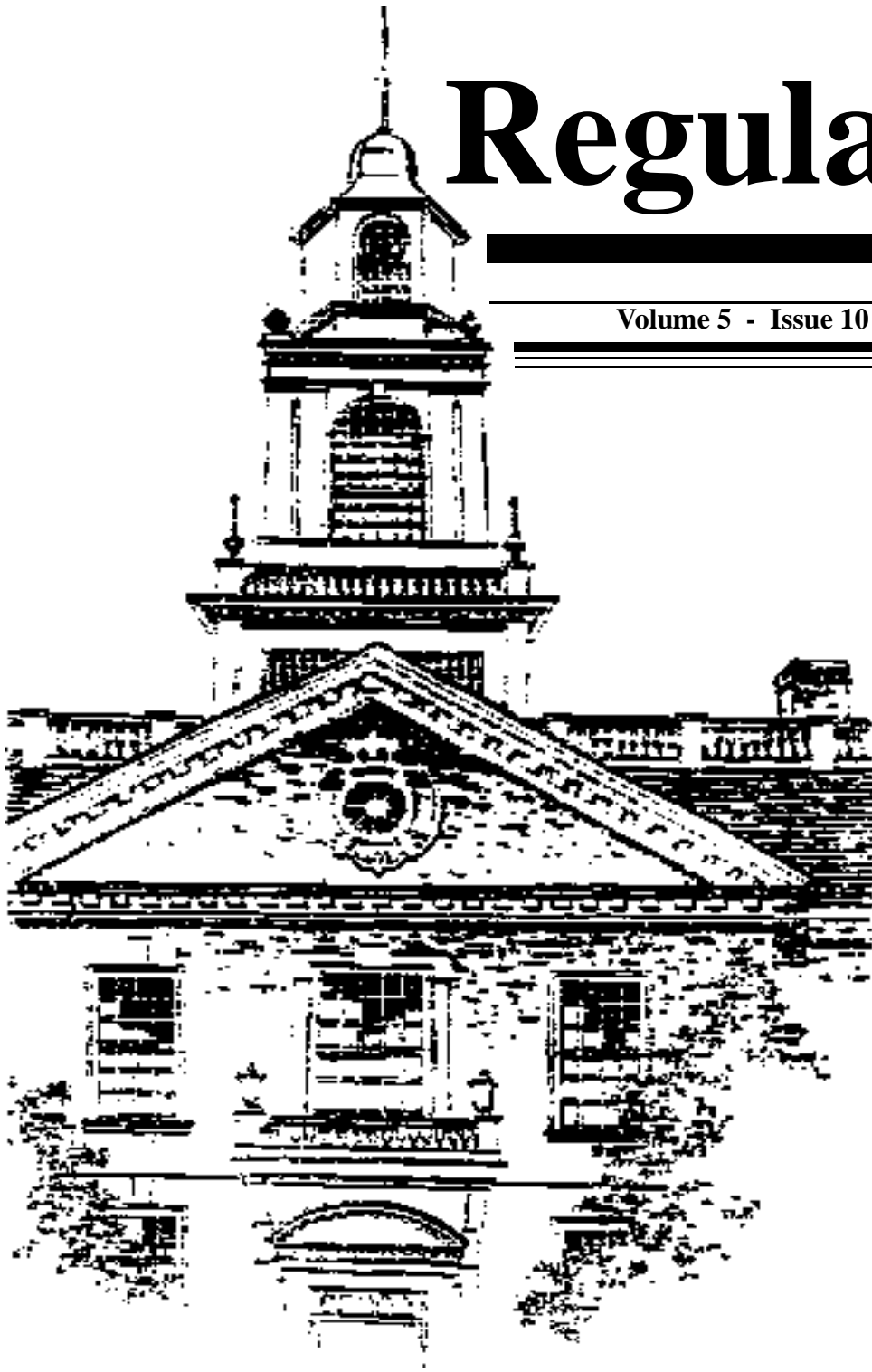


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# Delaware Register of Regulations



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Issue Date: April 1, 2002

Volume 5 - Issue 10

Pages 1846 - 1942

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before March 15, 2002.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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1847

## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

**5 DE Reg. 1337 - 1339 (01/1/02)**

Refers to Volume 5, pages 1337 - 1339 of the Delaware Register issued on January 1, 2002.

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### SUBSCRIPTION INFORMATION

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section,

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

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.

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**Symbol Key**

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

**Proposed Regulations**

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

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

**REAL ESTATE COMMISSION**

24 DE Admin. Code 2925

Statutory Authority: 24 Delaware Code,  
Section 2905(a)(1) & 2911(b),  
(24 **Del.C.** §2905(a)(1), §2911(b))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Real Estate Education Requirement. The proposed amendments revise Guideline 6.1.2 to permit the listing of specific courses of instruction that are acceptable for continuing education credit towards the requirement for renewal. The proposed revisions include insertion of a new Guideline 6.2.1 permitting up to three credits of continuing education applicable to legislative update for Delaware Association of Realtor members who serve on the State Government Affairs Committee provided that they attend no less than eighty percent of the annual meetings of that committee and attendance is certified in the form and manner prescribed by the Commission.

A public hearing will be held on the proposed Education Guidelines on Thursday, May 9, 2002 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Education Guidelines. Any written comments should be submitted to the Commission in

care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**Real Estate Commission Education Committee**

Statutory Authority: 24 **Del.C.** 2911(b)

- 1.0 Introduction
- 2.0 Objective
- 3.0 Administration
- 4.0 Education Committee
- 5.0 Course Approval
- 6.0 Program Criteria
- 7.0 Course Approval Process
- 8.0 Provider Responsibilities
- 9.0 Instructor Qualifications
- 10.0 Instructor Approval Process

**Guidelines for Fulfilling the Delaware Real Estate  
Education Requirements**

**1.0 Introduction -- Mandate for Continuing Education**

1.1 24 **Del.C.** §2911(b) sets forth a requirement that "...each Delaware Real Estate Certificate holder applying for renewal shall be required to successfully complete in the two year period prior to renewal, continuing education hours in an amount to be prescribed by the Rules and Regulations of

the Commission. Each Delaware Real Estate Certificate holder at the time of certificate renewal shall be required to furnish to the Commission satisfactory evidence that they have successfully completed the required number of hours in approved courses.....”

1.2 The continuing education requirements apply to all licensees whether or not the certificate holder has been officially active or inactive during the two year period prior to expiration. The Delaware Real Estate Commission shall be informed of the completion of the continuing education requirement at the time of submission of the Real Estate Certificate Renewal Application. In the case of an inactive licensee proof of completion of the continuing education requirement will be due upon reactivation of the license. The number of continuing education credit hours required is established within the Rules and Regulations of the Commission. The number and content of mandated courses may vary at the discretion of the Commission. The current requirement for continuing education is included within these guidelines. Updates may be obtained from the offices of the Real Estate Commission or the Real Estate Education Committee.

## **2.0 Objective**

Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Delaware Real Estate Commission's primary objective of protection of the public.

## **3.0 Administration**

The Delaware Real Estate Commission has the governing powers to approve or disapprove educational course offerings and instructor certification and reserves the right to suspend or revoke the privilege of conducting any educational course to any course provider(s) or instructor(s) who fail to adhere to the educational guidelines as established by the Commission.

## **4.0 Education Committee**

4.1 The Commission may utilize the services of a committee, appointed by the Commission, to assist in the educational objectives of the Commission.

4.2 Committee Structure - The Committee shall be comprised of twelve (12) members, four (4) from each county. Three (3) members shall be public members and the remaining members shall hold a valid Delaware real estate license.

4.3 Committee Officers - (Chairperson and Vice-Chairperson) shall be elected from the Committee and shall serve one year terms. Election of said officers will be held in January.

### **4.4 Term of Office**

4.4.1 Each appointment shall be for four (4) full

years. No person who has been appointed to the Committee shall again be appointed to the Committee until an interim period of at least one (1) year has passed since such person last served.

4.4.2 Five (5) members shall constitute a quorum; and no recommendation shall be effective without the affirmative vote of a majority of the quorum. Any member who fails to attend three (3) consecutive regular business meetings without a valid excuse, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Commission.

4.4.3 Committee members shall be appointed by the Commission. Applications for committee membership will be received by the Commission, via a letter of intent and a current resume 60 days prior to an anticipated vacancy. Committee members may be removed by the Commission for good cause. If an interim vacancy should occur, the Commission shall appoint a person to fill the position for a full four (4) year term commencing with the date of appointment.

### **4.5 Committee Responsibilities**

4.5.1 It shall be the duty of the Education Committee to monitor the content and conduct of all pre-licensing courses for salesperson and broker as well as continuing education programs offered to fulfill the educational requirements for obtaining and maintaining licensure in the State of Delaware.

4.5.2 The Education Committee shall have the responsibility for reviewing all applications for pre-licensing and continuing education credit as well as certification of instructor applicants, to insure that all applications satisfy the requirements.

4.5.3 After this review, the Education Committee shall recommend that an application be approved or disapproved by the Commission. If approval is recommended with regard to continuing education, the Committee shall indicate the number of full credit hours for the course. In making its decisions, the Education Committee shall follow the provisions contained in these guidelines. Any recommendation for non-approval shall be accompanied by a specific reason. Only the Delaware Real Estate Commission shall have the power to approve or disapprove the application for a course offering or instructor certification.

4.5.4 The Education Committee shall undertake such other duties and responsibilities as the Commission shall direct from time to time.

4.5.5 Committee meeting times and places shall be as necessary, but in all cases within two weeks prior to the next regularly scheduled meeting of the Commission. Committee meetings shall be conducted in accordance with the Administrative Procedures Act.

4.5.6 Notwithstanding any rule, regulation, or guideline to the contrary, members of the Education Committee who attend at least eighty percent (80%) of the meetings of the Education Committee during a biennial licensure period may receive up to six (6) continuing education credit hours applicable to elective credit hours only. This guideline will become effective beginning May 1, 2002.

**See 5 DE Reg. 1686 (3/1/02)**

## **5.0 Course Approval**

5.1 General Requirements - An educational activity to be approved as satisfying Delaware's real estate continuing education requirements must be an organized real estate related activity, offered under responsible sponsorship, facilitated by an instructor certified by the Commission.

5.2 Organization - The sponsoring organization must have a designated individual responsible for the administration and coordination of the education program. That designee shall be responsible to report to the Commission and/or the Committee for the proper conduct of each such program.

5.3 Facilities - The sponsoring organization must provide or arrange for appropriate educational facilities, and when necessary, library and reference materials and all instructional aids and equipment consistent with the content, format, and objective of each learning experience.

5.4 Performance - Attendance shall be used as the minimum requirement for satisfactory completion, in addition, alternative criteria for evaluating student performance may be established by the sponsoring organization or class instructor.

5.5 Maintenance and Availability of Records - An individual record of participation must be maintained by the sponsoring organization for a period of not less than three (3) years from the date of the activity and upon request made readily available as an official statement to each student of his or her participation. Information which must be included as part of this record is:

5.5.1 Name and address of the organization offering the course.

5.5.2 Name of course topic.

5.5.3 Title of the course

5.5.4 Name, resume and certificate number of the individual instructors.

5.5.5 Completion date of the course offering.

5.5.6 Number of hours of approved credit.

5.5.7 A detailed outline of the course.

5.5.8 A copy of the approval letter received from the Commission

5.5.9 A copy of the individual instructor(s) certification(s) letter(s) issued by the Commission.

5.5.10 A copy of the individual student evaluations on forms provided by the Commission.

5.5.11 A list of the individual students attending the course offering and their completion status, e.g., satisfactory or unsatisfactory.

5.6 Program Evaluation - Evaluation forms, approved by the Real Estate Commission shall be used to measure the effectiveness of the program design, operation and effectiveness of the instructor(s). These forms must be returned to the Education Committee for review within fifteen (15) calendar days of completion of the program.

## **6.0 Program Criteria**

6.1 Areas of Concentration for Acceptable Courses

6.1.1 Courses of instruction and seminars, to be considered eligible for continuing education credit approval must be in a definable real estate topic area. Courses that may be considered eligible must be in the following topic areas:

6.1.1.1 Federal, State or Local Legislative Issues (Legislative Update).

6.1.1.2 Fair Housing Law

6.1.1.3 Anti-Trust Law

6.1.1.4 Real Estate Ethics or Professional Standards

6.1.1.5 Agency Relationships and Responsibilities

6.1.1.6 Professional Enhancement for Practicing Licensees

6.1.2 Unless specifically identified in Guideline 6.2 as acceptable for credit, courses of instruction which Are Not acceptable for credit include, but are not limited to:

6.1.2.1 Offerings in mechanical office and business skills such as typing, business machines and computer operations.

6.1.2.2 Personal development and/or enrichment and motivational courses, speed reading memory improvement, and language report writing.

6.1.2.3 Correspondence courses and program learning courses not under the direct supervision of a certified instructor, except those courses that have been certified through The Association of Real Estate License Officials (ARELLO) Distance Education Certification Program.

6.1.2.4 General training or education required of licensees to function in a representative capacity for an employing broker except if said training or education complies with the above stated topic areas, has been approved by the Commission and is taught by a certified instructor.

6.1.2.5 Meetings which are a normal part of in-house staff or licensee training, sales promotions or other meetings held in connection with the general business of the licensee and/or broker; any meetings that a licensee is required to attend as a condition of continued employment, whether imposed by rules of the employing broker or by a



contractual agreement between broker and franchiser, does not qualify for continuing education credit. Work experience does not qualify for continuing education credit.

6.1.2.6 Non-educational activities of associations, trade organizations, and professional and occupational group membership or certification are not considered creditable continuing education activities. Examples of such activities are, but not limited to:

6.1.2.6.1 membership or service in a professional, occupational or other society or organization;

6.1.2.6.2 attendance at annual, periodic or special meetings, conventions, conferences, rallies and retreats;

6.1.2.6.3 writing or presentation of articles or research papers;

6.1.2.6.4 a program or other type of organizational assignment;

6.1.2.6.5 self-directed reading or study. As a guiding principle "self-directed studies" and "individual scholarship" are not considered creditable educational activities.

6.2 The following are approved for credit as indicated:

6.2.1 In any biennial license period, up to three (3) credits applicable towards legislative update may be obtained by Delaware Association of Realtors (DAR) members who serve on the State Government Affairs Committee provided that: 1) the member attends no less than eighty percent (80%) of the annual State Government Affairs Committee meetings; and 2) the DAR Executive Vice President or DAR President certifies attendance in the form and manner prescribed by the Commission.

**See 5 DE Reg. 1171 (11/1/01)**

## **7.0 Course Approval Process**

7.1 An application for course approval (on forms approved by the Commission), course outline, all applicable fees and any other documentation that may be required, must be filed by the course sponsor or provider, with the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467, at least sixty (60) days prior to the date that the course is to be held. Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed.

7.2 A course may be certified for a period of two (2) calendar years, provided the course is conducted by the sponsor or provider making application, the curriculum and course length remains exactly as approved, and certified instructors are utilized. The Education Committee may

recommend a shorter or probationary approval where good cause for limited approval can be demonstrated. A sponsor who receives approval to conduct a certified course or activity, must notify the Commission in writing, of the intent to hold such activity, at least seven (7) days in advance of the start of the activity. Included in the letter of intent shall be the course approval number, date(s) and time(s) and location of the course, topic area, course name, instructor name(s) and instructor certification number(s). Courses can not be automatically renewed. Sponsors providers will need to reapply by the course expiration date and before conducting further courses. The Education Committee shall have the right to recommend to the Commission that a provider's privilege of conducting a certified course be revoked for the remainder of the approval period, if the Education Committee determines that the provider is not maintaining the standards required in these guidelines.

7.3 An application for an individual student request for approval of an educational activity (on forms approved by the Commission), course outline, instructor resume of a qualified instructor, and any other documentation that may be required, may be filed by the individual student with the Delaware Real Estate Commission, Real Estate Education Committee within twelve (12) months. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed. The subject educational activity must comply with Section 6.0 herein and any other applicable Guidelines.

**See 5 DE Reg. 1395 (01/01/02)**

## **8.0 Provider Responsibilities**

8.1 The organization receiving approval of a course or program accepts the responsibility to maintain a permanent record of the course activity for not less than three years from the date of the course offering. The permanent record shall include the documents as listed in "Maintenance and Availability of Records".

8.2 The sponsor or provider of all continuing education courses shall arrange for an on-site monitor in addition to the certified instructor for each activity. The monitor shall be responsible, at a minimum, for ensuring faithful and complete attendance by students, as well as facilities management. The monitor may be a student for educational credit for that course or activity. This guideline shall not apply to courses that have been certified through ARELLO's Distance Education Certification Program.

8.3 The course sponsor or provider, will supply to the student at the completion of the course or program, a certificate of completion. This certificate must contain, but is not limited to, the following information:

Student Name

Sponsors Name  
Topic Area Name  
Course Title  
Date course was completed  
Number of Credit Hours  
Course Approval Number  
Instructor Name(s)  
Instructor Certificate Number(s)

8.4 The organization offering the course, shall, within fifteen (15) days after the completion of the activity, provide a list of participants, their real estate license numbers (if applicable) and a copy of each student's course and instructor evaluation form and an evaluation summary report form to the Commission's Office. The evaluation summary report form shall be signed by any instructors who participated in the delivery of the course thus indicating each has had the opportunity to review the evaluation result. Failure of the organization to provide this information may be grounds to suspend the approval of that course or educational activity, in the absence of a showing of good cause for that failure.

8.5 Where the provider is a prelicensing school, the administrator thereof is responsible to apply to the Delaware Department of Public Instruction for certification and to maintain such certification. Proof of current certification must be attached to the application for course approval submitted to the Education Committee.

8.6 Prelicensing schools are to solicit the names of students interested in being contacted by recruiters by the second class meeting. Any students joining after the first class must be informed of the opportunity to be a part of the recruiting roster at the first class attended. Schools must supply the recruiting roster within seven (7) days of receiving a request from a broker.

8.7 Prelicensing schools will also furnish each student with current information regarding the prelicensing examination to include the "Real Estate Candidate Handbook" which is available to prelicensing schools through the testing service for this purpose.

8.8 Members of the Real Estate Commission or Education Committee And/or Their Official Representatives Shall Have the Right to Monitor Any Approved Course Without Notice.

**See 5 DE Reg. 1171 (11/1/01)**

## **9.0 Instructor Qualifications**

9.1 It is the stated policy of the Delaware Real Estate Commission that qualified instructors must be directly involved in presenting any professional educational activity. Qualifications are determined by all or a combination of:

9.1.1 competence in the subject matter (may be evidenced by experience in which command of subject matter is recognized by the individual's peers, and/or by a formal education or training, and/or by demonstrated knowledge through publication in professional journals or

appropriate media);

9.1.2 ability to transmit the educational content to the participants as determined by student evaluations and/or test results from previous instructional assignments;

9.1.3 understanding of the program objectives; and

9.1.4 knowledge and skill in the instructional methodology and learning processes to be employed.

9.2 The persons applying for instructor certification in teaching a real estate related topic must have five (5) years of full time experience in the trade, business, or profession that relates to the topic of instruction to be taught, and meet at least one (1) of the following sets of qualifications:

9.2.1 An approved instructor must meet two of the following criteria:

9.2.1.1 a Bachelor's degree

9.2.1.2 a Broker's Certificate

9.2.1.3 a professional designation such as, but not limited to; ALC (Accredited Land Consultant), CRS (Certified Residential Specialist), CCIM (Certified Commercial Investment Member) CPM (Certified Property Manager), CRB (Certified Residential Broker), CRE (Counselor Real Estate), MAI (Member Appraisal Institute), SIOR (Society Industrial Office Realtors) SRA (Senior Residential Appraiser), SRPA (Senior Real Property Appraiser), but not including GRI (Graduate Realtor Institute);

9.2.2 Possession of a valid teaching credential or certificate issued in the State of Delaware (or any State with qualifications that are equal to, or that exceed the qualification standards of the State of Delaware), and/or five (5) years of teaching experience in an accredited public, private, or parochial school; and/or five (5) years teaching experience in an accredited junior college, college or university.

9.2.3 A fully designated senior member of the Real Estate Educators Association who has been issued the DREI (Designated Real Estate Instructor) designation.

9.3 The Commission may waive the above requirements contingent upon review of proof of collateral experience in related fields of real estate. The Commission reserves the right to exercise its discretion in denying an applicant who has had a disciplinary action taken against him/her.

9.4 In addition to the qualifications listed above, the Commission shall take into consideration evaluations from previous programs that the applicant has instructed. The Commission will also take into consideration recommendations or absence thereof of course providers, course coordinators, administrators and institutions that have employed the applicant.

9.5 The Education Committee may, at its discretion, subject to Commission approval, require a potential instructor to take a teaching methodology course (such as those given by colleges and universities) and/or a teaching

methods seminar (such as currently given by the National Association of Realtors or Real Estate Educator's Association).

### 10.0 Instructor Approval Process

10.1 Applicants for instructor shall submit an application (on forms approved by the Commission), resume and any applicable fees to the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467, **at least sixty (60) days prior to the employment starting date.** Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the application. An application that is incomplete when filed shall not be considered to have been filed.

10.2 Upon approval, an instructor may be certified for a period of two (2) calendar years. An instructor may be certified in more than one subject or topic area, (e.g. pre-licensing math, pre-licensing law, fair housing, ethics, etc.). An instructor may only teach courses as preapproved by the Commission. Instructor certification can not be automatically renewed. Instructors will need to reapply by the certification expiration date and before teaching any further courses or programs. Applications are available from the Commission office.

10.4 An Instructor may receive credit for continuing education hours towards the real estate license renewal requirement in the same amount of hours as approved for credit for the course/topic being taught. This is a one time credit per licensure period, regardless of the number of times that said course/topic is taught during said course or instructor certification period.

10.5 The Education Committee shall have the right to recommend to the Commission that a certified instructor lose the privilege of certification for the remainder of the certification period if the Education Committee determines that the instructor is not maintaining the standards and/or policies required in these guidelines.

10.6 It is the Stated Policy of the Delaware Real Estate Commission That at No Time During Periods of Instruction Shall Any Person Involved in Any Approved Real Estate Educational Activity, Use, or Attempt to Use, the Position of Instructor, Sponsor or Provider Etc., to Solicit Employees or Sales Representatives.

## DEPARTMENT OF AGRICULTURE

Statutory Authority: 3 Delaware Code  
Section 407(a) (3 Del.C. § 407(a))

### AQUACULTURE REGULATIONS

The Department proposes these regulations pursuant to 3 Del.C. § 407(a). The proposed regulations contain the following general sanctions: Definitions, Aquaculture Registration, General Aquaculture Permits, Restricted Aquaculture Permits, Aquaculture Stock Certification, Aquaculture Broodstock, Identification and Certification, Inspection of Premises, Enforcement, Future Considerations, Fee Fishing, Aquaculture Facility Protection and Civil Penalties. These regulations are intended to more clearly define the role of the Department in the Delaware aquaculture industry. The proposed regulations will be considered at a public hearing scheduled for May 10, 2002 at 1:00 p.m. at the Delaware Department of Agriculture Building, Conference Room #1. Copies of the proposed regulations may be obtained from the State Veterinarian's office. Comments may be submitted in writing to Bruce R. Walton on or before 1:00 p.m. on May 10, 2002 and/or in person at the hearing. The Delaware Department of Agriculture is located at 2320 S. DuPont Highway, Dover, Delaware 19901 and the phone number is (302) 698-4503.

#### 1.0 AUTHORITY

These regulations are promulgated under the authority of 3 Del.C. Section 407 of the Delaware Code.

#### 2.0 PURPOSE

The purpose of these regulations is to encourage the orderly development of an aquaculture industry in Delaware, while ensuring that aquaculture operations do not adversely impact upon the state's wild stocks of fish by introducing any non-indigenous species that harbor disease or parasites or are capable of surviving and adversely competing with resident plant or animal species.

#### 3.0 DEFINITIONS

As used in these regulations:

"Aquaculture" means the controlled propagation, growth, harvest and subsequent commerce in cultured aquatic stock by an aquaculturist.

"Aquaculturist" means an individual, partnership or corporation involved in the production of cultured aquatic stock or parts thereof.

"Aquaculture Facility" means any water system and associated infrastructures used for producing cultured aquatic stock.

"Aquatic Organism" means an animal or plant of any species or hybrid thereof, and includes gametes, seeds, eggs,

sperm, larvae, juvenile and adult stages, any one of which is required to be in water during any stage of its life.

**“Aquaculture Registration”** means the formal registration with the Delaware Department of Agriculture of an aquaculture facility by an individual, partnership, or corporation.

**“Broodstock”** means sexually mature aquatic organisms, either domesticated or wild, used to propagate cultured aquatic stock.

**“Closed system”** means an aquaculture facility or system(s) with water discharge(s) that does not connect in any way to the waters of the state prior to the discharged water being screened, filtered or percolated to prevent cultured aquatic stock from escaping.

**“Cultured Aquatic Stock”** means privately owned aquatic organisms, lawfully acquired, held and grown in a registered aquaculture facility.

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

**“DNREC”** means the Department of Natural Resources and Environmental Control.

**“Authorized Employee or Representative”** means any Department employee with a regulatory enforcement capacity or a ranking official instructed by the Secretary of the Department to act on its own behalf.

**“Domesticated”** means an animal or plant trained, adapted and/or bred to live in a human controlled environment.

**“Fee Fishing”** means hook and line fishing for cultured aquatic stock in a registered aquaculture facility upon payment of a fee.

**“Fee Fishing Operation”** means a registered aquaculture facility where for a fee, one may fish for cultured aquatic stock.

**“Finfish”, “food fish”, “Game fish” and “Bait fish”** mean those fish as defined in 7 *Del.C.* § 906.

**“General Aquaculture Permit”** means written authorization from DNREC to conduct aquaculture practices that do not require DNREC inspection.

**“Native Species”** means any species or hybrid thereof of any plant or animal, which naturally occurs in the waters of the state.

**“Non-indigenous Species”** means any species or hybrid thereof of any plant or animal that does not occur in the waters of the state.

**“Naturalized Species”** means any species or hybrid thereof of any plant or animal, which has been introduced to the waters of the state and has become established by reproducing in the waters of the state.

**“Resident Species”** means those species defined as "native" or "naturalized."

**“Open System”** means an aquaculture facility with a water discharge or discharges that connects to the waters of this state without being screened, filtered or percolated prior

to discharge to prevent cultured aquatic stock from escaping.

**“Registered Aquaculture Facility”** means an aquaculture facility that has an aquaculture registration issued by the Department.

**“Restricted Aquaculture Permit”** means a written authorization from DNREC to conduct aquaculture that is subject to DNREC approval prior to receiving possession of aquatic organisms

**“Shellfish”** means any mollusca, crustacea, and chilcerata that includes oysters, clams, lobsters, mussels, whelks, crabs, shrimp and horseshoe crabs.

**“Waters of the state”** means all the tidal waters under the jurisdiction of the State of Delaware where the lunar tide regularly ebbs and flows and all non-tidal waters under the jurisdiction of the state except for waters contained in aquacultural facilities registered with the Department.

**“Wild”** means any animal or plant that is not trained, adapted and/or bred to live in a human controlled environment.

#### **4.0 AQUACULTURE REGISTRATION**

4.1 All aquaculturists with anticipated or realized gross annual revenues in excess of twenty-five hundred dollars (\$2500.00) must register with the Department. Aquaculturists with lower rates of revenues may voluntarily register with the Department. Formal registration shall be on a form prescribed by the Department.

4.2 Aquaculturists that deal with species regulated by the DNREC (i.e., game fish) must obtain the appropriate possession permits from DNREC.

4.3 The aquarium industry is not governed by these regulations.

4.4 Neither the Department nor DNREC shall release any information other than names and addresses contained in the registration without the express permission of the registrant.

4.5 The Department may verify any information provided on the registration form.

4.6 Each registered aquaculture facility will be issued a number by the Department to be used as a reference for marketing and movement documents.

4.7 The initial terms of aquaculture registration shall be for 5 years from the date of the issue. The Department shall, unless due cause is shown, renew an approved aquaculture registration every five (5) years thereafter. The owner of an aquaculture facility shall notify the Department in the event of any change in ownership or a significant change in operation. A significant change in operation would be conversion to or from a closed to open system. A change in the type of cultured aquatic stock does not constitute a significant change but may require a change in the aquaculture permit. Normal maintenance of registered aquaculture facilities shall not be considered a significant change.

**5.0 AQUACULTURE PERMITS**

5.1 Permits shall be required for the propagation, production, harvest, possession, transport, and disposition of cultured aquatic stock, except for those unrestricted species described in Section 5.4 and any other species as may be specifically designated by DNREC. All permits shall be issued by the Department.

5.2 The Department shall provide copies of all aquaculture permits to DNREC.

5.3 On an annual basis, DNREC will provide to the Department a list of aquatic organisms with a designation as to the type of permit required for each, and an indication as to whether or not each shall be considered a resident species of the state.

5.3.1 Species not listed, all non-resident species, and all species which have not otherwise been provided for, shall be assumed to require a permit and the DNREC shall handle those species on a case-by-case basis.

5.3.2 Any changes in this list must take into account the crop cycle and allow for the grow-out and sale of existing cultured aquatic stock(s).

5.4 UNRESTRICTED SPECIES: Aquaculture facilities engaged with resident minnows and shiners, Cyprinidae (family); killifish, Fundulus spp; anchovy, Anchoa spp; sand lance, Ammodytes spp; and mullet, Mugilidae (family) do not require an aquaculture permit from the DNREC. Non-resident species incapable of surviving in the waters of the state shall be listed in this category on a case-by-case basis.

