

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 **Del.C.** §1119C & 29 **Del.C.** §10119)
16 **DE Admin. Code** 3210

EMERGENCY

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119

16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents

3210 Nursing Homes Admitting Pediatric Residents

AUTHORITY

Pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents. Additionally, 29 **Del.C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. Moreover, 16 **Del.C.** §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for nursing homes admitting pediatric residents.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 has significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 9 (07/01/21).

In addition, staff at nursing homes that admit pediatric residents must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 17.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents, specifically, Section 17.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

17.0 Infection Prevention and Control

17.4 Specific Requirements for COVID-19

17.4.1 Before their start date, all new staff, vendors and volunteers must be tested in accordance with Delaware Division of Public Health Guidance.

17.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

17.4.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

17.5 The licensee shall amend their policies and procedures to include:

- 17.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
- 17.5.2 Staff refusals to participate in COVID-19 testing:
- 17.5.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.
- 17.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and
- 17.5.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

This Emergency Order shall take effect on September 30, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119 (3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 17th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3210 Nursing Homes Admitting Pediatric Residents, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3210 Nursing Homes Admitting Pediatric Residents

1.0 Purpose

1.1 As set forth in 16 **Del.C.**, Ch. 11 §1101:

- 1.1.1 the primary purpose of the licensing and regulation of nursing facilities and similar facilities is to ensure that these facilities provide a high quality of care and quality of life to their residents.†
- 1.1.2 Given that most nursing facilities and similar facilities provide services to adults who are elderly and/or physically disabled, children with special needs housed in these facilities require unique and carefully coordinated plans of pediatric care as well as developmentally appropriate, family-friendly environments.
- 1.1.3 These regulations outline minimum acceptable levels of care and treatment for this population.
- 1.1.4 A facility must be in compliance with all state and local laws and regulations applicable to facility personnel, provision of services and physical plant.

5 DE Reg. 2126 (05/01/02)

2.0 Authority and Applicability

- 2.1 These regulations are adopted in implementation of 16 **Del.C.** Ch. 11 and are applicable to any licensed nursing facility which provides care or services to one or more persons under 18 years of age.
- 2.2 These regulations are intended to supplement, and not supplant, general regulations promulgated in conformity with 16 **Del.C.** Ch. 11 and other applicable laws.

5 DE Reg. 2126 (05/01/02)

3.0 Definitions

“**Adult Resident**” - any person residing in the facility 18 years of age and older.

“**Care Plan**” - a specific document that includes, but is not limited to, identified resident-based goals and defined action steps for providing appropriate care and treatment.

“**Certified Nursing Assistant**” - an individual certified in accordance with 16 **Del.C.**, Ch. 30A, under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the persons(s) to whom they are providing care.

“Department”- Department of Health and Social Services.

“Division”- Division of Long Term Care Residents Protection.

“Licensee” - the person or organization to whom a license is granted and who has full legal authority and responsibility for the governance and operation of a nursing home and/or similar facility.

“Pediatric Resident” - any person residing in a nursing facility under 18 years of age and for whom there is a care plan including medical care, treatment and other related services.

“Primary Care Nurse (PCN)” - a Registered Nurse with at least a Bachelor’s Degree in nursing with expertise in the care of children with special needs. The PCN is responsible for the day to day delivery of all services specified in the care plan.

“Primary Care Provider (PCP)” - a physician licensed to practice in the State of Delaware with expertise in the care of children with special needs designated to coordinate medical care on a day to day basis.

“Social Worker” - an individual with a bachelor’s degree in social work or in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology. An individual with a bachelor’s degree in any other related field may qualify if the individual can demonstrate competency in coordinating care for medically fragile populations either through course work or experience. A minimum of one year of supervised experience is required in a long term care setting working directly with individuals and their families.

5 DE Reg. 2126 (05/01/02)

6 DE Reg. 79 (07/01/02)

4.0 General Requirements

- 4.1 Prior to admission, an interdisciplinary team of healthcare professionals shall evaluate the potential pediatric resident to determine whether the licensee can meet the pediatric resident’s needs. The care plan must contain documentation of the per-admission assessment with approval by the primary care provider and parents/guardian with notification to the responsible state agencies.
- 4.2 The licensee shall admit and retain only children with special needs whose specific medical, nursing, and psychosocial needs the licensee can meet.
- 4.3 The licensee through licensed healthcare professionals shall ensure that an interdisciplinary team is formulated for each pediatric resident. The interdisciplinary team shall include, but not be limited to, the Primary Care Nurse, a representative from each pediatric service received by the pediatric resident, a nutritionist, a representative from the educational program, social worker, Primary Care Provider and the parents/family/guardian. The team shall meet quarterly or more frequently as needed and review and document the care plan, and the Individual Education Plan (IEP) or Individualized Family Services Plan (IFSP) formulated for the pediatric resident.

