shall comply with this regulation for the year ending December 31, 1994 and each year thereafter unless the Commissioner permits otherwise.

14.3 Domestic insurers not retaining a certified public accountant on the effective date of this regulation who qualify as independent may meet the following schedule for compliance unless the Commissioner permits otherwise.

14.3.1 As of December 31, 1994, file with the Commissioner:

14.3.1.1 Report of independent certified public accountant;

14.3.1.2 Audited balance sheet;

14.3.1.3 Notes to audited balance sheet.

14.3.2 For the year ending December 31, 1994 and each year thereafter, such insurers shall file with the Commissioner all reports required by this regulation.

~~14.4 14.3.3~~ Foreign insurers shall comply with this regulation for the year ending December 31, 1994 and each year thereafter, unless the Commissioner permits otherwise.

15.0 Canadian and British Companies

15.1 In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered accountant.

15.2 For such insurers, the letter required in Section 6.0 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to Section 4.0 and shall affirm that the opinion expressed is in conformity with such requirements.

16.0 Severability Provision

16.1 If any section or portion of a section of this regulation or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of such provision to other persons or circumstances shall not be affected thereby.

17.0 Effective Date

This regulation became effective July 29, 1987. the first amendment became effective on September 12, 1994. This second amendment shall become effective on October 12, 2004.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,
Sections 311 and 7105
(18 Del.C. §§311 and 7105))

ORDER

1404 Long-term Care Insurance [Formerly Regulation 63]

A public hearing was held on September 1, 2004 to receive comments on amendments to Regulation 1404 relating to audited financial reports from licensed insurers. By my order of August 17, 2004, Deputy Insurance Commissioner F.L. Peter Stone was appointed hearing officer to receive comments and testimony on the proposed

amendments to the regulation. Public notice of the hearings and publication of proposed Regulation 1404 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law. Four persons attended the public hearing. Five written comments were received, three of which were submitted after the public hearing but prior to the expiration of the published time for public comment.

Summary Of The Evidence And Information Submitted

I adopt the FINAL REPORT AND RECOMMENDATIONS OF THE HEARING OFFICER dated September 7, 2004 and incorporate it herein by reference. The Delaware Department of Insurance favors the proposal which adds three new sections to the regulation dealing with the required disclosure of rating practices to consumers, new initial filing requirements and provisions relating to premium rate schedule increases. The three had not been previously adopted by the Department even though they were part of the model regulation approved by the National Association of Insurance Commissioners ("NAIC") and were in force in neighboring jurisdictions. A change was recommended to section 13.1.1 (formerly 11.1.1) to provide an alternate opportunity for insurers to offer inflation protection on a basis other than five percent compounded annually. The change means that if a consumer cannot afford the five percent inflation protection, a company is free to offer alternative lower cost inflation protection benefits that might be more affordable even if the benefit is less than the five percent standard.

Two non-substantive changes to the regulation that were not published are desirable and appropriate. The first is the addition of definitional terms be added to section 4 of the regulation so that the use of those terms in the regulation will be consistent with the NAIC model regulation's definitions and use of those terms. The addition of definitions that do not change the substance of the regulation and which provide notice to the public as to how the terms are used does not require re-notice and re-hearing of the regulation even though the final regulation, if adopted, would differ from the one published for public comment.

The State Council for Persons With Disabilities and the State Delaware Developmental Disabilities Council submitted identical comments suggesting that section 6.2.5's exception for Medicaid was possibly illegal. It was noted that the exclusion for government programs other than Medicaid was in section 6 of the regulation which allows policy exclusions for coverage provided by a government program. It is appropriate for a long term care policy to exclude benefits provided under other programs to avoid having a consumer pay for double coverage when it is not necessary to do so. In any event, by excluding Medicaid from section 6.2.5 the regulation provides that treatment

under a Medicaid program cannot give rise to a policy exclusion under section 6.2 and would not necessarily make Medicaid the payer of first resort.

The State Council for Persons With Disabilities and the State Developmental Disabilities Council also noted that the new section 8 referred to an Appendix F which was not part of the published proposed changes. The omission was not intentional. The hearing officer has recommended that the appendix be included in the final version and further recommended that re-notice and re-publication for comment was not required because the appendix did not change the substantive provisions of section 8 but rather provided a form for insurers to use for purposes of disclosure to consumers.

Findings Of Fact

The purpose for a public hearing on a proposed regulatory change is to determine the necessity for the change and whether the language proposed to effect that change needs to be changed or modified for purposes of clarity or efficiency. There were no objections to the addition of the three new sections as noted above. I find that the addition of definitions relating to the usage of the terms "exceptional increase," incidental," qualified actuary" and similar policy forms" as submitted in Exhibit 5 are not substantive in nature and clarify the context in which those terms are used in the regulation. I find that the addition of those terms to the final regulation would not require a re-notice or re-hearing of the regulation.

I find that the final regulation should also include Appendix F as submitted in Exhibit 5. It does not alter the substantive provisions of the regulation and section 8.2.5 clearly notes that the form is required as part of an insurer's compliance with the regulation.

I find that the reasons for the change are meritorious and will benefit consumers insofar as they enhance the disclosure requirements of the insurers and make inflation protection more affordable.

Decision

Based on the provisions of 18 Del.C. §§ 311 and 7105, and the record in this docket, I adopt the FINAL REPORT AND RECOMMENDATION OF THE HEARING OFFICER dated September 7, 2004 and order that Regulation 1404 be amended as provided for in the notice published in the Delaware Register of Regulations 8 DE Reg. 252 (8/1/04) as supplemented with the addition of the definitional changes in section 4 and the addition of Appendix F.

I order that the proposed change shall become effective on January 1, 2005.

Donna Lee H. Williams, Insurance Commissioner
DATED: September 7, 2004

1404 LONG-TERM CARE INSURANCE
[Formerly Regulation 63]

1.0 Purpose

The purpose of this regulation is to implement 18 Del.C. Ch. 71, to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

2.0 Authority

This regulation is issued pursuant to the authority vested in the Commissioner under 18 Del.C. §§ 3141 and 7105.

3.0 Applicability and Scope

Except as otherwise specifically provided, this regulation applies to all long-term care insurance policies and certificates delivered or issued for delivery in this state on or after the effective date hereof, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

4.0 Definitions

[4.1] For the purpose of this regulation, the terms "Department," "long-term care insurance," "Commissioner," "applicant," "policy" and "certificate" shall have the meanings set forth in 18 Del.C. §§ 102 and 7103.

[4.2 Exceptional increase

4.2.1 "Exceptional Increase" means only those increases filed by an insurer as exceptional for which the Commissioner determines the need for the premium rate increase is justified:

4.2.1.1 Due to changes in laws or regulations applicable to long-term care coverage in this state; or

4.2.1.2 Due to increased and unexpected utilization that affects the majority of insurers of similar products.

4.2.2 Except as provided in Section 20, exceptional increases are subject to the same requirements as other premium rate schedule increases.

4.2.3 The Commissioner may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

4.2.4 The Commissioner, in determining that the necessary basis for an exceptional increase exists,

shall also determine any potential offsets to higher claims costs.

4.3 "Incidental," as used in Section 20.10, means that the value of the long-term care benefits provided is less than ten percent (10%) of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

4.4 "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

4.5 "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in 18 Del.C. §7103(4) are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, non-institutional long-term care benefits only, or comprehensive long-term care benefits.]

5.0 Policy Definitions

No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, or terms of like or similar meaning, unless the terms are defined in the policy and the definitions satisfy the following requirements:

5.1 "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

5.2 "Acute Condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain their health status.

5.3 "Adult day care" means a program for six (6) or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

5.4 "Chronically ill" means any individual who has been certified by a Licensed Health Care Practitioner as being unable to perform, without substantial assistance from another individual, at least two activities of daily living for a period of at least ninety (90) days; or who requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

5.5 "Cognitive impairment" means a deficiency in a person's short-term or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

5.6 "Home health care services" means medical and

nonmedical services provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

5.7 **"Medicare"** means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as ~~F~~then ~~C~~constituted or ~~L~~later ~~A~~amended," or "Title I, Part I of Public Law 89-97, as ~~E~~enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

5.8 **"Mental or nervous disorder"** shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

5.9 **"Personal care"** means the provision of hands-on services to assist an individual with activities of daily living (such as bathing, eating, dressing, transferring and toileting).

5.10 **"Preexisting Conditions"** shall be defined in accordance with 18 Del.C. § 7105 (C).

5.11 **"Qualified Long-Term Care Insurance Policy"** means a policy that provides coverage for qualified long-term care services that is intended to meet the requirements of §7702B(b) of the Internal Revenue Code of 1986, as amended.

5.12 **"Qualified Long-Term Care Services"** means necessary diagnostic, preventive therapeutic, curing, treating, mitigating and rehabilitative services and Maintenance or Personal Care Services which are required by a Chronically Ill Individual and are provided pursuant to a Plan of Care prescribed by a Licensed Health Care Practitioner.

5.13 **"Skilled nursing care", "intermediate care", "personal care", "home care",** and other services shall be defined in relation to the level of skill required, nature of the care and the setting in which care must be delivered.

5.14 All providers of services, including but not limited to "skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

2 DE Reg. 2113 (5/1/99)

6.0 Policy Practices and Provisions

6.1 Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without providing further explanatory language in accordance with the disclosure

requirements of section 7.0 of this regulation.

6.1.1 No such policy issued to an individual shall contain renewal provisions less favorable to the insured than "guaranteed renewable." However, the Commissioner may authorize nonrenewal on a statewide basis, on terms and conditions deemed necessary by the Commissioner, to best protect the interests of the insureds, if the insurer demonstrates: That renewal will jeopardize the insurer's solvency.

6.1.2 The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums, during which period the insurer has no unilateral right to make any change in any provision of the policy or rider, and cannot decline to renew and cannot revise rates except on a class basis in accordance with section 6.1.4 below. This cost disclosure must be approved by the Commissioner and included in any solicitation and also prominently displayed on the initial policy.

6.1.3 Every long-term care insurance policy or certificate issued or delivered in this State must be "guaranteed renewable" as defined in section 6.1.2 above, and contain a cost disclosure section as defined section 6.1.4 below.

6.1.4 Cost Disclosure Information.

6.1.4.1 The following cost disclosure information shall appear in bold print on the cover page of every individual policy and Outline of Coverage issued or delivered in this state: "This policy provides only the following price protection, and no more. Your premiums may not increase by more than X% during any given calendar year and your benefits may not decrease. Any representations that these increases will not take place are unauthorized and shall not be relied upon."

6.1.4.2 The following cost disclosure information shall appear in bold print on the cover page of every certificate and Outline of Coverage issued or delivered in this state: "This policy provides only the following price protection, and no more. Your premiums are guaranteed to remain the same for the first three (3) years this policy is in force. Your premiums may not increase by more than X% during any three year rating period. Insurers will be allowed a carry forward of the initially disclosed maximum premium increase, but said carry forward is lost within twenty-four (24) months if not utilized." Any additional language that appears under the cost disclosure section must be approved in advance by the Delaware Insurance Department. The purpose of this cost disclosure section is twofold: first, to make crystal clear to the purchaser what the maximum cost will be from year to year, and second, to prohibit the practice of low pricing during the early years of a policy followed by dramatic increases designed to produce a high ratio of cancellations when the group insured reaches that age at which its members are more likely to file claims. Therefore,

this section does not permit annual increases to be accumulated and applied all at once. For example, if the price is \$100 in the initial year of the policy and 10% is the represented annual maximum increase, then during the second year of the policy, the maximum allowable price is \$110, the third year of the policy the maximum allowable price is not more than 110% of the price actually charges during year two of the policy. It is not permissible to charge \$121 during the third year of the policy unless \$110 had actually been charged during year two of the policy. In other words, any permitted annual price increase not implemented during a calendar year is thereafter waived and may not be considered in calculating future prices.

6.1.5 In addition to other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable.

6.2 Limitations and Exclusions. No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

6.2.1 Preexisting conditions;

6.2.2 Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;

6.2.3 Alcoholism and drug addiction;

6.2.4 Illness, treatment or medical condition arising out of:

6.2.4.1 War or act of war (whether declared or undeclared);

6.2.4.2 Participation in a felony, riot or insurrection;

6.2.4.3 Service in the armed forces or units auxiliary thereto;

6.2.4.4 Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

6.2.4.5 Aviation (this exclusion applies only to non-fare-paying passengers).

6.2.5 Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

6.2.6 No territorial limitations are permissible, except that nothing herein shall preclude limiting benefits for specific services to a specific dollar amount, or to that dollar amount which is reasonable and prevailing in a particular geographic area which is defined and clearly delineated in the original offering or solicitation and the initial policy or certificate, or to specific providers within a particular

geographic area. Moreover, nothing herein shall prohibit the limitation of services to a particular geographic area when the insured elects to receive services within that specific geographical area. For purposes of this clause, the location of receipt of services must be within 50 miles of the domicile of the insured at the time of entry therein or that area, including the nearest three nursing homes, whichever distance is greater.

6.2.7 Expenses for services or items available or paid under another long-term care insurance or health insurance policy.

6.2.8 In the case of a qualified long-term care insurance contract expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount.