5.5 GENERAL AQUACULTURE PERMIT: a general aquaculture permit is required by facilities engaged with culturing the following aquatic organisms; resident freshwater crayfish, black crappie pomoxis nigromaculatus; white crappie, Pomoxis annularis; striped bass, Morone saxatilis; black bass Micropterus spp; white perch, Morone americana; walleye, Stizostedion vitreum; northern pike, Esox lucius; chain pickerel, Esox niger; Muskellunge, Esox masauinonqy; tiger muskellunge, Esox Licius x Esox masauinonqy; rock bass Ambloplites rupestris; salmon and trout except Pacific salmon, Salmonidae (family) (including rainbow trout Oncorhynchus mykiss, but no other Oncorhynchus spp.); sunfishes, Lepomis spp; channel catfish, Ictalurus punctatus; yellow perch, Perca flavescens; and other food fish included in Subsection 906(28), 7 Del. Code. Size limits and/or creel limits shall be waived. There will be no restrictions on their disposition, provided none are stocked into the waters of this state without approval from DNREC.

5.5.1 SPECIAL PROVISIONS: The Department and the DNREC in cooperation with representatives from the aquaculture industry shall develop a list of species including, at a minimum, rainbow trout, golden shiner, fathead minnow, channel catfish, bluegill and largemouth bass, which may be stocked in privately-owned

ponds to support recreation without specific authorization from the DNREC.

5.6 RESTRICTED AQUACULTURE PERMIT: A restricted aquaculture permit is required to culture any aquatic organism(s) not specifically enumerated as species for which the general permit shall apply or for which no permit is required. Such permits, if and when used, may be subject to various restrictions, limitations, stipulations, special conditions, and guidelines, as the Department may deem appropriate in consultation with DNREC. The Department shall attempt to maintain a consistency of standards and restrictions among and within the permits issued to all facilities operating similar systems for particular species.

5.7 PROHIBITED SPECIES: The Department, in consultation with DNREC, may designate particular species of aquatic organisms as entirely prohibited for aquaculture.

**6.0 STOCK CERTIFICATION AND FISH HEALTH**

The Department of Agriculture in cooperation with the DNREC and representatives of the industry shall expedite the development of a list to designate aquaculture facilities and their stock as disease free. Once so identified and listed by the Department, shipments of cultured aquatic stock from such facilities shall be considered to have valid health certification. The Department shall review disease status annually by questionnaire and distribute revisions to Delaware aquaculturists as appropriate.

The Department shall also attempt to develop Memorandums of Understanding with other states, especially those adjacent to Delaware, to facilitate and simplify interstate shipment of cultured aquatic stock.

6.1 All shipments of cultured aquatic stock into the state shall be accompanied by documentation of origin, which describes the species involved, and the name and address of the original source. It must also include the name and address of additional premises where the shipment has been held for more than a twenty-four (24) hour period.

6.2 Certificates of health must be included when facilities at the point of origin for their procurement exist and their preparation is practical.

6.2.1 Shipments into the state, not accompanied by a certificate of health, require a written or oral authorization from the Department.

6.2.2 All incoming international shipments must be accompanied by a valid health certificate or be held in a Department approved closed system until the Delaware State Veterinarian authorizes its distribution.

6.3 As with other commodity groups, when the Delaware State Veterinarian is made aware of a particular disease condition affecting cultured aquatic stock, and the presence of which could have adverse effects on Delaware's aquaculture species, he will, in a timely manner, alert Delaware aquaculturists by way of a memo or appearance at

an industry group meeting.

6.4 Commercially grown aquacultural species in the State of Delaware are considered in the same class with livestock and poultry and, therefore, in the case of a serious contagious or infectious disease, would be subject to quarantine, testing or destruction under 3 Delaware Code Section 7107.

6.5 To the extent practical, species with demonstrated genetic characteristics inappropriate to Delaware should be prevented from entering the waters of the state. Specifically, striped bass from races, which have sinking eggs, should not be released into Delaware waters.

6.6 Section 7101 of Title 3 of the Delaware Code provides that the Department shall protect the health of the domestic animals of the state, and determine and employ the most efficient and practical means for detection, prevention, suppression, control or eradication of a dangerous, contagious, or infectious disease. It may establish, maintain, enforce, and regulate such quarantine and other measures relating to the movement and care of animals and their products, the disinfection of suspected localities and articles and the destruction of animals, as it deems necessary, and may adopt from time to time all such regulations as are necessary. In the case of a contagious disease, the Department or its authorized agent may put under quarantine the entire group containing the suspected or diseased individual or individuals. Any loss of cultured aquatic stock sustained by the aquaculturist due to inspection or condemnation by Department shall be reimbursed by the Department in accordance with 3 Del. C. § 7107.

## **7.0 BROODSTOCK**

Broodstock for aquaculture facilities may be obtained as follows:

7.1 By propagation of existing broodstock and maturation of the offspring.

7.2 By purchase from commercial source.

7.3 By legal sportfishing or commercial harvest methods authorized in the Delaware Code and DNREC regulations.

7.4 Through the use of a collecting permit issued by DNREC which authorizes the collecting of specified species by methods that otherwise would be illegal, in consideration of the broodstock availability needs of the aquaculture industry.

7.5 Broodstock acquired under Regulations 7.1 and 7.2 (above) may be bought sold, traded and transported at any time. Broodstock of wild game fish, as defined in 7 Del.C. § 906 obtained under Regulations 7.3 and 7.4 (above) must be marked (i.e., fin-clipped) upon capture and shall not be bartered, sold or traded. However, such broodfish may be transported out of state with written authorization from DNREC. Interstate transport or sale of commercially harvested wild food fish as broodstock may be permitted

providing Department and DNREC are notified at least 48 hours in advance.

## **8.0 IDENTIFICATION AND CERTIFICATION**

8.1 Except as provided in Section 4.0 above, any cultured aquatic stock that is being transported for sale or distribution shall be accompanied by a bill of sale or bill of lading or functional equivalent.

8.2 Any label, bill of sale or bill of lading shall contain the name and address of the receiver and the identify of the cultured aquatic stock by species, and to the extent that practically determined total weight or number.

8.3 Cultured aquatic stock being transported but not for sale or distribution shall be accompanied by a copy of the aquaculture registration issued by the Department.

8.4 Shipments of black bass must also include the facility of origin.

## **9.0 FEE FISHING**

The owner(s) of a fee fishing operation must register as an aquaculture facility. Within a registered facility, it shall be lawful for any person to fish without being licensed to fish in this state. The fee fishing operation shall meet the following requirements, subject to inspection and approval by the Department prior to the Department's approving the registration:

9.1 The fee fishing operation shall be a closed system.

9.2 The fee fishing operation shall not contain any wild Finfish.

## **10.0 INSPECTION**

10.1 When authorized by the owner of a fee fishing operation, it shall be lawful for a person to take and/or possess those species, or hybrids thereof, permitted by species name by the Department without regard to any seasonal restrictions, size limits or creel limits.

10.2 Unless otherwise authorized, it shall be unlawful for any person other than the facility operators to possess any cultured aquatic stock that remain alive after legally taking them from a fee fishing operation. Any person who lawfully takes and has fish in his possession from a fee fishing operation, registered as such with the Department, is exempt from any seasonal restrictions, size limits and/or creel limits on that particular species of fish, provided that the person has in his or her possession a valid receipt issued by the owner or owner's agent of the fee fishing operation.

10.3 Any person in possession of cultured aquatic stock lawfully taken from a fee fishing operation shall be issued a receipt for same by the owner's agent of that fee fishing operation. This receipt shall include the name and address of the fee fishing operation, the date the cultured aquatic stock was taken, the identification and number of each species of cultured aquatic stock taken, and the signature of the person to whom the receipt is issued. This

receipt shall remain in the possession of the person who took the cultured aquatic stock from the fee fishing operation until that person enters his or her personal abode or temporary or transient place of lodging. The owner or owner's agent of the fee fishing operation shall maintain a copy of each receipt for a period of to one year from the date of issuance.

### **11.0 INSPECTION OF PREMISS**

11.1 Pursuant to 3 Del.C. § 407, any authorized employee of the Department after determining there is probable cause to believe that there has been a violation of these regulations or the Delaware Code, may do the following without first obtaining a search warrant:

11.1.1 Inspect, search and/or examine any registered aquaculture facility or vehicles on the premises in the presence of any operator(s) or occupant(s) of said facility or vehicles to determine compliance with Chapter 4 of Title 3 or any regulation promulgated by the Department.

11.2 Only reasonably foreseeable damages sustained by the Aquaculture facility due to inspections, searches, and/or examinations shall be reimbursed by the Department.

### **12.0 AQUACULTURE FACILITY PROTECTION**

It shall be unlawful for any person, without the written consent of the owner, to remove, destroy or release cultured aquatic stock from a registered aquaculture facility or introduce any toxic substance directly or indirectly into the waters of a registered aquaculture facility. Fines and penalties for such acts will be those specified in Title 11 of the Delaware Code.

### **13.0 CIVIL PENALTIES**

13.1 In addition to proceeding under any other remedy available by law or in equity for a violation of a provision of the Aquaculture Act or a rule or regulation adopted thereunder, or any order issued pursuant thereto, the Secretary of the Department may hold an administrative hearing for the purpose of determining whether or not there should be a suspension or revocation of the aquaculture registration issued by the Department.

13.1.1 The persons affected by such suspension or revocation may request a hearing before the Department.

13.1.2 A hearing shall be held within 30 days after the request.

13.1.3 Within 30 days after the hearing, the Department shall affirm, withdraw or modify its action by an order based upon the record of the hearing.

13.1.4 An appeal from that order may be taken to the Superior Court within 30 days from the date of the order.

13.1.5 Registration shall remain in effect until all such hearings or appeals have been completed.

13.1.6 If no request for a hearing is made within 30 days the order becomes effective.

13.2 Any person who interferes with the Department in the enforcement of these regulations as determined by an administrative hearing, may be assessed a civil fine of up to \$500.

13.2.1 In determining the amount of the fine, the Secretary shall consider the gravity of the violation.

13.2.2 Whenever the Secretary finds the violation occurred despite the exercise of due care or did not cause significant harm to property or the environment, the Secretary may issue a warning in lieu of assessing a fine.

13.2.3 No civil fine shall be assessed unless the person(s) charged shall have been given notice and opportunity for a hearing.

13.3 If no violations are charged after an inspection or examination as herein provided, any loss of cultured aquatic stock or reasonably foreseeable damages to the aquaculture facility will be reimbursed by the Department.

13.4 All fines and penalties for violations of this subsection shall be paid to the Department and deposited in the general fund account.

13.5 In the case of the failure to pay civil fines, the Secretary shall refer the matter to the Attorney General's Office of the State of Delaware for enforcement.

### **14.0 FUTURE CONSIDERATIONS**

14.1 The Department, in consultation with the Delaware Aquaculture Council, may amend or adopt such rules and regulations as it deems advisable to aid in carrying out the purpose of these regulations and to facilitate their enforcement.

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## **DEPARTMENT OF AGRICULTURE**

Statutory Authority: 3 Delaware Code  
Section 1101 (3 Del.C. § 1011)

### **Forest Service Regulations**

The Department proposes these amendments to the Forest Service's Regulations pursuant to 3 Del.C. § 1011. It's purpose in proposing these amendments is to streamline the procedures for responding to potential or existing water quality problems arising from silvicultural activities and to establish an enforcement and penalty scheme for those who fail to obtain and file the necessary permits before commencing timber harvesting activities.

The proposed amendments to the regulations will be considered at a public hearing scheduled for May 8, 2002 at 4:00 PM at the Delaware Department of Agriculture Building, conference Room No. 1. Copies of the proposed amendments to the regulations may be obtained from the State Forester's Office. Public comments may be submitted

in writing to E. Austin Short, III on or before 4:00 PM on May 8, 2002 and/or in person at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware and the telephone number is (302) 698-4503.

**Delaware's Forestry Practices Erosion and Sediment  
Law  
Rules and Regulations  
Forest Service Regulations**

**I. Effective Date:**

Rules and Regulations Effective Date: July 1, 1996

**II. Overview of Statutory Authority:**

On July 11, 1994, Governor Thomas Carper signed into law Delaware Code Title 7, Chapter 29, Title 3, Chapter 10, Subchapter VI, titled "Water Quality as relates to Silvicultural Systems and Sedimentation and Erosion Control." For ease of discussion and as reference, the Delaware Department of Agriculture Forest Service (DDAFS DFS) will commonly call Subchapter VI the Forestry Practices Erosion & Sediment (E&S) law. This terminology will also distinguish this law from those relating to sedimentation under the regulatory authority of the Department of Natural Resources and Environmental Control (DNREC) called the Sediment and Stormwater Management Law.

The law The Forest Practices E & S law charges the Delaware Department of Agriculture's Forestry Administrator (commonly known as the State Forester) with "protection of the waters of the State by pollution from sediment deposits resulting from silvicultural activities. . . . Through the adoption of this subchapter the State of Delaware recognizes that water quality protection techniques for silvicultural practices are an integral component of properly managed forests."

Further, the law describes components of the State Program that may be administered by the Forestry Administrator. The components which are important to these proposed rules and regulations are:

- 1) Develop and publish water quality protection techniques and guidelines for landowners and operators;
- 2) Provide technical and other assistance to landowners and operators in the proper use of the techniques and guidelines; and
- 3) Conduct educational programs on the use of the techniques and guidelines for landowners and operators.

Through the cooperative efforts of landowners and operators groups, State and Federal agencies, environmental interest groups, and others, the Forestry Administrator adopted and published Delaware's Forestry Best

Management Practices (BMP) Manual. This manual enumerates water quality protection techniques appropriate to silvicultural practices in Delaware and provides guidelines for their use.

The completion and availability of the BMP Manual has enabled the Forestry Administrator to continue the program set forth in the law through technical assistance and education. Furthermore, the manual provides quantitative measures by which landowners and operators can protect the waters of the State while conducting silvicultural operations.

Through distribution of the BMP Manual, technical assistance, education, rules, and regulations, the Forestry Administrator will seek to meet the charge of protection of the waters of the State and ensure properly managed forests for their multiple benefits.

**1.0 Authority**

These regulations are promulgated under the authority of Section 1011 of Title 3 of the Delaware Code.

**2.0 Purpose**

The purpose of these proposed amendments to the Forest Service's Erosion and Sedimentation Control regulations is to streamline the process for responding to potential or existing water quality problems and to establish an enforcement scheme for dealing with operators who do not file the proper permits prior to commencing a timber harvest.

**3.0 Definitions:**

3.1 **Forester** is defined as a Forester, Senior Forester, Regional Forester, Assistant Forestry Administrator, or Forestry Administrator currently employed by the Delaware Forest Service.

3.2 **Acceptable sediment control and stormwater management techniques** are equivalent/synonymous to/ with both erosion and sediment control measures and forestry Best Management Practices (BMP).

3.3 **Forest management activities** are herein defined as practices, techniques or activities which are designed for purpose of conserving, protecting and enhancing the land as forest land over the long-term. Forest management includes but is not limited to perpetuation of tree species; improvement of trees' and forest growth, health and vigor; protection from fire, and insects and diseases.

3.4 **Intermittent Stream with a well-defined channel** is a defined as a water body which maintains a seasonal flow of water under typical climatic conditions. This does not include man-made water channels such as ditches.

3.5 **Normal rainfall** is an inch of liquid precipitation in a 24 hour period.

3.6 **Open water body** is a bay, lake, or pond where water is present throughout the year. This does not include man-made water channels such as ditches.



3.7 **Perennial stream** is defined as a water body with a well-defined channel which maintains a continuous flow of water throughout the year under typical climatic conditions. This does not include man-made water channels such as ditches.

3.8 **Pollution** is defined as the "alteration of the physical, chemical or biological properties of any waters of the State resulting from sediment deposition that will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare or the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future source as a public water supply; or unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses."

3.9 **Silvicultural activity** is defined as "any forest management activity, including but not limited to harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation."

3.10 **Buyer** is defined as "any individual or firm that regularly purchases standing trees for harvest by himself or herself or a subcontractor."

3.11 **Operator** is defined as "any person that operates or exercises control over any silvicultural activity."

3.12 **Permittee** is defined as "any individual or firm that has a Delaware Erosion and Sediment Law Notification Form and Permit that has been approved by the DFS."

3.13 ~~Working days~~ **Business days** are defined as any day Monday through Friday.

#### 4.0 Rules and Regulations Intent and Goals

The intent of the Rules and Regulations is to establish a system of notification and referral that quickly and easily provides the Forestry Administrator with the information needed to administer Delaware's Forestry Practices E&S Law without causing undue hardship on operators and landowners. The goals of these Rules and Regulations are:

4.1 to protect the waters of the State from erosion and sedimentation resulting from silvicultural activities; and

4.2 to provide the Forestry Administrator the authority to:

4.2.1 track the use and effectiveness of Forestry BMPs,

4.2.2 develop close working relationships with forest operators and landowners through site visits,

4.2.3 permit the Delaware ~~Department of~~ **Agriculture Forest Service** to rapidly address inquiries from citizens, agencies, and other organizations concerning ongoing silvicultural operations, and

4.2.4 document the positive benefits of properly managed forests.

#### 5.0 Regulatory Procedures

5.1 ~~The operator~~ Operators and buyers will provide written notification to ~~Delaware Department of Agriculture Forest Service (DDAFS)~~ Delaware Forest Service (DFS) at least ten (10) working days prior to the initiation of silvicultural operations greater than or equal to 43,560 square feet of area (1 acre).

2) ~~Operators will notify the Department by completing and signing the forms (BMP-02) provided by the Delaware Department of Agriculture Forest Service (DDAFS).~~

5.2 Operators and buyers will notify the Department by completing and signing Delaware's Forestry Practices Erosion and Sediment Law Notification Form and Permit, as provided by the Delaware Forest Service (DFS).

5.3 This notification form will include, but is not limited to:

5.3.1 the forest land acreage and type of silvicultural activity planned,

5.3.2 statement that land will remain under forest management,

5.3.3 signed statements stating the operators' intent to use forestry BMPs to prevent pollution,

5.3.4 specific Forestry BMPs to be used on the site,

5.3.5 maps of the site, including location of any water bodies, streams, ponds, Streamside Management Zones, roads, stream crossings, landings, and other pertinent site specific information as appropriate, and

5.3.6 estimated start and completion dates

5.3.7 county tax parcel identification number

5.3.8 If the property is covered by the Delaware Seed Tree Law and, if so, how the owner intends to reforest the property.

5.3.9 Delaware business license of the contractor

5.4 Notification forms will be sent to the local Delaware ~~Department of Agriculture~~ Forest Service office for the county in which the activity is to occur. Technical assistance, forms, topographic maps, and other assistance are available at these offices as well.

5.4.1 Kent County:

Forestry Administrator

Delaware Department of Agriculture

Forest Service

2320 South Dupont Highway

Dover, DE 19901

(302) 698-4500 In-state 1-800-282-8685

FAX (302) 697-6245

Kent County Forester

Taber State Forest

1953 Burrsville Road

Harrington, DE 19952

(302) 349-0938

FAX (302) 349-0937

5.4.2 Sussex County:  
Southern Regional Forester  
Redden State Forest  
~~RD 4, Box 354 Sussex County Route 565~~  
18074 Redden Forest Drive  
Georgetown, DE 19947  
(302) 856-2893  
FAX (302) 856-5039

5.4.3 New Castle County:  
Northern Regional Forester  
Blackbird State Forest  
502 Blackbird Forest Road  
Smyrna, DE 19977  
(302) 653-6505  
FAX (302) 653-2869

5.5 The Delaware ~~Department of Agriculture~~ Forest Service will approve, approve with modifications, or deny all applications within five (5) working days of their receipt. In cases where denial of the application is issued, the Delaware ~~Department of Agriculture~~ Forest Service will provide technical assistance to the landowner, buyer and/or operator to develop modification(s) necessary to bring the application into compliance.

5.6 The operator on the site is responsible for following BMPs as indicated on the Erosion and Sediment Law Notification Form and Permit, during the silvicultural operations, until a forester has made a final inspection of the site and issued a final inspection report on form BMP-02.

5.7 A copy of the approved Erosion and Sediment Law Notification Form and Permit shall be kept on the site at all times during the harvest operation, and shown on demand to any forester or DNREC Environmental Protection Officer.

5.8 The permittee/operator shall provide the DFS with the following notifications of intent:

5.8.1 starting a permitted harvest operation — not less than two (2) days prior to desired start date.

5.8.2 completion of the harvest operation — not less than one (1) day prior to completion.

5.8.3 returning to a site if the operator has vacated the site for weather-related or similar reasons — not less than one (1) day prior to return.

5.9 Special Consideration - Streamside Management Zones:

5.9.1 All open water bodies, perennial streams, intermittent streams with a well-defined channel, and streams that have been hydrologically modified by dredging or straightening **shall** have a Streamside Management Zone (SMZ), unless the property or a portion of the property is covered by an approved Delaware Seed Tree Law application (~~Title 7, Chapter 29, Title 3, Chapter 10, Subchapter V~~) and is located on slopes of less than ~~five (5)~~ three (3) percent.

5.9.2 A Streamside Management Zone shall not

be required along ditches, since these systems usually receive periodic maintenance, as long as Best Management Practices are followed to prevent the movement of sediment and debris into the ditch. The alteration of any berm or bank, structure, or control inlet culvert in or adjacent to tax ditches, as defined by Delaware Code Title 7, Chapter 41, is prohibited unless written approval from both the appropriate tax ditch managers and the Department of Natural Resources and Environmental Control (DNREC), Division of Soil and Water Conservation, Drainage Section is obtained.

5.9.3 The minimum width for a SMZ is 50 feet from each side of qualifying streams. Listed below are the minimum SMZ widths based on slope. Slope shall be defined as average slope of 100 contiguous feet measured on a horizontal plane perpendicular to the water body. All slope measurements shall begin at the crest of the water body, thus measurements adjacent to channelized streams will begin at top of the channel. SMZ width is measured in linear feet perpendicular from the perimeter of the water body. For tidal waters, the high water line should be used as the perimeter. The SMZ must be plainly designated with surveyors ribbon or durable paint *before* submitting the permit application.

**Minimum Streamside Management Zone Width**

	<b>Percent Slope</b>		
	<b>0-10%</b>	<b>11-20%</b>	<b>21-45%</b>
<b>Horizontal distance</b>	<b>50 feet</b>	<b>75 feet</b>	<b>100 feet</b>

5.9.4 Within a Streamside Management Zone, at least sixty (60) square feet of basal area per acre of trees well distributed throughout the area shall be retained, or at least sixty (60) percent of the overstory. These trees should be equally divided among diameter classes. The landowner may desire to leave up to eighty (80) percent of the crown cover to provide shading for streams.

5.9.5 Felling trees across a waterway and dragging any part of the tree over or through the waterway channel is not permitted. Any occurrence shall result in the operator making immediate repairs to the waterway bank, and reporting the incident to the DFS for an inspection. All trees will be felled away from the SMZ to avoid depositing logging debris in the SMZ.

5.9.6 The remainder of the specifications for Streamside Management Zones is found in **Delaware's Forestry Best Management Practices Manual, September 1995, Document Control No. 65-01-04/95/09/01. Copies of this manual and current topographic maps are available at all Department of Agriculture Forest Service offices.**

5.10 Special Consideration - Multiple Silvicultural Practices:

5.10.1 If more than one silvicultural activity is covered by an approved Forestry Practices E&S permit, the landowner will notify the local Delaware ~~Department of Agriculture~~ Forest Service office at least five (5) working

days prior to the initiation of the subsequent operation. For example, if an E& S permit is approved for the harvesting operation and site preparation, please notify the local DDAFS office five (5) days before starting the site preparation operation.

5.11 Special Consideration - Adverse Weather Conditions:

5.11.1 The notification form, which becomes the E&S permit once approved, requires projected start and completion dates. Should environmental conditions create circumstances which either delay or accelerate the projected start or completion of operations, the operator or landowner will verbally notify the local DDAFS office. One example of such a circumstance is excessive rain causing saturated soils during forest harvest operations; as a result to comply with BMPs, operations are terminated with plans to resume the operations in the drier summer months.

## 6.0 Land Use

6.1 Timber harvesting is the primary silvicultural activity which enables landowners to initiate change in the land use from forest land to another land use, such as agricultural cropland, residential development, and industrial or commercial development. Delaware's Forestry Practices E&S rules and regulations are designed for silvicultural activities where the land is to remain under forested land use.

6.2 However, should the landowner choose to change the land use, the new land treatment activity would no longer fall within the jurisdiction of the Delaware ~~Department of Agriculture~~ Forest Service. Land clearing activities are regulated under the Department of Natural Resources and Environmental Control's (DNREC) Sediment and Stormwater Management law. For conversion to agricultural cropland use, the designated agencies are the local Conservation Districts in each county. For conversion to other non-forest uses, the DNREC Division of Soil and Water Conservation, Sediment and Stormwater Section has regulatory authority. Thus, the owner or operator will be required to receive approval from the appropriate agency prior to initiating any activity on the site.

6.3 Therefore, as enumerated above, a land use intent declaration is required to receive approval under this law. However, in cases where the land use is to change, the ~~DDA~~ Delaware Forest Service, in accordance with a Memorandum of Understanding with DNREC Division of Soil and Water Conservation, will notify in writing the appropriate agency(ies) of the landowner's intention and provide a copy of this correspondence to the landowner.

6.4 These rules and regulations as well as those of the Stormwater and Sediment law relate to erosion and sedimentation control. Any local, county, state, or federal laws which regulate land use changes, such as wetlands conversion, should be investigated thoroughly prior to initiating conversion of forest land to other uses.

## 7.0 Procedures and Penalties

7.1 To establish an inspection procedure which reinforces and compliments the regulatory authorities contained within Subchapter VI, the Delaware ~~Department of Agriculture~~ Forest Service (DDAFS) has established the following framework.

7.1.1 Informal field visits

~~2) Informal conference~~

7.1.2 Formal hearing

7.1.3 Superior Court.

7.2 If at any time during the enforcement process any water quality problem is corrected, all proceedings will be terminated, and a letter will be provided to the landowner and operator reflecting compliance with the law.

### 7.3 Informal Field Visits

7.3.1 The ~~DDAFS field person~~ Forester will visit a tract, perform a BMP inspection, and complete a BMP inspection form, a copy of which will be provided to the operator and landowner. During the course of this inspection, the field person will determine the status of the effectiveness of BMPs in protecting water quality and record this determination on the inspection form.

7.3.2 If, during a routine inspection of a harvest operation, it is discovered that the operator on the site does not have an approved harvest permit for the operation, the Forester will, at his or her discretion, issue a verbal or written warning to the operator. The Forester will immediately assist the operator in completing a permit form to bring the operation into compliance with the E & S rules and regulations. If failure to have an approved permit is a second offense, the Forester can, at his or her discretion, halt all harvesting operations until a permit has been completed and approved. If more than two offenses of this nature within a 12 month period, are on record for the operator/buyer, a fine, not to exceed \$2,000.00 may be levied as specified in Title 3, Chapter 10, Subchapter VI, Paragraph 1077.

7.3.3 On the BMP inspection form, three categories of water quality classifications will be used: 1) *no Water Quality (WQ) problem*; 2) *potential WQ problem*; and 3) *severe WQ problem*. A potential WQ problem is defined as a typical problem that would cause excessive sedimentation and erosion during a normal rainfall. Examples may include undersized culverts and improper log road or deck stabilization on highly erodible soils. A severe WQ problem is defined as any silvicultural activity which is causing sediment deposition or will immediately create serious sediment deposition in a rainfall event.

7.3.4 If no WQ problem exists, the landowner and operator are notified on site, if possible, and in writing within five (5) ~~working~~ business days following the inspection.

~~(d) If a potential WQ problem exists on an initial field visit, the field person will note the problem on the BMP~~

inspection form, give a verbal recommendation to the operator and landowner, and a time frame of up to five (5) working days to correct the problem. The field person will notify his/her immediate supervisor of the existence of a potential WQ problem.

(e) ~~When the time frame specified in the recommendation for a potential WQ problem has elapsed, the field person will return for a second visit and if the problem remains with no extenuating circumstances such as bad weather, a Notice of Required Action (NORA) will be issued to both the operator and the landowner. The NORA will provide written recommendations and a time frame of no more than three (3) working days to correct the problem. If an agent is involved, he/she will be notified of the problem, along with the operator and landowner. Photographs will be taken at the disturbance site.~~

(f) ~~Where a severe WQ problem exists, the initial field visit becomes the equivalent of a second visit as described above in (e), and a NORA is issued to the operator and landowner. The field person will photograph the disturbance site. The field person will return at the end of the designated time frame listed on the NORA, and, if the problem remains, an informal conference, as described below, will be scheduled.~~

7.3.5 If a potential WQ problem exists on an initial field visit, the Forester will note the problem on the BMP inspection form, including written directions to alleviate the potential problem, to the operator and landowner, and a time limitation of up to five (5) business days to correct the problem. The Forester will notify his/her immediate supervisor of the existence of a potential WQ problem. When the time limitation specified in the recommendation for a potential WQ problem has elapsed, the Forester will return for a second visit. If the problem persists with no extenuating circumstances such as bad weather, all operations will be halted until specified corrective actions have been made to the satisfaction of the Forester.

7.3.6 If a severe WQ problem exists, such as skidding logs across a stream or ditch with no bridge, the Forester will cause all operations to cease immediately, issue a written warning containing instructions how to immediately correct the problem.