5 DE Reg. 2126 (05/01/02)

6 DE Reg. 79 (07/01/02)

5.0 Facility Requirements

- 5.1 Pediatric residents shall only share rooms with other residents of the same sex.
- 5.2 The licensee must provide a tobacco-free environment for pediatric residents.
- 5.3 The licensee must provide and maintain all clinically indicated pediatric resuscitation equipment for children with special needs. For rooms occupied by such children, oxygen, suction equipment and electrical outlets must be at each bedside with access to an emergency power system. A pediatric resuscitation cart shall be provided on each pediatric unit/wing and shall include: dosage appropriate emergency drugs, resuscitation equipment including a pediatric backboard for cardiopulmonary resuscitation (CPR), and an easily readable list of drug dosages. A defibrillator designed for pediatric use with paddle sizes appropriate for pediatric residents and an easily readable chart indicating jolt dosages must be provided on each pediatric unit/wing. Equipment must be in good working order and must be checked daily by a registered nurse for proper functioning and must be documented as such.
- 5.4 A nursing staff member certified in Pediatric Advanced Life Support (PALS) shall be present in the unit where pediatric residents reside and when pediatric residents are present.
- 5.5 All nurses caring for pediatric residents must be certified in infant and pediatric cardiopulmonary resuscitation (CPR).
- 5.6 An audio monitoring system shall be utilized whenever a pediatric resident is left unattended. The monitoring system must include heart rate and respiratory rate alarms audible to the nursing station. Any pediatric resident with a tracheotomy and/or ventilator must also be monitored by a pulse oximetry with alarms audible to the nursing station. The monitors must be used when pediatric residents are unsupervised and/or in their

rooms for quiet time and nap/bed time. A plan to answer and respond to alarms must be in place and reviewed by all facility staff members.

- 5.7 The licensee through licensed healthcare professionals shall ensure that each pediatric resident is assessed by appropriate professionals for the need for assistive technology. The licensee shall ensure provision of appropriate assistive technology as prescribed as well as training in its use for staff members. Parents/family/guardian may also be trained when determined to be appropriate by the interdisciplinary team.

5 DE Reg. 2126 (05/01/02)

6 DE Reg. 79 (07/01/02)

6.0 Medical Services

- 6.1 The licensee through licensed healthcare professionals shall ensure the delivery of individualized, comprehensive services to each pediatric resident in conformity with a care plan.
- 6.2 The PCN shall be the liaison among treating physicians.
- 6.3 Pediatric services must be multidisciplinary and individualized. The services provided to each pediatric resident must be developmentally specific and appropriate to the age group being served.
- 6.4 The licensee shall provide access to emergency medical care 24 hours a day, 7 days a week, as outlined in a written policy which is updated annually. The policy shall be reviewed with all staff members and mock situations performed and documented at least twice a year.
- 6.5 The licensee through licensed healthcare professionals shall ensure complete physical assessments are performed on pediatric residents by the PCP or a Primary Care Nurse on admission/readmission and monthly thereafter. Documentation of complete physical assessment must be included in the pediatric resident's chart for review by all medical and nursing staff.
- 6.6 The licensee through licensed healthcare professionals shall ensure that each pediatric resident receives immunizations in accordance with current national pediatric standards.
- 6.7 The licensee through licensed healthcare professionals shall ensure timely medically necessary referrals to pediatric medical sub-specialists and pediatric surgical specialists as needed.
- 6.8 The licensee through licensed healthcare professionals shall ensure that each pediatric resident over the age of 3 years receives dental exams according to current national dentistry standards and necessary treatment.

5 DE Reg. 2126 (05/01/02)

6 DE Reg. 79 (07/01/02)

7.0 Therapy Services

- 7.1 The licensee shall ensure that qualified individuals specializing in the healthcare of children with special needs (e.g., physical therapist, occupational therapist, speech therapist, nutritionist, qualified interpreter) plan and administer the treatments for each pediatric resident.
- 7.2 The licensee through licensed healthcare professionals shall ensure that the plan for therapy and progress toward goals is reviewed and revised at least quarterly and is incorporated into the care plan. The nature, duration, frequency, and provider of therapy services shall be specified in the care plan.