6.2.9 This section 6.2 is not intended to prohibit exclusions and limitations by type of provider.

6.3 Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization which began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

6.4 Continuation or Conversion.

6.4.1 Group long-term care insurance issued in this state on or after the effective date of this section shall provide covered individuals with a basis for continuation or conversion of coverage.

6.4.2 For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits under the existing policy. The Commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

6.4.3 For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or

with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

6.4.4 For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or determined by the Commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made.

6.4.4.1 Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the Commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity. When the policyholder or certificate holder is no longer in the geographical area of the provider system or available services, the insurer must calculate the financial worth of the group policy and make a cash contribution toward the purchase of any health insurance policy the policyholder may select.

6.4.5 Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer no later than thirty-one (31) days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

6.4.6 Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

6.4.7 Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

6.4.7.1 Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

6.4.7.2 The terminating coverage is replaced no later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:

6.4.7.2.1 Providing benefits identical

to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

6.4.7.2.2 The premium for which is calculated in a manner consistent with the requirements of 6.4.6 of this section.

6.4.8 Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

6.4.9 The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

6.4.10 Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

6.4.11 For the purposes of this section: a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

6.5 Discontinuance and Replacement.

If a group long-term care insurance policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and the premiums charged under the new group policy:

6.5.1 Shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced; and

6.5.2 Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

6.6 The premiums charged to an insured for long-term care insurance shall not increase due to either: (1) The increasing age of the insured at ages beyond sixty-five (65); or (2) The duration the insured has been covered under the

policy.

6.7 Electronic Enrollment for Group Policies

6.7.1 In the case of a group defined in 18 Del.C. § 7103(4)a. any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

6.7.1.1 The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

6.7.1.2 The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

6.7.1.3 The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information is maintained.

6.7.2 The insurer shall make available, upon request of the Commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

2 DE Reg. 2113 (5/1/99)

7.0 Required Disclosure Provisions

7.1 Renewability. Individual long-term care insurance policies shall contain a renewability provision consistent herewith. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed, subject to section 6.1.1 hereof. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

7.2 Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

7.3 Payment of Benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", "reasonable and prevailing", or words of

similar import shall include a definition of such terms and an explanation of such terms in its outline of coverage.

7.4 Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

7.5 Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility, except in accordance with 18 Del.C. § 7105, shall set forth a description of such limitations or conditions, including any required number of days or confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions of Eligibility for Benefits."

7.6 Disclosure of Tax Consequences.

7.6.1 With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.

7.6.2 With regard to qualified long-term care insurance policies a disclosure statement shall appear in bold print on the face of the policy and outline of coverage indicating the policy is intended to be a qualified long-term care policy under Section 7702B(b) of the Internal Revenue Code of 1996.

7.7 Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

2 DE Reg. 2113 (5/1/99)

8.0 Required Disclosure of Rating Practices to Consumers

8.1 This subsection shall apply as follows:

8.1.1 Except as provided in section 8.1.2, this section applies to any long-term care policy or certificate issued in this state on or after March 1, 2005.

8.1.2 For certificates issued on or after the

effective date of this amended regulation under a group long-term care insurance policy as defined in 18 Del.C. § 7103(4), which policy was in force at the time this amended regulation became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2006.

8.2 Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

8.2.1 A statement that the policy may be subject to rate increases in the future;

8.2.2 An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

8.2.3 The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

8.2.4 A general explanation for applying premium rate or rate schedule adjustments that shall include:

8.2.4.1 A description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.); and

8.2.4.2 The right to a revised premium rate or rate schedule as provided in section 8.2.3 if the premium rate or rate schedule is changed;

8.2.5 Premium rate increase information

8.2.5.1 Information regarding each premium rate increase on this policy form or similar policy forms over the past ten (10) years for this state or any other state that, at a minimum, identifies:

8.2.5.1.1 The policy forms for which premium rates have been increased;

8.2.5.1.2 The calendar years when the form was available for purchase; and

8.2.5.1.3 The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

8.2.5.2 The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

8.2.5.3 An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other

nonaffiliated insurers when those increases occurred prior to the acquisition.

8.2.5.4 If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of this section or the end of a twenty-four-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with section 8.2.5.1.

8.2.5.5 If the acquiring insurer in section 8.2.5.4 above files for a subsequent rate increase, even within the twenty-four-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in section 8.2.5.4, the acquiring insurer shall make all disclosures required by section 8.2.5, including disclosure of the earlier rate increase referenced in section 8.2.5.4.

8.3 An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under sections 8.2.1 and 8.2.5. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

8.4 An insurer shall use the forms in Appendices B and F to comply with the requirements of sections 8.2 and 8.3 of section 8.

8.5 An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by section 8.2 when the rate increase is implemented

89.0 Unintentional Lapse

89.1 Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

89.1.1 Notice before lapse or termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any

liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

89.1.1.1 The insurer shall notify the insured of the right to change this written designation, no less often than once every two (2) years.

89.1.2 When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in section 89.1.1.1 need not be met until sixty (60) days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

89.1.3 Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to section 89.1.1.1, at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until thirty (30) days after a premium is due and unpaid. Notice shall be deemed to have been given as of five (5) days after the date of mailing.

89.2 Reinstatement. In addition to the requirement in section 89.1.1, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

2 DE Reg. 2113 (5/1/99)

10.0 Initial Filing Requirements

10.1 This section applies to any long-term care policy issued in this state on or after March 1, 2005.

10.2 An insurer shall provide the information listed in this subsection to the commissioner 30 days prior to making a long-term care insurance form available for sale.

10.2.1 A copy of the disclosure documents required in Section 8; and

10.2.2 An actuarial certification consisting of at least the following:

10.2.2.1 A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

10.2.2.2 A statement that the policy design and coverage provided have been reviewed and taken into consideration;

10.2.2.3 A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

10.2.2.4 A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

10.2.2.4.1 Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

10.2.2.4.2 A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

10.2.2.4.3 A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and

10.2.2.4.4 A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;

10.2.2.4.4.1 An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

10.2.2.4.4.2 If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under section 10.3 based on a standard age distribution; and

10.2.2.4.5 Premium schedules.

10.2.2.4.5.1 A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

10.2.2.4.5.2 A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

10.3 Actuarial information.

10.3.1 The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

10.3.2 In the event the commissioner asks for additional information under this provision, the period in section 10.2 does not include the period during which the insurer is preparing the requested information.

911.0 Prohibition Against Post-Claims Underwriting

911.1 All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

911.2 If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

911.2.1 If the medications listed in such application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

911.3 Except for policies or certificates which are guaranteed issue:

911.3.1 The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: Caution: If your answers on this application are incorrect or untrue [company] has the right to deny benefits or rescind your policy.

911.3.2 The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery: Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].

911.3.3 Prior to issuance of a long-term care

insurance policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one of the following:

911.3.3.1 A report of a physical examination,

911.3.3.2 An assessment of functional capacity,

911.3.3.3 An attending physician's statement, or

911.3.3.4 Copies of medical records.

911.4 A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

911.5 Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information to the Insurance Commissioner in the form prescribed by the National Association of Insurance Commissioners.

4012.0 Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies

4012.1 A long-term care insurance policy or certificate shall not, if it provides benefits for home health or community care services, limit or exclude benefits;

4012.1.1 By requiring that the insured/claimant would need skilled care in a skilled nursing facility if home health care services were not provided.

4012.1.2 By requiring that the insured/claimant first or simultaneously receive nursing and/or therapeutic services in a home, community or institutional setting before home health care services are covered.

4012.1.3 By limiting eligible services to services provided by registered nurses or licensed practical nurses.

4012.1.4 By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification.

4012.1.5 By excluding coverage for personal care services provided by a home health aide;

4012.1.6 By requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

4012.1.7 By requiring that the insured/claimant have an acute condition before home health care services are covered.

4012.1.8 By limiting benefits to services provided by Medicare-certified agencies or providers;

4012.1.9 By excluding coverage for adult day

care services.

~~12~~12.2 A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

~~12~~12.3 Home health care coverage may be applied to non-home health care benefits provided in the policy or certificate when determining the maximum coverage under the terms of the policy or certificate.

~~13~~13.0 Requirement to Offer Inflation Protection

~~13~~13.1 No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

~~13~~13.1.1 Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five percent (5%); However, if the insured individual shall reject the inflation protection offer as provided for in this section, the insurer may offer other or alternate forms of inflation protection;

~~13~~13.1.2 Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent (5%) for the period beginning with the purchase of the existing benefit and extended until the year in which the offer is made; or

~~13~~13.1.3 Covers a specific percentage of actual or reasonable charges and does not include a maximum specified indemnity amount of limit.

~~13~~13.2 Where the policy is issued to a group, the required offer in section ~~13~~13.1 above shall be made to the group policyholder; except, if the policy is issued to a group defined in 18 Del.C. § 7103(4), other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

~~13~~13.3 The offer in section ~~13~~13.1 above shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

~~13~~13.4 Insurers shall include the following

information in or with the outline of coverage:

~~13~~13.4.1 A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period.

~~13~~13.4.2 Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

~~13~~13.5 Inflation protection benefit increases under a policy which contains such benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

~~13~~13.6 An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. Such offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

~~13~~13.7

~~13~~13.7.1 Inflation protection as provided in section ~~13~~13.1.1 of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.

~~13~~13.7.2 The rejection shall be considered part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans _____ and I reject inflation protection.

~~14~~14.0 Requirements for Replacement

~~14~~14.1 Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent, except where the coverage is sold without an agent, containing such questions may be used. With regard to a replacement policy issued to a group defined in 18 Del.C. § 7103(4), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificate holder has been notified of the replacement.

~~14~~14.1.1 Do you have another long-term care insurance policy or certificate in force (including health care services contract, health maintenance organization contract)?

~~14~~14.1.2 Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?

~~14~~14.1.2.1 If so, with which company?

~~14~~14.1.2.2 If that policy lapsed, when did it lapse?

~~14~~14.1.3 Are you covered by Medicaid?

~~14~~14.1.4 Do you intend to replace any of your medical or health insurance with this policy {certificate}?

~~14~~14.2 Agents shall list any other health insurance policies they have sold to the applicant.

~~14~~14.2.1 List policies sold which are still in force.

~~14~~14.2.2 List policies sold in the last five (5) years which are no longer in force.

~~14~~14.3 Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING
REPLACEMENT OF INDIVIDUAL
ACCIDENT AND SICKNESS OR LONG-TERM CARE
INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care insurance is a wise decision.

STATEMENT TO APPLICANT BY AGENT
[BROKER OR OTHER REPRESENTATIVE]:

(Use additional sheets, as necessary).

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny and future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(Date)

(Agent's Signature)

The above "Notice to the Applicant" was delivered to me on:

(Date)

(Applicant's Signature)

~~14~~14.4 Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING
REPLACEMENT OF INDIVIDUAL
ACCIDENT AND SICKNESS OR LONG-TERM CARE
INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to

keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within (30) thirty days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

~~14.5~~ Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the name of the insurer, name of the insured and policy number or address including zip code. Such notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

14.6 Life Insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Regulation 1204. If a life insurance policy that accelerates benefits for long-term care is replaced by another such

policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

~~1315.0 Reporting~~ Requirements

~~1315.1~~ Every insurer shall maintain records for each Delaware-licensed agent of that agent's amount of replacement sales as a percentage of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

~~1315.2~~ Each insurer shall report annually by June 30 the ten percent (10%) of its Delaware-licensed agents with the greatest percentages of lapses and replacements as measured by section ~~1315.1~~ above.

~~1315.3~~ Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

~~1315.4~~ Every entity providing long-term care insurance in this state shall file annually as an attachment to its annual statement an exhibit that discloses the total number of long-term care insurance policies, by form number, in force in this state and the total number of policies, by form number, that have lapsed over the previous five years. Companies must provide in-force policy and lapsed policy information in the following manner:

POLICY FORM # _____						
SOLD	LAPSED	LAPSED	LAPSED	LAPSED	LAPSED	TOTAL
1985	1985	1986	1987	1988	1989	
100	6	21	11	32	14	84
1986	1986	1987	1988	1989		
100	6	11	21	32		70
1987			1987	1988	1989	
100			6	21	28	50
1988				1988	1989	
100				6	14	20
1989					1989	
100					6	6

~~1315.5~~ Every insurer shall report, annually by June 30 the number of replacement policies sold as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the preceding calendar year.

~~1315.6~~ For purposes of this section, "policy" shall mean only long-term care insurance and "report" shall mean on a statewide basis.

146.0 Licensing

146.1 No agent is authorized to market, sell, solicit or otherwise contact any person for the purpose of marketing long-term care insurance unless the agent has demonstrated his or her knowledge of long-term care insurance and the appropriateness of such insurance by passing a test required by this state and maintaining appropriate licenses.