7.3.7 In the event that an operator vacates a harvest site and WQ problems have not been corrected or resolved, the following actions may be taken at the discretion of the Forestry Administrator. 1) No further E & S permits will be issued for that permittee (operator), nor may that operator legally operate under any existing DFS E & S permits, until all corrections have been made to the satisfaction of the DFS. 2) A fine, not to exceed \$2,000.00 may be levied as specified in Title 3, Chapter 10, Subchapter VI, Paragraph 1077.

## 2. Informal Conference

~~(a) At the conclusion of the three days specified in the NORA, a field person will again inspect the tract. If the problem remains, an informal fact-finding conference will be scheduled in a DDAFS office convenient to both parties within seven (7) working days of the last field visit. The conversation will be recorded to ensure accurate reporting. Following the informal conference, DDAFS and the parties will agree on a recommended course of action and time frame for remedying the site. This agreement will be formalized in a **Special Order by Consent** signed by the landowner and operator.~~

### 7.4 Formal Hearing

7.4.1 ~~If the parties cannot agree or the Special Order by Consent is not complied with as determined by DDAFS, a formal public hearing~~ If the parties cannot agree to corrective actions as determined by DFS, a formal hearing will be convened and conducted in accordance with Title 29 Chapter 101 of the Delaware Code, the Administrative Procedures Act (APA).

7.4.2 Twenty (20) days prior to the hearing, formal notice will be given to the parties and such notice will contain the following information:

7.4.2.1 A description of the subject matter of the proceedings;

7.4.2.2 Notice of the opportunity to proceed with informal fact-finding procedures (a second informal conference) and of the date by which this election must be made;

7.4.2.3 The date, time, and place the formal hearing will be held if informal fact-finding is not elected;

7.4.2.4 Citation to the law or regulation giving the ~~DDAFS~~ DFS the authority to act;

7.4.2.5 Notice to parties of their right to present evidence, to be represented by counsel, and to appear personally or by other representative, and

7.4.2.6 Notice to the parties of the agency's obligation to reach its decision based upon the evidence received.

7.4.3 ~~The hearing may be conducted by the Forestry Administrator~~ the Secretary of Agriculture or his or her designee.

7.4.4 Any party may request a pre-hearing conference, to discuss, among other things, issues in dispute, documents to be relied upon, witnesses to be called, and any procedural matters.

7.4.5 The proceedings shall be recorded to ensure accuracy. A recorded transcript will be taken by a court stenographer upon request and this procedure will be paid for by the requesting party. All testimony shall be taken under oath as administered by the hearing officer. The names and addresses of all interested parties present shall be noted on the official record of the hearing.

7.4.6 Any party may present any competent evidence in its behalf and request subpoenas for testimony or

production of documents and other tangible evidence. Non-parties shall not present evidence.

7.4.7 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by a reasonably prudent person in the conduct of his or her affairs shall be admitted. Objections to the admission or the exclusion of evidence shall be brief and shall state the ground for objection. Evidence which is plainly irrelevant, immaterial, insubstantial, cumulative, or unduly repetitive may be excluded.

7.4.8 The parties may be represented by counsel. The hearing shall open with a brief statement from each party of what such party intends to establish at the hearing.

7.4.9 Following opening statements, each party shall have an opportunity to produce evidence in support of such party's position. The owner/operator shall produce evidence first followed by DDAFS. After initial testimony and cross-examination by the parties, any witness may be examined by the hearing officer. Following the presentation of the main case, the owner/operator shall have an opportunity to produce rebuttal evidence, subject to cross-examination. Following the presentation of the rebuttal evidence, DDAFS shall have an opportunity to present surrebuttal evidence, subject to cross-examination.

7.4.10 If no procedure is specifically prescribed by these Rules, the hearing officer may proceed in a manner not inconsistent with these Rules.

7.4.11 At the conclusion of the hearing, the ~~Forestry Administrator~~ the Secretary of Agriculture or designee may issue a **Special Order** within twenty (20) days from the date of the hearing. The Special Order shall describe evidence on which the Order was based. ~~Upon issuance of a Special Order, the landowner and operator may be required to cease immediately all or part of the silvicultural activities on the site and to implement specified corrective measures within a stated period of time. The Special Order will be issued not less than five (5) days after service on the parties. Upon issuance of a Special Order, the landowner and operator will implement specified corrective measures within a specified period of time.~~

## 7.5 Penalties

7.5.1 Any owner or operator who violates, fails, or refuses to obey any Special Order may be assessed a civil penalty by the Forestry Administrator. Such penalty shall not be less than \$200 or more than \$2,000 for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of assessing penalties.

## 7.6 Superior Court

7.6.1 If the Special Order has not been complied with, the Forestry Administrator may file a complaint in the Superior Court which has jurisdiction over all offenses under this statute. However, within three (3) working days of the inspection and prior to the filing of a complaint with the

Superior Court, the Forestry Administrator may, ~~in his~~ at his or her discretion, agree to engage in an informal conference process with the landowner and operator to discuss and resolve violations of the Special Order.

7.6.2 Any person who intentionally, knowingly, and after written notice to comply violates or refuses to comply with any notice issued by the ~~DDAFS~~ DFS shall be fined not less than \$500 or more than \$10,000 for each offense. Such penalty may only be assessed after owner or operator has had the opportunity for a hearing as specified herein. Each day the violation continues shall constitute a separate offense.

## 6. Emergency Special Orders

~~(a) If at the time of the initial visit, an Emergency Special Order is warranted, the field person will notify their immediate supervisor or the Regional Forester of the issuance of an Emergency Special Order. Pursuant to the Emergency Special Order, landowner/operator may be required to stop all work on all or part of the tract and to take specific corrective action within a set time. An example of a practice which warrants an Emergency Special Order would be skidding across a perennial stream without a stream crossing.~~

~~(b) The commencement of proceedings by the DDAFS for the issuance of a Special Order does not affect the Forestry Administrator's authority to issue an Emergency Special Order.~~

~~(c) The Forestry Administrator shall provide opportunity for a hearing, upon written request of any owner or operator affected by the Emergency Special Order, to affirm, modify, amend, or cancel such order. Such hearing shall proceed as described above. Violations of an Emergency Special Order shall be treated as a violation of a Special Order as described above.~~

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## DEPARTMENT OF EDUCATION

14 DE Admin. Code 101

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

### EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL.C. SECTION 122(d)

#### 804 IMMUNIZATIONS

**A. TYPE OF REGULATORY ACTION REQUESTED**  
Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Secretary of Education seeks to amend regulation

804 Immunizations in order to add the requirements for the Varicella vaccine to the schedule of immunizations for students. The addition of the Varicella vaccine was recommended by the Division of Health and Social Services, Department of Public Health.

### C. IMPACT CRITERIA

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

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses students' health needs related to nationally recommended immunization.

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

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated 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? Since there is a regulation on immunizations adding the Varicella vaccine can only be accomplished by amending 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 to the local school boards for compliance with the regulation.

### 804 Immunizations

**1.0 Definition of School Enterer:** A school enterer is any child between the ages of two months and 21 years entering or being admitted to a Delaware school district for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from nonpublic schools.

**2.0 The following minimum immunizations will be required for all school enterers.** Children who enter school prior to age 4 shall follow current Division of Public Health recommendations. Disease histories for measles, rubella and mumps will not be accepted unless serologically confirmed. Immunizations given up to four days prior to the minimum interval or age will be accepted.

2.1 Four or more doses of diphtheria, tetanus, pertussis (DTaP, DTP, or other approved vaccine) or diphtheria, tetanus (DT) vaccine or a combination of these vaccines with the following exceptions: (1) a child who received a fourth dose prior to the fourth birthday must have a fifth dose; (2) a child who received the first dose of Td (adult) at or after age seven may meet this requirement with only three doses of Td (adult).

2.1.1 A booster dose of Td (adult) is recommended for all students, at age 11 or 12, or five years after the last DTaP, DTP or DT dose was administered.

2.2 Three or more doses of inactivated polio virus (IPV), oral polio vaccine (OPV), or a combination of these vaccines with the following exception: A child who received a third dose prior to the fourth birthday must have a fourth dose.

2.3 Two doses of measles, mumps and rubella (MMR) vaccine. The first dose should be administered on or after the age of 12 months. The second dose should be administered after the fourth birthday. ~~The Individual~~ or combination vaccines of measles, mumps, rubella (MMR) can be used to meet this requirement.

2.4 Three doses of Hepatitis B vaccine beginning in the 1999-2000 school year with kindergarten and grade seven. (By adding a grade at each of the levels, by the year 2004-2005 all students will be required to have the vaccine.) Two doses of CDC approved vaccine for children ages 11-15 may be used.

~~2.5 One dose of rubella vaccine administered after the age of 12 months.~~

~~2.6 One dose of mumps vaccine administered after the age of 12 months.~~

~~2.7 2.5 One dose of varicella is recommended. Varicella vaccine is required beginning in the 2003-2004 school year with kindergarten and adding a grade each subsequent year.~~

One dose is required for children through age 12. Two doses are required for children age 13 and older.

2.5.1 A written disease history , provided by the health care provider, parent, legal guardian, caregiver or school enterer who has reached the statutory age of majority (18) Del. C. §131(a)(9), will be accepted in lieu of vaccination.

**See 4 DE Reg. 1515 (3/1/01)**

### 3.0 Certification of Immunization

3.1 The parent, legal guardian, caregiver or a school enterer who has reached the statutory age of majority (18), 14 *Del.C.* §131(a)(9), shall present a certificate specifying the month, day, and year that the immunizations were administered by the state licensed health care practitioner.

3.2 According to 14 *Del.C.* § 131, a principal or person in charge of a school shall not permit a child to enter into school without acceptable evidence of immunization. The parent, legal guardian, caregiver or a school enterer who has reached the statutory age of majority (18), 14 *Del.C.* §131(a)(9), shall be notified of this requirement in writing. Within 14 calendar days after notification, evidence must be presented to the school that the basic series of immunizations has been initiated or has been completed.

3.3 A school enterer may be conditionally admitted to a Delaware school district by presenting a statement from a state licensed health care practitioner who specifies that the school enterer:

3.3.1 Has received at least one dose of DTaP, DTP, or DT and

3.3.2 Has received at least one dose of IPV or OPV and

3.3.3 Has received at least one dose of measles, mumps and rubella (MMR) vaccine.

3.3.4 Has received the first dose of the Hepatitis B series as per 2.4. See Regulation 901 Education of Homeless Children and Youth 6.0 School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth. To that end, school districts shall: 6.1 assist homeless children and youth in meeting the immunization requirements.

3.3.5 Has received at least one dose of Varicella vaccine as per 2.5.

3.4 Regulation 901 Education of Homeless Children and Youth 6.0 states that "School districts shall ensure that policies concerning immunization, guardianship and birth certificates do not create barriers to the school enrollment of homeless children and youth". To that end, school districts shall as in 6.1 "assist homeless children and youth in meeting the immunization requirements".

3.5 If the school enterer fails to complete the series of required immunizations according to the Division of Public Health's recommended schedule, the parent, legal

guardian, caregiver or a school enterer who has reached the statutory age of majority (18), 14 *Del. C.* §131(a)(9), will be notified the child will be excluded according to 14 *Del.C.* §131.

**See 4 DE Reg. 1515 (3/1/01)**

**4.0 Lost or Destroyed Medical Records:** When an immunization record has been lost or destroyed by the medical provider who administered the vaccine, the parent, legal guardian, caregiver or a school enterer who has reached the statutory age of majority (18), 14 *Del.C.* §131(a)(9), shall sign a written statement to this effect and must obtain at least one dose of DTaP, DTP or DT, one dose of IPV or OPV, one dose of Hepatitis B (as per 2.4) and immunization against measles, mumps and rubella and one dose of varicella (as per 2.5). Evidence that the vaccines were administered shall be presented to the superintendent or designated person. An exemption to this requirement would be a statement from a state licensed health care practitioner demonstrating serological evidence of immunity to measles, mumps or rubella.

**See 4 DE Reg. 1515 (3/1/01)**

### 5.0 Exemption from Immunization:

5.1 Exemption from this requirement may be granted in accordance with 14 *Del.C.* §131.

5.2 Alternative dosages or immunization schedules may be accepted with the written approval of the Division of Public Health.

**See 4 DE Reg. 1515 (3/1/01)**

**6.0 Verification of School Records:** The Division of Public Health shall have the right to audit and verify school immunization records to determine compliance with the law.

**See 1 DE Reg. 1808 (5/1/98)**

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## EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL.C. SECTION 122(d)

### 1501 KNOWLEDGE, SKILLS AND RESPONSIBILITY BASED SUPPLEMENTS FOR EDUCATORS

**A. TYPE OF REGULATORY ACTION REQUESTED**  
New Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF  
REGULATION**

The Professional Standards Board, with the consent of the State Board of Education acting in cooperation and consultation with the Department of Education, seeks the approval of regulation 1501 Knowledge, Skills and Responsibility Based Supplements for Educators. This

regulation includes the requirements for, and payment of salary supplements established by 14 Del. C. § 1305. This regulation shall apply to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary for gaining knowledge and skills that lead to more effective instruction, for achieving certification from the National Board for Professional Teaching Standards, or from an equivalent program, and/or for accepting additional responsibility supplements that impact student achievement.

### **C. IMPACT CRITERIA**

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation addresses student achievement and requires that knowledge and skills lead to more effective instruction and that responsibility supplements impact student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation help ensure that all educators have access to high quality opportunities to acquire knowledge and skills that lead to more effective instruction.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation addresses educator knowledge, skills, and responsibility based salary supplements, not health and safety issues.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses educator knowledge, skills, and responsibility based salary supplements, not students' legal rights.

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

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation may require changes in reporting requirements at the local board and school levels, but these changes will be offset by a reduction in reporting requirements for professional development elsewhere in the system.

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

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

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

10. What is the cost to the state and to the local school boards of compliance with the new regulation? The knowledge, skills, and responsibility based salary supplements are subject to an annual appropriation by the Legislature. The Department of Education shall provide for funding the supplement provisions of this regulation in its annual budget. There is no additional cost to local school boards for compliance with the regulation.

### **1501 KNOWLEDGE, SKILLS, AND RESPONSIBILITY BASED SALARY SUPPLEMENTS FOR EDUCATORS**

#### **1.0 Content:**

The following requirements shall be met in order to receive the salary supplements established by 14 Del.C. §1305. This regulation shall apply to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary for gaining knowledge and skills that lead to more effective instruction, for achieving certification from the National Board for Professional Teaching Standards, or from an equivalent program, and for accepting additional responsibility supplements that impact student achievement. Supplements are available subject to an annual appropriation from the Legislature.

#### **2.0 Definitions:**

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

"**Approved cluster**" means a professional development cluster that meets the criteria specified in 3.1 of this Regulation and that has been designated by the Standards Board and the State Board as the basis for awarding a specific salary supplement.

"**Delaware Administrator Standards**" means standards for education administrators approved by the Secretary of Education and the State Board of Education, as per 14 **Del. Admin. Code** 394, Delaware Administrator Standards.

"**Delaware Content Standards**" means K-12 student content standards approved by the Secretary of Education and the State Board of Education, as per 14 **Del. Admin.**



Code 501, State Content Standards.

**“Delaware Professional Teaching Standards”** means standards of teaching approved by the Secretary of Education and the State Board of Education, as per 14 **Del. Admin. Code** 393, Delaware Professional Teaching Standards.

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

**“Educator”** means an employee paid under 14 **Del.C.** § 1305.

**“Hours of Engagement”** means time spent in classes, seminars, workshops, collaborative work groups, learning communities, cohort, school, or district teams, and time engaged in research-based activities which result in the acquisition of knowledge and skills which lead to more effective instruction.

**“Knowledge and Skills”** means understandings and abilities that, when acquired by educators, lead to more effective instruction.

**“NSDC Standards for Staff Development”** means standards adopted by the National Staff Development Council for high quality staff and professional development.

**“Professional Development Cluster” or “Cluster”** means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

**“Provider”** means a local school district, charter school, college, educationally related organization, or professional organization that delivers professional development clusters approved by the Standards Board and the State Board to educators.

**“Responsibilities”** means educators’ additional responsibility assignments that are academic in nature and that impact student achievement. Extra curricular or non-instructional supervisory activities are specifically excluded from this definition under this regulation.

**“Salary Supplement”**, when referring to knowledge, skills, and responsibility based supplements, means additional state salary, as described in 14 **Del.C.** § 1305.

**“Standards Board”** means the Professional Standards Board of the State of Delaware established in response to 14 **Del.C.** § 1205.

**“State Board”** means the State Board of Education of the State of Delaware established in response to 14 **Del.C.** § 104.

### **3.0 Knowledge and Skills:**

The Standards Board shall, on no less than an annual basis, submit to the State Board for approval, lists of proposed new professional development clusters in specific areas of knowledge and skills which shall serve as the basis for awarding salary supplements.

3.1 The criteria for evaluating professional

development clusters designed to promote acquisition of knowledge and skills are based upon:

3.1.1 Delaware Professional Teaching Standards or Delaware Administrator Standards or their equivalent (i.e., national standards from educators’ specialty-area organizations that complement the Delaware standards).

3.1.2 Delaware content standards or their equivalent (i.e., national standards from content-specialty groups, if there are no Delaware standards for the content area).

3.1.3 National Staff Development Council Standards for Staff Development (NSDC, 2001).

3.2 Clusters may include a combination of formal courses at graduate or undergraduate levels, and other research-based activities which conform to the NSDC Standards for Staff Development.

3.3 Clusters may be comprised of related segments which may be completed separately over a specified period of time, not to exceed 5 years, as included in the cluster design and approved by the Standards Board and the State Board.

3.4 Voluntary performance or assessment-based specialty certifications awarded for meeting standards established by national professional organizations shall be evaluated as proposed clusters in accordance with this regulation.

3.5 The specific percentage of salary assigned to each knowledge and skills supplement, provided that no supplement may be less than 2% nor more than 6% of an educator’s base state salary, shall be submitted with the list of professional development clusters and specific areas of knowledge and skills.

3.5.1 A cluster qualifying an educator for a supplement of 2% shall consist of no less than 90 hours of engagement by the educator.

3.5.2 A cluster qualifying an educator for a supplement of 4% shall consist of no less than 180 hours of engagement by the educator.

3.5.3 A cluster qualifying an educator for a supplement of 6% shall consist of no less than 270 hours of engagement by the educator.

3.6 Knowledge and skills which, once acquired, are expected to lead to more effective instruction for the duration of an educator’s career are designated as permanent supplements.

3.7 Knowledge and skills related to new technologies, curriculum adoptions, and short-term strategies shall have a duration of 5 years, and may be renewed by successfully completing renewal activities in accordance with cluster approval procedures established by the Standards Board.

3.8 The provider will present an educator who satisfactorily completes an approved cluster with a certificate of completion to verify eligibility for a salary supplement. The certificate shall certify the knowledge and

skills acquired and demonstrated by the educator.

3.9 Annually, the Standards Board shall submit to the State Board for approval a list of all clusters proposed for continued approval, renewal, and non-renewal.

#### **4.0 Responsibilities:**

The Standards Board shall, on no less than an annual basis, submit to the State Board a list of specific responsibility assignments for approval as the basis for awarding responsibility salary supplements.

4.1 Responsibility assignments shall be:

4.1.1 Focused on school improvement issues that impact student achievement;

4.1.2 Supported by high quality, targeted professional development, and

4.1.3 Academic in nature.

4.2 In order to qualify for a responsibility assignment salary supplement, an educator shall have completed the state approved training program for the position, or, in the absence of a training program, shall meet the criteria set forth for the position, and shall provide state and district approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified responsibility assignment.

#### **5.0 Approval of Professional Development Clusters and Responsibilities:**

5.1 The Standards Board's standing committee on professional development and associated compensation shall provide the Standards Board with recommended lists of professional development clusters and responsibility assignments in accordance with this regulation.

5.2 The Standards Board shall examine the proposed lists and previously approved lists of clusters to evaluate the system of professional development to determine its overall balance and accessibility.

5.3 The lists of professional development clusters and responsibilities shall be forwarded to the State Board with a recommendation for approval.

#### **6.0 Confirmation of Educators' Eligibility for Salary Supplements:**

6.1 Knowledge and Skills: The district or charter school shall notify educators annually, in writing, of the clusters it approves from the State Board approved list for knowledge and skills salary supplements.

6.2 Those clusters approved by districts or charter schools shall not require any additional prior approval. After completing the entire cluster, an educator shall submit documentation to the local district of fulfilling the requirements of the cluster's design.

6.3 Responsibility Assignments: An educator shall provide the local district or charter school or state agency

with such information as may be required to enable the local district or charter school or state agency to verify that the educator has fulfilled the requirements of 4.2 of this regulation.

#### **7.0 Payment of Salary Supplements:**

[RESERVED]

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF PUBLIC HEALTH**

Office of Health Facilities Licensing  
and Certification

Statutory Authority: 16 Delaware Code,  
Section 122(3)s1 (16 Del.C. 122(3)s1)

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

These proposed regulations, "Delaware Regulations for Adult Day Care Facilities," apply to any program that provides health, social, and related support services as described in the regulations for four or more functionally impaired adults who reside in the community and are in need of these services as determined by a pre-admission assessment. Adult Day Care facilities do not include programs intended exclusively or primarily to provide activities or training to the developmentally disabled or mentally ill. These services are provided to adults for a period of less than 12 hours during the day and are provided in a setting other than a participant's home or the residence of the facility operator.

#### **Notice of Public Hearing**

The Office of Health Facilities Licensing and Certification, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware Regulations for Adult Day Care Facilities.

The regulations for Adult Day Care Facilities apply to any program that provides health, social, and related support services as described in these regulations for four or more functionally impaired adults who reside in the community and are in need of these services as determined by a pre-admission assessment. Adult Day Care facilities do not include programs intended exclusively or primarily to provide activities or training to the developmentally disabled or mentally ill. These services are provided to adults for a period of less than 12 hours during the day and are provided in a setting other than a participant's home or the residence

of the facility operator.

The public hearing will be held April 25, 2002 at 1:00 PM in the 3<sup>rd</sup> Floor Conference Room, Jesse Cooper Building, Federal and Water Streets, Dover, Delaware 19903.

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

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

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Vanette Seals at (302) 995-8521 by April 16, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by May 1, 2002 to:

David P. Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

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## STATE OF DELAWARE REGULATIONS FOR ADULT DAY CARE FACILITIES

### Title 16 - Health and Safety

#### Part I, Chapter 1, Subchapter II, Section 122.(3).s.1.

### Powers and Duties of the Department of Health and Social Services

Establish standards for regulation in the operation of adult day care facilities, and grant licenses for the operation of such facilities to persons, associations or organizations which have been approved in accordance with this title and which pay the appropriate permit fee.

## REGULATIONS

### SECTION 68.0 PURPOSE

The regulations for Adult Day Care Facilities apply to any program that provides health, social, and related support services as described in these regulations for four or more functionally impaired adults who reside in the community and are in need of these services as determined by a pre-admission assessment. Adult Day Care facilities do not include programs intended exclusively or primarily to provide activities or training to the developmentally disabled or mentally ill. These services are provided to adults for a period of less than 12 hours during the day and are provided in a setting other than a participant's home or the residence of the facility operator.

### SECTION 68.1 GLOSSARY OF TERMS

68.101 Accessible - an environment which allows an individual using a wheelchair or support appliance to enter, exit and move about freely with no assistance from another person.

68.102 Activities of Daily Living - the tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include ambulating, transferring, grooming, bathing, dressing, eating, and toileting.

68.103 Adult - any person 18 years of age or older.

68.104 Aide/Assistant/Technician - an individual who provides care that 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 for the person(s) to whom they are providing care.

68.105 Department - the Delaware Department of Health and Social Services.

68.106 Dietitian - a person currently registered by the Commission on Dietetic Registration of the American Dietetic Association and/or a Certified Dietitian/Nutritionist in the State of Delaware.

68.107 Functionally Impaired Adult - An adult who requires supervision due to cognitive or physical impairment or who cannot independently perform one or more Activities of Daily Living.

68.108 Nursing Services - those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of functionally impaired adults which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: irrigations; catheterization; application of dressings; supervision of special diets; objective observation of changes in participant condition as a means of determining required nursing care and the need for further medical diagnosis and treatment; special procedures contributing to rehabilitation; administration of medication and carrying out treatments prescribed by a physician or an Advanced Practice Nurse in accordance with the Rules and Regulations related to the law Regulating the Practice of Nursing in Delaware which involve a like level of complexity and skill in administration.

68.109 Participant - an individual receiving services in an adult day care facility.

68.110 Representative - a person acting on behalf of the participant under Delaware law.

## **SECTION 68.2 LICENSING REQUIREMENTS AND PROCEDURES**

68.201 No person shall establish, conduct or maintain in this State any adult day care facility without first obtaining a license from the Department of Health and Social Services.

### **A. Issuance of Licenses**

#### **1. Provisional License:**

a. A provisional license shall be granted, for a period of less than one year, to all agencies/facilities:

i. which have completed the application process pending an on-site survey during the first ninety (90) days of operation; or

ii. which have experienced a change of ownership (CHOW), have completed the application process, and are pending an on-site survey during the first ninety (90) days of operation; or

iii. which are not in substantial compliance

with these rules and regulations.

b. The Department shall designate the conditions and the time period under which a provisional license is issued.

c. A provisional license may not be renewed unless a Plan for Corrective Action has been approved by the Department and implemented by the agency/facility.

#### **2. License:**

a. A license shall be granted, for a period of one year (12 months) to all agencies/facilities which are and remain in substantial compliance with these rules and regulations.

b. A license shall be effective for a twelve-month period following date of issue and shall expire one year following such date, unless it is: modified to a provisional, suspended or revoked, or surrendered prior to the expiration date.

c. Agencies/Facilities must apply for licensure at least thirty (30) days prior to the expiration date of the license.

d. Agencies/Facilities which have not been inspected/surveyed during a licensure year may apply for and be issued a new license until an inspection/survey is completed.

e. A license may not be issued to an agency/facility which is not in substantial compliance with these regulations and/or whose deficient practices present an immediate threat to the health and safety of its patients/clients.

### **B. Suspension or Revocation of Licenses**

The Department may suspend or revoke a license issued under this chapter for good cause, including but not limited to the following:

1. Violation of any of the provisions of these rules and regulations.

2. Deficiencies which present a threat to the health and safety of participants.

3. Permitting, aiding, or abetting the commission of any illegal act in the facility.

4. Conduct or practices detrimental to the welfare of the participant.

5. Refusal to allow the Department access to the facility to conduct surveys/investigations as deemed necessary by the Department.

Before any license issued under this chapter is suspended or revoked, the Department shall give ten (10) calendar days written notice to the holder of the license, during which he/she may appeal for a hearing before the Secretary of the Department or her/his designee.

The holder of the license may, within such 10-day period, give written notice of their desire to have a hearing. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Title 29, Chapter 101 of

the Delaware Code and in accordance with applicable rules and regulations of the Department.

**C. Order to Suspend a License**

1. The Department may immediately suspend a license upon issuance of a written suspension order if the health, safety, or well-being of the participants is in jeopardy or imminent danger. The order shall state the reason(s) for the suspension.

2. Within ten (10) working days of the issuance of the suspension order, the Department shall hold a hearing with the licensee unless, prior to such hearing, the conditions upon which the suspension were based have been corrected and a new license issued.

**D. Renewal of License after Suspension or Revocation**

If and when the conditions upon which the suspension or revocation of a license are based have been corrected and after a proper inspection has been made, a new license may be granted.

**E. Fees**

Fees shall be in accordance with DE Code, Title 16, Part I, Chapter 1, Subchapter II, Section 122.s.2.

F. A license is not transferable from person to person or from one location to another.

G. The license shall be posted in a conspicuous place on the licensed premises.

**68.202 Separate Licenses**

A. Separate licenses are required for facilities maintained in separate locations, even though operated under the same management.

B. A separate license is not required for separate buildings maintained by the same management on the same grounds.

**68.203 Inspection**

Every adult day care facility for which a license has been issued under this chapter shall be periodically inspected by a representative of the Department.

**68.204 Application Process**

A. All persons or entities applying for a license shall request a licensure application from the Department.

B. Applicants shall submit to the Department the following information:

1. The names, addresses and types of facility owned or managed by the applicant;

2. Identity of:

a. each officer and director of the corporation if the entity is organized as a corporation;

b. each general partner or managing member if the entity is organized as an unincorporated entity;

c. the governing body if the entity is government operated;

d. proof of not-for-profit status if claiming tax-

exempt status; and

e. any officers/directors, partners, or managing members, or members of a governing body who have a financial interest of 5 percent or more in a licensee's operation or related businesses.

3. Disclosure of any officer, director, partner, employee, managing member, or member of the governing body with a felony criminal record;

4. Name of the individual (director/administrator/etc.) who is responsible for the management of the adult day care facility; and

5. Policy and procedure manuals and any other information required by the Department.

**SECTION 68.3 GENERAL REQUIREMENTS**

68.301 The adult day care provider shall neither knowingly admit, nor continue to care for, participants whose needs cannot be met by the program.

68.302 All records maintained by the adult day care facility shall at all times be open to inspection by the authorized representatives of the Department.

68.303 No policies shall be adopted by the adult day care facility which are in conflict with these regulations.

68.304 The adult day care facility shall establish written policies regarding the rights and responsibilities of participants, and these policies and procedures shall be made available to authorized representatives of the Department.

68.305 The adult day care facility shall establish policies and procedures that address the handling and documentation of incidents, accidents, medical emergencies and the prevention of wandering away from safe areas by cognitively impaired participants. Reports of these events shall be kept on file at the facility.

68.306 Emergency telephone numbers for each participant shall be available to staff at all times.

68.307 A procedure, approved by the Department, shall be established to enable participants and their families or representatives, if any, to have their concerns addressed without fear of reprisal.