5 DE Reg. 2126 (05/01/02)

6 DE Reg. 79 (07/01/02)

8.0 Nutritional Services

- 8.1 The licensee through licensed healthcare professionals shall ensure that each pediatric resident has an individually appropriate care plan that addresses the nutritional needs of that resident including the recommended daily allowance (RDA) of vitamins and minerals according to current national pediatric standards.
- 8.2 The licensee through licensed healthcare professionals shall ensure that infants and children are held during oral feeding as needed.
- 8.3 The licensee through licensed healthcare professionals shall consult with the PCP regarding the introduction of solid foods and the pediatric resident's progress in advancing to table foods.
- 8.4 The licensee through licensed healthcare professionals shall ensure each pediatric resident is meeting his/her optimal developmental potential regarding eating habits/eating techniques.
- 8.5 The licensee through licensed healthcare professionals and support staff shall assist pediatric residents to convene in a common dining area and partake in social gatherings around meal times, including children who are fed by tube.
- 8.6 The licensee shall ensure proper documentation of meal intake every shift.

5 DE Reg. 2126 (05/01/02)

9.0 Nursing Services

- 9.1 The licensee shall ensure that at least one registered nurse is present on every shift. That nurse must have at least one year of previous employment in a pediatric setting. This nurse may be the Primary Care Nurse (PCN).
- 9.2 The licensee through licensed healthcare professionals shall ensure that a sufficient number of nursing staff are assigned to the pediatric care unit to provide care in accordance with each pediatric resident's care plan and to meet each pediatric resident's needs. The licensee shall provide sufficient nursing and support staff so that each pediatric resident receives daily interaction from a variety of staff members. Interaction includes, but is not limited to, frequent conversation, play and holding/cuddling of pediatric residents to provide daily stimulation.
- 9.3 The licensee shall ensure that all pediatric nursing procedures are written in a policy and procedure manual. The manual must be accessible to all staff members caring for pediatric residents. Each individual policy must be reviewed and updated at least annually.
- 9.4 In addition to the facility standard orientation, the licensee shall ensure that upon hiring, all pediatric nursing and support staff complete an orientation to the pediatric unit/wing which is documented in the staff members' personnel files.
- 9.5 The licensee shall ensure that each nursing and support staff member providing care to pediatric residents receives training and demonstrates competence prior to performing any specialized skill or procedure on a pediatric resident. Written evidence of training and demonstration of competence must be included in each nursing and support staff member's personnel file.
- 9.6 The licensee through licensed healthcare professionals and support staff shall ensure that mouth care, skin care, passive range of motion, hygiene and other dependent care activities are performed as specified in the care plan.

5 DE Reg. 2126 (05/01/02)

10.0 Educational Services

- 10.1 The licensee in coordination with appropriate educational professionals shall ensure that each pediatric resident eligible for services under the Individuals with Disabilities Education Act (IDEA) is offered such services in conformity with 14 **Del.C.**, Ch. 31 and 16 **Del.C.**, Ch. 2, Subchapter II, and any regulations implemented under those laws.
- 10.2 The licensee shall maximize the coordination of each pediatric resident's care plan with any Individual Education Plan (IEP) or Individual Family Service Plan (IFSP) to ensure consistency and promotion of the pediatric resident's optimal benefit. In implementation of this duty, the PCN and Social Worker shall collaborate with responsible schools or school districts in development and revision of care plans, IEPs, and IFSPs.

5 DE Reg. 2126 (05/01/02)

11.0 Family Services

- 11.1 The Social Worker and other involved staff members shall promote positive family interaction and provide comprehensive instruction in providing care, as needed. The licensee shall have written guidelines for:
 - family visits to the facility and flexibility in accommodating such visits,
 - the pediatric resident's visits to the home setting,
 - telephone contacts between the pediatric resident and the family,
 - the provision of privacy between the pediatric resident and the family,
 - the inclusion of the family in planning of care.
- 11.2 The Social Worker and other involved staff members shall ensure that family support services are provided which include, but are not limited to, transportation, health education, counseling/support groups, home visiting, and coordination of care. The provision of quality services shall be family-based, community-based and culturally appropriate.
- 11.3 The Social Worker shall provide assistance to families to obtain services including Social Security, Medicaid, and other public/private assistance programs.
- 11.4 The licensee through licensed healthcare professionals shall facilitate discharge planning and coordination of outside resources. The licensee shall encourage the option of discharging the pediatric resident to the home if resources are available and the family is willing.