146.2 Agents shall comply with the licensing provisions contained in 18 Del.C. Ch. 17 and Delaware Insurance Department Regulation 504, as the same may be amended or supplemented, §§ 1716(a)(4) and 1725(a) relating to lines of authority and examinations, respectively.
2 DE Reg. 2113 (5/1/99)

1517.0 Discretionary Powers of Commissioner

The Commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

1517.1 The modification or suspension would be in the best interest of the insureds; and

1517.2 The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

1517.3

1517.3.1 The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

1517.3.2 The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonable related to the special needs or nature of such a community; or

1517.3.3 The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

1618.0 Reserve Standards

1618.1 When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for such benefits shall be determined in accordance with 18 Del.C. § 1113. Claim reserves must also be established in the case when such policy or rider is in claim status. Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the

payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term benefit. In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

- 1618.1.1 Definition of insured events;
- 1618.1.2 Covered long-term care facilities;
- 1618.1.3 Existence of home convalescence coverage;
- 1618.1.4 Definition of facilities;
- 1618.1.5 Existence or absence of barriers to eligibility;
- 1618.1.6 Premium waiver provision;
- 1618.1.7 Renewability;
- 1618.1.8 Ability to raise premiums;
- 1618.1.9 Marketing method;
- 1618.1.10 Underwriting procedures;
- 1618.1.11 Claims adjustment procedures;
- 1618.1.12 Waiting period;
- 1618.1.13 Maximum benefit;
- 1618.1.14 Availability of eligible facilities;
- 1618.1.15 Margins in claim costs;
- 1618.1.16 Optional nature of benefit;
- 1618.1.17 Delay in eligibility for benefit;
- 1618.1.18 Inflation protection provisions; and
- 1618.1.19 Guaranteed insurability options.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

1618.2 When long-term care benefits are provided other than as in section 1618.1 above, reserves shall be determined in accordance with 18 Del.C. § 1108.

1719.0 Loss Ratio

1719.1 This section shall apply to all long-term care insurance policies or certificates except those covered under Sections 10 and 20.

1719.2 Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent (60%) for individual policies and at least sixty-five percent (65%) for group policies, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

- 1719.2.1 Statistical credibility of incurred claims experience and earned premiums;
- 1719.2.2 The period for which rates are computed to provide coverage;

1719.2.3 Experienced and projected trends;
1719.2.4 Concentration of experience within early policy duration;
1719.2.5 Expected claim fluctuation;
1719.2.6 Experience refunds, adjustments or dividends;
1719.2.7 Renewability features;
1719.2.8 All appropriate expense factors;
1719.2.9 Interest;
1719.2.10 Experimental nature of the coverage;
1719.2.11 Policy reserves;
1719.2.12 Mix of business by risk classification;
 and
1719.2.13 Product features such as long elimination periods, high deductibles and high maximum limits.
1719.3 Section 19.2 shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:
1719.3.1 The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;
1719.3.2 The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of 18 Del. C. § 2929;
1719.3.3 The policy meets the disclosure requirements of 18 Del. C. § 7105;
1719.3.4 Any policy illustration that meets the applicable requirements of the Delaware Insurance Department Regulation 1210; and
1719.3.5 An actuarial memorandum is filed with the insurance department that includes:
1719.3.5.1 A description of the basis on which the long-term care rates were determined;
1719.3.5.2 A description of the basis for the reserves;
1719.3.5.3 A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
1719.3.5.4 A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;
1719.3.5.5 A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
1719.3.5.6 The estimated average annual premium per policy and the average issue age;
1719.3.5.7 A statement as to whether

underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
1719.3.5.8 A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

~~17.1 Benefits under individual long-term care insurance policies and group policies with fewer than 250 insureds shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. Long-term care benefits provided through the acceleration of the death benefit under a life insurance policy or annuity, where the charge or the premium for the acceleration benefit is identifiable and where the payment of such long-term care benefits cannot result in the decrease of the total amount of benefits payable under the policy (i.e., long-term care benefits plus balance payable upon death), shall be exempt from this section. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:~~

~~17.1.1 Statistical credibility of incurred claims experience and earned premiums;~~
~~17.1.2 The period for which rates are computed to provide coverage;~~
~~17.1.3 Experienced and projected trends;~~
~~17.1.4 Concentration of experience within early policy duration;~~
~~17.1.5 Expected claim fluctuation;~~
~~17.1.6 Experience refunds, adjustments or dividends;~~
~~17.1.7 Renewability features;~~
~~17.1.8 All appropriate expense factors;~~
~~17.1.9 Interest;~~
~~17.1.10 Experimental nature of this coverage;~~
~~17.1.11 Policy reserves;~~
~~17.1.12 Mix of business by risk classification; and~~
~~17.1.13 Product features such as long elimination periods, high deductibles and high maximum limits.~~

~~17.2 Every entity providing long-term care insurance in this State shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and~~

experience.

For purposes of this section, policy forms shall be deemed to comply the loss ratio standards if:

~~17.2.1f~~ or the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for three years or more is greater than or equal to the applicable percentages contained in this section; and

~~17.2.2~~ the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.

20.0 Premium Rate Schedule Increases

20.1 This section shall apply as follows:

20.1.1 Except as provided in section 20.1.2, this section applies to any long-term care policy or certificate issued in this state on or after September 1, 2005.

20.1.2 For certificates issued on or after the effective date of this amended regulation under a group long-term care insurance policy as defined in Section 18 **Del. C.** § 7103(4), which policy was in force at the time this amended regulation became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2006.

20.2 An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least 30 days prior to the notice to the policyholders and shall include:

20.2.1 Information required by section 8;

20.2.2 Certification by a qualified actuary that:

20.2.2.1 If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

20.2.2.2 The premium rate filing is in compliance with the provisions of this section;

20.2.3 An actuarial memorandum justifying the rate schedule change request that includes:

20.2.3.1 Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

20.2.3.1.1 Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;

20.2.3.1.2 The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

20.2.3.1.3 The projections shall demonstrate compliance with section 20.3; and

20.2.3.1.4 For exceptional increases,

20.2.3.1.4.1 The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

20.2.3.1.4.2 In the event the commissioner determines as provided in section 4.1.4 that offsets may exist, the insurer shall use appropriate net projected experience;

20.2.3.2 Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

20.2.3.3 Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

20.2.3.4 A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

20.2.3.5 In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

20.2.4 A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

20.2.5 Sufficient information for review of the premium rate schedule increase by the commissioner.

20.3 All premium rate schedule increases shall be determined in accordance with the following requirements:

20.3.1 Exceptional increases shall provide that seventy percent (70%) of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

20.3.2 Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

20.3.2.1 The accumulated value of the initial earned premium times fifty-eight percent (58%);

20.3.2.2 Eighty-five percent (85%) of the accumulated value of prior premium rate schedule increases on an earned basis;

20.3.2.3 The present value of future projected initial earned premiums times fifty-eight percent (58%); and

20.3.2.4 Eighty-five percent (85%) of the

present value of future projected premiums not in section 20.3.2.3 on an earned basis;

20.3.3 In the event that a policy form has both exceptional and other increases, the values in section 20.3.2.2 and 20.3.2.4 will also include seventy percent (70%) for exceptional rate increase amounts; and

20.3.4 All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified by applicable Delaware law or regulation. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

20.4 For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as defined in section 20.2.3.1, annually for the next three (3) years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three (3) years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in section 20.11, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

20.5 If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in section 20.2.3.1, shall be filed for review [approval] by the commissioner every five (5) years following the end of the required period in section 20.4. For group insurance policies that meet the conditions in section 20.11, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

20.6 Actual v. projected experience.

20.6.1 If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in section 20.3, the commissioner may require the insurer to implement any of the following:

20.6.1.1 Premium rate schedule adjustments;
or 20.6.1.2 Other measures to reduce the difference between the projected and actual experience.

20.6.2 In determining whether the actual experience adequately matches the projected experience, consideration should be given to section 20.2.3.5, if applicable.

20.7 If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

20.7.1 A plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the

policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in section 20.8; and

20.7.2 The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to section 20.3 had the greater of the original anticipated lifetime loss ratio or fifty-eight percent (58%) been used in the calculations described in section 20.3.2.1 and 20.3.2.3.

20.8 Lapse rate review.

20.8.1 For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

20.8.1.1 The rate increase is not the first rate increase requested for the specific policy form or forms;

20.8.1.2 The rate increase is not an exceptional increase; and

20.8.1.3 The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse

20.8.2 In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

20.8.2.1 The offer shall:

20.8.2.1.1 Be subject to the approval of the commissioner;

20.8.2.1.2 Be based on actuarially sound principles, but not be based on attained age; and

20.8.2.1.3 Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

20.8.2.2 The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

20.8.2.2.1 The maximum rate increase determined based on the combined experience; and

20.8.2.2.2 The maximum rate increase determined based only on the experience of the insureds

originally issued the form plus ten percent (10%).

20.9 If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of section 20.8 of this section, prohibit the insurer from either of the following:

20.9.1 Filing and marketing comparable coverage for a period of up to five (5) years; or

20.9.2 Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

20.10 Sections 20.1 through 20.9 shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in section 4.2, if the policy complies with all of the following provisions:

20.10.1 The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

20.10.2 The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as set forth by law or regulation including but not limited to the following:

20.10.2.1 18 Del.C. §2929; and

20.10.2.2 Delaware Insurance Department Regulation 1201;

20.10.3 The policy meets the disclosure requirements of 18 Del.C. §§ 7105 and 7106;

20.10.4 The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as set forth by law or regulation including but not limited to the following:

20.10.4.1 Policy illustrations as required by Delaware Insurance Department Regulation 1210; and

20.10.4.2 Disclosure requirements in Delaware Insurance Department Regulation 1201.

20.10.5 An actuarial memorandum is filed with the insurance department that includes:

20.10.5.1 A description of the basis on which the long-term care rates were determined;

20.10.5.2 A description of the basis for the reserves;

20.10.5.3 A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

20.10.5.4 A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

20.10.5.5 A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

20.10.5.6 The estimated average annual premium per policy and the average issue age;

20.10.5.7 A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

20.10.5.8 A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

20.11 Sections 20.6 and 20.8 shall not apply to group insurance policies as defined in 18 Del.C. § 7103(4) where:

20.11.1 The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

20.11.2 The policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than twenty percent (20%) of the total premium for the group in the calendar year prior to the year a rate increase is filed.

1821.0 Filing Requirement

Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to 18 Del.C. §7104 it shall file with the Commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

1922.0 Standard Format Outline of Coverage

This section of the regulation implements, interprets and makes specific, the provisions of 18 Del.C. Section 7105, in prescribing a standard format and the content of an outline of coverage.

1922.1 The outline of coverage shall be a free-standing document, using no smaller than ten point type.

1922.2 The outline of coverage shall contain no material of an advertising nature.

1922.3 Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.

1922.4 Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

1922.5 Format for outline of coverage;

[COMPANY NAME]
 [ADDRESS - CITY & STATE]
 [TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate
 Number]

[Except for policies or certificates which are guaranteed issue, the following cautionary statement, or language substantially similar, must appear as follows in the ~~on~~ the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when your applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).

2. Purpose Of Outline Of Coverage. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. FEDERAL TAX CONSEQUENCES.

This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

OR

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986 as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) [For long-term care health insurance

policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable shall contain the following statement: RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

(2) [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.]

(c) [Describe waiver of premium provisions or state that there are not such provisions.]

5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return—"free look" provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government

or any state government.

8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home. This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

9. BENEFITS PROVIDED BY THIS POLICY.

(a) [Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]

(d) Eligibility for Payment of Benefits

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.] [Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.

[Describe:

(a) Preexisting conditions;

(b) Non-eligible facilities and provider;

(c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

(d) Exclusions and exceptions;

(e) Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in Number 6 above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

(a) That the benefit level will not increase over time;

(b) Any automatic benefit adjustment

provisions;

(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

(d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;

(e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS. [State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

13. PREMIUM.

(a) State the total annual premium for the policy;

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

14. ADDITIONAL FEATURES.

(a) Indicate if medical underwriting is used;

(b) Describe other important features.]

15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

~~19.5.3 TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.~~

~~19.5.3.1[Provide a brief description of the right to return—"free look" provision of the policy.]~~

~~19.5.3.2[Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]~~

~~19.5.4 THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide provided by the insurance company.~~

~~19.5.4.1[For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.~~

19.5.4.2[For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

19.5.5 LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed-dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

19.5.6 BENEFITS PROVIDED BY THIS POLICY.

19.5.6.1[Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]

19.5.6.2[Institutional benefits, by skill level.]

19.5.6.3[Non-institutional benefits, by skill level.]

[Any benefit triggers must be explained in this section. If these triggers differ for different benefits, explanation of the screen trigger should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or triggers must be explained.]

19.5.6.4Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.

19.5.7LIMITATIONS AND EXCLUSIONS.

19.5.7.1Describe:

19.5.7.1.1Preexisting conditions;

19.5.7.1.2Non-eligible facilities/provider;

19.5.7.1.3Non-eligible levels of care (e.g., unlicensed providers, care of treatment provided by a family member, etc.);

19.5.7.1.4Exclusions/exceptions;

19.5.7.1.5Limitations.

This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in section 19.5.6 above.

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

19.5.8RELATIONSHIP OF COST OF CARE AND

BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. As applicable, indicate the following:

19.5.8.1That the benefit level will not increase over time;

19.5.8.2Any automatic benefit adjustment provisions;

19.5.8.3Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not only by a specified amount or percentage;

19.5.8.4If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;

19.5.8.5And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.

19.5.9TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

19.5.9.1Describe the policy renewability provisions;

19.5.9.2For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;

19.5.9.3Describe waiver of premium provisions or state that there are not such provisions;

19.5.9.4State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.

19.5.10ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.

19.5.11PREMIUM.

19.5.11.1State the total annual premium for the policy;

19.5.11.2If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium that corresponds to each benefit option.

19.5.12ADDITIONAL FEATURES.