68.308 The adult day care facility shall advise the Department in writing within fifteen (15) days following any change in the designation of the director/administrator of the facility.

**SECTION 68.4 PLANT, EQUIPMENT AND PHYSICAL ENVIRONMENT****68.401 Construction**

A. Minimum construction requirements are set forth herein.

B. All construction, new/renovations/remodeling, must conform to the design and construction standards recognized by the Department.

C. In the event that there is a conflict between the design and construction standard utilized by the Department and the minimum standard set forth herein, the higher standard or requirement shall prevail.

D. When a facility is classified under this law or regulation and plans to construct, extensively remodel or convert any buildings, one (1) copy of properly prepared plans and specifications for the entire facility shall be submitted to the Department.

E. An approval, in writing, shall be obtained from the Department before construction/renovation/remodeling work is begun.

F. Upon completion of construction/renovation/remodeling, in accordance with the plans and specifications, the Department will inspect and approve the site prior to occupancy/use by the agency/facility.

**68.402 Site Provisions**

Each adult day care facility shall be located on a site which is approved in advance and considered suitable by the Department. Site must be safe, easily drained, must be suitable for disposal of sewage and furnishing a potable water supply.

68.403 The adult day care facility shall comply with all local and state building codes and ordinances as pertain to this occupancy.

**68.404 Building**

A. All facilities shall either be at grade level or shall be equipped with ramps or elevators to allow easy access for persons with disabilities.

B. The building shall be so constructed and maintained to prevent the entrance or existence of rodents and insects at all times. All exterior openings used for ventilation shall be effectively screened. Screen doors shall open outward and shall be equipped with self-closing devices.

C. The roof, exterior walls, doors, skylights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.

D. The exterior of the site shall be free from hazards and also from the accumulation of waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other litter.

E. Floor and wall surfaces of bathrooms and kitchens shall be constructed and maintained to be impervious to

water and to permit the floor and walls to be easily kept in a clean condition.

F. The adult day care facility must be accessible as defined at Section 68.101. The entrance and circulation areas shall meet appropriate American National Standards Institute (A.N.S.I.) standards and all applicable State and Federal standards.

G. Each adult day care facility, when located in a facility housing other services, shall have its own separate identifiable space.

H. Outdoor recreation and/or relaxation area for participants, if provided, shall be safe, secure, free of accident hazards, accessible to indoor areas and accessible to those with disabilities. Outdoor areas shall have a fence or landscaping to create a boundary which prevents participants from wandering away and shall be easily supervised.

**68.405 Water Supply and Sewage Disposal**

A. The plumbing shall meet the requirements of all municipal or county codes. Where there are no local codes, the provisions of the Department Sanitary Plumbing Code shall prevail.

B. The water supply and the sewage disposal system shall be approved by the Department and the Department of Natural Resources and Environmental Control respectively.

C. The water system shall be designed to supply adequate hot and cold water, under pressure, at all times.

D. Hot water at shower, bathing and hand washing facilities shall not exceed 110°F (43°C).

**68.406 Heating, Ventilation and Air Conditioning**

A. The heating equipment for all areas shall be adequate, safe, protected, and easily controlled. It shall be capable of maintaining the temperature in each room used by participants between 70°F and 80°F. Portable heating devices shall not be used.

B. The adult day care facility shall be adequately ventilated. Air conditioning equipment shall be adequate and capable of maintaining the temperature in each room used by participants between 70°F and 80°F.

**68.407 Lighting**

Each room shall be suitably lighted at all times for maximum safety, comfort, sanitation and efficiency of operation particularly in areas that present safety hazards. Careful attention shall be given to avoid glare.

**68.408 Safety Equipment**

A. To prevent slipping, staircases shall have stair treads and sturdy handrails.

B. Stairways, ramps and porches shall have adequate lighting and handrails.

C. Hallways shall have handrails located on at least one side.

D. Floor surfaces, especially in heavy traffic areas shall be durable, yet non-abrasive and slip-resistant. Area rugs on hard finished floors shall have a non-skid backing. Carpeting shall be maintained in a clean and slip-resistant condition.

#### 68.409 Bathrooms and Hand Washing Facilities

A. At least one (1) window or mechanical ventilation to the outside shall be provided in each bathroom. Floors shall not be slippery.

B. Bathroom design shall be accessible as defined at Section 68.101 and meet appropriate American National Standards Institute (A.N.S.I.) Standards.

C. Toilets, bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

D. There shall be at least one toilet of appropriate size for every twelve participants.

1. Each toilet shall be equipped with a toilet seat.

2. Toilet tissue shall be readily accessible at each toilet.

E. There shall be at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand washing facilities shall be readily accessible to participants and staff.

F. Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

G. Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way to minimize the danger of breakage.

H. Soap, paper towels and a trash receptacle(s) shall be provided at all times and shall be within reach of the participants.

I. Signaling devices shall be installed or placed in the bathroom areas, restroom stalls, and showers, if any.

#### 68.410 Program Area

A. When a multi-purpose room is used, it shall have sufficient space to accommodate all activities and to prevent interference with each other. There shall be sufficient space to permit privacy and confidentiality.

##### B. Square Footage

1. Minimum space requirements are as follows:

a. 100 square feet for each of the first five participants; and

b. 60 square feet for each of the participants thereafter.

2. Space requirements do not include office space, bathrooms, storage, examination room, or dining room (unless the dining room is also used for activities).

C. A telephone shall be available to participants to make and receive calls. Telephones shall be in an area which affords privacy during use.

D. The adult day care facility shall maintain comfortable sound levels. Background noise shall be minimized and

sound transmission shall be controlled. Sound transmission may be controlled by use of acoustical ceiling surfaces, partitions between activity areas, and separation of noisy rooms. Sound levels shall enhance privacy and encourage interaction when social participation is desired.

E. There shall be adequate storage space for program supplies and for participants' outer garments and possessions.

F. The dining area shall be large enough to provide table and chair space to accommodate all participants.

G. The adult day care facility shall provide a separate rest area to permit privacy for assessments and to isolate participants who become ill. A bed, cot or other appropriate lounging or reclining furniture shall be available for participants in this area.

H. Adult day care facilities which provide rehabilitation services shall have separate additional space and equipment for carrying out each type of therapy that may be provided. At a minimum, the following shall be provided:

1. Provisions for wheelchair participants;

2. Additional storage for supplies and equipment;

3. Provisions for participant privacy; and

4. Hand washing facilities within the rehabilitation area.

#### 68.411 Furnishings

A. Furniture shall be sturdy and secure so that it cannot easily tip when used for support while walking or seating. Furniture shall be scaled so that it is easily used by persons with limited agility and shall permit feet to rest on the floor. Chairs used for dining shall have armrests or be free of armrests in accordance with each participant's physical needs and preferences.

B. All rugs and floor coverings shall be tacked down securely. Any mat used at a doorway shall be non-slip with edges that do not cause a tripping hazard.

C. All equipment and furnishings shall be in good condition and safe for usage by participants and staff. The adult day care facility shall provide:

1. One chair for each participant and staff person;

2. Adequate table space for all participants; and

3. Reclining lounge chairs, the number to be determined by the needs and numbers of participants.

#### 68.412 Emergency Equipment and Supplies

The adult day care facility shall provide adequate emergency equipment and supplies readily available for treating shock, burns and wounds, including:

A. First aid kit containing sterile gauze dressings and bandages, antiseptic, tape and scissors;

B. Thermometers; and,

C. Sphygmomanometers and stethoscopes.

Special equipment as needed by the participant (i.e. suction equipment, oxygen, etc.) may be supplied by the

adult day care facility or the participant.

**68.413 Sanitation and Housekeeping**

A. All rooms and every part of the building shall be kept clean, orderly and free of offensive odors.

B. Policy manuals shall be prepared and followed which outline maintenance and cleaning procedures, safe storage of cleaning materials and pesticides and other potentially toxic materials, and safe storage and handling of soiled linen and clothing.

C. A ventilated janitor's closet shall contain a service sink and provide for the locked safe storage and use of housekeeping items.

D. Chemicals and disinfection agents shall be stored separate from participant care items and food.

**68.414 Existing Facilities**

Adult day care facilities that have been in operation before the adoption of these regulations and do not meet the minimum square footage, dining area and bathroom ratio requirements set forth in Section 68.4 must be brought into full compliance within a five (5) year period. All other provisions of these regulations apply upon their adoption except as otherwise expressly provided.

**68.415 Waiver of Requirements**

Waiver of a standard requires Department approval. Waiver requests must be made in writing, include the full justification behind the request and address issues of safety and infection control. They are an exception to established standards and will only be approved for compelling reason.

**SECTION 68.5 FIRE SAFETY**

68.501 Fire safety in adult day care facilities shall comply with the adopted rules and regulations of the State Fire Prevention Commission. Enforcement of Fire Regulations is the responsibility of the State Fire Prevention Commission. All applications for a license or renewal of a license must include, with the application, a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of noncompliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for revocation of a license.

68.502 The adult day care facility shall have a minimum of two (2) exits remote from each other which shall be clearly marked.

68.503 Staff and participants shall be trained in executing the evacuation plan. A written record of fire safety training, including content of the training and persons attending shall be maintained.

68.504 Evacuation fire drills shall be held and documented at least quarterly for all staff and participants.

**SECTION 68.6 ADMISSION AGREEMENT, ASSESSMENT AND DISCHARGE**

68.601 The adult day care facility shall have written admission policies which describe admission and discharge criteria.

68.602 The admission policies shall be discussed with each participant entering the program, and their representative, if any.

68.603 The adult day care facility shall only admit those individuals whose needs can be met by the facility.

68.604 All participants shall be 18 years of age or older and functionally impaired as defined at Section 68.107.

68.605 There shall be a written agreement between the participant and the adult day care program. The agreement shall:

A. Specify the services to be provided by the facility, scheduled days, financial arrangements, transportation agreements, emergency procedures and conditions for dismissal or discharge and appeal;

B. Be signed by the participant, if he is able, and representative, if any, and the adult day care facility;

C. Be given to the participant and representative, if any, and a copy shall be kept at the facility; and

D. Be reviewed and updated as necessary to reflect the change in the services or the financial arrangements.

**68.606 Assessment**

A. The facility shall be responsible for conducting a written assessment of an applicant within 30 days prior to admission. The assessment shall include input as required from physicians, licensed nurses, social workers, physical and occupational therapists, and other personnel with expertise as required by the participant's needs.

B. The assessment shall be completed by the adult day care facility in conjunction with the participant and her/his representative, if any.

C. The assessment shall include at a minimum a description of the participant's:

1. Physical condition, including ability to perform activities of daily living, such as ambulating, eating, toileting, and sensory limitations such as sight, hearing, and speech completed by a licensed nurse;

2. Social situation, including living arrangements and the availability of family and community support; and,

3. Mental status, including any cognitive impairment and known psychiatric, emotional, and



behavioral problems.

D. The initial assessment shall be reviewed and updated on a scheduled basis, but at least annually. This reassessment shall become a permanent part of the participant's record.

E. A reassessment shall be conducted when the needs of the participant change which indicate a revision to the plan of care is needed.

#### 68.607 Discharge

A. No participant shall be discharged from an adult day care facility except for the following:

1. When the participant's needs can no longer be met by the program of care;
2. For medical reasons;
3. For the participant's own welfare or the welfare of the other participants; or
4. For nonpayment of justified charges.

B. The participant and her/his representative, if any, shall be informed of and participate in discharge planning. A minimum of 2 weeks notice shall be given by the adult day care facility to the participant and representative, if any. However, the notice period may be waived if the care needs of the participant undergo a sudden change which necessitates immediate transfer to a facility or program able to provide a higher level of care. If the notice provisions are waived, the facility shall be responsible for assisting in suitable placement for the participant.

C. The adult day care facility shall develop a written plan of discharge which outlines the services needed by the participant upon discharge.

### **SECTION 68.7 PLAN OF CARE**

68.701 Prior to admission, a preliminary written plan of care, based upon the initial assessment shall be developed for each participant.

68.702 A written individual plan of care shall be developed within thirty (30) calendar days of the participant's first day in the program. The plan shall be based on a functional assessment and information obtained from the participant, participant's family, physician, and the referring agency (if appropriate).

68.703 The plan shall be developed to improve or maintain the functional capabilities of the participant. The plan shall include:

- A. A description of the participant's needs;
- B. The activities, programming and services in which the person will participate in order to meet those needs; and
- C. Realistic goals for the participant, designated roles of the responsible parties, and if appropriate, the timeline for each goal.

68.704 The written plan of care and personal information shall be revised as frequently as warranted by the participant's condition, but shall be reviewed at least every six (6) months with the participant and representative, if any, and updated on an annual basis. All revisions to the plan of care shall be in writing.

### **SECTION 68.8 SUPPORT SERVICES**

68.801 Aide/Assistant/Technician as defined at Section 68.104 or licensed nurses shall provide supervision and assistance in activities of daily living, such as feeding and toileting, to participants who require those services. Facilities that have been in operation before the adoption of these regulations shall comply with this requirement within 12 months of the adoption date of the regulations.

68.802 Rehabilitation services, including occupational therapy, physical therapy, and speech therapy, if provided, shall be ordered by the participant's physician and be performed by qualified therapists or therapy aides under supervision of a qualified therapist.

#### 68.803 Medication Management

A. Medication shall not be administered to a participant unless prescribed by a licensed practitioner with independent prescriptive authority as provided by Delaware Code.

B. All adult day care programs shall have an up-to-date drug reference manual/compendium which lists drug actions, interactions, and side effects.

C. All medication administered to participants shall be ordered in writing, dated and signed by the attending physician. All prescription medications shall be properly labeled in accordance with DE Code, Title 24, Chapter 25, Subchapter III, §2536. The label shall contain the following information:

1. The prescription number;
2. The date such drugs were originally dispensed to the participant;
3. The participant's full name;
4. The brand or established name and strength of the drug to the extent that it can be measured;
5. The physician's directions as found on the prescription;
6. The physician's name;
7. The name and address of the dispensing pharmacy or physician.

D. Medications may be self-administered or administered in accordance with all State and Federal laws, including the State of Delaware Nurse Practice Act. Those participants who, upon admission, are incapable of self-administration or who become incapable of self-administration shall have their medications administered according to the Nurse Practice Act.

E. The adult day care facility shall maintain a record of all medication provided to a participant indicating time of day, type of medication, dose, route of self-administration/administration, by whom given and any reactions noted.

F. Medication Storage

If medications are administered on site, provisions for the locked storage of medications shall be provided. The key to the medication storage must be in the possession of or accessible only to authorized licensed personnel responsible for the distribution for self-administration/administration of medications.

1. Prescription medication not requiring refrigeration shall be kept in the original container stored in a locked cabinet or drawer, and clearly labeled for the specific participant. These medications shall be stored within the U.S.P. recommended temperature range of 59° - 86°F unless the manufacturer's labeling states otherwise.

2. Prescription medication requiring refrigeration shall be stored in a separate and secured locked container within the refrigerator. The temperature must be maintained within the U.S.P. recommended range of 36° - 46°F.

3. Schedule II substances/prescriptions shall be kept in separately locked, securely fixed boxes (approved under Delaware law and standards) or drawers in the secure locked medication cabinet. Medication cabinets utilized will have a 2-lock system.

Schedule II substances shall be handled in the manner outlined by the State and Federal laws and regulations. All unused Schedule II substances shall be returned to the participant or representative for disposition.

The adult day care facility must develop policies to prevent possible diversion of controlled substances.

4. Internal medications shall be stored separately from external medications.

G. The adult day care facility shall ensure that prescription medication is not used by other than the participant for whom the medication was prescribed.

H. The center may maintain a supply of over-the-counter medications, such as antacids and aspirin. However, over-the-counter medications shall only be administered upon the order of the participant's physician.

I. Used needles and syringes shall not be recapped, but placed immediately after use into an approved and secured Sharps container and disposed of properly.

68.804 Transportation Services

When transportation services are provided directly or under contract by the adult day care facility:

A. The vehicle shall be accessible and appropriate to the participants using it, considering any physical handicaps and impairments.

B. Every participant shall have a seat in the vehicle,

except those participants who remain in their wheelchairs.

C. Wheelchairs shall be secured when the vehicle is in motion.

D. Each participant shall be seated while the vehicle is in motion.

E. Vehicles shall have adequate seat belt and securement devices for ambulatory and wheelchair bound passengers.

F. Participants shall not be left unsupervised (must always be within eyesight of the driver/attendant) while in a vehicle.

G. Assistance by a driver or attendant shall be provided from the ground floor of the passenger's residence to the ground floor of the day care facility.

H. The driver shall have a valid and appropriate Delaware driver's license. The driver shall meet any state requirements for licensure or certification for the vehicle operated.

I. Each vehicle shall have a first aid kit, along with fire extinguisher and safety triangles.

J. The driver or attendant shall be trained in first aid procedures which include but are not necessarily limited to the following:

1. Cardiopulmonary Resuscitation (CPR);

2. Care during a seizure;

3. Care of minor scrapes and abrasions; and,

4. Summoning help in the event of an emergency.

K. The driver or attendant shall have medical and emergency information in the vehicle for participants being transported.

L. All transportation vehicles shall be equipped with a device for two-way communication.

68.805 Nutrition and Food Services

A. Kitchen and Food Storage Areas

If meals are prepared by the adult day care facility the State of Delaware Food Code shall apply.

B. The adult day care facility shall assure the availability of meals and supplemental snacks in accordance with each participant's individual plan of care.

C. The adult day care facility shall provide or make arrangements for a minimum of one meal daily which is of suitable quality and quantity for participants who are in the center for four (4) or more hours. The meal shall meet at least one-third (1/3) of an adult's current recommended dietary allowance (RDA) of the Food and Nutrition Board, National Academy of Sciences-National Research Council.

D. A morning snack shall be offered daily to participants. Those participants remaining in the facility for more than 3 hours after completion of lunch shall be offered a mid-afternoon snack. Facilities open in the evening shall serve an evening meal. Evening meals shall be served approximately 4 hours after completion of lunch, but no later than 7 p.m. Beverages shall be available to participants at all times and shall be offered periodically to promote good

hydration. Snacks shall have nutritional value.

E. Food shall be stored, prepared, served, or any combination of these on site in accordance with the State of Delaware Food Code.

F. Food that is prepared for the adult day facility at an alternate site shall be prepared in a facility which is in compliance with the State of Delaware Food Code and has been issued a permit.

G. Menus shall be planned and written for a minimum of a two-week cycle, if meals are prepared on-site, and approved by a dietitian.

H. The menu shall be dated for the week of service and posted in a prominent area for the availability to the participant and representative, if any.

I. A therapeutic diet shall be provided for a participant when prescribed in writing by a physician. Therapeutic diet menus shall be prepared by a dietitian.

J. A dietitian shall be available for consultation with staff on basic and special nutritional needs and proper food handling techniques and shall provide in-service training to staff on these topics at least annually.

K. Appropriate food containers and utensils shall be available as needed for use by handicapped participants.

L. Equipment for adequate refrigeration to maintain foods at 40°F and for the heating of foods shall be provided if needed to assist in the provision of meals and snacks.

M. Drinking water shall be easily accessible to the participants and provided by either an angle jet drinking fountain with mouth guard or by a running water supply with individual service drinking cups.

#### 68.806 Nursing Services

Nursing services may be provided by the adult day care facility in accordance with the Delaware Nurse Practice Act and shall meet the needs of the participants.

### **SECTION 68.9 ACTIVITIES**

68.901 Each facility licensed under these regulations shall provide appropriate programming for each participant. Programming shall take into consideration individual differences in age, health status, sensory deficits, lifestyle, ethnicity, religious affiliation, values, experiences, needs, interests, abilities, and skills by providing opportunities for a variety of types and levels of involvement.

68.902 Activities shall be planned to support the plans of care for the participants, and shall be consistent with the program statement and the admission policies.

68.903 Activities shall be planned and shall include:

A. Group activities for all participants; and

B. Personalized options for individuals with varying interests and needs.

#### 68.904 Activity Schedule

A. The adult day care program shall provide planned activities during at least sixty-five percent (65%) of the time that the program is open for daily operations.

B. A written schedule of activities shall be developed at least monthly.

C. Changes in activities shall be noted on the schedule.

D. The current month's schedule of activities shall be posted in a conspicuous place and made available to participants and their representatives, where applicable, including the name or type, date and hour of the activity.

E. The schedule of activities for the past twelve months shall be maintained by the adult day care facility.

#### 68.905 Activities Coordinator

There shall be an Activities Coordinator who shall have either:

A. A Bachelor's Degree plus one year of experience (full-time or equivalent) in developing and conducting activities for the population to be served; or

B. An Associates Degree in a related field plus two years of appropriate experience; or

C. A high school diploma or equivalent plus three years of experience in developing and conducting activities for the population to be served in the program.

Existing facilities shall have 12 months from the adoption of these regulations to comply with this requirement.

The Activities Coordinator need not be assigned on a full time basis.

#### 68.906 Equipment and Supplies

A. The facility shall provide equipment to encourage active participation and group interaction and materials shall be geared to the interests and backgrounds of the participants.

B. Environmental aids and supplies for activities shall be provided as required by the participants' needs and the goals of the program.

### **SECTION 68.10 RIGHTS OF PARTICIPANTS**

68.10.1 Each participant shall be treated as an adult, with respect and dignity.

68.10.2 Each participant shall have the right to participate in a program of services and activities which promotes positive attitudes regarding one's usefulness and capabilities.

68.10.3 Each participant shall have the right to participate in a program of services designed to encourage learning, growth and awareness of constructive ways to develop one's interests and talents.

68.10.4 Each participant shall have the right to be encouraged and supported in maintaining one's independence to the extent that conditions and circumstances permit, and to be involved in a program of services designed to promote personal independence.

68.10.5 Each participant shall have the right to self-determination within the adult day care setting, including the opportunity to:

A. Participate in developing one's plan for services;

B. Decide whether or not to participate in any given activity; and

C. Be involved, to the extent possible, in program planning and operation.

68.10.6 Each participant shall have the right to privacy and confidentiality.

68.10.7 Each participant shall have the right to be protected from abuse, neglect, solicitation and harassment.

68.10.8 Each participant shall have the right to voice grievances without discrimination or reprisal.

68.10.9 Each participant shall have the right to be free from physical restraints.

A. Physical restraint is defined as any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

B. Physical restraint may not be imposed for the purposes of discipline or convenience. They are used only when necessary to treat a resident's medical symptoms.

C. The decision to use a restraint is driven not by diagnosis, but by comprehensive individual assessment (including but not limited to the participant's strengths, weaknesses, the environment, how the restraint benefits the participant, and whether a less restrictive device/intervention could offer the same benefit at less risk) that concludes that for this participant at this time, the use of less intrusive measures pose a greater risk than the risk of using a restraint.

D. A voluntary mechanical support used to achieve proper body position, balance, or alignment so as to allow greater freedom of mobility than would be possible without the use of such a mechanical support is not considered a restraint.

68.10.10 Each participant shall have the right to be fully informed, as evidenced by the participant's written acknowledgment of these rights, and of all rules and regulations regarding participant conduct and responsibilities.

68.10.11 Each participant shall have the right to be fully informed, at the time of acceptance into the program, of services and activities available and related charges.

### **SECTION 68.11 STAFFING**

68.11.1 There shall be at least two adult day care facility staff on duty at all times when participants are present. If separate sections are established within each facility, each separate section shall independently comply with the staffing requirements of this section. The minimum staffing requirements shall not include volunteers or employees who have not yet completed the required orientation program.

68.11.2 For facilities with more than sixteen (16) participants there shall be a minimum of one adult staff person on duty for each eight participants (1:8). Facilities may not use rounding in determining staffing requirements, i.e., for 17-24 participants at least 3 staff members would be required, for 25-32 participants at least 4 staff members, etc.

A. As the number or acuity of participants with functional and cognitive impairments increase the staff-participant ratio shall be adjusted accordingly to meet the needs of the participants.

B. Supervision of each participant shall be based upon the comprehensive assessment of the individual's needs.

68.11.3 Programs serving mainly participants who are severely cognitively or severely physically impaired shall have a staff-participant ratio of at least one to four (1:4) for all severely impaired participants.

68.11.4 There shall be at least one RN or LPN on the premises at all times, when participants are present, for those facilities serving participants requiring nursing services as defined at 68.108.

68.11.5 There shall be at least one employee on the premises at all times, when participants are present, who is certified in cardiovascular pulmonary resuscitation (CPR).

68.11.6 The individual (director/administrator/etc.) or designee responsible for the management of the adult day care program shall be present and in charge during all hours that participants are on the premises.

### **SECTION 68.12 PERSONNEL/ADMINISTRATIVE**

68.12.1 Adult day care providers must comply with the special employment practices relating to health care and child care facilities (DE Code, Title 19, Part I, Chapter 7, §708 and DE Code, Title 11, Part V, Chapter 85, Subchapter V, §8563) and adult abuse registry check (DE Code, Title 11, Part V, Chapter 85, Subchapter V, §8564) and the regulations

promulgated by the Department of Labor regarding same.

68.12.2 No employee shall be less than 18 years of age and no person shall be employed who has been convicted of a crime where the victim was a person regardless of whether the crime was a felony or a misdemeanor.

68.12.3 The facility shall have written personnel policies and procedures that adequately support sound care and services to participants.

68.12.4 Personnel records of each employee shall be kept current and available upon request by the Department's representatives and shall contain sufficient information to support placement in the positions to which assigned.

68.12.5 Minimum requirements for pre-employment and annual tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

A. No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to participants.

B. Any person having a positive skin test but a negative X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.

C. A report of all test results and all attestation statements shall be on file at the facility of employment.

68.12.6 All new employees shall be required to have a pre-employment physical examination. A copy of the pre-employment physical examination shall be maintained in individual personnel files.

68.12.7 Any individual who cannot adequately perform her/his duties or who may jeopardize the health or safety of the participants shall be relieved of his duties and removed from the center until such time as the condition is resolved. This includes infections of a temporary nature.

68.12.8 The adult day care provider shall provide for systematic performance review to communicate expectations and responsibilities, recognize achievement, and identify areas for skill development and work performance improvement. Performance reviews shall be completed annually and shall be maintained in the employee personnel record.

68.12.9 The director/administrator shall be responsible for complying with the regulations herein contained. In the absence of the director, a qualified substitute shall be authorized, in writing, to be in charge.

68.12.10 The director's/administrator's responsibilities shall include, but not be limited to, the following areas:

A. The development of the content of the program offered to the participants;

B. Programmatic functions, including orientation, training, and scheduling of all staff whether or not the director personally performs these functions; and

C. Assignment of a sufficient number of qualified staff to meet the participant's needs for:

1. Adequate nutrition;

2. Health supervision and maintenance;

3. Personal care;

4. Socialization;

5. Recreation;

6. Activities and stimulation; and,

7. Supervision, protection, and safety.

68.12.11 The director shall have a Bachelor's Degree in health or social services or a related field, with one year supervisory experience (full-time or equivalent) in a social or health service setting; have comparable technical and human service training with demonstrated competence and experience managing in a health or human service setting.

68.12.12 Volunteers

A. All volunteers shall be under the supervision of the director/administrator or designated staff person.

B. The duties of volunteers shall be clearly defined.

C. The adult day care facility shall maintain a record of volunteer hours/activities and provide appropriate supervision of volunteers.

68.12.13 Aides/Assistants/Technicians

A. All aides must meet the following minimum criteria:  
1. Completion of an orientation/training program which meets the requirements contained within these regulations; AND,

2. Certification as a nurse aide (CNA); or,

3. Possession of one year of experience in a health care setting; or,

4. Is a student nurse and has completed a medical surgical clinical practicum.

B. All aides must pass a competency evaluation test prior to providing unsupervised care to participants in the program.

C. It is the responsibility of the adult day care program to ensure that aides are proficient to carry out the care assigned in a safe, effective, and efficient manner.

68.12.14 Staff Training and Development

A. Prior to assuming job responsibilities, all personnel shall receive training in:

1. Their individual responsibilities in the event of fire, including the location and operation of any fire extinguisher and fire alarm box;

2. Their individual responsibilities in the event of illness or injuries, including the location and use of the first aid emergency supplies;

3. Their individual responsibilities in the event of any emergency;

4. Infection control, body mechanics and first aid; and

5. Special needs of the elderly, the cognitively impaired or persons with disabilities, including the specific needs of the participants being served.

B. Ongoing staff development is required to maintain and improve the skills of the adult day care team and should include:

1. The needs of the elderly and disabled.

2. Assisting participants to achieve maximum self-reliance through re-learning and modifying activities of daily living.

3. Physical restraint and the use of less restrictive alternatives.

4. Maintaining an environment that encourages morale building and self-help.

5. Review of participant care policies and procedures.

6. Prevention and control of infection.

7. Confidentiality of participant information.

8. Rights of participants.

C. Personnel who are primarily responsible for the direct care of the participants shall attend at least twelve (12) hours annually of staff development activities which shall consist of in-service training programs, workshops, or conferences related to adult day care or specific needs of participants.

#### 68.12.15 Aide Orientation and Training

A. An orientation/training program should be based on an instruction plan that includes learning objectives, clinical content and minimum acceptable performance standards.

B. The orientation program must include at least forty (40) hours of instruction and supervised practicum.

C. An orientation/training program must include the following:

1. The aide's role as a member of the adult day care team.

2. Personal care services.

3. Principles of good nutrition.

4. Process of growth, development, and aging.

5. Principles of infection control.

6. Observation, reporting, and documentation of participant status.

7. Maintaining a clean, safe, and healthy environment.

8. Maintaining a least restrictive environment.

9. Verbal/non-verbal communication skills.

10. Principles of body mechanics.

68.12.16 The adult day care program must maintain sufficient documentation to demonstrate that all requirements of this section have been met.