5 DE Reg. 2126 (05/01/02)

12.0 Emergency Preparedness

- 12.1 Nursing facilities shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.
- 12.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 12.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division.
- 12.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 12.5 In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.
- 12.6 Each facility shall submit with an application for a license and annual renewal of a license:
 - 12.6.1 A current all hazards emergency plan, and
 - 12.6.2 Copies of the FEMA certificate of achievement which demonstrates that at least two active, full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months.
- 12.7 The Division may grant an extension of time for either requirement in 12.6 upon request and for good cause shown.

16 DE Reg. 863 (02/01/13)

13.0 Miscellaneous Services

- 13.1 The licensee shall ensure that each pediatric resident has adequate, clean, well-fitting clothing that is weather appropriate. Clothing must be used exclusively by one pediatric resident and not shared in common.
- 13.2 The licensee shall ensure that each pediatric resident has individual personal hygiene items that are in proper condition for use and are not shared for use with other residents. These items include, but are not limited to, bathing soap, toothbrush, toothpaste, hair brushes/comb, and other toiletries.
- 13.3 The licensee through licensed healthcare and educational professionals shall ensure that each pediatric resident engages in activities on a daily basis which directly relate to the following developmental areas:
 - neurosensory,
 - fine motor development,
 - gross motor development,
 - social/emotional,
 - speech/language/communication,
 - hearing, audiology.
- 13.4 The licensee shall ensure adequate staff to enable pediatric residents to participate in daily play activities and crafts. The licensee shall provide indoor and outdoor play and activity equipment that is appropriate for the ages and developmental levels of the pediatric residents.
- 13.5 The licensee shall provide recreational therapy for the pediatric residents which will include supervised outdoor activity and play time, weather permitting and the pediatric resident's condition permitting.
- 13.6 The licensee through the Activities Director shall ensure that appropriate alternative recreational activities are provided for pediatric residents unable to participate in group activities.
- 13.7 The licensee shall ensure that all shared play equipment is properly disinfected and that needed infection control precautions are taken.
- 13.8 The licensee shall ensure that pediatric residents are transported in accordance with current national safety standards.
- 13.9 A registered nurse must accompany pediatric residents on all school-related field trips. Portable resuscitation equipment must be supplied and accompany the pediatric residents.

5 DE Reg. 2126 (05/01/02)

6 DE Reg. 79 (07/01/02)

16 DE Reg. 863 (02/01/13)

14.0 Resuscitation Orders

- 14.1 Upon admission to the facility, the PCP and PCN shall discuss with the parents/guardian of the pediatric resident procedures to follow in terms of a Do Not Resuscitate (DNR) status and shall include in the pediatric resident's chart, documentation of either DNR or Full Code status.

14.2 The DNR status of a pediatric resident shall not prohibit full participation by that pediatric resident in school/recreational field trips and/or events.

5 DE Reg. 2126 (05/01/02)

16 DE Reg. 863 (02/01/13)

15.0 Waiver

Waivers may be granted by the Division for good cause.

5 DE Reg. 2126 (05/01/02)

16 DE Reg. 863 (02/01/13)

16.0 Severability

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

5 DE Reg. 2126 (05/01/02)

16 DE Reg. 863 (02/01/13)

17.0 Infection Prevention and Control Program

17.1 The licensee shall establish and implement an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

17.1.1 The infection prevention and control program must cover all services and all areas of the facility, including provision of the appropriate personal protective equipment for all residents, staff and visitors.

17.2 The individual designated to lead the licensee's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the licensee's infection control outcomes.

17.3 All licensee's staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

17.4 Specific Requirements for COVID-19

17.4.1 Before their start date, all new staff, vendors and volunteers must be tested in accordance with Delaware Division of Public Health Guidance.

17.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

17.4.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

17.5 The licensee shall amend their policies and procedures to include:

17.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.

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17.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and

17.5.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

5 DE Reg. 2126 (05/01/02)

6 DE Reg. 79 (07/01/02)

16 DE Reg. 863 (02/01/13)

25 DE Reg. 319 (10/01/21) (Emer.)