19.5.12.1Indicate if medical underwriting is used;

19.5.12.2Describe other important features.

[COMPANY NAME]

~~{ADDRESS - CITY & STATE}~~

~~{TELEPHONE NUMBER}~~

2 DE Reg. 2113 (5/1/99)

203.0 Filing Requirements for Advertising

203.1 Prior to use, every insurer, health care service plan or other entity providing long-term care insurance in this State shall provide a copy of any long-term care insurance advertisement intended for use in this State whether through written, radio or television medium to the Insurance Commissioner of the State Delaware for review and approval by the Commissioner.

~~24.0 Standards for Marketing~~

~~24.1~~ Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

~~24.1.1~~ Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

~~24.1.2~~ Establish marketing procedures to assure excessive insurance is not sold or issued.

~~24.1.3~~ Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, the following: "Notice to Buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

~~24.1.4~~ Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.

~~24.1.5~~ Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this section ~~24.0~~.

~~24.1.6~~ If the state of Delaware is the state in which the policy or certificate is delivered or issued for delivery, the insurer shall, at solicitation, provide written notice to the prospective policyholder or certificate holder that the *Elderinfo* Program, a senior counseling program approved by the Commissioner, is available and the name, address and telephone number of the *Elderinfo* Program.

~~24.2~~ In addition to the practices prohibited in 18 **Del.C.** Ch. 23, Unfair Trade Practices, the following acts and practices are prohibited:

~~24.2.1~~ Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

~~24.2.2~~ High Pressure Tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

~~24.2.3~~ Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

2 DE Reg. 2113 (5/1/99)

~~225.0 Suitability~~

~~225.1~~ This section shall not apply to life insurance policies that accelerate benefits for long-term care.

~~225.2~~ Every insurer, health care service plan or other entity marketing long-term care insurance ("insurer") shall:

~~225.2.1~~ Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

~~225.2.2~~ Train its agents in the use of its suitability standards; and

~~225.2.3~~ Maintain a copy of its suitability standards and make them available for inspection upon request by the Commissioner.

~~225.3~~ Procedures required.

~~225.3.1~~ To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:

~~225.3.1.1~~ The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

~~225.3.1.2~~ The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

~~225.3.1.3~~ The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

~~225.3.2~~ The insurer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in section ~~225.3.1~~ above. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than twelve (12) point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the Commissioner.

2225.3.3 A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

2225.3.4 The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in Appendix B is prohibited.

2225.4 The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

2225.5 Agents shall use the suitability standards developed by the insurer in marketing long-term care insurance.

2225.6 At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C, in not less than twelve (12) point type.

2225.7 If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

2225.8 The insurer shall report annually to the Commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

2 DE Reg. 2113 (5/1/99)

2326.0 Standards for Benefit Triggers

2326.1 A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment.

2326.2 Activities of Daily Living

2326.2.1 Activities of daily living shall include at least the following as defined in section 5.0 and in the policy:

- 2326.2.1.1 Bathing;
- 2326.2.1.2 Continence;
- 2326.2.1.3 Dressing;
- 2326.2.1.4 Eating;
- 2326.2.1.5 Toileting; and
- 2326.2.1.6 Transferring;

2326.2.2 Insurers may use activities of daily living to trigger covered benefits in addition to those contained in section 2326.2.1 as long as they are defined in the policy.

2326.3 An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in sections 2326.1 and 2326.2.

2326.4 For purposes of this section the determination of a deficiency shall not be more restrictive than:

2326.4.1 Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

2326.4.2 If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

2326.5 Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

2326.6 Long term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

2326.7 The requirements set forth in this section shall be effective (12 months after adoption of this provision) and shall apply as follows:

2326.7.1 Except as provided in section 2326.7.2, the provisions of this section apply to a long-term care policy issued in this state on or after the effective date of the amended regulation.

2326.7.2 For certificates issued on or after the effective date of this section, under a group long-term care insurance policy as defined in 18 Del.C. §7103(4)a, the provisions of this section shall not apply.

2 DE Reg. 2113 (5/1/99)

247.0 Prohibition Against Pre-Existing Conditions and Probationary Periods in Replacement Policies or Certificates

247.1 If a long-term care insurance policy or certificate replaces another long-term care insurance policy or certificate, the replacing insurer shall waive any time periods applicable to pre-existing conditions and probationary periods in the new long-term care insurance policy or certificate to the extent that similar exclusions have been satisfied under the original policy.

258.0 Requirement to Deliver Shopper's Guide

258.1 A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or one developed or approved by the Commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

258.1.1 In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

258.1.2 In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

258.2 Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under 18 Del.C. § 7105 (j).

2629.0 Requirement to Offer Nonforfeiture Benefit

2629.1 No policy or certificate may be delivered or issued for delivery in this state unless the insurer also offers to the policyholder or certificateholder the option to purchase a policy that provides for nonforfeiture benefits to the defaulting or lapsing policyholder or certificateholder.

This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

2629.1.1 For purpose of this section, attained age rating is defined as a schedule of premiums starting from the issue date which increases with increasing age at least one percent per year to age fifty (50), and at least three percent (3%) per year beyond age fifty (50).

2629.1.2 For purposes of this section, the nonforfeiture benefit shall be a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefit shall be determined as specified in section 2629.1.3.

2629.1.3 The standard nonforfeiture credit will be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of section 2629.2.

~~26.1.4 No Policy or certificate shall begin a nonforfeiture benefit later than the end of the third year following the policy or certificate issue date except that for a policy or certificate with attained age rating, the~~

~~nonforfeiture benefit shall begin on the earlier of:~~

~~2629.1.4 Effective Dates~~

~~29.1.4.1 The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three (3) years.~~

~~29.1.4.2 Section 29.1.4.1 notwithstanding, No policy or certificate shall begin a nonforfeiture benefit later than the end of the third year following the policy or certificate issue date except that for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:~~

~~2629.1.4.2.1 The end of the tenth year following the policy or certificate issue date; or~~

~~2629.1.4.2.2 The end of the second year following the date the policy or certificate is no longer subject to attained age rating.~~

2629.1.5 Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

2629.2 All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would have been payable if the policy or certificate had remained in premium paying status.

2629.3 There shall be no difference in the minimum nonforfeiture benefit as required under this section for group and individual policies.

2629.4 The requirements set forth in this section shall become effective on May 1, 1997, except for certificates issued on or after the effective date of this section under a group long-term care insurance policy as defined in 18 Del.C. § 7103, which policy was in force at the time this amended regulation became effective.

2629.5 Premiums charged for a policy or certificate containing nonforfeiture benefits shall be subject to the loss ratio requirements of section ~~4618.0~~ treating the policy as a whole.

2629.6 Rejection of nonforfeiture benefit.

2629.6.1 A nonforfeiture benefit as provided in sections 2629.1.2 and 2629.1.3 shall be included in a long-term care insurance policy or certificate unless an insurer obtains a rejection of a nonforfeiture benefit signed by the policyholder or certificateholder as required in this section.

2629.6.2 The rejection shall be considered part of the application and shall state: I have reviewed the outline of coverage and the nonforfeiture benefit as described therein. Specifically, I have reviewed Plan _____ and I reject the nonforfeiture benefit.

2629.7 Nonforfeiture benefits for qualified long-term care policies shall meet the following requirements:

2629.7.1 The nonforfeiture provision shall be appropriately captioned:

2629.7.2 The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the Commissioner Secretary of the Treasury for the same contract form; and

2629.7.3 The nonforfeiture provision shall provide at least one of the following:

- 2629.7.3.1 Reduced paid-up insurance;
- 2629.7.3.2 Extended term insurance;
- 2629.7.3.3 Shortened benefit insurance; or
- 2629.7.3.4 Other similar offerings approved

by the Commissioner.

2629.8 If the required offer of a nonforfeiture benefit is rejected, the insurer shall provide the contingent benefit upon lapse described below. In the event that a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

2629.8.1 The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase
Percent Increase Over

Issue Age	Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%

72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

2629.8.2 On or before the effective date of a substantial premium increase as defined in section 2629.8.1 above, the insurer shall:

2629.8.2.1 Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

2629.8.2.2 Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of section 2629.5. This option may be elected at any time during the 120-day period referenced in section 2629.8.1; and

2629.8.2.3 Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in section 2629.8.1 shall be deemed to be the election of the offer to convert in section 2629.8.2.2 above.

2629.8.2.4 The contingent benefit upon lapse shall begin not later than the end of the third year following the policy or certificate issue date.

2730.0 Permitted Compensation Arrangements

2730.1 An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a long-term care insurance policy or certificate which shall not exceed thirty-five percent (35%) of the total premium paid for that policy year.

2730.2 No entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than twenty-five percent (25%) of the total premium paid for that policy year for the sale of a replacement long-term care insurance policy or certificate.

2730.3 For purposes of this section, "compensation"

includes pecuniary or non-pecuniary remuneration or any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

2831.0 Penalties

28.1 In addition to any other penalties provided by the laws of this state, any insurer and any agent found to violate any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

2932.0 Separability

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

303.0 Effective Date

303.1 This regulation became effective July 30, 1990, except Section 13 became effective July 1, 1993. Amendment #1 adopted nonforfeiture benefits (Section 2326) on December 23, 1996, to become effective on May 1, 1997. Amendment #2 became effective on March 22, 1999 to become effective 120 days thereafter. Amendment #3 adding sections 8.0, 10.0 and 20.0 shall become effective on January 1, 2005~~Subsequent amended provisions of this Regulation shall become effective 120 days from the Commissioner's order amending this regulation.~~

See 2 DE Reg. 2113 (5/1/99)

APPENDIX A

**RESCISSION REPORTING FORM FOR
LONG-TERM CARE POLICIES
FOR THE STATE OF DELAWARE
FOR THE REPORTING YEAR 19[]**

Company Name: _____

Address: _____

Phone Number: _____

Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission
---------------	--------------------------	-----------------	-------------------------	--------------------------	--------------------

Detailed reason for rescission:

Signature

Name and Title (please type)

Date

**APPENDIX B
Long Term Care Insurance
Personal Worksheet**

People buy long-term care insurance for a variety of reasons. Some don't want to use thier own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

Premium Information

Policy Form Numbers _____

The premium for the coverage you are considering will be [\$_____ per month, or \$_____ per year,] [a one-time single premium of \$_____.]

Type of Policy (non cancellable/guaranteed renewable): _____

The Company's Right to Increase Premiums:

[The company cannot raise your rates on this policy.]
[The company has a right to increase premiums on this policy in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

Rate Increase History

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

Questions Related to Your Income

How will you pay each year's premium?

From my Income From my Savings/Investments My Family will Pay

Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 20%?

What is your annual income? (check one)

Under \$10,000 \$10-20,000 \$20-30,000
 \$30-50,000 Over \$50,000

How do you expect your income to change over the next 10 years? (check one)

No change Increase Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Will you buy inflation protection?(check one) Yes No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount? From my Income From my Savings/Investments My Family will Pay

How are you planning to pay for your care during the elimination period? (check one)

From my Income From my Savings/Investments My Family will Pay

Question Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (savings and investments) worth? (check one)

Under \$20,000 \$20,000-\$30,000 \$30,000-\$50,000 Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

Stay about the same Increase Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

The information provided above accurately describes my financial situation.

I choose not to complete this information.

Signed:

(Applicant) (Date)

I explained to the applicant the importance of completing this information.

Signed:

(Agent)(Date)

Agent's Printed Name:]

[Note: In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My agent has advised me that this policy does not appear to be suitable for me. However, I still want the company to consider my application.

Signed:]

(Applicant) (Date)

Drafting Note: Choose the appropriate sentences depending on whether this is a direct mail or agent sale.

The company may contact you to verify your answers.

Drafting Note: When the Long-Term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading "Disclosure Statement" to the end of the page may be removed.

APPENDIX C**Things You Should Know Before You Buy Long-Term Care Insurance**

Long-Term Care Insurance

A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.

[You should not buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

Drafting Note: For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.

The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare Medicare does not pay for most long-term care.

Medicaid Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.

Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.

When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

Shopper's Guide Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

Counseling Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

**Appendix D
Long-Term Care Insurance Suitability Letter**

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to

consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

Drafting Note: Choose the paragraph that applies.

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.

Drafting Note: Delete the phrase in brackets if the applicant did not answer the questions about income.

No. I have decided not to buy a policy at this time.

APPLICANT'S SIGNATURE DATE

Please return to [issuer] at [address] by [date].

[APPENDIX E

**Claims Denial Reporting Form
Long-Term Care Insurance**

OMITTED

APPENDIX F

Instructions:

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

Insurers shall provide all of the following information to the applicant:

**Long Term Care Insurance
Potential Rate Increase Disclosure Form**

1. [Premium Rate] [Premium Rate Schedules]: [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [filed][approved] for an increase [is][are] [on the application][(\$ _____)]

Drafting Note: Use "approved" in states requiring prior approval of rates.

2. The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.

3. Rate Schedule Adjustments:

The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): _____.

4. Potential Rate Revisions:

This policy is Guaranteed Renewable. This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:

- "Pay the increased premium and continue your policy in force as is.
- "Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
- "Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
- "Exercise your contingent nonforfeiture rights.* (This option may be available if you do not purchase a separate nonforfeiture option.)

*** Contingent Nonforfeiture**

If the premium rate for your policy goes up in the future

and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long-term care insurance coverage, if:

- "Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table; and
- "You lapse (not pay more premiums) within 120 days of the increase.