#### **SECTION 68.13 QUALITY IMPROVEMENT**

68.13.1 Each adult day care facility shall develop and implement a documented ongoing quality improvement program. The program shall include at a minimum:

A. An internal monitoring process that tracks performance measures;

B. A review of the program's goals and objectives at least annually;

C. A review of the grievance/complaint process;

D. A review of actions taken to address identified issues; and

E. A process to monitor the satisfaction of the participants and/or their representatives with the program.

#### **SECTION 68.14 RECORDS AND REPORTS**

68.14.1 There shall be a separate record maintained at the adult day care facility for each participant which shall contain:

A. Admission record: Including participant's name, birth date, home address, identification numbers, such as social security, Medicaid, Medicare, date of admission, physician's name, address and telephone number, diagnosis, names, addresses and telephone numbers of family members, friends, or other designated people to be contacted in the event of illness or an emergency;

B. A written history and physical examination performed by or under the direction of a physician within 6 months prior to admission;

C. Results of a medical evaluation or screening test for tuberculosis indicating the absence of active tuberculosis in an infectious stage within 1 year prior to admission;

D. Application and enrollment forms;

E. Assessment (initial and reassessments);

F. Nutritional status assessment as needed;

G. Individual plan of care (initial and reviews) and revisions;

H. Signed authorizations for releases of medical information and photos, as appropriate;

I. Signed authorization for participant to receive emergency medical care if necessary;

J. Ancillary reports;

K. Attendance and service records;

L. Transportation plans;

M. Where appropriate, medical information sheet;

documentation of physicians' order; treatment, therapy, medication, and professional notes;

N. Progress notes, chronological and timely, including a monthly assessment of health, functional, and psychosocial status of participants;

O. Discharge plan;

P. Current photograph (biannually and as necessary) depicting an accurate likeness of the participant;

Q. Advance directive form or a statement that none has been signed.

R. A copy of the written agreement between the participant and the adult day care program including any updates made to the original reflecting changes in services or arrangements.

S. Written acknowledgment that the participant or the participant's representative has been fully informed of the participant's rights.

68.14.2 All participants' medical records shall be maintained in accordance with professional standards.

68.14.3 All program records shall be available for review by authorized representatives of the Department and to legally authorized persons; otherwise such records shall be held confidential. The consent of the participant or her/his representative if the participant is incapable of making decisions shall be obtained before any personal information is released from her/his records as authorized by these regulations or Delaware law.

68.14.4 The adult day care facility records shall be retained for a minimum of five (5) years before being destroyed.

68.14.5 Records shall be protected from loss, damage, and unauthorized use.

### **SECTION 68.15 SEVERABILITY**

68.15.1 In the event any particular clause or section of these Regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

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### **DIVISION OF SOCIAL SERVICES**

### **PUBLIC NOTICE** **Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5,

Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement new policy in the Division of Social Services Manual (DSSM): DSSM 6011 - 6111. The proposed new policy establishes the Relative Caregivers' (Non-Parent) Transitional Resource Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by April 30, 2002.

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.

NEW:

### **6100 Relative Caregivers (Non-Parent) Transitional Resource Program.**

#### **6101 Purpose**

The Relative Caregivers' (Non-Parent) Transitional Resource Program is established to assist non-parent caregivers during the transition period when a child initially moves into the non-parent caregiver's home. The child(ren)'s parent cannot reside with the caregiver. This program assists caregivers in meeting the child's immediate need for clothing, shelter, and educational supplies.

#### **6102 Funding Limitations**

Funding for the Relative Caregivers' (Non-Parent) Transitional Resource Program is limited to funds appropriated by the General Assembly. Though caregivers may meet the eligibility requirements and have a need for the service, this does not guarantee that DHSS will provide the service. DHSS reserves the right to limit, where appropriate, services based on available resources and funding.

#### **6103 Eligibility**

Applicants must meet the following eight criteria to receive assistance from the Relative Caregivers' (Non-Parent) Transitional Resource Program:

1. Relationship-The child is living with a relative within the 5th degree of relationship (DSSM 3004).
2. Age-The child is less than 18 years of age.
3. Residence-Applicants must reside in Delaware to be eligible for benefits. Persons including the homeless (those with no fixed address or not living in a permanent dwelling) who currently live in Delaware and plan to stay, regardless of the length of time they have been here, meet

the residency requirement.

4. Time Limitation-The child has been living in caregiver's home less than or equal to 90 days.

5. Income-

a. The income cannot exceed 200% of the Federal Poverty Level based on the household size. The household size used in the income determination is the child and the child's siblings or half siblings who recently moved into the caregiver's home. Children who are not a sibling or half sibling will be considered a separate household.

b. The income of the caregiver is always excluded. The income of siblings or half siblings of the child living with the caregiver for more than 90 days will not be considered.

6. Resources-Eligibility will be determined without regard to the child or caregiver's resources.

7. Citizenship-The child is a citizen or lawfully admitted alien.

8. Need-The child's need is for one or more of the covered services.

#### **6104 Verification requirements**

1. The following items will be verified:

a. The identity of the caregiver making application for the Relative Caregivers' (Non-Parent) Transitional Resource Program.

b. Alien status

c. The child's income.

d. Caregivers have the option of presenting estimates from a vendor for the needed services or receipts itemizing the expenditures for the needed service. See 6106 listing conditions for caregiver reimbursements.

2. The following items will be accepted by declaration, the caregiver is not required to provide verification:

a. The date of birth of the child(ren).

b. The relationship of family members.

c. Delaware residency.

d. Time limitation.

e. Citizenship.

#### **6105 Vendor Payments**

When the caregiver elects to verify the cost of needs services by presenting estimates, payments are made by check payable to the vendor of the needed items/services.

#### **6106 Reimbursements to Caregivers**

Reimbursement will be made to the caregiver when the following three conditions are met:

a. The purchase(s) are made after the application for the Relative Caregivers' (Non-Parent) Transitional Resource Program.

b. The purchases received prior approved by DHSS staff.

c. The caregiver presents verification of the purchase(s).

#### **6107 Benefit Limitations**

The maximum benefit is \$500 per child per transition period per year. The year starts with the date benefits were provided by Relative Caregivers' (Non-Parent) Transitional Resource Program.

#### **6108 Items/Service Covered**

The Relative Caregivers' (Non-Parent) Transitional Resource Program payment is made to meet the needs arising from the child's moving into the caregiver's residence. Payments may be used for items and/or services such as but not limited to:

1. Clothing for the child.

2. Furniture such as beds, chairs, dressers.

3. Bed linens, blankets, towels.

4. School supplies such as notebooks, pencils, etc.

5. Items such as items required to make the home 'child safe'

6. Supplies

#### **6109 Items/Service Not Covered**

Payments will not be made for electronic equipment such as personal computers, televisions, or stereos.

#### **6110 Relationship to Other Programs**

1. Emergency Assistance and other programs administered by DHSS

The Relative Caregivers' (Non-Parent) Transitional Resource Program exists in addition to the Emergency Assistance Program and other programs administered by DHSS. Payments made from the Relative Caregivers' (Non-Parent) Transitional Resource Program will not limit Emergency Assistance Program payments or payments made by other programs administered by DHSS. Payment made by the Emergency Assistance Program or payments made by other programs administered by DHSS will not limit Relative Caregivers' (Non-Parent) Transitional Resource Program payments.

2. Child Care Programs

Relative Caregivers' (Non-Parent) Transitional Resource Program payments do not count as income in the child care programs.

3. Food Stamp Program

Relative Caregivers' (Non-Parent) Transitional Resource Program payments do not count as income in the Food Stamp Program.

#### **6111 Client Notices and Fair Hearing Practice and Procedures**

See Division of Social Services Manual Section 5000.



**DIVISION OF SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement a policy change to the following section of the Division of Social Services Manual (DSSM): DSSM 15400.6.1. The proposed change clarifies the Medicaid eligibility termination date for Foster Children who move out-of-state.

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 Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by April 30, 2002.

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.

**REVISION:****15400.6.1 Out-of-State Residence**

The DSCYF worker will send all documentation to the state of residence to indicate the child is IV-E eligible, his/her vital statistics, location, and a request the child be covered under the Interstate Compact on the Placement of Children (ICPC). The DSCYF worker will notify the state of residence of the date Delaware Medicaid will terminate.

~~Once the state of residence has notified Delaware of the date they will start Medicaid coverage for the foster child, a copy of this verification will be sent to the Delaware Medicaid office so Delaware Medicaid coverage can be terminated.~~

~~Delaware Medicaid coverage should not be terminated without verification the state of residence will be starting coverage.~~

~~The Delaware Medicaid social worker will follow up regarding the Medicaid termination date if not notified by the DSCYF worker within 15 days of the proposed termination date.~~

**PUBLIC NOTICE****Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement Title XIX Medicaid State Plan changes mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Subtitle F of HIPAA, the Administrative Simplification section, standardizes the format of electronic data interchange of certain types of administrative and financial transactions used in healthcare. These changes reflect the replacement of local reimbursement code sets with the use of standard, more generic national codes for services.

**Summary of Changes - Reimbursement Methodology**

1. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services:
  - dental treatment and specialized dental services - change reimbursement from fee-for-service to a percentage of charges
  - add to the list of EPSDT services, Private Duty Nursing in excess of eight (8) hours with prior authorization.
2. Extended Services to Pregnant Women:
  - change reimbursement language from the locally specific "hourly" rate to the generic "unit" rate; unit rates are based on fifteen (15) minute increments.
3. Home Health Services
  - simplify the reimbursement methodology language and change reimbursement language from the locally specific per "visit" and "hour" rates to the generic "unit" rate; unit rates are based on fifteen (15) minute increments.
4. Private Duty Nursing
  - change reimbursement language from the locally specific "hourly" rate to the generic "unit" rate; unit rates are based on fifteen (15) minute increments.

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 Mary Ann Daniels, Policy and Program

Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by April 30, 2002.

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.

## REVISIONS

### TITLE XIX MEDICAID STATE PLAN STATE PLAN ATTACHMENT 4.19-B Page 3

~~Extended Services to Pregnant Women~~ will be reimbursed at a ~~negotiated hourly unit~~ rate for individual services.

### STATE PLAN ATTACHMENT 4.19-B Page 6

#### I. GENERAL PROVISIONS

##### A. Purpose

This plan establishes a reimbursement system for Home Health services, including skilled nursing, therapies, and home health aide services. This system complies with federal requirements, including the requirement that Medicaid payments in the aggregate do not exceed what would have been paid by Medicare based on allowable cost principles.

##### B. Reimbursement Principles Home Health Services

1. Providers of Home Health services shall be reimbursed prospectively determined rates, ~~based on costs reported by each agency according to standard HCPCS definitions.~~

2. Skilled Nursing and Therapy services shall be reimbursed per visit. Home Health Aide services shall be reimbursed per hour.

3. ~~2.~~ Providers will be ~~reimbursed~~ prospectively reimbursed the lower of their Usual and Customary charge or the Medicaid rate.

#### H. RATE DETERMINATION

##### A. Cost Determination

1. Prospective rates for skilled nursing, therapies, and home health aide services will be computed from annual provider certified cost report data. Reimbursable costs are those allowable costs based on Medicare principles in accordance with HIM15, and subject to caps and ceilings determined by Delaware Medicaid.

2. Prospective rates will not exceed the Medicare rate limitation for the same services. Costs applicable to Home Health services shall not exceed the lowest cost of comparable services purchased elsewhere. The cost report

~~used in the rate calculation will represent the most recent State audited provider fiscal year.~~

### STATE PLAN ATTACHMENT 4.19-B Page 6a

#### B. Rate Calculation

~~Skilled nursing, therapies, and home health aide services shall be reimbursed according to the cost of care determined prospectively up to a calculated ceiling. The total costs reported by each agency for each discipline will be divided by the number of visits to determine the average cost per visit. The inflated average cost per visit of each agency will be arrayed by discipline, and the ceiling set at the 75<sup>th</sup> percentile of this array.~~

#### C. Supply Costs

~~Supply costs will be reimbursed as part of the skilled nursing and home health aide prospective rates. The total cost of supplies as reported by each agency is divided by the sum of the skilled nursing visits and aide visits to determine the average supply cost per visit. The average supply costs per visit for each agency is arrayed, and a ceiling set at the 75<sup>th</sup> percentile of this array. The average supply cost of each agency, up to the ceiling, is added to the prospective rate for skilled nursing services. The average supply cost of each agency is multiplied by that agency's home health aide hours per visit ratio to determine the average supply cost per hour, and added to the prospective rate for home health aides.~~

#### D. Administrative and General Costs

~~Delaware Medicaid will not consider in the rate calculation administrative and general costs, which exceed 40% of the total reported costs in each discipline. Total costs for each discipline will be capped before the costs are arrayed to determine the 75<sup>th</sup> percentile ceiling. The rate year from July 1, 1993 to June 30, 1994 will be considered a "hold harmless" period for the Administrative and General cost cap only.~~

### STATE PLAN ATTACHMENT 4.19-B Page 6b

#### III. RATE REVIEW

##### A. Rebase of Cost Data

~~The prospective rates will be calculated and ceilings will be rebased every three years using the most recent audited provider cost reports. The rates and the ceilings will be inflated in interim years.~~

##### B. New Agencies

~~1. "New agencies" are home health providers, which newly enroll in Medicaid after the last rate calculation. They may be newly operational and unable to~~

document 12 months of operational costs, or be existing agencies, which newly enroll with Medicaid.

2. New agencies with a year or more experience are required to submit an audited cost report at the time of enrollment. If the initial report representing a full year of operational costs is submitted in an interim year, the agency will be reimbursed their inflated reported costs, up to the inflated ceiling.

3. If they agency has not been operational for a full year, they must submit a report of estimated costs. These agencies will be reimbursed the lower of their estimated costs or the ceiling for each discipline for the first year until they submit a cost report representing a full year of operation. An average cost per visit, or average cost per hour for home health aide, will be calculated from the initial cost report.

#### STATE PLAN ATTACHMENT 4.19-B

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#### DELAWARE RATES FOR PRIVATE DUTY NURSING

Private Duty Nursing Services, whether performed by a provider located in Delaware or a provider with an out-of-state location are reimbursed at a capped hourly unit rate with weekly maximum dollar limit per client, as set by the Delaware Medicaid Program. The hourly unit rates are reviewed whenever a rate increase is requested by a provider, but no more frequently than annually, by conducting a survey of agencies that provide private duty nursing services and capping the rate at the lowest level available of these prevailing rates. The weekly maximum dollar limit is derived by multiplying the capped hourly unit rate by the minimum number of hours units necessary to maintain the client in the home as an alternative to institutionalization, but not to exceed eight (8) hours daily.

#### STATE PLAN ATTACHMENT 4.19-B

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Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services are reimbursed as follows:

1. Screening services - fee-for-service.
2. Treatment services - fee-for-service.
3. Dental Treatment - ~~flat fee per year per child to Division of Public Health~~ or a percentage of charges for routine dental services ~~provided in a private dentist's office.~~
4. Specialized Dental Services - ~~fee-for-service approved through DPH~~ or a percentage of charges for specialized dental services ~~if provided directly by a private dentist.~~

#### 5. Non-State Plan Other EPSDT Services

Reimbursement for services not otherwise covered under the State Plan is determined by the Medicaid agency through review of a rate setting committee. Non-

institutional services are paid on a fee-for-service basis. Institutional services are per diem rates based on reasonable costs. These services include:

- a. Prescribed Pediatric Extended Care - see ATT. 4.19-B, Page 7
- b. Inpatient and Partial Hospital Psychiatric Services - reimbursed on a per diem basis
- c. Outpatient Psychiatric Facility Services - fee-for-service
- d. School-based Health Services - fee-for-service
- e. Mental Health and Drug/Alcohol Rehabilitation Services:

- Institutional - per diem
- Non-Institutional - fee-for-service or, if managed by the Department of Services for Children, Youth and Their Families' Division of Child Mental Health, bundled rates (see ATTACHMENT 4.19-B, Page 19 Addendum)

#### STATE PLAN ATTACHMENT 4.19-B

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#### Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Service-

5. ~~Non-State Plan~~ Other EPSDT Services-(cont)
  - f. Assistive Technology - fee-for-service
  - g. Orthotics and Prosthetics - fee-for-service
  - h. Private Duty Nursing in excess of 8 hours per day with prior approval - fee-for-service
    - i. Any other medical or remedial care provided by licensed medical providers - fee-for-service
    - j. Any other services as required by §6403 of OBRA '89 as it amended §1902(a)(43), 1905(a)(4)(b) and added a new §1905(r) to the Act will be reimbursed as determined by the rate setting committee.

**Symbol Key**

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

**Final Regulations**

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

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

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF VETERINARY MEDICINE  
24 DE Admin. Code 3300  
Statutory Authority: 24 Delaware Code,  
Section §3306(a)(1) (24 Del.C. 3306(a)(1))**

**ORDER****Summary of the Evidence and Information Submitted  
Written Comments**

There were no written comments received addressing the proposed rules and regulations.

**Sworn Testimony  
Findings of Fact**

1. Pursuant to 24 *Del. C.* § 3306 (a) (1), the Board of Veterinary Medicine of the State of Delaware (the "Board") proposed to revise Rule 2.1.7 in its Rules and Regulations as more specifically set forth in the Hearing Notice which is attached hereto as Exhibit "A" and incorporated herein.

2. Pursuant to 29 *Del. C.* § 10115, notice was given to the public that a hearing would be held on March 12, 2002, at 1:00 p.m. in the Second Floor Conference Room "A" of the Cannon Building, 861 Silver Lake Boulevard, Dover,

Delaware to consider the proposed revision. Notice was posted in two Delaware newspapers of general circulation as more specifically set forth in the affidavits which are attached hereto as Exhibits "B" and "C" and incorporated herein.

3. The notice invited the public to submit written comments regarding the proposed revision.

4. A hearing was held on March 12, 2002, at which a quorum of the Board of Veterinary Medicine was present.

5. The Board has decided that the revision to Rule 2.1.7 to further clarify the amount of time that a veterinarian should retain veterinary records.

6. The Board of Veterinary Medicine finds the proposed revision serves to implement or clarify 24 *Del. C.* Chapter 33.

**Text and Citation**

The text of the Rules and Regulations hereby promulgated are as it appeared in the Delaware Register of Regulations, Vol. 5, Issue 8 (February 1, 2002). The text is attached hereto as Exhibit "E."

**Decision**

**NOW, THEREFORE**, based on the Board of Veterinary Medicine's authority to formulate rules and regulations pursuant to 24 *Del. C.* § 3306 (a) (1), it is the decision of the Board of Veterinary Medicine to adopt the proposed revision to Rule 2.1.7 of its Rules and Regulations.

The Board has decided that the revision to Rule 2.1.7 further clarifies the amount of time that a veterinarian should retain veterinary records. A copy of the rules and regulations is attached hereto as Exhibit "F" with the changes incorporated herein. Such regulations shall be effective ten days after the date this Order is published in its final form in the Register of Regulations.

**IT IS SO ORDERED** this 12th day of March, 2002.

**Delaware State Board Of Veterinary Medicine**

John T. Gooss, V.M.D., President

William Cross, Vice-President, Public Member

Caroline Hughes, V.M.D., Professional Member

Sharon Little, D.V.M., Professional Member

Peggy Swygert, Public Member

- 1.0 Direct Supervision
- 2.0 Unprofessional Conduct
- 3.0 Privileged Communications
- 4.0 Veterinary Premises and Equipment
- 5.0 Qualification for Licensure by Examination as a Veterinarian
- 6.0 Character of Examination - North American Veterinary Licensing Examination (NAVLE)
- 7.0 Reciprocity
- 8.0 Licensure - Renewal
- 9.0 Continuing Education
- 10.0 Voluntary Treatment Option

**1.0 DIRECT SUPERVISION** (24 Del. C. § 3303(10))

1.1 Direct Supervision - refers to the oversight of any person performing support activities (support personnel) by a licensed Delaware veterinarian. Oversight includes control over the work schedule of the person performing support activities and any remuneration the person receives for performing such activities. Oversight does not include remuneration paid directly to support personnel by the public. The constant physical presence of the licensed veterinarian on the premises is not required, however, if the licensed veterinarian is accessible to support personnel by electronic means or has arranged for another supervising licensed veterinarian to be accessible by electronic means. All acts by support personnel not prohibited by Rule 1.2 which constitute the practice of veterinary medicine under 24 Del. C. § 3302 (6) must be performed under direct supervision. Direct supervision of support personnel also includes:

1.1.1 The initial examination of the animal by the veterinarian prior to the delegation of work to be performed by support personnel. The veterinarian may, however, authorize support personnel to administer emergency measures prior to the initial examination.

1.1.2 The development of a treatment plan by the veterinarian that shall be referenced by support personnel.

1.1.3 The authorization by the veterinarian of the work to be performed by support personnel.

1.2 At no time may support personnel perform the following activities (24 Del. C. § 3303(10)):

1.2.1 Diagnosing.

1.2.2 Prescribing.

1.2.3 Inducing Anesthesia.

1.2.4 Performing Surgery.

1.2.5 Administration of Rabies Vaccinations.

1.2.6 Operative dentistry and oral surgery.

1.2.7 Centesis of body structures (not to include venipuncture and cystocentesis) in other than emergency situations.

1.2.8 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters).

1.2.9 Splinting or casting of broken bones in other than emergency situations.

1.2.10 Euthanasia.

1.2.11 Issue health certificates.

1.2.12 Perform brucellosis, equine infectious anemia and tuberculosis tests and other tests which are regulated by federal and state guidelines.

**2.0 UNPROFESSIONAL CONDUCT** (24 Del.C. § 3313(a)(1))

2.1 Unprofessional conduct in the practice of veterinary medicine shall include, but not be limited to, the following;

2.1.1 Allowing support personnel to perform the acts forbidden under Section 1.2 of the Rules and Regulations.

2.1.2 Allowing support personnel to perform tasks without the required direct supervision as specified in Section 1.1 of the Rules & Regulations.

2.1.3 Representation of conflicting interests except by express consent of all concerned. A licensee represents conflicting interests if while employed by a buyer to inspect an animal for soundness he or she accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of fraud.

2.1.4 Use by a veterinarian of any certificate, college degree, license, or title to which he or she is not entitled.

2.1.5 Intentionally performing or prescribing treatment, which the veterinarian knows to be unnecessary, for financial gain.

2.1.6 Placement of professional knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

2.1.7 ~~Intentionally left blank.~~ Destruction of any part of a patient's records before a minimum of three (3)

years have elapsed from the last entry in the medical record shall be considered unprofessional conduct. Records are to include, but are not limited to, information such as written or electronic documentation, rabies records, radiographs, ultrasounds, laboratory, and histopathological results.

2.1.8 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 *Del. C.* § 1325.

2.1.8.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing convenient access to appropriate food and water. If animals are group housed, they should be maintained in compatible groups without overcrowding.

2.1.8.2 Housing should be kept in good repair to prevent injury to the animal.

2.1.8.3 Failure to take precautions to prevent the spread of communicable diseases in housing animals.

2.1.9 Leaving an animal during the maintenance stage of anesthesia.

2.1.10 Improper labeling of prescription drugs. The package or label must contain:

2.1.10.1 Name, strength, and quantity of the drug;

2.1.10.2 Usage directions.

2.1.11 Failure to make childproof packaging available for prescription drugs upon the request of a client.

2.1.12 Misrepresenting continuing education hours to the Board.

2.1.13 Failure to obey a disciplinary order of the Board.

### **3.0 PRIVILEGED COMMUNICATIONS (24 *Del. C.* § 3313(a)(7))**

3.1 Privileged Communications. Veterinarians must protect the personal privacy of patients and clients by not willfully revealing privileged communications regarding the diagnosis and treatment of an animal. The following are not considered privileged communications:

3.1.1 The sharing of veterinary medical information regarding the diagnosis and treatment of an animal when required by law, subpoena, or court order or when it becomes necessary to protect the health and welfare of other individuals or animals.

3.1.2 The sharing of veterinary medical information between veterinarians or facilities for the purpose of diagnosis or treatment of animals.

3.1.3 The sharing of veterinary medical information between veterinarians and peace officers, humane society officers, or animal control officers who are acting to protect the welfare of individuals or animals.

### **4.0 VETERINARY PREMISES & EQUIPMENT (24 *Del. C.* § 3313 (9))**

4.1 The animal facility shall be kept clean. A regular schedule of sanitary maintenance is necessary, including the elimination of wastes.

4.2 Animal rooms, corridors, storage areas, and other parts of the animal facility shall be washed, scrubbed, vacuumed, mopped, or swept as often as necessary, using appropriate detergents and disinfectants to keep them free of dirt, debris, and harmful contamination.

4.3 Animal cages, racks, and accessory equipment, such as feeders and water utensils, shall be washed and sanitized as often as necessary to keep them physically clean and free from contamination. In addition, cages should always be sanitized before new animals are placed in them. Sanitizing may be accomplished either by washing all soiled surfaces with a cleaning agent having an effective bactericidal action or with live steam or the equivalent thereof.

4.4 Cages or pens from which animal waste is removed by hosing or flushing shall be cleaned and suitably disinfected one or more times daily. Animals should be removed from cages during servicing in order to keep the animals dry.

4.5 If litter or bedding such as paper is used in animal cages or pens, it shall be changed as often as necessary to keep the animals clean.

4.6 Waste disposal must be carried out in accordance with good public health practice and federal and state regulations. Waste materials should be removed regularly and frequently so that storage of waste does not create a nuisance.

4.7 Biomedical waste such as culture plates, tubes, contaminated sponges, swabs, biologicals, needles, syringes, and blades, must be disposed of according to federal and state guidelines. Before disposing of blood soiled articles, they shall be placed in a leak-proof disposable container such as a plastic sack or a plastic-lined bag.

4.8 Proper refrigeration and sterilization equipment should be available.

4.9 Adequate safety precautions must be used in disposing animal carcasses and tissue specimens. An animal carcass shall be disposed of promptly according to federal and state law and regulations. If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed. Livestock shall be disposed of by any acceptable agricultural method.

4.10 The elimination or effective control of vermin shall be mandatory.

**5.0 QUALIFICATION FOR LICENSURE BY EXAMINATION AS A VETERINARIAN** (24 Del. C. § 3307)

5.1 The applicant shall file the following documents:

5.1.1 Completed application form obtained from the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.

5.1.2 Official transcript from an AVMA approved veterinary college or university or its equivalent (Educational Commission for Foreign Veterinary Graduates).

5.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed.

5.1.4 North American Veterinary Licensing Examination (NAVLE) score or both the official National Board Examination (NBE) and Clinical Competency Test (CCT) scores, unless the applicant meets the statutory exemptions in 24 Del. C. § 3309.

5.1.5 Check or money order for the amount established by the Division of Professional Regulation. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."

5.2 Only completed application forms will be accepted. In the case of incomplete application forms, omissions will be noted to the applicant. Any information provided to the Board is subject to verification.

5.3 Applications for any licensure submitted by final year veterinary students enrolled in an AVMA accredited university for the purpose of taking the NAVLE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

**6.0 CHARACTER OF EXAMINATION - NORTH AMERICAN VETERINARY LICENSING EXAMINATION (NAVLE)** (24 Del. C. § 3306)

6.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the North American Veterinary Licensing Examination (NAVLE) after November 2000 or its successor.

6.1.1 The passing score for the NAVLE shall be the score as recommended by the National Board of Veterinary Medical Examiners or its successor.

**7.0 RECIPROCITY** (24 Del. C. § 3309)

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the same application requirements set forth in 24 Del. C. § 3309.

**8.0 LICENSURE - RENEWAL** (24 Del. C. § 3311)

8.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. Continuing education requirements for renewal are specified in Section 9.0. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

8.2 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the established renewal fee and submitting the continuing education requirements for renewal as specified in Section 9.0.

**9.0 CONTINUING EDUCATION** (24 Del. C. § 3311(b))

9.1 Any veterinarian actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

9.1.1 Twenty-four (24) hours of approved certified continuing education credits must be completed for the immediate two year period preceding each biennial license renewal date.

9.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board. The continuing education credit hours shall be submitted to the Board no later than 60 days prior to the biennial license renewal date. The Board may audit the continuing education credit hours submitted by a licensee.

9.1.3 A veterinarian may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence.

**9.2 Continuing Education Requirements for Reinstatement of Lapsed License**

9.2.1 Any veterinarian whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.

9.2.1.1 *Lapse of 12 to 24 months.* Twenty-four (24) hours of continuing education credits must be completed. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

9.2.1.2 *Lapse of over 24 months.* Thirty-six

(36) hours of continuing education credits must be completed. The 36 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.

9.3 Continuing Education Requirements for Reinstatement of Inactive License

9.3.1 Twenty-four (24) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.

9.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.

9.5 The following organizations are approved for formal continuing education activities.

9.5.1 AVMA.

9.5.2 AVMA accredited schools.

9.5.3 Federal/State/County Veterinary Associations & USDA.

9.5.4 *Compendium on Continuing Education for the Practicing Veterinarian*; NOAH; VIN.

9.5.5 Registry of Approved Continuing Education (RACE) courses.

9.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

9.6.1 University course work, subject to Board approval.

9.6.2 Veterinary course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more that 2 1/2 years before the renewal date.