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you've paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

Example:

- "You bought the policy at age 65 and paid the \$1,000 annual premium for 10 years, so you have paid a total of \$10,000 in premium.
- "In the eleventh year, you receive a rate increase of 50%, or \$500 for a new annual premium of \$1,500, and you decide to lapse the policy (not pay any more premiums).
- "Your "paid-up" policy benefits are \$10,000 (provided you have a least \$10,000 of benefits remaining under your policy.)

**Contingent Nonforfeiture
Cumulative Premium Increase over Initial Premium
That qualifies for Contingent Nonforfeiture**

(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)

Issue Age	Percent Increase Over Initial Premium
29 and under	200%

30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

**Appendix G
Long-Term Care Insurance
Replacement and Lapse Reporting Form**

OMITTED]

DEPARTMENT OF STATE

HUMAN RELATIONS COMMISSION

Statutory Authority: 6 Delaware Code,
Section 4616 (6 Del.C. §4616)

ORDER

A public hearing was held on June 10, 2004 to receive public comment on the proposed changes to the Fair Housing Regulations of the State Human Relations Commission. Notice of the hearing was published in two newspapers and in the Register of Regulations, Volume 7, Issue 11, May 1, 2004. The Commission deliberated and reached a decision at its regularly scheduled meeting on September 9, 2004.

Summary Of The Evidence And Information Received

There were no verbal comments offered at the public hearing. Three written comments were received from the State Council for Persons with Disabilities, Delaware Developmental Disabilities Council, and the Governor's Advisory Council for Exceptional Citizens. The letters are similar and are summarized as follows:

1. The use of the form for filing complaints should not be mandatory and the word "may" should replace "should."
2. The 90 day time frame for dismissal due to inactivity should be expanded. Formerly, it was one year.
3. The 10 calendar or business days for disclosing witnesses and exhibits for a hearing should be consistent.
4. The commentors suggest that the Commission should be able to order transcripts. The rules just authorize a party to request a transcript.
5. Several clerical errors were noted.

Findings Of Fact Based On The Information Received

1. The parties are encouraged to use the Commission's complaint form. Using the directory term "should" instead of "shall" allows for discretion in accepting another form of complaint.

2. The dismissal after 90 days of inactivity rather than one year is based on HUD guidelines for investigation from the U.S. Department of Housing & Urban Development. A complainant can refile within the applicable statute of limitations.

3. The Commission agrees that the 10 day period for identifying witnesses and other evidence for a hearing should be consistent. The rules will be uniform allowing 10 business days in 10.1 and 10.2..

4. The Commission can ask for a transcript since it is part of its own records. It is unnecessary to make a provision in the Rule.

5. The clerical changes are made as suggested. The affected provisions are restated in the TEXT below.

6. The Commission find these changes are not substantive and do not require further publication and comment.

Text

The text appears in the Register of Regulations, Volume 7, Issue 11, May 1, 2004 with the following substitutions:

- 2.4 Complaints filed with the Commission through the Division of Human Relations shall be in writing and are deemed to be filed when received at the office in substantially completed form as required. A complaint referred to the Commission or the Division of Human relations by a federal agency shall be deemed to be filed on the date it was taken or filed with such agency.
- 4.2 Within thirty (30) days after a complaint is filed, the Division shall prepare questionnaires to be answered by the parties. Questions may be suggested by the parties for inclusion in such questionnaires. The answer to such questionnaires shall be submitted in writing to staff within 10 business days after service of the questionnaire. Each party shall receive a copy of every other party's response to questionnaires.
- 4.4 Investigation of a complaint shall proceed according to the time limits set forth in the Act to aid conciliation, to determine if reasonable cause exists to issue a charge, and to prepare the case for hearing or Court.
- 5.6 Written and executed copies of such agreements shall be given to all parties. Conciliation agreements shall be publicly available unless the Complainant and Respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of the Act.
- 10.2 A written list of witnesses a party intends to call during a Panel Hearing must be delivered to the Commission and all parties at least ten (10) business days prior to the hearing.
- 15.2.1.2 Units occupied by persons under age 55 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 55 or older.

Decision And Effective Date

The State Human Relations Commission hereby adopts the proposed changes to be effective 10 days following publication in the Register of Regulations.

SO ORDERED THIS 9th day of September, 2004.

STATE HUMAN RELATIONS COMMISSION

Calvin H. Christopher, Chairperson

Gail E. Launay, Vice Chairperson

Randall Perry

Dawn Brown

Katharine V. Cropper

Bernice M. Edwards

James E. Gray

Shirley Horowitz

William D. Johnston

Mookkan Periyasamy

Diaz J. Bonville

Chok-Fun C. Chui

Wallace R. Dixon

Ralph A. Figueroa

Marian L. Harris

Doug James

Harold Truxon

John W. Pitts

1502 Fair Housing Regulations

Introduction

Pursuant to the authority granted to the Human Relations Commission under Title 6, Chapter 46, Section 4616 of the Delaware Fair Housing Act, and in accordance with the applicable requirements of The Administrative Procedures Act, the Human Relations Commission has adopted these rules and regulations to carry out the Delaware Fair Housing Act (The Act).

These regulations shall govern individual cases over which the Human Relations Commission and the ~~Office~~ Division of Human Relations have jurisdiction pursuant to Chapter 46, Title 6 of the Delaware Code.

These procedural regulations are intended to carry out the Delaware Fair Housing Act prohibiting unlawful discrimination in housing, and to enable the Commission to achieve equal or greater protection, thereby allowing eligibility for certain Federal funding necessary to carry out this function as a substantially equivalent agency.

~~These new Regulations shall apply to Fair Housing causes of action occurring under the Delaware Fair Housing Act on or after September 1, 1992.~~

These rules and regulations are specific to the processing of complaints of unlawful housing discrimination under the Delaware Fair Housing Act. The Commission believes these rules and regulations are necessary to ensure the appropriate administration of the Fair Housing Act and in order that the commission will be regarded as a substantially equivalent agency.

1.0 Definitions

1.1 The following terms used in these regulations shall have the same definition as defined in the Delaware Fair Housing Act, Section 4602:

Age
 Aggrieved persons
 Chairperson
 Commission
 Complainant
 Conciliation
 Conciliation Agreement
 Court
 Covered Multifamily Dwellings
 Discriminatory Housing Practice
 Dwelling
 Familial Status
 Family
 Handicap or Disability
 Housing For Older Persons
 Marital Status
 Panel
 Panel Chair
 Person
 Residential Real Estate - Related Transaction
 Respondent
 To Rent
 To Sell or sale
 Special Administration Fund

1.2 As used in these Rules and Regulations, the following terms are defined:

“**Act**” means The Delaware Fair Housing Act as amended from time to time, Chapter 46, Title 6 of the Delaware Code.

“**Commissioner**” means a person duly serving as a member of the Commission.

“**Charging Party**” means the same as "Complainant" (including in some instances the Commission).

“**Creed**” means any system of beliefs guiding or directing a person's behavior and actions including, but not limited to, an organized religion, sect, or philosophical society.

“**Director**” means the administrator and head of the Office of Human Relations or person duly authorized to act as such.

“**National Origin**” means the native country of an individual or his ancestor(s).

“**Office**” means any one of the places of business of the Office of Human Relations.

“**Party**” means the Complainant(s) or Respondent(s).

“**Religion**” means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination or other group of people.

“**Sex**” means the basis of being male or female.

“**Staff**” means a person employed by the Office of Human Relations of the State of Delaware.

“**Verified**” means that the person signing the

complaint or answer has sworn or affirmed that the statements of facts in the document are true.

2.0 Commencement of Proceedings Filing a Complaint (Formerly Rules 1, 2, 3, 4, 5 and 6)

2.1 Any aggrieved person or the Commission itself may file a written complaint. Minors may be represented by a parent or guardian ~~or responsible adult~~ for the purpose of bringing an action.

2.2 The Commission may initiate an investigation regarding compliance with applicable law whether or not a complaint is filed. Such investigations may be initiated by written statement showing justification signed by the Commission Chair or such person as may be authorized by the Commission in accordance with applicable provisions of law. To the extent practicable, procedures in these Regulations shall apply to Commission-initiated investigations.

2.3 A complaint shall be filed at any one of the places of business of the ~~Office~~ Division of Human Relations.

2.4 Complaints ~~made~~ filed with the Commission through ~~its Offices~~ The Division of Human Relations shall be in writing and are deemed to be filed when received at the office in substantially completed form as required. A complaint referred to the Commission or ~~Office~~ the Division of Human Relations by a federal agency shall be deemed to be filed on the date it was taken or filed with such agency.

2.5 Form of Complaint

2.5.1 All complaints ~~may~~ should be filed on a Complaint Form provided by the Office.

2.5.2 All complaints shall include the following data:

2.5.2.1 Full name and address of Complainant(s).

2.5.2.2 Full name and address of Respondent (s), if known, identifying whether each Respondent is an individual, partnership, corporation, etc.

2.5.2.3 The alleged discriminatory housing practice(s). --A concise statement of the facts thereof.

2.5.2.4 The date (s) of the alleged discriminatory practice (s) and whether the practice(s) is/are of a continuing nature together with the duration of such continuing practice(s).

2.5.2.5 The signature of Complainant or his/her attorney ~~at law, or his/her representative authorized by written certification,~~ or, in the case of a minor, a parent or guardian, ~~guardian, or responsible adult on behalf of such minor, unless otherwise required by law.~~ Such signature shall be notarized as a verified complaint. The ~~Office~~ Division of Human Relations shall provide such notarial service without charge for persons coming into the office.

2.6 Complainants and Respondents must keep the ~~Office~~ Division of Human Relations informed of their current addresses and telephone numbers.

3.0 Answer to Complaint of Respondent Role (Formerly Rule 7)

A copy of ~~Any~~ written answer of Respondent shall be verified and filed with the Commission within 20 days of receiving the complaint with proof of service showing a copy has been served on the Complainant.

4.0 ~~Initiating Action on Investigation of the Complaint (Formerly Rules 8, 9, 10 and 11)~~

4.1 Investigation of complaints shall be conducted by ~~Staff~~ the Division and commenced within 30 days after filing the complaint, and may include: interviews, questionnaires, fact finding conferences, search of records, ~~the conduct of~~ tests, identification of witnesses, development of statistics, other studies of alleged practices and patterns, or other work to gather relevant evidence. ~~Such work shall be subject to the approval of the Director.~~

4.2 Within thirty (30) days after a complaint is filed, ~~[staff the Division]~~ shall prepare questionnaires to be answered by the parties. Questions may be suggested by the parties for inclusion in such questionnaires. The answer to such questionnaires shall be submitted in writing to staff within 10 business days after service of the questionnaire. Each party shall receive a copy of every other party's response to questionnaires.

4.3 ~~Staff shall~~ The Division may schedule an informal fact-finding conference to be held with the Complainant and Respondent within thirty (30) days of the date the complaint is filed, unless it is impractical to do so.

4.4 Investigation of a complaint shall proceed ~~with all possible dispatch~~ according to the time limits set forth in the Act, to aid conciliation, to determine if reasonable cause exists to issue a charge and to prepare the case for hearing or Court.

4.5 At the end of each investigation, the ~~Commission~~ Division shall prepare a final investigative report containing that information set forth in Section 4610 (b)(5) of The Act.

5.0 Conciliation and Agreement (Formerly Rules 12, 13, 14 and 15)

5.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement opportunity prior to the onset of the investigation offer; the Complainant shall be advised of the opportunity ~~so notified~~ when a complaint is filed and the Respondent when a complaint is served.

5.2 Conciliation shall be initiated upon request of Complainant or Respondent or recommendation of the Division ~~Staff or the~~ Panel assigned to the case. Statements made in the course of conciliation can be disclosed only as provided under the Act.

5.3 An employee of the Division may serve as conciliator. A Commissioner, who is not assigned to the hearing Panel ~~other than one of the Commissioners later~~

~~appointed as members of the hearing panel, may, in the discretion of the Chairperson be appointed by the Chairperson to serve as conciliator. , or a staff person may serve as conciliator.~~

5.4 Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the parties. The following may be included:

5.4.1 binding arbitration to resolve the dispute; payment of damages;

5.4.2 compensation or other monetary relief;

5.4.3 payments made to the Special Administration Fund of the Human Relations Commission under Chapter 30, Title 31 of the Delaware Code;

5.4.4 monitoring of future activities;

5.4.5 affirmative action measures; ~~and/or other means to ensure future compliance, such as the implementation of Rental Guidelines in housing cases;~~

5.4.6 closing or terminating the case; and

5.4.7 any other relief agreed upon by the parties that will further the purposes of the Act.

5.5 A conciliation agreement shall become effective when signed by all parties, ~~the Panel Chair if a Panel has been appointed,~~ and the Commission Chair or his or her designee.

5.6 Written and executed copies of such agreements shall be given to all parties. ~~and notice thereof promptly sent to the Panel if a Panel has been appointed.~~ Conciliation agreements shall be made public publicly available unless the Complainant and Respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of the Act.

5.7 ~~Failure to comply with~~ Conciliation Agreements shall be pursued enforced according to the Act.

6.0 Charge (Formerly Rules 16 and 17)

6.1 Except in the case of complaints initiated by the Commission, the Director of the Office of Human Relations or a staff person designated by the Director shall make a determination as to whether or not reasonable cause exists to believe that a discriminatory choosing practice has occurred or is about to occur and issue a charge or dismiss the complaint pursuant to Section 4610(f).

6.2 Although the time for conciliation specified by Section 4610(b)(1) of the Act ends with the filing of a charge or dismissal, under Section 4612(e), staff may still make efforts to settle the case before a final order is issued.

7.0 ~~Case Closing Prior to Hearing~~ 6.0 Administrative Closure (Formerly Rules 18, 19, and 20)

7.1 6.1 A case ~~shall be considered to have been closed or can be~~ voluntarily terminated upon withdrawal of complaint by Complainant in writing with or without prejudice prior to answer prior to a response by the Respondent. Such withdrawal shall be in writing. However,

after ~~answer a response is filed~~ by Respondent, a complaint may be withdrawn ~~with or without prejudice~~ only with the consent of the Respondent or with approval by the Chairperson or ~~his or her~~ designee ~~to preserve the public interest.~~

~~7.2 6.2~~ A case may be closed ~~by the Division~~ for lack of activity in the case for more than ~~one (1) year ninety (90) days,~~ failure of Complainant to cooperate, or loss of contact ~~with the Complainant.~~ Application shall be made in writing ~~by Staff to Panel or if no Panel has been appointed then~~ to the Director or Chairperson, stating the reason for the proposed closing.

~~7.3~~ A case may be closed for failure of Complainant to cooperate upon application of Staff to the Panel or if no Panel has been appointed, ~~then to the Director or Chairperson.~~

~~7.4~~ A case may be closed for loss of contact with the Complainants where all reasonable efforts to locate same have been exhausted, upon written application by the Panel or by the Staff to the Panel, or if no Panel has been appointed, ~~then to the Director or Chairperson.~~

~~7.5 6.3~~ All notices of case closing shall be served on all parties ~~at the last addresses they provided to the Division~~ and shall include a statement ~~of the option to re-file the complaint as provided under the Act within the applicable statute of limitations.~~ ~~of the right to appeal, to have the case reopened for good cause shown to the Panel, or if no Panel has been appointed, then to the Director or Chairperson.~~

7.0 Charge and Answer

7.1 ~~Except in the case of complaints initiated by the Commission, the Director or his or her designee shall make a determination as to whether or not reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur and issue a charge on behalf of the aggrieved person or dismiss the complaint pursuant to Section 4610(f).~~

7.2 ~~The time for conciliation specified by Section 4610(b)(1) of the Act ends with the filing of a charge or a dismissal under Section 4610(f)(1)(2). Any subsequent settlement negotiations are conducted between the Respondent, or his or her attorney, and the Deputy Attorney general assigned to represent the Division.~~

7.3 ~~The charge shall consist of a short and plain statement of the facts that support a finding of reasonable cause by the Division and shall be served on the Respondent and the aggrieved person. The charge shall be based on the final investigative report and need not be limited to the facts alleged in the complaint.~~

7.4 ~~An aggrieved person may intervene as a party in the proceeding with written notice to the Division and the Respondent.~~

7.5 ~~Within 20 days after service of the charge, a Respondent shall file an answer with the Division.~~

7.6 ~~Failure to file an answer to the charge shall be deemed an admission by the Respondent of all matters of fact recited therein and may result in the entry of a default decision by the Commission.~~

7.7 ~~Any party may elect in writing to proceed for judicial determination rather than the administrative hearing before the Commission by notifying the Division within 20 days of receiving the charge. If an election for judicial determination is made, the Respondent is not required to file an answer to the charge with the Division. The subsequent proceeding are subject to the rules of the Court.~~

8.0 Appointment of Panel ~~(Formerly Rule 21 and 22)~~

8.1 ~~In the absence of an election to proceed with judicial determination in a Civil Action pursuant to Section 4612 of the Act, the Commission Chair or designee shall promptly appoint a panel of three (3) Commissioners, one of whom shall be designated as the Panel Chair.~~

8.2 ~~The Panel shall have all the powers of the Commission with respect to matters before it.~~

9.0 Expedited Discovery after a Charge is Filed ~~(Formerly Rules 23, 24, 25, 26 and 27)~~

9.1 ~~Staff shall cause interrogatories and/or requests for production of documents to be issued and depositions to be taken upon request of any party; After a charge is filed by the Division, parties may obtain discovery by depositions, written interrogatories, production of documents or things, and requests for admission. The expense of such discovery shall be borne by the party requesting the discovery.~~

9.2 ~~Pursuant to the Fair Housing Act, Sections 4612(d) and (e), discovery in A administrative proceedings shall be conducted as expeditiously as possible consistent with the need of all parties to obtain relevant evidence and the statutory requirement that a hearing be scheduled within 120 days following the issuance of the charge unless impracticable.~~

9.3 ~~The parties shall try to agree on procedures for discovery. Where the parties cannot agree, disputes shall be presented in writing to staff, and the dispute shall be resolved by written decision of a Commissioner, appointed by the Chairperson, who will not be assigned to the hearing Panel; or to the Director, who shall resolve the dispute according to the intent of the Fair Housing Act and fairness to both parties. The person making the decision shall make a written record of the decision and the reasons therefor.~~

9.4 ~~Discovery need not be formal, made with the customary formalities of Superior Court or the Court of Chancery. For example, the parties need not have a professional stenographer for transcription of depositions, so long as a record is made in some fashion such as an audio or video tape. by a professional or non-professional. Each party Parties shall be entitled to a copy of the record, in whatever form, at their own expense.~~

9.5 Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on that party's behalf to inspect and copy or photograph, any designated documents or photographs which constitute or contain evidence relating to any matter which is relevant to the subject matter involved in the pending hearing and not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served. Nevertheless, requests for production shall not be unduly burdensome upon the parties.

9.6 Production of documents shall be made to the requesting party within twenty (20) days after a written request is served upon the party, with a copy filed with the Commission. If the parties cannot agree as to production of documents, the party submitting the request may request the Commission to resolve the dispute according to Rule 9.1 (Formerly Rule 23).

9.7 Each party shall be provided with copies of the other parties responses to staff questionnaires. If an interrogatory was not covered by the staff questionnaire, any party may request staff to supplement the questionnaire with additional questions. Disputes as to this shall be resolved according to section 9.1 (Formerly Rule 23).

10.0 Pre-hearing Production ~~(Formerly Rules 28 & 29)~~

10.1 Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the Commission ~~Office~~ at the office of the Division where the complaint was filed and to all parties at least ten (10) business days prior to the hearing. The hearing panel shall consider such exhibits without formal proof unless the parties and the Commission have been notified at least five (5) business days prior to the hearing that an adverse party intends to raise an issue concerning the authenticity of the exhibit.

10.1.1 The Panel may refuse to receive into evidence any exhibit, a copy or photographs of which has not been delivered to the Commission and to an adverse party as provided herein. After commencement of the hearing, the Panel, in its discretion, may view or inspect exhibits or the ~~locus~~ location involved in a case. ~~in the presence of the parties and/or their attorneys or outside the presence of the parties or their attorneys.~~

10.1.2 Exhibits submitted at Panel Hearings are to be kept by the Commission during the passage of time for judicial review under Section 4612(i) or until all relevant proceedings have been concluded, whichever is later. When such time has passed, the exhibits shall be returned to their ~~proper~~ owner or destroyed.

10.2 A written list of witnesses a party intends to call during a Panel Hearing must be delivered to the Commission and all parties at least ten (10) ~~twenty one (21)~~ [business] days prior to the hearing.

10.2.1 The Commission Panel may refuse to receive into evidence any testimony of a witness ~~which~~ who has not been named on the witness list.

10.2.2 A party requesting that a witness be subpoenaed to appear shall provide the address where service can be made as required under Rule 11.5. A witness is required to appear only if a subpoena has been issued.

11.0 Hearings ~~(Formerly Rules 30, 31, 32, 33, 34 & 35)~~

11.1 The purpose of a hearing is to receive evidence, determine facts, and, after deliberation, render an adjudication in accordance with applicable law.

11.2 ~~The date, time, place and subject matter to be heard shall be included in the notice of hearing sent to all parties, the Panel and the Attorney General's representative, as well as such other information as is required by the Administrative Procedures Act. Notice of the hearing shall be sent to the parties pursuant to the Administrative Procedures Act.~~

11.3 No fewer than three Commissioners shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel member ~~for any reason whatsoever~~, the Commission Chair or his or her designee shall be empowered to make a substitution without notice to the parties, provided the hearing has not yet begun.

11.4 The hearing shall be held in the € county in which the discriminatory housing practice is alleged to have occurred or is to be about to occur.

11.5 A subpoena shall be issued upon written request by any party to a proceeding, ~~the Staff~~, or the Panel. Such request shall be submitted by a party within a reasonable time in advance of the hearing or deposition. Witnesses and documents requested must be clearly described in writing and include addresses for service. The consequence of failure to request a subpoena in timely fashion shall be at the discretion of the Panel.

11.5.1 Subpoenas may be served by the Division or a person ~~Staff, a Commissioner, or by any other person who is not a party and is not less than 18 years of age or older who is not a Respondent or aggrieved person in the proceeding~~. A return of service of each subpoena shall be promptly filed at the appropriate Office.

11.5.2 Where a person fails or neglects to attend and testify or to produce records or other evidence in obedience to a subpoena or other lawful order, the Commission may petition the Superior Court for an order requiring the person to appear to produce evidence or give testimony. Failure to obey such order is punishable by the Court as contempt.

11.6 The hearing shall be conducted by the ~~Commission~~ Panel Chair in a setting designed to put the parties at ease. ~~The parties~~ Individuals may be represented by counsel. A corporate entity must be represented by an

attorney admitted to practice in Delaware. Every hearing shall be recorded by electronic instrument or court reporter.

11.6.1 All parties or their counsel shall be given the opportunity to make a brief opening statement prior to the introduction of any evidence in the case. The purpose of opening statements shall be to clarify the positions of the parties and the issues being presented for determination. ~~Testimony shall be under oath or affirmation administered by the Panel Chair or a notary public.~~

11.6.2 All ~~information and facts available evidence~~ shall be presented ~~in by sworn~~ testimony and ~~exhibits documentary evidence presented~~ at the hearing. ~~Staff shall be required to attend the hearing in order to assist in the proceedings, or, where appropriate, to be a witness. The Panel Chair shall have full authority to control the procedure of a hearing, including, but not limited to the authority to call and examine witnesses, admit or exclude evidence, and rule upon all motions and objections subject to the following:~~

11.6.2.1 Formal rules of evidence need not be strictly followed.

11.6.2.2 ~~The right of cross-examination shall be preserved and may be conducted by the parties, or a duly authorized~~ a party who represents himself or herself, an attorney admitted to practice in Delaware who represents a party, attorney at law or the Commission Panel.

11.6.2.3 ~~Testimony from any other person may be allowed at the discretion of the Commission Panel.~~

11.6.2.3 Witnesses may be sequestered at the discretion of the Commission Panel, upon the request of the party(s).

11.6.2.4 Evidence on behalf of the Complainant should ordinarily be introduced first, to be followed by the Respondent, then allowing rebuttal, if any.

11.6.2.5 The Panel may continue a hearing from day to day or adjourn it to a later date or to a different place by so announcing at the Hearing or by appropriate notice to all parties.

11.6.2.6 Following presentation of the evidence an opportunity shall be given to each party to make a closing statement.

11.6.2.7 The Panel may re-call the parties for further testimony if it is unable to reach a decision.

11.7 A written transcript shall be prepared, if and as required, on the written request of any party to the matter, provided that such party pays for the cost of preparing the transcript. ~~Staff~~ The Division shall coordinate this process under State contract. ~~Such recordings and transcripts shall be preserved with the official file record of a case.~~

12.0 Decision and Orders (Formerly Rules 36, 37 & 38)

12.1 Deliberations of the Panel are non-public. The case decision may be rendered immediately following the

Hearing or the Panel may reserve its decision to a later date and so advise the parties. Decisions shall be by majority vote of the Panel. ~~The Attorney General's representative may be invited to be present while the Panel reaches a decision.~~

12.2 A copy of the Final Order shall be delivered by hand or mailed by Certified Mail, Return Receipt Requested, or ~~Hand Delivery~~ or by regular first class mail to the parties' last known address. In addition each party shall be notified of the right to seek reconsideration by the Panel.

12.3 Any party within ten (10) five (5)-business days after mailing of the Final order may apply to the Panel for reconsideration briefly and distinctly stating the grounds therefor. Such application for reconsideration must show service on the opposing party.

Within ten (10) five (5) business days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. ~~Any such application or answer should be submitted in five (5) copies.~~ The Panel shall promptly convene ~~in person or by teleconference~~ to consider such motion for reconsideration. The filing of such application shall ~~not~~ extend the time for judicial review under Section 4612(i).

13.0 Recovery of Attorney's Fees, Costs, and Expenses

13.1 Any party seeking to recover attorney's fees, costs, and expenses shall file a motion and affidavit detailing the time spent and fees incurred no later than the close of any hearing held before the Panel.

13.2 A motion filed by a Respondent shall state with particularity the improper purpose that would permit recovery of attorney's fees, costs, and expenses as provided pursuant to 6 Del. C. Section 4615.