9.6.3 Government Agencies.

9.6.4 Other forms of CE as long as and the activity is approved by the Board.

9.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

## 10.0 VOLUNTARY TREATMENT OPTION

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated



professional's progress.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during

the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

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## DEPARTMENT OF AGRICULTURE FOOD PRODUCTS INSPECTION SECTION

Statutory Authority: 3 Delaware Code,  
Section 8708(8) ( 3 Del.C. §8708(8))

### ORDER

#### I. NATURE OF PROCEEDINGS

Pursuant to its authority under 3 Del.C. §8708(8), the Department proposed to amend its regulations concerning the rules of practice that govern agency enforcement actions by bringing them into conformity with federal law. The Department proposed to define each type of enforcement action that it may take, the conditions under which it is likely to take each of these actions and the procedures it will follow when it does so.

Notice of the public hearing on the Department's proposed amendments was published in the Delaware *Register of Regulations* for January 1, 2002 as well as in two Delaware newspapers of general circulation in accordance with 29 Del.C. §10115. Thereafter, the public hearing was held as noticed on Friday, February 15, 2002 before the Department's designee, Bruce Walton, and at which time, no public comments either written or oral having been received, Mr. Walton resolved to recommend to the Secretary of the Department that the proposed amended regulations be adopted. This is the Department's Decision and Order adopting the proposed amended regulations.

#### II. EVIDENCE SUBMITTED AT PUBLIC HEARING

The Department received no written comments in response to the notice of intention to adopt the proposed amended regulations. No public comments were received at the February 15, 2002 public hearing.

**III. FINDINGS AND CONCLUSIONS**

The public was given the required notice of the Department's intention to adopt the proposed regulations and was given ample opportunity to provide the Department with comments opposing the Department's plan. Thus, the Department concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, it is now free to do so.

**IV. ORDER**

**NOW THEREFORE**, it is hereby ordered that:

1. The proposed amendments to the Department's food products inspection regulations are adopted in the language found at 66545 of the Federal Register at Volume 64, No. 228, and beginning with the heading "Part 304 - Application for Inspection; Grant of Inspection" and ending at page 66547 at the end of Section 500.8(c), which is incorporated by reference herein.

2. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations* in accordance with 29 Del. C. §10118(e).

3. The Department reserves the jurisdiction and authority to issue such other and further orders in this matter as may be just and proper.

Michael T. Scuse, Secretary  
Delaware Department of Agriculture

The Delaware Department of Agriculture, Food Products Inspection Section proposed to amend its regulations concerning the rules of practice that apply to agency enforcement actions by bringing them into the conformity with federal law. The Department proposed to define each type of enforcement action that it may take, the conditions under which it likely to take each of these actions, and the procedures it will follow in doing so.

The proposed amendments are part of the Department's ongoing effort to consolidate, streamline, and clarify the meat and poultry product inspection regulations. To that end, the Department is proposed to adopt by reference, in their entirety, the federal regulations published in the Federal Register at Volume 64, Number 228, dated November 29, 1999, amending the Code of Federal Regulations at 9 CFR Sections 304, 305, 327, 335, 381 and adding a new Part 500 which became effective January 25, 2000.

**AUTHORITY**

These proposed amendments to regulations governing food product inspection are promulgated pursuant to the Department's authority set forth in Section 8708(a) of Title 3

of the Delaware Code.

**PURPOSE**

The purpose of these proposed amendments to regulations is to consolidate, streamline, and clarify the meat and poultry product inspection regulations thereby insuring that Department enforcement actions are fair by identifying the situations that may lead to such actions.

**SUBSTANTIVE PROVISIONS**

The Department incorporates by reference herein, in its entirety, the language found at page 66545 of the Federal Register at Volume 64, Number 228, beginning with the heading "Part 304-Application for Inspection; Grant of Inspection" and ending at page 66547 at the end of Section 500.8(c).

**ORDER ADOPTING REGULATIONS**

AND NOW, this 13th day of March 2002, and in accordance with 29 **Del.C.** §10118 and for the reasons set forth herein, the Food Products Inspection Section of the Delaware Department of Agriculture (hereinafter "the Department") enters this Order adopting regulations.

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**HARNES RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10027 (3 **Del.C.** §10027)

**Order**

Pursuant to 29 **Del.C.** §10113(b) and 3 **Del.C.** §10027, the Delaware Harness Racing Commission ("the Commission") hereby issues this Order adopting an amendment to Commission Rule 10.2.9.1.

Whereas, the Delaware Standardbred Breeder's Fund has adopted Regulations published in the Register of Regulations on December, 2001 and those final Regulations established an appeal process for decisions of the Administrator of the Breeder's Program; and,

Whereas, the Breeder's Fund Regulation 13.2 provide that the decisions of the Administrator of Racing may be appealed to the Harness Racing Commission; and,

Whereas, the enactment of the Breeder's Fund Regulations require nonsubstantive amendment of the Harness Racing Commission;

**IT IS SO ORDERED** this 12th day of March, 12, 2002:

1. The Commission finds that a nonsubstantive amendment to Commission Rule 10.2.9.1 is required for

consistency with the existing Breeder's Fund Regulations. The Commission's amendment to Rule 10.2.9.1 is exempt from the public hearing requirements of 29 Del.C. chapter 101. The Commission finds that the amendment to Commission Rule 10.2.9.1 is an amendment to the rules of practice and procedure used by the agency and is an amendment necessary to make the Commission's regulations consistent with changes in Breeder's Fund regulations. The Commission concludes that the proposed amendment to Commission Rule 10.2.9.1 may be adopted informally pursuant to 29 Del.C. §10113(b)(2)(5).

2. The Commission after consideration and discussion has adopted the following amendment to Rule 10.2.9.1:

10.2.9.1 A person aggrieved by a ruling of the State Steward, judges, or the Administrator of the Breeder's Program may appeal to the Commission except as provided in subdivision 10.2.9.6 of this subsection. A person who fails to file an appeal by the deadline in the form required by this section waives the right to appeal. Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals under these Rules. For purposes of appeals from decisions of the Administrator of the Breeder's Program, the Commission will take official notice of the rules and regulations enacted by the Delaware Standardbred Breeders' Fund.

3. This Order is effective immediately and the Commission will be submitted to the Register of Regulations for publication.

Beth Steele, Chair  
Mary Ann Lambertson, Commissioner  
Thomas Conaty, IV, Esquire, Commissioner  
Robert Everett, Commissioner  
Kenneth Williamson, Commissioner

## DEPARTMENT OF EDUCATION

14 DE Admin. Code

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

### Reauthorization Of Certification Regulations 326 And 327 Order Amending Rules And Regulations

#### 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 reauthorize regulations 326 and 327 from the *Regulations of the Department of Education*. The reauthorized regulations will also be renumbered to reflect their movement to the Professional Standards Board section of the regulations. All regulations listed concern the requirements for certification of educational personnel.

1526 ~~326~~ Certification English to Speakers of Other Languages (ESOL) Teachers

Delete effective date of ~~July 1, 1993~~ and insert April 11, 2002 in lieu thereof.

1527 ~~327~~ Endorsement English to Speakers of Other Languages (ESOL) Teacher

Delete effective date of ~~March 20, 1997~~ and insert April 11, 2002 in lieu thereof.

Notice of the proposed repeal of regulations was published in the News Journal and the Delaware State News on February 7, 2002, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

#### II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to reauthorize these regulations. All regulations listed concern the requirements for certification of educational personnel

#### III. Decision To Repeal The Regulations

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

**IV. Text And Citation**

The text of the regulations 1526 and 1527, shall be in the form attached hereto as Exhibit "B", and said regulations shall be cited from the *Regulations of the Department of Education*.

**V. Effective Date Of Order**

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

Approved By The Professional Standards Board The 14<sup>th</sup> Day Of September, 2002:

Charles Michels, Chair	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Sherie Hudson	Tony Marchio
Mary Mirabeau	John Pallace
Michèle Hazeur-Porter	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich
Jacquelyn Wilson	

**For Implementation By The Department Of Education:**

Valerie A Woodruff, Secretary of Education

It Is So Ordered This 21<sup>th</sup> Day Of March, 2002.

Dr. Joseph A. Pika, President  
Jean W. Allen, Vice President  
Robert Gilsdorf  
Mary B. Graham, Esquire  
Valarie Pepper  
Dennis J. Savage  
Dr. Claibourne D. Smith

**~~1526~~ ~~326~~ Certification English To Speakers Of Other Languages (ESOL) Teachers**

~~Effective July 1, 1993~~ Effective April 11, 2002

1.0 The following shall be required for the Standard License in grades K-12

- 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 English to Speakers of Other Languages (ESOL) or,

1.2.2 A minimum of 24 semester hours to include Human Development; Methods of Teaching Elementary Language Arts, or English, or Foreign Language; Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching

and,

1.3 Specific Teaching Field

1.3.1 Major in English to Speakers of Other Languages (ESOL) or,

1.3.2 Completion of an approved teacher education program in English to Speakers of Other Languages (ESOL) or,

1.3.3 Completion of an approved teacher education program in English, Foreign Language, or Elementary Education, with specific courses in: Second Language Acquisition/Psycholinguistics, 3 semester hours, Methods of Teaching English as a Second, Language, or English as a Second Dialect, 3 semester hours, Structure of the English Language, 3 semester hours, Second Language Testing, 3 semester hours, Ethnic Studies/Multicultural Education, 3 semester hours and

1.3.4 Successful completion of the intermediate level of a foreign language. This requirement may be satisfied by a Department of Education approved proficiency test.

2.0 The following shall be required for the Limited Standard License (not renewable)

2.1 This License may be issued for a period of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as an English to Speakers of Other Languages (ESOL) teacher to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Completion of an approved teacher education program in English, Foreign Language, or Elementary Education and,

2.1.2 Specialized preparation required:

2.1.2.1 Three semester hours Methods of Teaching English as a Second Language or English as a second dialect and,

2.1.2.2 Cross-cultural experience gained through either college credits (which include field work) or by work experience.

2.2 Licenses that may be issued for this position include Standard and Limited Standard.

**~~1527~~ ~~327~~ Endorsement English To Speakers Of Other Languages (ESOL) Teacher**

~~Effective March 20, 1997~~ Effective April 11, 2002

1.0 The following shall be required for the Standard Endorsement in grades 9-12, in grades 5-8 in departmentalized middle-level schools, and in adult education for individuals teaching content area courses (mathematics, science, English, social studies, etc.) to classes primarily designed for or primarily composed of students who are speakers of other languages. Optional for

all other fully-certified teacher.

1.1 Bachelor's degree from an accredited college and,

1.2 A standard Delaware certificate in the content area(s) which the individual is teaching to speakers of other languages and,

1.3 A minimum of 15 semester hours of coursework in teaching English as a second language to include the following: Second Language Acquisition/Psycholinguistics, 3 semester hours, Methods of teaching English as a Second Language, 3 semester hours, Structure of the English Language, 3 semester hours, Second Language Testing, 3 semester hours, Ethnic Studies/Multicultural Education, 3 semester hours.

2.0 The following shall be required for the Limited Standard Endorsement

2.1 Bachelor's degree from an accredited college and,

2.2 A standard Delaware certificate in the content area(s) which the individual is teaching to speakers of other languages.

3.0 Endorsements issued for this position may include Standard and Limited Standard.

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**Regulatory Implementing Order**  
**245 Michael C. Ferguson Achievement Awards**  
**Scholarship**

**I. Summary Of The Evidence And Information**  
**Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 245 Michael C. Ferguson Achievement Awards Scholarship. The amendments are needed to exempt foreign exchange students on a temporary visa from receiving the scholarship award (1.3), to clarify the wording of the exception on the number of scholarships awarded (was 2.0, is now 1.1.1, 1.1.2, 1.2.1 and 1.2.2), to clarify that the post secondary institutions or programs that the scholarship winners attend must be accredited either nationally, regionally or by a state (was 4.0 is now 3.0), and to remove some unnecessary procedural language in the amended 4.4 and 4.4.1, (previously 5.4 and 5.4.1). The student was added to 4.4.2 as also being responsible for notifying the Higher Education Commission if the student does not plan to enter a higher education institution immediately after high school. This clarification and the revision of 1.1.1, 1.1.2, 1.2.1 and 1.2.2 for clarification purposes, were both recommended by the State Board of Education.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on January 23,

2002, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

**II. Findings Of Facts**

The Secretary finds that it is necessary to amend this regulation in order to exempt foreign exchange students on a temporary visa from receiving the scholarship award, to clarify the wording of the exception on the number of scholarships awarded, to clarify that the post secondary institutions or programs that the scholarship winners attend must be accredited either nationally, regionally or by a state, and to remove some unnecessary procedural language. The word student was also added to the names of those responsible for notifying the Higher Education Commission if the student does not plan to enter a higher education institution immediately after high school

**III. Decision To Amend The Regulation**

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del.C.*, §153, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provisions 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 fourth in Section V. below.

**IV. Text And Citation**

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited in the *Regulations of the Department of Education*.

**V. Effective Date Of Order**

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del.C.*, §153, in open session at the said Board's regularly scheduled meeting on March 21, 2002. 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** this 21 day of March 2002.

**Department Of Education**

Valerie A Woodruff, Secretary of Education

Approved this 22nd day of March 2001.

**State Board Of Education**

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President  
 Robert J. Gilsdorf  
 Mary B. Graham, Esquire  
 Valarie Pepper  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

## 245 Michael C. Ferguson Achievement Awards Scholarship

The Michael C. Ferguson Achievement Awards Scholarship Program, included in the Educational Accountability Act of 1998, recognizes students who demonstrate superior performance on the assessments administered pursuant to 14 Del. C. Section 153 (c).

1.0 Subject to available funding, the Michael C. Ferguson Achievement Awards shall be made based on the student's score on the results of the annual spring administration of the Delaware Student Testing Program. Scores from re-testing shall not be considered. The Scholarships may be awarded to a maximum of 300 eighth grade students in the content areas of reading, writing and mathematics and to a maximum of 300 tenth grade students in the content areas of reading, writing, and mathematics.

1.1 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics shall receive the scholarships.

1.1.1 The eighth grade awards may be given to a maximum of ~~[50 150]~~ students in ~~[the areas of]~~ reading ~~[a maximum of 50 students in]~~ writing and ~~[a maximum of 50 students in]~~ mathematics. ~~[The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be awarded in the priority order of reading, mathematics and writing.]~~

1.1.2 The tenth grade awards may be given to a maximum of ~~[50 150]~~ students in ~~[the areas of]~~ reading, ~~[a maximum of 50 students in]~~ writing and ~~[a maximum of 50 students in]~~ mathematics. ~~[The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be allocated in the priority order of reading, mathematics and writing.]~~

1.2 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics, who participate in the free and reduced lunch program and who are not already identified as one of the students in section 1.1. shall receive the scholarships.

1.2.1 The eighth grade awards may be given to a maximum of ~~[ 50 150]~~ students in ~~[the areas of]~~ reading, ~~[a maximum of 50 students in]~~ writing and ~~[a maximum of 50 students in]~~ mathematics. ~~[The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be allocated in the priority order of reading, mathematics and writing.]~~

1.2.2 The tenth grade awards may be given to a maximum of ~~[50 150]~~ students in ~~[the areas of]~~ reading, ~~[a maximum of 50 students in]~~ writing and ~~[a maximum of 50 students in]~~ mathematics. ~~[The number of awards shall be as close to fifty in each area as possible and the unassigned awards shall be allocated in the priority order of reading, mathematics and writing.]~~

1.3 A Foreign Exchange student who is on a temporary visa is not eligible to receive the Michael C Ferguson Achievement Award Scholarship.

~~[2.0 Exception: If the implementation of 1.0 results in fewer than 150 scholarships being awarded at either grade 8 or 10 for either the highest scores on the DSTP without reference to any other indicators of performance, or the highest scores on the DSTP for students who participate in free and reduced lunch programs, the Department shall award additional scholarships. Such additional scholarships shall be awarded to students scoring at the next qualifying level by priority order of reading, mathematics and writing. Such additional awards shall be granted by priority curriculum area until no more awards can be made without exceeding the 150 limit previously specified.]~~

~~[2.0 3.0]~~ Students may receive a scholarship in more than one content area and may also receive scholarships for their 8<sup>th</sup> and their 10<sup>th</sup> grade scores.

~~[3.0 4.0]~~ The Michael C. Ferguson Scholarship Award can only be used at a regionally or nationally accredited post secondary institution or at a Delaware or other state approved private business and trade school in the United States of America. The award cannot exceed direct educational costs.

~~[4.0 5.0]~~ All scholarship awards shall be deposited in an account at the Delaware Higher Education Commission in an interest bearing account. Interest earned shall be utilized by the Department of Education and/or Delaware Higher Education Commission to offset administrative expenses associated with the program.

~~[4.1 5.1]~~ Funds deposited for scholarships through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend a post secondary institution within five calendar years after graduating from high school.

~~[4.2 5.2]~~ It is the responsibility of the parent or guardian to notify the Higher Education Commission of any change of address during the scholarship eligibility period. Students may receive their scholarship awards even if they are living in another state at the time they attend a post secondary institution.

~~[4.3 5.3]~~ The Department of Education shall annually announce the winners of Michael C. Ferguson Scholarships.

~~[4.4 5.4]~~ The Delaware Higher Education Commission shall send a "Request for Information" form to Michael C. Ferguson Scholarship recipients ~~in the spring of their high school senior year to determine whether they plan to use their scholarship in the following year, and which institution they will attend.~~ annually to update their account information

~~[4.4.1 5.4.1]~~ ~~In August following high school graduation,~~ The Delaware Higher Education Commission shall send enrollment verification forms to institutions identified by recipients. When completed verification forms are received by the Delaware Higher Education Commission, disbursement of scholarship funds will be made to the institution.

~~[4.4.2 5.4.2]~~ If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the **[student]** parent or guardian's responsibility to provide timely notification to the Delaware Higher Education Commission prior to enrollment in order to receive payment of the scholarship.

~~[4.4.3 5.4.3]~~ Recipients may defer all or a portion of payment of Michael C. Ferguson Scholarships beyond their first post secondary year, but must assume the responsibility to notify the Delaware Higher Education Commission of their plans to claim the Scholarship, and may not extend payment beyond the five year limit.

See 4 DE Reg. 224 (7/1/00)

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF LONG TERM CARE  
RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code,  
Sections 3001A-3006A  
(16 Del.C. §§3001A-3006A)

**Regulations for Training and Qualifications for Nursing  
Assistants and Certified Nursing Assistants**

**Nature of the Proceedings:**

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt the final six Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants. On January 1, 2002, DLTCRP published proposed regulations in the Register of Regulations and

received written and verbal comments at a public hearing on February 6, 2002.

DLTCRP reviewed and evaluated all the comments. As a result of that evaluation, the proposed regulations are being promulgated as final regulations. The evaluation of those comments is in the accompanying Summary of Evidence.

**Summary of Evidence:**

Comments on the proposed regulations have been received and evaluated as follows:

One written comment suggested alternative phrasing for Regulation 69.301E to make the wording less awkward. Since the suggested wording does clarify the regulation without changing its meaning, and is a non-substantive change which does not require a further public hearing, the change is incorporated in the final regulation.

One written comment proposed that residents be able to participate in the training of the CNA who will be helping them. The suggestion does not appear to be directly related to any of the proposed regulations. However, facilities may wish to incorporate the suggestion in their orientation programs.

One comment proposed that the regulations include a specific provision authorizing DLTCRP to waive a regulation. Although that comment is not specific to the proposed regulations, DLTCRP may waive a regulation upon a showing of good cause.

Several comments objected to the requirement for certification in cardiopulmonary resuscitation (CPR) in Regulation 69.303D6, and some commenters wanted a task force to study the proposed regulation in lieu of finalizing it. The CPR certification requirement has elicited comments pro and con in earlier public hearings. The requirement is retained in these regulations because some training courses already include CPR certification and because each facility may adopt its own policy regarding which personnel are authorized to administer CPR.

Similarly, one commenter suggested that the type of CPR training be specified in Regulation 69.303D6. While most facilities will choose to train CNAs in basic CPR, the intent of the regulation is to be general enough that facilities may opt for the CPR certification they deem appropriate to their facility.

**Findings of Fact:**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy,

should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Training and Qualifications for Nursing Assistants and Certified Nursing Assistants are promulgated effective April 10, 2002.

3.15.02 *Vincent P. Meconi*  
Vincent P. Meconi, Secretary

### **SECTION 69.100 - DEFINITIONS**

**69.101 Advanced Practice Nurse-** shall mean an individual whose education and licensure meet the criteria outlined in 24 Del., C. Chapter 19 and who is certified in at least one of the following specialty areas: (1) Adult nurse practitioner; (2) Gerontological clinical nurse specialist; (3) Gerontological nurse practitioner; (4) Psychiatric/mental health clinical nurse specialist; (5) Family nurse practitioner.

**69.102 Assisted Living Facility** – Assisted living facility is a residential arrangement for fee licensed pursuant to 16 Del. C., Chapter 11.

**69.103 Certified Nursing Assistant (CNA)** – a duly certified individual 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 person(s) to whom they are providing care.

**69.104 Department** – the Department of Health and Social Services.

**69.105 Division-** the Division of Long Term Care Residents Protection.

**69.106 Intermediate Care Facility** - Facility licensed pursuant to 16 Del. C., Chapter 11 with a license designated for intermediate care beds.

**69.107 Licensed Nurse** - shall mean a licensed practical nurse, registered nurse and/or advanced practice nurse whose education and licensure meet the criteria in 24 Del. C., Chapter 19.

**69.108 Licensed Practical Nurse (LPN)** – a nurse who is licensed as a practical nurse in Delaware or whose license is recognized to practice in the State of Delaware, and who may supervise LPN's, CNA's, NA's and other unlicensed personnel.

**69.109 Nursing Assistant (NA)** – an individual who has completed the requisite training to become a Certified Nursing Assistant but is awaiting certification.

**69.110 Nursing Services Direct Caregivers-** those individuals, as defined in 16 Del. C., Section 1161(e), assigned to the direct care of nursing facility residents.

**69.111 Personal Care Services** - those health related services that include supervision of, and direct assistance to, individuals in their activities of daily living.

**69.112 Physician** – a physician licensed to practice in the State of Delaware.

**69.113 Registered Nurse (RN)** – a nurse who is a graduate of an approved school of professional nursing and who is licensed in Delaware or whose license is recognized to practice in the State of Delaware.

**69.114 Rehabilitation** – the restoration or maintenance of an ill or injured person to self-sufficiency at his or her highest attainable level.

**69.115 Resident** – a person admitted to a nursing facility or similar facility licensed pursuant to 16 Del. C., Chapter 11.

**69.116 Restraint** – “physical restraints” are defined as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. “Chemical restraints” are defined as a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

**69.117 Senior Certified Nursing Assistant** – a Certified Nursing Assistant who has met the requirements and training specified in Section 4 of these regulations.

**69.118 Skilled Care Facility** – Facility licensed pursuant to 16 Del. C., Chapter 11 with a license designated for skilled care beds.

**69.119 Student** – a person enrolled in a course offering certification as a CNA.

**69.120 Supervision** – direct oversight and inspection of the act of accomplishing a function or activity.

### **SECTION 69.200 – GENERAL TRAINING REQUIREMENTS AND COMPETENCY TEST**

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/agency or facility staff shall be required to meet the following:

**69.201** An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.

**69.202** Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.

**69.203** Nursing Assistants shall take the competency test within 30 days of completion of an approved program or when the nearest testing location is available to the nursing assistant, whichever is later. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test, or they cannot continue to work as a nursing assistant.

**69.204** A Certified Nursing Assistant must perform at least 64 hours of nursing related services in a health care



setting during each 24-month certification period in order to qualify for recertification. A certified nursing assistant who does not perform at least 64 hours of nursing related services in a certification period must complete and pass a new training course and competency test, or competency test.

**69.205** A Certified Nursing Assistant trained and certified outside the State of Delaware shall be deemed qualified to meet the Department's requirements based on a current certificate from the jurisdiction where he/she presently practices, documentation of the equivalent of one year of full-time experience as a certified nursing assistant and verification that he/she is in good standing on that jurisdiction's Registry.

**69.206** Employees hired as Nursing Assistants/Certified Nursing Assistants who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a clinical component will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

**69.207** For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program **may** be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.

## SECTION 69.300 - CNA TRAINING PROGRAM REQUIREMENTS

### 69.301 General

To obtain approval, the curriculum content for the Certified Nursing Assistant training programs shall meet each of the following requirements:

A. The curriculum shall include material that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program.

B. The program shall be a minimum of 150 hours in length, divided equally between clinical skills training and classroom instruction. Additional hours may be in either of these areas or both.

C. Classroom instruction and demonstrated proficiency in each skill shall be completed prior to students' performing direct resident care. Programs shall maintain documentation of required skills that each student has successfully demonstrated to the RN instructor.

D. Classroom ratios of student to RN instructor shall not exceed 24:1. Clinical and laboratory ratios of student to instructor shall not exceed 8:1.

E. The RN instructor shall directly supervise students at all times during clinical instruction. Students shall remain in visual contact with a licensed nurse in the clinical setting while performing any skills ~~for~~

in which ~~they have not yet demonstrated and the program has documented~~ proficiency [has not been both demonstrated and documented].

F. Programs must notify the Division in writing (which may be faxed) when permanent and/or substantial changes to the program or the program's personnel are made. Examples of substantial changes include, but are not limited to, instructor(s), clinical or classroom site, major revision of course structure, change in textbook.

### 69.302 Equipment

All programs shall have available at a minimum the following equipment:

- A. Audio/Visual (Overhead projector and/or TV with VCR)
- B. Teaching Mannequin, Adult, for catheter and perineal care
- C. Hospital Bed
- D. Bedpan/Urinal
- E. Bedside commode
- F. Wheelchair
- G. Scale
- H. Overbed Table
- I. Sphygmomanometer
- J. Stethoscope
- K. Resident Gowns
- L. Thermometers, Glass and Electronic
- M. Crutches
- N. Canes (Variety)
- O. Walker
- P. Miscellaneous Supplies: i.e., Bandages, Compresses, Heating Pad, Hearing Aid, Dentures, Toothbrushes, Razors.
- Q. Foley Catheter Drainage Bag
- R. Hydraulic Lift
- S. Adaptive eating utensils/equipment

### 69.303 Curriculum Content

The following material identifies the minimum competencies that the curriculum content shall develop. Nursing assistants being prepared to work in skilled, intermediate, or assisted living facilities either as direct or contract staff shall master each competency. All demonstrable competencies for each student must be documented as mastered by the RN instructor in order for a student to qualify as successfully having completed that section of programming.

#### A. THE NURSING ASSISTANT ROLE AND FUNCTION

Introduces the characteristics of an effective nursing assistant: personal attributes, on-the-job conduct, appearance, grooming, health and ethical behavior. Also presented are the responsibilities of the nursing assistant as a member of the resident care team. Legal aspects of resident care and resident rights are presented. Relevant Federal and

State statutes are also reviewed.

Competencies:

(1) Function as a nursing assistant within the standards described below:

a. Define the role and functions of the nursing assistant and provide awareness of the legal limitations of being a nursing assistant.

b. Recognize the responsibilities of the nursing assistant as a member of the health care team. Understand the relevant State and Federal regulations for long term care and legalities of reporting and documenting incidents and accidents.

c. Understand the role of Long Term Care advocates, investigators and surveyors.

d. Identify the "chain of command" in the organizational structure of the health care agency.

e. Maintain personal hygiene and exhibit dress practices which meet professional standards.

f. Recognize the importance of punctuality and commitment to the job.

g. Differentiate between ethical and unethical behavior on the job.

h. Understand the role, responsibility and functional limitations of the nursing assistant.

(2) Demonstrate behavior that maintains resident's rights.

a. Provide privacy and maintenance of confidentiality.

b. Promote the resident's right to make personal choices to accommodate individual needs.

c. Give assistance in resolving grievances.

d. Provide needed assistance in going to and participating in resident and family groups and other activities.

e. Maintain care and security of resident's personal possessions as per the resident's desires.

f. Provide care which ensures that the residents are free from abuse, mistreatment, neglect or financial exploitation and report any instances of such poor care to the Division of Long Term Care Residents Protection. Discuss the psychological impact of abuse, neglect, mistreatment, misappropriation of property of residents and/or financial exploitation.

g. Maintain the resident's environment and care through appropriate nursing assistant behavior so as to keep the resident free from physical and chemical restraints.

h. Discuss the potential negative outcomes of physical restraints, including side rails.

## B. ENVIRONMENTAL NEEDS OF THE RESIDENT

Key Concepts: Introduces the nursing assistant to the need to keep residents safe from injury and infection in

the long-term care setting. The nursing assistant is taught why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

Competencies:

(1) Apply the basic principles of infection control.

a. Identify how diseases are transmitted and understand concepts of infection prevention.

b. Demonstrate proper hand washing technique.

c. Demonstrate appropriate aseptic techniques in the performance of normal duties and understand the role of basic cleaning, disinfecting, and sterilization tasks.

d. Demonstrate proper isolation and safety techniques in the care of the infectious resident and proper handling and disposal of contaminated materials.

(2) Assist with basic emergency procedures.

a. Follow safety and emergency procedures.

b. Identify safety measures that prevent accidents to residents.

c. Recognize signs when a resident is choking or may have an obstructed airway.

d. Assist with clearing obstructed airway.

e. Call for help when encountering convulsive disorders, loss of consciousness, shock, hemorrhage, and assist the resident until professional help arrives.

f. Follow disaster procedures.

g. Report emergencies accurately and immediately.

h. Identify potential fire hazards.