~~13.0~~ 14.0 Miscellaneous Provision (Formerly Rules 39, 40, 41, 42, 43 & 44)

~~13.1~~ 14.1 Time.

~~14.1.1~~ 14.1.1 In computing any period of time prescribed or allowed by these Rules, by order of court, or by statute, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the ~~office~~ Division of Human Relations is closed, in which event the period shall run until the end of the next day on which the ~~Office~~ Division is open. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

~~14.1.2~~ 14.1.2 When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the Commission ~~or Director~~ for cause shown may at any time in its discretion

~~14.1.2.1~~~~14.1.2.1~~ with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or

~~14.1.2.2~~~~14.1.2.2~~ upon motion made after the expiration of specified period permit the act to be done where the failure to act was the result of excusable neglect.

~~14.1.3~~~~14.1.3~~ Whenever a party has the right to or is required to do some act or take some proceeding within a prescribed period after being served and service is by mail, 3 days shall be added to the prescribed period.

~~14.2~~~~14.2~~ Service. Unless otherwise specifically required by the Acts or these regulations, service of complaints, answers, other pleadings, charges, motions, requests or notices shall be made according to this rule.

~~14.2.1~~~~14.2.1~~ For the initial complaint and any pleading which brings in a new party, service shall be sufficient if made according to Superior Court Civil Rule 4(f), Rule 4(h) for service under Title 10, Section 3104, or by certified mail, return receipt requested with the return receipt card signed by (1) the person to be served, (2) a person living with or working in the office of the person to be served, or (3) an agent authorized by appointment or by law to receive service of process.

~~14.2.2~~~~14.2.2~~ Once jurisdiction over a party has been established, service may be by certified mail, return receipt requested, or by hand delivery or mail pursuant to Superior Court Civil Rule 5(b), as then in effect, or by some other means of notice generally recognized in the community with some confirmation of the notice having been sent such as by regular first class mail to the parties' last known address as evidenced by a certificate of mailing, by an express mail service with a receipt showing the notice was delivered to the express mail company, or by telecopier or fax with confirmation of transmission from the sender's machine.

~~14.3~~~~14.3~~ These regulations shall be liberally construed to accomplish the purpose of the applicable laws.

~~14.4~~~~14.4~~ These regulations shall be reviewed periodically by the Commission or its designee and the Director of the Office Division of Human Relations. Any recommendations for change shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.

~~14.5~~~~14.5~~ The Administrative Procedures Act (Chapter 101 of Title 29) shall provide the method by which these regulations may be amended.

~~14.6~~~~14.6~~ Copies of these regulations shall be available during regular office hours at the office Division of Human Relations or, upon request, by mail. ~~A fee established by appropriate authority may be charged. A copy of the rules and regulations is also available at : <http://www.state.de.us/research/AdminCode/General/Frame.htm>~~

15.0 Regulations related to Housing for Older Persons.

15.1 Housing for persons age 62 or older.

15.1.1 Housing that is designated for persons age 62 or older must be solely occupied by persons age 62 or older.

15.1.2 No person under age 62 may move into a unit designated for persons age 62 or older even if it is also occupied by a person who is qualified by age. For example, if a person age 65 who lives in a unit designated for persons age 62 or older marries a person age 60, the person age 60 does not qualify to live in the unit.

15.1.3 Units occupied by persons under age 62 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 62 or older.

15.1.4 Units occupied by persons under age 62 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 62 or older.

15.2 Housing for persons age 55 or older.

15.2.1 Housing qualifies under this section as long as at least 80% of the units are occupied by at least one person age 55 or older.

15.2.1.1 In computing whether the 80% occupancy test is met, unoccupied units are not included in the calculation.

15.2.1.2 Units occupied by persons under age 55 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 55 or older.

15.2.1.3 Units occupied by persons under age 55 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 55 or older.

15.2.1.4 A unit that is temporarily vacant is deemed to be occupied by a person 55 or older if, within the preceding 12 months, the unit was occupied by a person 55 or older who intends to periodically return.

15.2.1.5 Owners or managers must maintain records demonstrating that at least 80% of the units are occupied by at least one person age 55 or older. These records shall include biennial surveys made to confirm the ages of occupants by reliable documentation, such as drivers' licenses, passports, etc. Surveys shall be made available to the Division for inspection if a complaint of discrimination is filed.

15.2.2 To qualify under this section, a facility or community must publish and adhere to policies and procedures that demonstrate the intent of the owner to maintain housing for persons age 55 or older. The publication must be available for inspection at the

management office during regular business hours.

15.2.3 To qualify under this section, a facility or community must have significant facilities and services designed to meet the physical or social needs of older persons. These can include periodic seminars, clubs, social activities, field trips, transportation, a local bus stop, homemaker or health services, maintenance, clubhouse, exercise equipment, recreation area, newsletters, etc. The Division will maintain a list of suggestions available for the convenience of providers of housing for persons 55 or older. The list is not all-inclusive.

15.3 Provisions under the Act regarding familial status and age are not applicable to qualified housing for older persons.

15.4 A child under 18 years of age may be a temporary resident in a unit of housing for older persons if the child's parent, guardian, or person acting as a parent, with whom the child just resided, is unable to care for the child by reason of death, serious injury or serious illness.

MERIT EMPLOYEE RELATIONS BOARD

ORDER

Classification Maintenance Review Appeal Procedures For Merit System Employees

BEFORE Brenda Phillips, Chairperson, Dallas Green, John W. Pitts, and John F. Schmutz, Members, constituting a quorum of the Merit Employees Relations Board pursuant to 29 **Del.C.** §5908(a).

It has come to the attention of the Merit Employees Relations Board ("Board") that the hereto attached instructions and form for appealing Maintenance Classification decisions to the Board pursuant to 24 **Del.C.** §5915 should be made available on the Internet at the Web Site for the Delaware State Personnel Office.

In reviewing the appeal procedures and the form for the appeal which were adopted by the Board on June 19, 1997, the Board has determined that there are nonsubstantive changes which should be made to improve the form and style of both the instructions and the form for the sake of clarity.

These instructions and the form for appeal of Maintenance Classification decisions are adopted by the Board pursuant to 29 **Del.C.** §10113 and are to be filed with the Register of Regulations. They are effective on the eleventh day following such publication. (September 11, 2004)

**BY THE ORDER OF THE BOARD THIS 19th DAY
OF AUGUST 2004.**

Brenda Phillips, Chairperson
John F. Schmutz, Member
John W. Pitts, Member
Dallas Green, Member

CLASSIFICATION MAINTENANCE REVIEW APPEAL PROCEDURES FOR MERIT SYSTEM EMPLOYEES

1. The position incumbent is notified in writing of a final classification decision and is given a copy of (a) the classification specification for the new classification assigned to the position, (b) Classification Maintenance Appeal Procedures for Merit System Employees, (c) the classification appeal form, and (d) the name of the designated agency representative (normally the agency personnel administrator or a high level personnel professional, or if the agency does not have a personnel professional, a high level agency manager). The classification decision may be appealed to MERB within thirty (30) calendar days from the notification to the employee of the classification decision.
2. The designated agency representative should within ten (10) calendar days offer to meet with the employee(s) considering filing a classification appeal to explain the process and answer questions about the appeals process. These meetings may be with individual employees or with groups of employees.
3. Within thirty (30) calendar days from the date the employee is given written notice of the final classification decision from the designated agency representative, the employee who decides to appeal must complete the employee portion of the classification appeal form (items 1-4), sign it and send copies of the appeal to the designated agency representatives and to MERB. Receipt by MERB with items 1-4 completed and signed serves as the basis for timeliness (faxed copies are acceptable).
4. The Merit Employee Relations Board will forward a copy of the employee's appeal to the State Personnel Office Classification Unit upon receipt. Within ten (10) calendar days from the receipt of the employee's signed appeal, the designated agency representative has the hiring agency head or designee complete the agency's portion of the classification appeal form (items 5-7), and submit the agency's portion of the employee's appeal to the Merit Employee Relations Board.
5. Within ten (10) calendar days after receipt of the employee's appeal, MERB notifies the agency head, the designated agency representative, the employee, the Director of the State Personnel Office, and the State

Personnel Classification Unit, in writing, that the appeal has been received and is assigned to an Independent Reviewer. The State provides access to all documentation pertaining to the classification decision.

6. Within thirty (30) calendar days of assignment of the appeal, the Independent Reviewer reviews the appeal form as filed by the employee and as completed by the agency and any other relevant documentation that was used in the classification decision provided by the State Personnel Classification Unit. The Independent Reviewer may contact the employee and agency via the designated agency representative, and/or the State Personnel Classification Unit, to get additional information or clarification. Based on this review, the Independent Reviewer shall prepare a written report of findings and recommendations concerning the classification appeal and shall submit it to MERB, the employee, the Director of the State Personnel Office, and the Manager of the Classification Unit. In unusual circumstances, the Board may authorize the Independent Reviewer an additional thirty (30) calendar days to issue findings and recommendations to the parties.

When the independent Reviewer makes his/her findings and recommendations, he/she shall consider whether:

- a. One or more major duties and responsibilities and/or major knowledge, skills and abilities are not included in the class specification;
 - b. Another class specification is clearly a more accurate description of the position.
7. Within thirty (30) calendar days of the date of the Independent Reviewer's findings and recommendations, the State Personnel Director and the employee shall accept, deny, or ignore the findings rendered by the Independent Reviewer and notify, in writing, the Merit Employee Relations Board.
 8. If the Independent Reviewer's findings and recommendations are accepted by the employee and the Director, MERB is required to also accept the findings and to so notify the parties.
 9. If the Independent Reviewer's findings are rejected or ignored by the Director or employee within (30) calendar days after the Independent Reviewer's findings and recommendations, MERB has sixty (60) calendar days to conduct a hearing. At this same time, the appeal file containing the PCQ/JAQ, the written analysis by the Independent Reviewer, and any other documentation provided by the employee or agency and the State Personnel Classification Unit is available for review by the employee and the Director. Parties may call the Merit Employee Relations Board if he/she wishes to schedule a time to review the file.
 10. The employee and/or the Director may respond in

writing to the findings and recommendations of the Independent Reviewer. Such written response, which may include affidavits, should be filed with MERB, served upon the opposing party, and provided to the Independent Reviewer within thirty (30) days of the issuance of the Independent Reviewer's findings and not less than ten (10) days prior to the scheduled hearing for oral argument.

11. The Independent Reviewer shall forward a decision binder containing the appeal form completed by the agency and the employee, and any pertinent documentation from the State Personnel Classification Unit's classification maintenance review decision file, and the written findings and recommendations by the Independent Reviewer and any written responses thereto and any other pertinent material to the members of MERB not less than ten (10) calendar days prior to the scheduled hearing for oral argument.
12. The Board shall hold a hearing at which all parties may attend and have the opportunity to present brief oral arguments. The Independent Reviewer will summarize the grounds for the appeal, the primary points made by the parties, and his/her findings and recommendations based on review of the facts. The appellant will have the opening argument (normally no more than 15 minutes) followed by the Director (normally no more than 15 minutes), and the appellant may close (normally 5 minutes). The Board may question the parties and the Independent Reviewer as deemed necessary.
13. Within fifteen (15) calendar days of the hearing, the Board shall render a final and binding decision considering the following criteria:
 - (a) the findings of the Independent Reviewer;
 - (b) the Director's initial determination;
 - (c) the Director's response to the Independent Reviewer's findings;
 - (d) the employee's response to the Independent Reviewer's findings'
 - (e) the oral argument;
 - (f) the consistency with other existing classified positions of a similar nature;
 - (g) the minimization of the number of classifications.
14. The Board shall notify the employee and the State Personnel Director, in writing of the Board's decision.

Adopted by the Board: June 19, 1997

Revised: April, 2004

CLASSIFICATION APPEAL FORM

SECTIONS TO BE COMPLETED BY AGENCY

PERSONNEL

Position Number: _____
Department/Division/Section: _____
Date Employee was Given Notice of the Classification Decision by the Agency: _____
Date Appeal was Submitted by Employee: _____
Name of Personnel Representative: _____
Title: _____
Phone No. _____
Fax No. _____
Date Bargaining Unit Representative Notified of Appeal (if applicable): _____

Note: Items 1-4 are to be completed by the employee who is appealing the classification decision. Items 5-7 are to be completed by the Division Director and/or the appropriate agency manager who is knowledgeable of the duties and responsibilities of the employee in this position.

TO BE COMPLETED BY EMPLOYEE

1. Name: _____
Mailing Address - Workplace: _____
(Include State Mail Code, if known)

Mailing Address - Home (optional): _____
Work Phone No. _____
Work Fax No. _____
Class Title: _____
(Former Title)

(New Title)

Date Employee was Given Notice of the Classification Decision by the Agency: _____
Agency: _____

2. Grounds for classification appeal. (See guidelines for classification appeals to the Merit Employee Relations Board).

A. _____ One or more major duties and responsibilities or major knowledge, skills and abilities are not included in the class specification.

B. _____ Another class specification is clearly a more accurate description of the position.

3. A. If you checked 2(A) or 2(B) above, list the duties and responsibilities that are assigned to your position that are

not included in the new class specification.

3. B. If you checked 2(A) or 2 (B) above, list the knowledge, skills and abilities that are required for your position that are not included in the new class specification. (Please note: personal qualifications and job performance of employees are not relevant factors in classifying positions).

4. Relief sought (check one of the following):
1. _____ Revisions to class specifications.
2. _____ Reclassification of position to:

Name of Classification

(If No.2 was checked, the requested class title must be listed.)

TO BE COMPLETED BY AGENCY MANAGER OR DIVISION DIRECTOR

5. Name of Manager: _____
Phone No. _____
Fax No. _____
Title: _____

6. If the employee completed section 3(A), please verify that each of the duties and responsibilities listed are assigned to the position. How long have these duties been assigned to this position? If possible, indicate the specific date these duties were assigned.

If the employee completed section 3(B), please verify that the knowledge, skills and abilities listed are required to perform this job. (Please note: Personal qualifications and job performance of employees are not relevant factors in classifying positions).

EMPLOYEE	DATE
IMMEDIATE SUPERVISOR	DATE
DIVISION DIRECTOR	DATE
PERSONNEL REPRESENTATIVE	DATE

Appeal form adopted by the Merit Employee Relations Board: June 19, 1997
Revised: April, 2004

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Pilot Commissioners	Mr. Grover A. Biddle	8/6/2009
	The Honorable Richard S. Cordrey	8/6/2009
Council on Manufactured Housing	Mr. Henry C. McCann	8/30/2006
Delaware Mentoring Council/Co-Chair	Mr. James Wolfe	Pleasure of the Governor
Delaware Mentoring Council	Ms. Laura Anderson	Pleasure of the Governor
	Mr. Timothy Barnekov	Pleasure of the Governor
	Ms. Elisa Diller	Pleasure of the Governor
	Ms. Cindy Dipinto	Pleasure of the Governor
	Mr. Joseph Duffy	Pleasure of the Governor
	Ms. Susan J. Eggert	Pleasure of the Governor
	Ms. Barbara Grogg	Pleasure of the Governor
	Ms. Lois M. Hobbs	Pleasure of the Governor
	The Honorable Bruce C. Reynolds	Pleasure of the Governor
	The Honorable David P. Sokola	Pleasure of the Governor
	Ms. Dorothy E. Talbert-Hersi	Pleasure of the Governor
	Mr. Louis Vangieri	Pleasure of the Governor
	Ms. Susan Whitaker	Pleasure of the Governor
Sgt. Roger A. Willey	Pleasure of the Governor	
The Honorable Valerie A. Woodruff	Pleasure of the Governor	
Dover Housing Authority	Ms. Audrey O. Daniels	8/2/8010
Governor's Commission on Community and Volunteer Service	Mr. Joseph J. Duffy	8/9/2005
	Ms. Joyce E. Edwards	8/9/2007
	Ms. Robin M. Fisher	8/9/2006
	Edward W. Goate, Ed.D.	8/9/2005
	Ms. Regina Greenwald	8/9/2007
	Mr. Robert P. Hall	8/9/2007
	Mr. Vincent F. Jacono, Jr.	8/9/2006
	Mr. Timothy S. McLaughlin	8/9/2006
Mr. George B. Meldrum, Jr.	8/9/2007	

GOVERNOR'S APPOINTMENTS

603

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Governor's Commission on Community and Volunteer Service	Ms. Margaret E. Strine	8/9/2005
	Mr. Robert D. Ulrich	8/9/2006
	Mr. Ted G. Van Name	8/9/2005
	Mr. Paul R. Wilkinson	8/9/2007
	Ms. Carol A. Zeigler	8/9/2006
State Fire Prevention Commission	Mr. Marvin C. Sharp	9/21/2005

DEPARTMENT OF INSURANCE

FORMS AND RATES BULLETIN NO. 29

Consumer Notices Required Under 21 Del.C. §2118(a)(2)

Issued: September 22, 2004

Under an amendment to become effective for all automobile liability policies written or renewed after October 1, 2004, insurers, with respect to the Personal Injury Protection ("PIP) deductibles under the policies, will be required to:

- Provide each consumer/policyholder with a separate document that fully explains all of the PIP deductible options offered by the insurer
- Obtain a written acknowledgment from the consumer/policyholder that such explanation has in fact been received
- Obtain from the consumer/policyholder a signed separate acknowledgment of the specific PIP deductible selected by the consumer/policyholder which shall include an acknowledgment of the policy costs relating to such PIP deductible.

The requirements of 18 Del.C. §2118(a)(2), as amended, do not conflict with the pre-existing obligations that insurers have under Regulation 603 (formerly Regulation 9), including the insurer's obligation to provide each policyholder with a copy of Form A under Regulation 603. The insurer's obligations under 18 Del.C. §2118(a)(2), as amended, will require all insurers offering automobile liability insurance to amend the currently approved forms for use in the State of Delaware. The Department recognizes that compliance with the law may create a conflict with an insurer's obligations to file forms for approval under 18 Del.C. §2712 et seq. The Department will require insurers to comply with the law as of October 1, 2004. However, insurers will be permitted to file the necessary form amendments for approval to their automobile policies at any time, provided, that no form amendment in compliance with 18 Del.C. §2118(a)(2) shall be filed after December 31, 2004 for any form put into use prior to December 1, 2004. This bulletin applies only to form filings necessitated by 18 Del.C. §2118(a)(2) and shall expire on December 31, 2004.

Donna Lee H. Williams
Insurance Commissioner

**DELAWARE RIVER BASIN
COMMISSION**

Summary: The Delaware River Basin Commission ("Commission" or "DRBC") will hold a public hearing to receive comments on a proposed amendment to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to establish pollutant minimization plan requirements for point and non-point source discharges of toxic pollutants following issuance of a total maximum daily load (TMDL) under Section 303(d) of the Clean Water Act (CWA) by either a member state or the U. S. Environmental Protection Agency (EPA), or issuance of an assimilative capacity determination by the Commission.

Dates: The public hearing will be held on October 27, 2004 at 11:00 A.M. as part of the Commission's regularly scheduled business meeting. The hearing will end 60 to 90 minutes later, at the discretion of the Commission chair. If necessary, the hearing will be continued at a date and location announced by the Commission chair, until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609-883-9500, extension 224. Written comments will be accepted through Friday, November 19, 2004.

Addresses: The full text of the proposed rule will be posted no later than October 1, 2004 on the Commission's web site, <http://www.drbc.net>. The public hearing will be held in the Kirby Auditorium at the National Constitution Center, 525 Arch Street, Independence Mall, Philadelphia. Written comments should be addressed to the Commission Secretary as follows: by e-mail to paula.schmitt@drbc.state.nj.us; by fax to Commission Secretary - dial 609-8839522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 086280360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

Further Information, Contacts: Please contact Pamela Bush, 609-883-9500 ext. 203, with questions about the proposed rule or the rulemaking process.

Pamela M. Bush, Esquire,
Commission Secretary
September 14, 2004

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

The Delaware Board of Pharmacy in accordance with 24 **Del.C.** §2509 has proposed changes to its rules and regulations as mandated by SB 229. The proposal identified crimes that are substantially related to the practice of pharmacy.

A public hearing will be held on the proposed changes on November 10, 2004 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed Regulation. Written comment can be submitted at any time prior to the hearing in care of David Dryden, Executive Secretary, at the above address. In addition to publication in the Register of Regulations, copies of the proposed regulation can be obtained from David Dryden, Executive Secretary, by calling (302) 739-4798. Notice of the hearing and the nature of the proposal are also published in two Delaware newspapers of general circulation.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF OCCUPATIONAL THERAPY****PUBLIC NOTICE**

The State Board of Occupational Therapy Practice in accordance with 24 **Del.C.** §2006 (b) has proposed changes to its rules and regulations as mandated by Senate Bill 229. The proposal identifies crimes that are substantially related to the practice of occupational therapy.

A public hearing will be held at 4:30 p.m. on November 17, 2004, in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the State Board of Occupational Therapy Practice, 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.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, October 21, 2004 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by October 31, 2004.

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

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

PUBLIC NOTICE

Notice is hereby given that the Secretary of the Department of Safety and Homeland Security, formerly the Secretary of the Department of Public Safety, in accordance with 21 **Del.C.** §4101(d) and 73 **Del. Laws**, c. 350, sec. 92 intends to promulgate regulations. These regulations will regulate the administration of the Electronic Red Light Safety Program in unincorporated areas of the State of Delaware. The Electronic Red Light Safety Program through the use of traffic light signal monitoring systems will impose

monetary liability on owners or operators of motor vehicles for failure to comply with traffic light signals. A public hearing will be held on Monday, November 1, 2004 at 11:00 A.M. in the second floor main conference room (rm. 205) of the Safety and Homeland Security Building, 303 Transportation Circle, Dover, DE. The Secretary of Safety and Homeland Security will receive and consider input in writing from any person on the proposed regulations. Any written comments should be submitted to the Department of Safety and Homeland Security, in care of William G. Bush, IV, at P.O. Box 818, Dover, DE 19903-0818 on or before November 1, 2004. Anyone wishing to obtain a copy of the proposed regulations may do so by sending a written request to the Department of Safety and Homeland Security, P.O. Box 818, Dover, DE 19903-0818 or may obtain a copy in room 220 of the Safety and Homeland Security Building, 303 Transportation Circle, Dover, DE. This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

DEPARTMENT OF STATE

DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Notice of Public Comment:

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.**, Ch. 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider all written comments on the proposed rules and regulations related to implementation of amendments to the Historic Preservation Tax Credit Act. Comments should be submitted to the Division in care of Daniel R. Griffith, Director, Division of Historical and Cultural Affairs, 21 The Green, Suite B, Dover, DE 19901. The final date to submit comments is October 31, 2004. Anyone wishing to obtain a copy of the proposed amendments to the rules and regulations should notify Daniel R. Griffith at the above address or call 302-739-5685. This notice will be published in two newspapers of general circulation.

SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public hearings and open meetings of state agencies.

PUBLISHED MONTHLY - \$135.00 PER YEAR

YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$135/YEAR.
You will be billed upon receipt of your order. Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$11 per issue. Back issues are available at \$12 per issue. Subscription fees are non refundable.

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Please clip and return to: **REGISTRAR OF REGULATIONS
LEGISLATIVE HALL, DOVER, DELAWARE 19903
FAX: 302-739-3895**

Visit The Delaware General Assembly On The Web!

142nd Delaware General Assembly

Legislative Hall, Dover, DE. 19901 Phone: (302) 744 4114



[Home](#) - [Contact Us](#) - [Permissions](#) - [Disclaimer](#) - [FAQs](#) - [Site Map](#) - [Related Links](#) - [Copyright](#)

State Senate

House of Representatives

Redistricting

Bill Tracking

Online Publications

General Information

Legislative Divisions

Contact Information

Meeting Notices & Agendas

Bill Tracking Archives

Delaware became the first state on December 7, 1787 by being the first state to ratify the new United States Constitution. Delaware's first constitution was adopted on September 20, 1776, with subsequent versions adopted in 1792, 1831 and the current version in 1897.



Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.

COMMITTEE HEARINGS

WHAT'S NEW

The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access to the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

<http://www.legis.state.de.us>



LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____ FAX _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
One copy of all legislation introduced:	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
One copy of all legislation signed by the Governor:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$215.00
One copy of House and Senate calendars:	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$110.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$850.00
One copy of all Governor's Advisories:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$30.00
Daily Legislative Agendas and weekly Standing Committee Notices:	
<input type="checkbox"/> Via Fax - - - - -	\$135.00

* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact the Division of Research by dialing, toll-free, (800) 282-8545 (in state) or via E-Mail at jeffrey.hague@state.de.us. Please dial (302) 744-4114 if you are calling from outside Delaware.

Please return this order form to the Division of Research at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.

ACCESS THE DELAWARE CODE ON-LINE!



Online Delaware Code

- [The Delaware Constitution](#)
- [Title 1 - General Provisions](#)
- [Title 2 - Transportation](#)
- [Title 3 - Agriculture](#)
- [Title 4 - Alcoholic Liquors](#)
- [Title 5 - Banking](#)
- [Title 6 - Commerce and Trade](#)
- [Title 7 - Conservation](#)
- [Title 8 - Corporations](#)
- [Title 9 - Counties](#)
- [Title 10 - Courts and Judicial Procedures](#)
- [Title 11 - Crimes and Criminal Procedure](#)
- [Title 12 - Decedents' Estates and Fiduciary Relations](#)
- [Title 13 - Domestic Relations](#)
- [Title 14 - Education](#)
- [Title 15 - Elections](#)
- [Title 16 - Health and Safety](#)
- [Title 17 - Highways](#)
- [Title 18 - Insurance Code](#)
- [Title 19 - Labor](#)
- [Title 20 - Military and Civil Defense](#)
- [Title 21 - Motor Vehicles](#)
- [Title 22 - Municipalities](#)
- [Title 23 - Navigation and Waters](#)
- [Title 24 - Professions and Occupations](#)
- [Title 25 - Property](#)
- [Title 26 - Public Utilities](#)
- [Title 27 - Religion](#)
- [Title 28 - Sports and Amusements](#)
- [Title 29 - State Government](#)
- [Title 30 - State Taxes](#)
- [Title 31 - Welfare](#)

Find in the section label

- Up-to-date version of the Code reflecting recent legislative enactments
- Comprehensive full text search capabilities.

Visit the Delaware Code On-Line at:

<http://www.delcode.state.de.us/>