(3) Provide a safe, clean environment.

a. Identify the resident's need for a clean and comfortable environment. Describe types of common accidents in the nursing home and their preventive measures. Be aware of the impact of environmental factors on the resident in all areas including but not limited to light and noise levels.

b. Report unsafe conditions to appropriate supervisor. Use the nurse call system effectively.

c. Report evidence of pests to appropriate supervisory personnel.

d. Report nonfunctioning equipment to appropriate supervisory/charge personnel.

e. Prepare soiled linen for laundry.

f. Make arrangement of furniture and equipment for the resident's convenience and to keep environment safe.

### C. PSYCHOSOCIAL NEEDS OF THE RESIDENT

Key Concepts: Focus is placed on the diverse social, emotional, recreational and spiritual needs of residents in a long term care setting. The curriculum shall describe some of the physical, mental, and emotional changes associated with aging and institutionalization, and present ways in which the nursing assistant may effectively communicate with residents and their families.

#### Competencies:

(1) Demonstrate basic skills by identifying the psychosocial characteristics of the populations being served in the nursing facility including persons with mental retardation, mental illness and persons with dementia, Alzheimer's disease, developmental disabilities and other related disorders.

a. Indicate the ways to meet the resident's basic human needs for life and mental well being.

b. Modify his/her own behavior in response to resident's behavior. Respect the resident's beliefs recognizing cultural differences in holidays, spirituality, clothing, foods and medical treatments.

c. Identify methods to ensure that the resident may fulfill his/her maximum potential within the normal aging process.

d. Provide training in, and the opportunity for, self-care according to the resident's capabilities.

e. Demonstrate principles of behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior.

f. Demonstrate skills which allow the resident to make personal choices and promote the resident's dignity.

g. Utilize resident's family as a source of emotional support and recognize the family's need for emotional support.

h. Recognize how age, illness and disability affect memory, sexuality, mood and behavior, including wandering.

i. Describe aggressive and wandering behavior; recognize responsibility of staff related to wanderers and aggressive residents.

j. Discuss how appropriate activities are beneficial to residents with cognitive impairments.

k. Recognize and utilize augmentative communication devices and methods of nonverbal communication.

(2) Demonstrate appropriate and effective communication skills.

a. Demonstrate effective verbal and nonverbal communications in keeping with the nursing assistant's role with residents, their families and staff.

b. Observe by using the senses of sight,

hearing, touch and smell to report resident behavior to the licensed nurse.

c. Document observations using appropriate terms and participate in the care planning process.

d. Recognize the importance of maintaining the resident's record accurately and completely.

e. Communicate with residents according to their state of development. Identify barriers to effective communication. Recognize the importance of listening to residents.

f. Participate in sensitivity training in order to understand needs of residents with physical or cognitive impairments.

### D. PHYSICAL NEEDS OF THE RESIDENT

Key Concepts: Presents the basic skills which nursing assistants use in the physical care of residents. The nursing assistant will learn basic facts about body systems and what is needed to promote good functioning. The nursing assistant will learn to provide physical care to residents safely and to keep the resident nourished, hydrated, clean, dry and comfortable. The nursing assistant will also learn to make observations regarding residents and to record and/or report observations. The nursing assistant will be introduced to the basics of range of motion and learn to integrate range of motion into routine personal care activities.

#### Competencies:

(1) Apply the principles of basic nutrition in the preparation and serving of meals.

a. Incorporate principles of nutrition and hydration in assisting residents at meals.

b. Understand basic physiology of nutrition and hydration.

c. Understand basic physiology of malnutrition and dehydration.

d. Identify risk factors for poor nutritional status in the elderly:

i. compromised skin integrity

ii. underweight or overweight

iii. therapeutic or mechanically

altered diet

iv. poor dental status

v. drug-nutrient interactions

vi. acute/chronic disease

vii. depression or confusion

viii. decreased appetite

e. Recognize how the aging process affects digestion.

f. Accurately calculate and document meal intake and report inadequate intake or changes in normal intake.

g. Accurately calculate and document fluid intake and report inadequate intake or changes in

normal intake.

h. Recognize and report signs and symptoms of malnutrition and dehydration.

i. Understand concepts of therapeutic diets including dysphagia diets and the related risks associated with dysphagia including aspiration and aspiration pneumonia.

j. Incorporate food service principles into meal delivery including:

i. distributing meals as quickly as possible when they arrive from the kitchen to maintain food temperature.

ii. assisting residents with meal set-up if needed (i.e., opening packets or cartons, buttering bread if desired).

iii. serving meals to all residents seated together at the same time.

iv. offering appropriate substitutions if the residents don't like what they have received.

k. Utilize tray card or other mechanism to ensure the resident is served his/her prescribed diet and identify who to notify if a resident receives the wrong diet.

l. Demonstrate understanding of how to read menus.

m. Assist residents who are unable to feed themselves.

n. Demonstrate techniques for feeding someone who:

- i. bites down on utensils
- ii. can't or won't chew
- iii. holds food in mouth
- iv. pockets food in cheek
- v. has poor lip closure
- vi. has missing or no teeth
- vii. has ill fitting dentures
- viii. has a protruding tongue or tongue

thrust

- ix. will not open mouth

o. Demonstrate proper positioning of residents at mealtime.

p. Demonstrate skills for feeding residents who:

- i. are cognitively impaired
- ii. have swallowing difficulty
- iii. have sensory problems
- iv. have physical deformities

q. Demonstrate positioning techniques for residents who:

- i. have poor sitting balance
- ii. must take meals in bed
- iii. fall forward when seated
- iv. lean to one side
- v. have poor neck control
- vi. have physical deformities

r. Demonstrate use of assistive devices.

s. Identify signs and symptoms that require alerting a nurse, including:

- i. difficulty swallowing or chewing
- ii. coughing when swallowing

liquids

- iii. refusal of meal
- iv. choking on food or fluids
- v. excessive drooling
- vi. vomiting while eating
- vii. significant change in vital signs

t. Incorporate principles of a pleasant dining environment when assisting residents at mealtime including ensuring adequate lighting and eliminating background noise.

u. Demonstrate positive interaction with residents recognizing individual resident needs.

v. Ensure residents are dressed appropriately.

w. Allow residents to eat at their own pace.

x. Encourage independence and assist as needed.

y. Recognize and report as appropriate the risk factors and signs and symptoms of malnutrition, dehydration and fluid overload.

z. . Accurately calculate and document intake and output including meal percentages and fluids.

(2) Demonstrate understanding of basic anatomy and physiology in the following areas:

- a. Respiratory system
- b. Circulatory system
- c. Digestive system
- d. Urinary system
- e. Musculoskeletal system
- f. Endocrine system
- g. Nervous system
- h. Integumentary system
- i. Sensory system
- j. Reproductive system

(3) Recognize abnormal signs and symptoms of common illness and conditions. Examples are:

a. Respiratory infection – Report coughing, sneezing, elevated temperatures.

b. Diabetes – Report excessive thirst, frequent urination, change in urine output, drowsiness, excessive perspiration and headache. Understand the healing process as it relates to diabetes.

c. Urinary tract infection – Report frequent urination, burning or pain on urination, elevated temperature, change in amount and color of urine, blood or sediment in urine and strong odors.

d. Cardiovascular conditions – Report shortness of breath, chest pain, blue color to lips, indigestion,

sweating, change in pulse, edema of the feet or legs.

e. Cerebral vascular conditions – Report dizziness, changes in vision such as seeing double, change in blood pressure, numbness in any part of the body, or inability to move arm or leg.

f. Skin conditions – Report break in skin, discoloration such as redness, black and blue areas, rash, itching.

g. Gastrointestinal conditions – Report nausea, vomiting, pain, inability to swallow, bowel movement changes such as color, diarrhea, and constipation.

h. Infectious diseases.

(4) Provide personal care and basic nursing skills as directed by the licensed nurse in the appropriate licensed entity.

a. Provide for resident's privacy and dignity when providing personal care.

b. Assist the resident to dress and undress.

c. Assist the resident with bathing and personal grooming.

d. Observe and report condition of the skin.

e. Assist the resident with oral hygiene, including prosthetic devices.

f. Administer oral hygiene for the unconscious resident.

g. Demonstrate measures to prevent decubitus ulcers, i.e., positioning, turning and applying heel and elbow protectors.

h. Assist the resident in using the bathroom. Understand consequences of not assisting resident to the bathroom.

i. Assist the resident in using a bedside commode, urinal and bedpan.

j. Demonstrate proper bed making procedures for occupied and unoccupied beds.

k. Feed residents oral table foods in an appropriate manner. Demonstrate proper positioning of residents who receive tube feeding.

l. Distribute nourishment and water.

m. Accurately measure and record with a variety of commonly used devices:

i. Blood pressure

ii. Height and weight

iii. Temperature, pulse, respiration

n. Assist the resident with shaving.

o. Shampoo and groom hair.

p. Provide basic care of toenails unless medically contraindicated.

q. Provide basic care of fingernails unless medically contraindicated.

r. Demonstrate proper catheter care.

s. Demonstrate proper perineal care.

t. Assist the licensed nurse with a physical examination.

u. Apply a non-sterile dressing properly.

v. Apply non-sterile compresses and soaks properly and safely.

w. Apply cold and/or heat applications properly and safely.

x. Demonstrate how to properly apply elastic stockings.

y. Demonstrate proper application of physical restraints including side rails.

(5) Demonstrate skills which incorporate principles of restorative care under the direction of a licensed nurse.

a. Assist the resident in bowel and bladder training.

b. Provide enemas within the scope of duties of the nurse assistant.

c. Assist the resident in activities of daily living and encourage self-help activities.

d. Assist the resident with ambulation aids, i.e., cane, quadcane, walker, crutches, wheelchair and transfer aids, i.e., hydraulic lifts.

e. Perform range of motion exercise as instructed by the physical therapist or the licensed nurse.

f. Assist in care and use of prosthetic devices.

g. Assist the resident while using proper body mechanics.

h. Assist the resident with dangling, standing and walking.

i. Demonstrate proper turning and/or positioning both in bed and in a chair.

j. Demonstrate proper technique of transferring resident from low and high bed to chair.

(6) Demonstrate safety and emergency procedures including proficiency in the Heimlich maneuver and certification in cardiopulmonary resuscitation (CPR).

(7) Provide care to resident when death is imminent.

a. Discuss own feelings and attitude about death.

b. Explain how culture and religion influence a person's attitude toward death.

c. Discuss the role of the CNA, the resident's family and significant others involved in the dying process.

d. Discuss the stages of death and dying and the role of the nurse assistant.

e. Provide care, if appropriate, to the resident's body after death.

**SECTION 69.400 – MANDATORY ORIENTATION PERIOD**

**69.401 - SKILLED AND INTERMEDIATE CARE FACILITIES**

**A. GENERAL REQUIREMENTS**

(1) All Nursing Assistants hired to work in a skilled or intermediate care facility, after completing 150 hours of training, shall undergo a minimum of 80 hours of orientation at least 40 of which shall be clinical. An exception to this requirement is that any Nursing Assistant who has undergone 150 hours of training, sponsored by the facility where the Nursing Assistant will be employed immediately thereafter, shall only be required to complete additional facility specific orientation of 40 hours in the same facility.

(2) All Certified Nursing Assistants hired to work in a skilled or intermediate care facility shall undergo a minimum of 80 hours of orientation; at least 40 of which shall be clinical.

(3) While undergoing orientation, Nursing Assistants shall have direct physical contact with residents only while under the visual observation of a Certified Nursing Assistant or licensed nurse employed by the facility.

(4) Any Certified Nursing Assistant or Nursing Assistant undergoing orientation **may** be considered a facility employee for purposes of satisfying the minimum facility staffing requirements.

**B. ORIENTATION PROGRAM REQUIREMENTS**

(1) The mandatory orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

- a. Tour of the facility and assigned residents' rooms
- b. Fire and disaster plans
- c. Emergency equipment and supplies
- d. Communication (including the facility chain of command) and documentation requirements
- e. Process for reporting emergencies, change of condition and shift report
- f. Operation of facility equipment and supplies, including scales, lifts, special beds and tubs.
- g. Review of the plan of care for each assigned resident including:
  - i. ADL/personal care needs
  - ii. Nutrition, hydration and feeding techniques and time schedules
  - iii. Bowel and bladder training programs
  - iv. Infection control procedures
  - v. Safety needs
    - (a.) Role and function of the CNA/NA

- (b.) Resident rights/abuse

reporting

transfer techniques

procedures

weight

techniques

and nail care

denture care

orthotic devices

ankle protectors

(c.) Safety and body mechanics:

(d.) Vital signs

(e.) Psychosocial needs

(f.) Facility policies and

(2) Nursing Assistants shall satisfactorily demonstrate competency in clinical skills including:

- a. Taking and recording vital signs
- b. Measuring and recording height and weight
- c. Handwashing and infection control techniques
- d. Caring for the resident's environment
- e. Bathing and skin care, including foot and nail care
- f. Grooming and mouth care, including denture care
- g. Dressing
- h. Toileting, perineal and catheter care
- i. Assisting with eating and hydration
- j. Proper feeding techniques
- k. Positioning, turning and transfers
- l. Range of motion
- m. Bowel and bladder training
- n. Care and use of prosthetic and orthotic devices
- o. Assisting with ambulation
- p. Measuring intake and output
- q. Use of elastic stockings, heel and ankle protectors
- r. Bedmaking skills

**69.402 - ASSISTED LIVING FACILITIES**

**A. GENERAL REQUIREMENTS**

(1) Nursing Assistants hired to work in an assisted living facility, after completing 150 hours of instruction, shall undergo a minimum 64 hours of orientation, at least 24 of which shall be clinical. An exception to this requirement is that any Nursing Assistant who has undergone 150 hours of training in a training program sponsored by the facility where the Nursing Assistant will be employed immediately thereafter shall only be required to complete an additional 32 hours of facility specific orientation in the same facility.

(2) Certified Nursing Assistants hired to work in an assisted living facility shall undergo a minimum of 64 hours of orientation at least 24 of which shall be clinical.

(3) While undergoing orientation, Nursing Assistants shall have direct physical contact with residents only while under the visual observation of a Certified Nursing Assistant or licensed nurse employed by the facility.

(4) Any Certified Nursing Assistant or Nursing Assistant undergoing orientation **may** be considered

a facility employee for purposes of satisfying the minimum facility staffing requirements as set forth by the Department.

**B. ORIENTATION PROGRAM REQUIREMENTS**

(1) The mandatory orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

a. Tour of the facility and assigned residents' rooms

b. Fire and disaster plans

c. Emergency equipment and supplies

d. Communication and documentation requirements

e. Process for reporting emergencies, change of condition and shift report

f. Operation of facility equipment and supplies, including but not limited to scales, lifts, and wheelchairs.

g. Review of the plan of care for each assigned resident including:

i. ADL/personal care needs

ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

iv. Infection control procedures

v. Safety needs

h. Role and function of the CNA/NA

i. Resident rights/abuse reporting

j. Safety and body mechanics: transfer techniques

k. Vital signs

l. Psychosocial needs

m. Facility policies and procedures

(2) Nursing Assistants shall satisfactorily demonstrate competency in clinical skills including:

a. Taking and recording vital signs

b. Measuring and recording height and weight

c. Handwashing and infection control techniques

d. Caring for the resident's environment

e. Bathing and skin care

f. Grooming and mouth care, including denture care

g. Dressing

h. Toileting, perineal and catheter care

i. Assisting with eating and hydration

j. Proper feeding techniques

k. Positioning, turning and transfers

l. Range of motion

m. Bowel and bladder training

n. Care and use of prosthetic and orthotic devices

o. Assisting with ambulation

p. Measuring intake and output

q. Use of elastic stockings, heel and ankle protectors

r. Bedmaking skill

**69.403 - TEMPORARY AGENCIES**

**A. GENERAL REQUIREMENTS**

(1) All Certified Nursing Assistants employed by temporary agencies and placed in a facility in which they have not worked within the previous six (6) months shall undergo a minimum of two (2) hours of orientation prior to beginning their first shift at the facility.

(2) Any Certified Nursing Assistant employed by a temporary agency and undergoing orientation shall **not** be considered a facility employee for purposes of satisfying the minimum facility staffing requirements.

(3) Nursing Assistants employed by a temporary agency must be certified prior to placement in any nursing home.

**B. ORIENTATION PROGRAM REQUIREMENTS**

(1) The mandatory two-hour orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

a. Tour of the facility and assigned residents' rooms

b. Fire and disaster plans

c. Emergency equipment and supplies

d. Communication and documentation requirements

e. Process for reporting emergencies, change of condition and shift report

f. Operation of facility equipment and supplies including but not limited to scales, lifts, special beds and tubs

g. Review of the plan of care for each assigned resident including:

i. ADL/personal care needs

ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

iv. Infection control procedures

v. Safety needs

**SECTION 69.500 - VOLUNTARY SENIOR CERTIFIED NURSING ASSISTANT CERTIFICATION**

**69.501 - TRAINING REQUIREMENTS AND COMPETENCY TEST**

Any Certified Nursing Assistant may pursue designation as a Senior Certified Nursing Assistant and shall be so designated if such individual meets the following

minimum requirements:

A. Has been a Certified Nursing Assistant for a minimum of three years, in good standing with no adverse findings entered on the Nurse Aide Registry;

B. Has successfully completed an additional 50 hours of advanced training in a program approved by the Department;

C. Has passed a competency test provided by the Department or by a contractor approved by the Department.

#### **69.502 - VOLUNTARY SENIOR CNA CURRICULUM**

The Senior CNA program must meet the same requirements as those specified in Section 2 of these regulations in terms of classroom ratios of students to instructors. The Senior CNA curriculum must meet the following minimum course content, which will provide an advanced level of knowledge and demonstrable skills. All demonstrable competencies shall be documented by the RN instructor.

##### **A. LEADERSHIP TRAINING AND MENTORING SKILLS**

Key Concepts: Senior Certified Nursing Assistants will learn how to teach new Nursing Assistants standards of care. Senior CNAs will learn how to be a role model and preceptor for new Nursing Assistants and CNAs. Senior CNAs will learn how to prepare assignments, conduct team meetings and resolve conflicts.

Competencies: Function effectively as a team leader and mentor/preceptor within the facility.

(1) Define the role and functions of an effective team leader and mentor.

(2) Identify principles of adult learning.

(3) Recognize various learning styles and communication barriers.

(4) Assess learner knowledge.

~~(5) Supervise, evaluate and act as a preceptor for the Nursing Assistant and Certified Nursing Assistant during orientation.~~

(6) Demonstrate effective communication techniques.

(7) Recognize the importance of teamwork.

(8) Actively participate in resident care plan and team meetings.

(9) Identify strategies for conflict management.

(10) Learn how to prepare assignments, assist with scheduling and other administrative duties.

##### **B. DEMENTIA TRAINING**

Key Concepts: The senior CNA will gain greater knowledge of Alzheimer's Disease and related dementias. The senior CNA will gain the skills necessary to effectively care for residents exhibiting signs and symptoms of dementia. The senior CNA will act as a role model and

resource person for other CNAs.

Competencies: Demonstrate appropriate skills and techniques necessary to provide care to residents exhibiting signs and symptoms of dementia.

(1) Recognize signs and symptoms of Alzheimer's Disease and related disorders.

(2) Identify types of dementias.

(3) Discuss methods for managing difficult behavior.

(4) Demonstrate effective communication techniques.

(5) Recognize specific issues that arise in providing care to persons with Alzheimer's Disease and other memory loss conditions and appropriate interventions for dealing with these problems including, but not limited to, agitation, combativeness, sundown syndrome, wandering.

##### **C. ADVANCED GERIATRIC NURSING ASSISTANT TRAINING**

Key Concepts: The senior CNA will gain greater knowledge of anatomy and physiology with emphasis on the effects of aging. The senior CNA will effectively carry out restorative nursing skills as specified in the resident's plan of care.

Competencies:

(1) Verbalize understanding of anatomy, physiology and pathophysiology of common disorders of the elderly.

a. Describe the effects of aging on the various organs and systems within the body.

b. Describe signs and symptoms of common disorders.

c. Describe the pathophysiology of common disorders.

d. Identify measures to assist residents with common medical problems (e.g., promoting oxygenation in residents with breathing problems).

e. Observe, report and document condition changes using appropriate medical terminology.

f. Recognize basic medical emergencies and how to respond appropriately.

(2) Maintain or improve resident mobility and the resident's ability to perform activities of daily living. Understand the reasons for rehabilitation (physiologically), reasons for, and benefits of Restorative Nursing and be able to demonstrate the same.

a. Assist the resident with exercise routine as specified in his/her care plan.

b. Carry out special rehabilitation procedures as ordered including working with the visually impaired, special feeding skills/devices, splints, ambulatory devices and prostheses.

c. Identify ways to prevent contractures.

d. Effectively communicate with the Rehabilitation Department.



**SECTION 69.600 – SENIOR CNA TRAINING PROGRAM INSTRUCTORS**

A. The Primary Instructor is an individual responsible for the overall coordination and implementation of the senior certified nursing assistant training program. The primary instructor is present and available during clinical training. The primary instructor and all who serve as instructors in the program must meet the following qualifications:

- (1) RN licensure in the State of Delaware.
- (2) Three (3) years nursing experience in caring for the elderly or chronically ill of any age.
- (3) Instructors shall demonstrate:
  - a. Successful completion of “Train-the-Trainer” program which provides preparation in teaching adult learners principles of effective teaching and teaching methodologies or;
  - b. Successful completion of a college level course of at least one semester in length, that was related to education and the principles of adult learning.
- (4) Waiver of the Train-the-Trainer and the college level education course requirement is made for those nurses who demonstrate at least one (1) year of continuous teaching experience at the nursing assistant or LPN or RN program level.

B. Program Trainer(s) may provide assistance to instructors as resource personnel from the health field. They may provide instruction in their area(s) of expertise.

- (1) Trainers shall be registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, physical, speech or occupational therapists, environmental/fire safety specialists, activity directors, or other licensed health care professionals.
- (2) One (1) year of current experience in caring for the elderly or have equivalent experience.
- (3) Trainers shall be licensed or certified in their field, where applicable.

**SECTION 69.700 – TRAIN-THE-TRAINER PROGRAM REQUIREMENTS**

Each train-the-trainer program shall ensure that an RN designated as primary instructor meets the following minimum requirements:

**69.701 TRAINING COURSE CONTENT**

- A. Role of Trainer
- B. Communication techniques
- C. Demonstration skills
- D. Teaching a process
- E. Teaching techniques
- F. Training techniques
- G. Developing a formal training plan

**69.702 COURSE MANAGEMENT INFORMATION**

- A. Training time shall consist of sixteen minimum

hours.

B. The train-the-trainer instructor must have formal educational preparation or experience with skills of adult learning.

**DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122(3)h (16 Del.C. §122(3)h)

**ORDER****NATURE OF THE PROCEEDINGS:**

The Department of Health and Social Services (“DHSS”) initiated proceedings to adopt Rules and Regulations Governing the Practice of Non-Nurse Midwifery. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 1, Section 122(3) h.

On November 1, 2001 (Volume 5, Issue 5), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 3, 2001, or be presented at a public hearing on November 28, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying “Summary of Evidence.”

**SUMMARY OF EVIDENCE**

A public hearing was held on November 28, 2001 at 3:00 p.m. in room 400-B of the Delaware Technical and Community, Terry Campus, Route 13 and Denneys Road, Dover, Delaware 19901, before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services (DHSS) Rules and Regulations Pertaining to the Practice of Non-Nurse Midwifery. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Ms. Prue Albright from the Community Health Care Access (CHCA) Section, Division of Public Health (DPH), made the agency’s presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Public testimony was

given at the public hearing and written comments were also received during the comment period. Groups represented that offered comments included:

Home Birth Mothers and Fathers  
State Representative Pamela Maier (Debbie Puzzo)  
Christiana Care, Director Internal Fetal Medicine  
Certified Nurse Midwives (CNM)  
Certified Professional Midwives (CPM)  
Midwives Alliance of North America (MANA)  
Certified Midwives (CM)  
Registered Nurses (RN)  
Physicians (DO, MD & OB/GYN)  
Emergency Medical Technician (EMT)  
Advanced Practice Nurse (APN) Council,  
Delaware Nurse Association  
Medical Society of Delaware  
Delaware's American College of Emergency Physicians  
American College of Nurse-Midwives  
Citizens for Midwifery, Inc.  
Midwifery Task Force (National midwifery  
advocacy organization)  
American College of Obstetricians and Gynecologists  
(Delaware Section)  
Women's Care Associates of Dover, P.A.  
Delaware Perinatal Board  
Standards Committee, Delaware Perinatal Board  
Delaware Friends of Midwives  
North American Registry of Midwives (NARM)

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

- **Regulation Section III & IV** There was a suggestion to change the physician Collaborative Agreement part of the regulation from physician to a Delaware licensed Obstetrician/Gynecologist or physician with obstetrical hospital privileges.

*Agency Response:* While considering this comment it was determined that the agency had fully intended the collaborative agreement to be with a Delaware licensed physician with obstetrical hospital privileges. In the final version, the regulation was amended to reflect this requirement.

- **Regulation Section III & IV** Concern was voiced that the physician Collaborative Agreement sections of the regulation are too restrictive and that non-nurse midwives should not be required by regulation to have such an agreement. The agreement should be between the patient (expectant mother) and the physician.

*Agency Response:* While the agency acknowledges childbirth as a natural biological process, obstetrical emergencies do arise and are most successfully dealt with, with a well thought out plan of action. The agency believes this plan should be developed a head of time through a collaborative agreement between the non-nurse midwife and physician. The agency also agrees that having a physician collaborative agreement is restrictive, but is a necessary step in ultimately providing the best possible medical interventions available to protect and preserve the health of mother and newborn.

- **Regulation III & IVA suggestion was voiced that the Collaborative Agreement be amended to ensure the planned birth site is within 30 minutes of the hospital where the back-up physician has hospital privileges.**

*Agency Response:* While this sort of requirement would add a degree of timeliness to an emergency event, it also may unnecessarily infringe on a home birth mother's choice to deliver at home. Rather than a cover-all regulatory requirement, the agency thinks this sort of requirement should be based on individual pregnancy risk factors or on a case-by-case basis. During the pregnancy, the physician, non-nurse midwife and expectant mother are in the best position to decide on distance and time limitations to the hospital. Making the time/distance to hospital decision on an individual basis also recognizes the fact that the birth of a baby is a natural, biological event, which can happen safely with very little medical intervention.

- **Regulation Section IV** Concern was expressed about this section of the regulation requiring non-nurse midwives to have personal medical malpractice insurance. Delaware physicians and nurses are not required by law to carry personal medical malpractice insurance.

*Agency Response:* Research through the Board of Medical Practice and Board of Nursing revealed that there is no statutory or regulatory mandate requiring physicians or nurses to have personal medical malpractice insurance. It is highly recommended for both of these groups. As a result, the regulatory requirement for non-nurse midwives to have personal medical malpractice insurance will be deleted from the regulation.

- **A general concern was expressed that it was premature to promulgate regulations while legislation (HB 299) is being considered in the General Assembly.**

*Agency Response:* While on the surface this appears to

be a valid concern, these regulations should have actually been updated right after the nurse midwives were removed from under the authority of the Department and placed under the Board of Nursing in January 2000.

- **Concerns were expressed that some language in the regulation would grant medication prescriptive authority to non-nurse midwives and that the term midwife was not clearly defined in the regulation.**

**Agency Response:** Research of the regulation revealed that medication prescriptive authority is actually specifically addressed in the physician/non-nurse midwife Collaborative Agreement (Section IV). The regulation requires the physician to maintain prescriptive authority and outline guidelines and protocols to access medications. To further define midwife, the definition of Nationally Certified Midwife was added to the Definitions section (Section III) of the regulation and the terms Nationally Certified Midwife were subsequently added to the Qualifications section (Section IV) of the regulation. Additionally, the definition of Direct entry/non-nurse midwife was further refined for clarity purposes.

- **A suggestion was offered that the regulation be amended to license the Certified Midwife for home, birth center or hospital births.**

**Agency Response:** To permit non-nurse midwives to practice at specific locations is beyond the authority of the Department. The back-up physician, as well as birth centers and hospitals need to be part of the decision for a non-nurse midwife to practice in said facilities.

In addition to changes recommended in this Summary of Evidence, minor grammatical corrections were made to the draft regulations.

The public comment period was open from November 1, 2001 to December 3, 2001.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

#### FINDINGS OF FACT:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the November 1, 2001, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be

substantive in nature.

**THEREFORE, IT IS ORDERED**, that the proposed Rules And Regulations Governing The Practice of Non-Nurse Midwifery are adopted and shall become effective April 10, 2002, after publication of the final regulation in the Delaware Register of Regulations.

VINCENT P. MECONI  
SECRETARY

#### Delaware State Board Of Health Rules And Regulations Pertaining To The Practice Of Midwifery

~~Adopted by the State Board of Health on April 17, 1978, amended September 19, 1978, and December 22, 1982, and amended to be effective 5/15/85.~~

~~Under the authority granted to the State Board of Health under 16 Del. C. §122 (3) (h), the Board of Health of the State of Delaware hereby adopts the following regulations pertaining to the practice of midwifery in the State of Delaware.~~

#### ~~Section I—Definitions~~

~~a. Midwifery is the management of the woman throughout an essentially uncomplicated maternity cycle and includes the immediate care of the newborn. Management may include but is not limited to the following acts: physical examination during the maternity cycle; history taking; prenatal, postpartum and family planning education and counseling; preparation for childbirth; physical and emotional monitoring during labor and delivery including diagnostic tests; attending spontaneous vaginal births; routine inspection of the vagina and cervix throughout the maternity cycle; providing local anesthesia for perineal repair; performing and repairing episiotomies; resuscitating the newborn according to accepted procedures; documenting activities in appropriate maternity records; signing Birth Certificates. Provided, however, that these regulations shall not apply to a person assisting a licensed physician who may perform any of the above listed acts, or under emergency circumstances.~~

~~b. Essentially uncomplicated refers to periodic mutual determinations by the midwife and physician that the woman's physical and support needs can be met safely by a midwife.~~

~~e. Alliance is a relationship between a midwife and a physician(s) licensed to practice medicine or osteopathy in Delaware whereby medical consultation and referral, available on a 24-hour basis, is agreed upon in writing, signed by both parties, and filed with the State Board of Health.~~

**Section II – Qualifications**

No permit to practice midwifery in the State of Delaware shall be issued by the State Board of Health unless an applicant can demonstrate that said applicant has met the following qualifications:

- a. Age of 21 years or older;
- b. Licensed as a Registered Professional Nurse in the State of Delaware;
- c. Possesses a valid certification by the American College of Nurse-Midwives;
- d. Submits a sworn statement that he/she has not been convicted of a felony; been professionally penalized or convicted of substance addiction; had a professional nursing license suspended or revoked in this or another state; been professionally penalized or convicted of fraud; is physically and mentally capable of engaging in the practice of midwifery; and
- d. Has formed an alliance.

**Section III – Application**

Any person desiring to obtain a permit to practice midwifery shall make a written application to the Secretary of the State Board of Health. Such application shall be accompanied by the necessary documents setting forth the facts that the applicant possesses the qualifications in Section II. If after investigation of the application by the State Board of Health or its designee, it appears the applicant is qualified to practice midwifery, the State Board of Health shall issue a permit to practice midwifery in the State of Delaware.

**Section IV – Maintenance of Permit**

No person granted a permit under these regulations shall engage in active practice of midwifery without having an established alliance with a physician(s) licensed to practice medicine or osteopathy in the State of Delaware. Should the alliance be terminated during the permit period, the midwife must form a new alliance and submit the agreement to the State Board of Health before continuing to practice as a midwife. Failure to do so will result in automatic and immediate revocation of permit.

Loss of certification as a midwife from the American College of Nurse-Midwives or suspension or revocation of the license to practice professional nursing in Delaware will result in automatic and immediate revocation of the permit to practice midwifery in Delaware.

**Section V – Renewal of Permit**

Any permit granted to practice midwifery in the State of Delaware shall terminate annually on December 31. The fee for such annual permit shall be \$15.00. Said permit shall be renewable annually with the filing of an application and documentation setting forth continued qualification in items "b" through "e" of Section II. Should said permit not be renewed by January 31, the permit is considered lapsed and

the midwife shall apply according to Section III.

**Section VI – Exclusion**

Any person who on September 19, 1978, held a valid permit issued by the State Board of Health to practice midwifery in the State of Delaware may be granted a permit to practice midwifery even though that person does not meet the qualifications specified in items "b" and "c" of Section II of these Rules and Regulations providing such midwife must continue to demonstrate to the State Board of Health full compliance with all other provisions of these Regulations and any special conditions as set forth by the State Board of Health to assure full compliance with all other provisions.

**Section VII – Complaints**

Any person may make a complaint in writing to the State Board of Health concerning incompetency, negligence, addiction to drugs and/or alcohol, physical or mental impairment, misrepresentation, willful breach of confidence, failure of a midwife to report a birth, or failure to otherwise comply with these regulations. Complaints shall be investigated by the State Board of Health or its designee and a determination made as to the need for a hearing. In the event a hearing is to be held, the midwife shall be notified by certified mail at least fifteen (15) days prior to the hearing as to the time and place of the hearing and any allegations which the Board intends to investigate. If such complaint is found to be justified, the permit of the midwife against whom the complaint has been lodged may, at the discretion of the State Board of Health, be revoked or suspended.

**Section VIII – Illegal Practice**

Any person who practices as a midwife as defined in item "a" of Section I in the State of Delaware without a permit issued by the State Board of Health shall be subject to a fine pursuant to 16 Del. C. § 107.

**Section IX – Effective Date**

These Regulations shall become effective January 14, 1983, and shall replace Rules and Regulations Pertaining to the Practice of Midwifery which were in effect until that date.

**Section X – Severability**

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

Amendment To  
Delaware State Board Of Health  
Rules And Regulations Pertaining To The  
Practice Of Midwifery

A waiver to the qualifications requirements may be approved

by the State Board of Health to allow practice by a traditional midwife under the following circumstances and qualifications:

a. Evidence is submitted to the State Board of Health of a reasonable attempt to secure a licensed professional midwife.

b. An alliance has been formed with a physician licensed in Delaware and certified by the American Board of Obstetrics and Gynecology.

c. Evidence is submitted of acceptable training and experience as a midwife that meets criteria established by the Board.

d. Is at least 21 years of age.

e. Submits a sworn statement that he/she has not been convicted of a felony or charged with substance abuse, and is physically and mentally capable of engaging in such practice.

f. The area of practice shall be limited, by agreement with the allied physician, to a population which is medically underserved or has religious tenets opposed to medical practices.

g. Agrees to abide by all laws and regulations applicable to the care of newborn infants and registration of births.

If the above requirements are met, a limited license may be approved, to be renewed annually, and the license so designated.

Adopted by the State Board of Health to become effective May 15, 1985.

#### STATE OF DELAWARE RULES AND REGULATIONS PERTAINING TO THE PRACTICE OF NON-NURSE MIDWIFERY

These regulations replace regulations previously adopted on April 17, 1978; amended September 19, 1978, December 22, 1982, and May 15, 1985, by the Delaware State Board of Health. Effective Date: ~~[XXX XX, XXXX]~~ April 10, 2002].

##### Section I – Purpose

The purpose of these Regulations is to establish and define conditions under which individuals may be granted permits to practice direct entry/non-nurse midwifery in the State of Delaware. The Department of Health and Social Services, through the Division of Public Health, will recognize and issue a permit to practice midwifery for direct entry/non-nurse midwives.

##### Section II – Authority

Title 16, Delaware Code, Chapter 1, Section 122 (3) h.

##### Section III – Definitions

a. Midwifery practice: is the management of women's health care, focusing particularly on pregnancy, childbirth, the postpartum period, care of the newborn, and the family planning and gynecological needs of women, including the prescription of appropriate medications and devices within this defined scope of practice. The midwife practices within a health care system that provides for consultation, collaborative management or referral as indicated by the health status of the client.

b. ~~[Direct entry/non-nurse midwife: A person who has met the qualifications and received a permit from the Delaware Division of Public Health to practice midwifery in Delaware who is not licensed as an advanced practice nurse midwife. Direct entry /non-nurse midwife: A midwife that has entered the profession directly through midwifery education and training and not through a prerequisite program of nursing and has met the qualifications and received a permit from the Delaware Division of Public health to practice midwifery in DE.]~~

c. ~~[Certified midwife: A person who has met the criteria stated in Section IVa (possesses a valid certification by national certification body). Nationally Certified Midwife: a direct entry midwife that has met national certification from North American Registry of Midwives (Certified Professional Midwife CPM ) or American College of Nurse Midwives (Certified Midwife)]~~

d. Collaborative Agreement: Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between a direct entry/non-nurse midwife and a ~~[physician. Delaware licensed physician with obstetrical hospital privileges.]~~

e. Guidelines/Protocols: Suggested pathways to be followed by direct entry/non-nurse midwives for managing a particular medical problem. These guidelines/protocols shall be developed collaboratively by the midwife and a ~~licensed physician. Delaware licensed physician with obstetrical hospital privileges.]~~

f. Referral: The process whereby a direct entry/non-nurse midwife directs the client to a physician or another health care professional for management of a particular problem or aspect of the client's care.

##### Section IV - Qualifications

To receive a permit to practice direct entry/non-nurse midwifery in the State of Delaware, an applicant must submit documentation to the Division of Public Health that they meet the following qualifications:

a. ~~[Possesses a valid certification by the American College of Nurse Midwives Certification Council, Inc.; has completed a midwifery education program~~

~~accredited by the ACNM's Division of Accreditation; or has completed an equivalent program of studies as determined by the certification agency, including Certified Professional Midwives (CPM) and/or Certified Midwife (CM).~~ Demonstration of completion of an accredited midwifery education program and is a Nationally Certified Midwife as demonstrated by possessing a valid certification of Certified Professional Midwives (CPM) from the North American Registry of Midwives or Certified Midwife (CM) from the American College of Nurse –Midwives Certification Council or an equivalent certification.]

b. Submits a sworn statement that he/she has not been convicted of a felony; been professionally penalized or convicted of substance addiction; had a professional midwifery license suspended or revoked in this or another state; been professionally penalized or convicted of fraud; and is physically and mentally capable of engaging in the practice of midwifery.

c. Establishes a collaborative agreement with a ~~medical provider~~ Delaware licensed physician with obstetrical hospital privileges] which includes at a minimum:

- a minimum number of medical provider prenatal visits.
- guidelines and protocols that must include access and use of oxygen, medications (including Intravenous medications), emergency protocols for labor, delivery, and postpartum for both mother and neonate.

~~d. Possesses personal medical malpractice insurance.~~

~~e d]. Submits to the Division of Public Health a sample contract between the midwife and the pregnant women outlining the scope of practice and potential risk factors and complications.~~

#### **Section V – Application**

Any person who wishes to obtain a permit to practice direct entry/non-nurse midwifery shall make a written application to the Division of Public Health. Such application shall be accompanied by the necessary documents demonstrating that the applicant possesses the qualifications in Section IV. If, after investigation of the application by the Division of Public Health, it appears the applicant is qualified to practice direct entry/non-nurse midwifery, a permit to practice midwifery in the State of Delaware will be issued.

#### **Section VI – Maintenance of Permit**

No person granted a permit under these regulations shall engage in active practice of direct entry/non-nurse midwifery without continuously meeting the qualifications in Section IV. Changes that occur during the permit period

(one year) must be reported to the Division of Public Health.

#### **Section VII – Renewal of Permit**

Any permit granted to practice direct entry/non-nurse midwifery in the State of Delaware shall terminate annually on December 31. The fee for such annual permit shall be determined annually (in July) by the Division of Public Health and not be less than \$15.00. Permits shall be renewable annually with the filing of an application and documentation setting forth continued qualifications as specified in Section IV. Should a permit not be renewed by January 31, the permit is considered lapsed and the direct entry/non-nurse midwife shall apply according to Section V.

#### **Section VIII – Complaints**

Any person may make a complaint in writing to the Division of Public Health concerning failure to comply with these regulations. The Division of Public Health will investigate complaints about direct entry/non-nurse midwives.

#### **Section IX – Illegal Practice**

Any person who practices as a direct entry/non-nurse midwife, as defined in Section III, in the State of Delaware without a permit issued by the Division of Public Health shall be subject to a fine pursuant to 16 Del. C 107.

#### **Section X - Severability**

Should any section, sentence, clause, or phase of these Rules and Regulations be legally declared unconstitutional or invalid for any reason, the remainder of these Rules and Regulations shall not be affected.

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### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

### **ORDER**

#### **NATURE OF THE PROCEEDINGS:**

The Delaware Department of Health and Social Services (“Department”) / Division of Social Services / Food Stamp Program initiated proceedings to amend policies to implement policy changes to the following sections of the Division of Social Services Manual: Section 7004.3 and Section 7007.

#### **SUMMARY OF CHANGES**

DSSM 7004.3 Collection and Management of Food

## Stamp Claims

- Adds the requirement which states that EBT collections must be non-settling;
- Reduces the state's retention rates for amounts of claims collected.

## DSSM 7007 Submission of Food Stamp Payments

- Adds the requirement that prohibits the refund of over-collected claims when a balance adjustment using expunged EBT benefits is responsible for the over-collection.

The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the February, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 28, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the February, 2002 Register of Regulations should be adopted as written.

**THEREFORE, IT IS ORDERED**, that the proposed regulations related to the Food Stamp Program are adopted and shall be final effective April 10, 2002.

Vincent P. Meconi, Secretary, DHSS

**REVISION****7004.3 Collection and Management of Food Stamp Claims**

4) Benefits from EBT accounts.

ARMS must allow a household to pay its claim using benefits from its EBT benefit account as follows:

a) Collecting from active (or reactivated) EBT benefits – the agency needs written permission or oral permission for one-time reductions with the agency sending the household a receipt of the transaction within ten (10) days.

The written permission must include:

1. A statement that this collection activity is strictly voluntary;
2. The amount of the payment;
3. The frequency of the payments;
4. The length (if any) of the agreement;
5. A statement that the household may revoke this agreement at any time.

b) Collecting from stale EBT benefits – the agency must mail or otherwise deliver to the household written notification that the agency intends to apply the benefits to the outstanding claim and give the household at least ten (10) days to notify the agency that it doesn't want to use these benefits to pay the claim.

c) Making an adjustment with expunged EBT benefits – the agency must adjust the amount of any claim by subtracting any expunged amount from the EBT benefit account and this can be done anytime.

d) A collection from an EBT account must be non-settling against the benefit drawdown account.

**7007 Submission of Food Stamp Payments**

ARMS will retain the value of funds collected for inadvertent household errors, intentional Program violation, or administrative error claims. This amount includes the total value of allotment reductions to collect claims, but does not include the value of benefits not issued as a result of a household member being disqualified. The State's letter of credit will be amended on a quarterly basis to reflect the State's retention of ~~25~~ 20 percent of the value of inadvertent household error claims collected and ~~50~~ 35 percent of the value of intentional Program violation claims collected, as well as full retention by FNS of all administrative error overissuance recoveries.

ARMS will submit quarterly a Form FNS-209, Status of Claims Against Households, no later than 30 days after the end of each calendar year quarter, even if no payments have been collected. In accounting for inadvertent household error and intentional Program violation claims, collection, cash, or coupon repayments and the value of allotments recovered or offset by restoration of lost benefits will be included. However, the value of benefits not issued during the period of disqualification will not be considered recovered allotments and will not be used to offset an intentional Program violation claim.

ARMS may retain any amounts recovered on a claim being handled as an inadvertent household error claim prior to obtaining a determination by an administrative disqualification hearing official or a Court of appropriate jurisdiction that intentional Program violation was committed at the rate applicable to intentional Program violation claims, once the determination or signed document is obtained. In such cases, ARMS must include a note in an attachment to the FNS-209 showing the additional amounts being retained on amounts already recovered as a result of

the change in status of the claim.

If a household has overpaid a claim, ARMS is to pay the household any amounts overpaid as soon as possible after the overpayment becomes known. The household will be paid by whatever method ARMS deems appropriate considering the household's circumstances. A refund is prohibited when a balance adjustment using expunged EBT benefits is responsible for the over-collection.

Overpaid amounts of a claim which have previously been reported as collected via the FNS-209 and which have been repaid to the household will be reported in the appropriate column on the FNS-209 for the quarter in which the repayment occurred. The amount of the repayment will be subtracted from the total amount collected. The appropriate retention rate will be applied to the reduced collection total.

In cases where the State has been billed by FNS for negligence, any amounts collected from households, which were caused by the State's negligence, will be credited by FNS. When submitting these payments, ARMS must include a note as an attachment to the FNS-209 showing the amount that should be credited against the State's bill.

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### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

### **ORDER**

#### **NATURE OF THE PROCEEDINGS:**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to amend policies to implement policy changes to the following sections of the Division of Social Services Manual: Sections 9028, 9030, 9040, 9081, and 9085.

#### **SUMMARY OF CHANGES**

1. Under application and interview procedures, the changes require the Division of Social Services (DSS):

- to make clear that disadvantages and requirements of applying for cash assistance do not apply to food stamps,
- to encourage applicants to continue to apply for food stamps if they decide not to apply for cash assistance,
- to inform households that receiving food stamps will have no bearing on any other program's time

limits,

- to inform households that stop getting cash assistance that they still may be eligible for food stamp benefits,
- to inform applicants that the office interview can be waived by conducting a telephone interview for hardship cases,
- to assign households waived the face-to-face interview normal certification periods, and
- to notify households that miss their interview appointment that they are responsible for making another appointment.

2. Exempts deeming of sponsor income for indigent aliens.

3. Deletes several sections from sponsor deeming rules.

4. Requires DSS to notify households about unclear information by sending them written Request for Contact (RFC) notice.

The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the February, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 28, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### **SUMMARY OF INFORMATION SUBMITTED:**

The State Council for Person with Disabilities (SCPD) offered the following comment on the proposed rule and regulation: "SCPD is pleased that the proposed regulation is broader and authorizes a telephone interview based on any hardship and then provides a non-exhaustive list of examples that cover weather, training program conflicts, and care of a household member. However, SCPD believes that DSS should reinsert "disability" rather than simply referring to "illness" since illness does not encompass disability. SCPD endorses the proposed regulation subject to the insertion of "disability or" prior to "illness". In addition, Council applauds DSS for adding a more comprehensive definition of "hardship", especially expansion to training program conflicts, since this may facilitate implementation of the Ticket to Work & Work Incentives Improvement Act. The change in text is indicated in



**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the February, 2002 Register of Regulations, as amended, should be adopted as written.

THEREFORE, IT IS ORDERED, that the revised regulations related to the Food Stamp Program are adopted and shall be final effective April 10, 2002.

Vincent P. Meconi, Secretary, DHSS

**REVISION****9028 Filing an Application**

[273.2(c)]

Households must file a food stamp application by submitting the form to a certification office either in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an on-line electronic application. Applications signed through the use of electronic signature techniques or applications containing a handwritten signature and then transmitted by fax or other electronic transmission are acceptable. DSS must document the date the application was filed by recording the date of receipt at the local office.

The length of time DSS has to deliver benefits is calculated from the date the application is filed in the food stamp claim office designated to accept the household's application, except when a resident of a public institution is jointly applying for SSI and food stamps prior to his/her release from an institution in accordance with DSSM 9015. Certify residents of public institutions who apply for food stamps prior to their release from the institution in accordance with DSSM 9039 or DSSM 9041, as appropriate. The date received will be documented on the application.

Each household has the right to file, and should be encouraged to file an application form on the same day it contacts any food stamp office during office hours and expresses interest in obtaining food stamps or expresses concerns which indicate food insecurity.

DSS shall make clear to applicants that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. Applicants shall be encouraged to continue an application with food stamps. DSS shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household.

Mail an application form the same day households request food stamp assistance either by telephone or written notice. Advise the household that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and the signature of a

responsible household member or the household's authorized representative. Where there is more than one certification office in a project area, any office must accept applications when filed, but must subsequently refer the household to the proper office for the eligibility determination. Mail applications received in the wrong office to the correct office the same day.

Applications filed at incorrect office locations are considered filed and the receiving office will forward the application to the correct office. If the household is eligible for expedited services, the receiving office will fax the application and proof of identity to the correct office and alert the office by phone about the fax. The correct office will issue the expedited benefits and, if necessary, schedule an appointment for an interview.

When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by DSS on the application is the date of release of the applicant from the institution.

Have application forms readily accessible to potentially eligible households in each regional office and provide them to those groups and organizations involved in outreach efforts. DSS will provide a means for applicants to immediately begin the application process with name, address, and signature by having applicants complete and sign a copy of the on-line Referral for Assistance or the first page of the hard-copy application. Households that complete an on-line electronic application in person have the opportunity to review the information that has been recorded electronically and to receive a copy for their records.

When a household contacts the wrong certification office in person or by telephone, the household will be given the address and phone number of the correct office. The office contacted in person will provide the household an opportunity to file an application that same day. The office will forward the application to the correct office the same day. If the household has mailed its application to the wrong certification office, forward it to the proper office on the same day.

Provide each household at the time of application for (re)-certification with a notice (Form 105) that informs the household of the verification requirements the household must meet as part of the application process. The notice must also inform the household of the Division's responsibility to assist the household in obtaining required verification provided the household is cooperating as specified in DSSM 9029.

**9030 Interviews**

[273.2(e)]

Households must have a face-to-face interview with an eligibility worker at initial certification and at least once

every 12 months thereafter, unless the face-to-face interview has been waived. ~~[DSS must inform applicants that the face to face interviews will be waived for hardship situations. Hardship conditions include, but are not limited to: being elderly or disabled, illness, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an office interview.]~~

DSS may not require a household to report for an in-office interview during their certification period although they may request a household to do so.

Interview may be conducted at the food stamp office or other mutually acceptable location, including a household residence. Interviews conducted at the household's residence must be scheduled in advance.

The head of household, spouse, any other responsible member of the household, or an authorized representative may be interviewed. Advise the households of their rights and responsibilities during the interview, including the appropriate processing standard and the responsibility to report changes. The interview will be conducted as an official and confidential discussion of household circumstances and will be limited strictly to facts that relate directly to food stamp eligibility criteria. The applicant's right to privacy will be protected during the interview.

The eligibility worker must explore and resolve with the household any unclear and incomplete information.

Households applying for cash assistance must be informed that time limits and other requirements that apply to the cash assistance program do not apply to the receipt of food stamps. Inform households that stop receiving cash assistance due to reaching a time limit, getting a job, or other reasons, that they may still be eligible for food stamp benefits.

~~Waive the office interview if requested by any household which is unable to appoint an authorized representative and which has no household member able to come to the food stamp office because they are elderly or disabled, have transportation difficulties, are working, or similar hardships. Determine if the transportation difficulties or other similar hardship warrants a waiver of the office interview and document in the case record why a request for a waiver was granted or denied.~~

Inform applicants that DSS will waive the office interview and conduct a telephone interview on a case-by-case basis because of household hardship situations. Hardship situations include, but are not limited to, [age, disability,] illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview. Document the casefile to show when a waiver was granted due to hardship.

Waiver of the face-to-face interview does not exempt the household from the verification requirements. ~~nor~~ should it affect the length of the households' certification period. A waiver of the face-to-face interview cannot not affect the length of the household's certification period. Assign households waived the face-to-face interview normal certification periods.

However, special verification procedures may be used such as substituting a collateral contact in cases where documentary evidence would normally be required.

Households for whom the office interview is waived will be offered either a telephone interview or a home visit. Home visits will be scheduled in advance with the household.

DSS will schedule an interview for all applicant households who are not interviewed on the day they submit their applications. All interviews will be scheduled as promptly as possible to ensure eligible households receive an opportunity to participate within 30 days after the application is filed. ~~If the household does not appear for the first interview, reschedule an interview only one time unless the household requests a further appointment.~~

If the household misses its interview appointment, DSS will notify the household that it missed the interview and that the household is responsible for making another appointment. DSS will not deny the application prior to the 30<sup>th</sup> day after the application was filed if the household fails to appear for the interview. If the household requests a second interview during the 30-day application processing period and is determined eligible, DSS will prorate benefits from the date of application.

Applicant and participant households which are unable to obtain certification services without missing time from work must be given appointments for such services.

The applicant may bring any person he or she chooses to the interview.

#### **9040 Delays in Processing**

[273.2(h)]

4. For households that have failed to appear for an interview, DSS must notify the household that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts DSS within the 30-day processing period, DSS must schedule a second interview. have attempted to reschedule the initial interview within 30 days following the date the application was filed. If the household fails to schedule a second interview, or the ~~However, if the household has failed to appear for the first interview and a subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20 days but before the 30th day following the date the application was filed, the household~~

must appear for the interview, bring verification, and register members for work by the 30th day; otherwise, the delay will be the fault of the household. If the household has failed to appear for the first interview, fails to schedule a second interview, and/or the ~~and~~ a subsequent interview is postponed at the household's request until after the 30th day following the date the application was filed, the delay will be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay will be the fault of the household.

### 9081.3 Exempt Aliens

Exempt aliens:

The deeming of sponsor income in 9081.2 (steps 1-5) above do not apply to:

1. An alien who is a member of his or her sponsor's food stamp household;
2. An alien who is sponsored by an organization or group as opposed to an individual;
3. An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;
4. A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after a determination is made that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After 12 months, do not deem the batterer's income and resources if the battery is recognized by a court or the INS and had a substantial connection to the need for benefits, and the alien does not live with the batterer.

5. An indigent alien that has been determined unable to obtain food or shelter taking into account the alien's own income plus any cash, food, or housing, or other assistance provided by other individuals, including the sponsor(s).

Indigent alien determination:

A. Inquire about sponsored alien status if an alien is a Lawful Permanent Resident (LPR).

B. If the LPR is an eligible sponsored alien, make an indigence determination.

An eligible sponsored alien is an alien eligible to receive food stamps according to DSSM 9007.1.

C. Determine the eligible sponsored alien's total household income by adding the eligible alien's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor or others provide.

Accept whatever dollar value, if any, is given for any in-kind assistance provided by the person(s) providing the assistance. In-kind assistance includes, but is not limited to, food, housing, clothing, or transportation.

Compare the total household income as

determined above to the 130 percent of the poverty income guidelines for the household size.

If the total income does not exceed the 130 percent of the poverty income guidelines for the household size, the alien is indigent.

D. If the alien is indigent, then process the case as normal and deem only the actual amount of the cash support received from the sponsor. The cash support does not include the value of the in-kind assistance.

E. If the alien is not indigent, then the eligible sponsored alien must provide information on the total amount of the sponsor's income and resources and follow the regular sponsor deeming procedures.

F. If the alien is indigent, only deem the income actually provided to the alien for the period beginning on the date the determination was made and ending 12 months after such date.

G. Each indigence determination is renewable for additional 12-month periods.

H. The names of each eligible sponsored alien determined to be indigent and the sponsor(s) names are to be sent to the Food Stamp Policy Administrator after a determination is made.

### 9081.6 Demands for restitution.

Exclude any sponsor who is participating in the Food Stamp Program from any demand made under 8 CFR 213a.4(1) [Affidavit of Support on Behalf of Immigrants] for the value of food stamp benefits issued to an eligible sponsored alien he or she sponsors.

### 9081.7 Memorandum of Agreement

~~An agreement will be signed by the Secretaries of the Departments of Agriculture and State setting forth the specific information that must be released by all parties to facilitate identification of the alien and sponsor and enable DSS to perform required verification of information for eligibility purposes as specified in DSSM 9081.5.~~

### 9081.8 ~~Overissuance Due to Incorrect Sponsor Information~~

~~Any sponsor of an alien and the alien will be jointly and severely liable for repayment of any overissuance of coupons as a result of incorrect information provided by the sponsor. However, if the alien's sponsor had good cause or was without fault for supplying the incorrect information, the alien's household will be solely liable for repayment of the overissuance.~~

~~Where the sponsor did not have good cause, decide whether to establish a claim for the overissuance against the sponsor or the alien's household, or both. DSS may choose to establish claims against both parties at the same time or to establish a claim against the party it deems most likely to repay first. If a claim is established against the alien's~~

sponsor first, ensure that a claim is established against the alien's household whenever the sponsor fails to respond to DMS' demand letter within 30 days of receipt. DMS will return to the alien's sponsor and/or the alien's household any amount repaid in excess of the total amount of the claim.

### **9081.9 Collecting Claims Against Sponsors**

Initiate collection action by sending the alien's sponsor a written demand letter which informs the sponsor of the amount owed, the reason for the claim, and how the sponsor may pay the claim. The sponsor will also be informed that the sponsor will not be held responsible for repayment of the claim if the sponsor can demonstrate that he/she had good cause or was without fault for the incorrect information having been supplied to the Division. In addition, DMS will follow up the written demand letter with personal contact, if possible. The sponsor is entitled to a fair hearing either to contest a determination that the sponsor was at fault where it was determined that incorrect information had been provided or to contest the amount of the claim.

DMS may pursue other collection actions, as appropriate, to obtain payment of a claim against any sponsor which fails to respond to a written demand letter. DMS may terminate collection action against a sponsor at any time if it has documentation that the sponsor cannot be located or when the cost of further collection is likely to exceed the amount that can be recovered.

If the alien's sponsor responds to the written demand letter and is financially able to pay the claim at one time, DMS will collect a lump sum cash payment. DMS may negotiate a payment schedule with the sponsor for repayment of the claim, as long as payments are provided in regular installments. Payments will be submitted to FNS in accordance with the procedures specified in 7004.3 Collection and Management of Food Stamp Claims. For submission to FNS, any funds collected from the sponsor will be reported and the State's retention will be based on whether the corresponding claim against the alien's household is being treated as an inadvertent household error claim or intentional misrepresentation or fraud claim.

### **9081.10 Collecting Claims Against Alien Households**

Prior to initiating collection action against the household of a sponsored alien for repayment of an overissuance caused by incorrect information having been supplied concerning the alien's sponsor or sponsor's spouse, determine whether such incorrect information was supplied due to inadvertent error or intentional misrepresentation or an act of intentional Program violation on the part of the alien. If sufficient documentary evidence exists to substantiate that the incorrect information concerning the alien's sponsor or sponsor's spouse was provided due to intentional misrepresentation on the part of the alien, pursue the case in accordance with the procedures specified in

DSSM 2023 for misrepresentation disqualifications. The claim against the alien's household will be handled as an inadvertent household error claim prior to the determination of intentional misrepresentation by an administrative disqualification hearing official or a court of appropriate jurisdiction. If DSS determined that the incorrect information was supplied due to misunderstanding or unintended error on the part of the sponsored alien, the claim will be handled as an inadvertent household error claim in accordance with the procedures specified in DSSM 7002.2. These actions will be taken regardless of the current eligibility of the sponsored alien or the alien's household.

### **9085.5 Unclear Information**

When information about changes in a household's circumstances are unclear and DSS cannot determine the effect on the household's benefit, DSS must clarify and verify the changes as follows:

1. DSS must issue a written request for contact (RFC) which clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances.

2. Allow the household at least ten (10) days to respond and to clarify its circumstances either by telephone or by correspondence, as directed by DSS.

3. If the household fails to respond to the RFC, or does respond but refuses to provide sufficient information to clarify its circumstances, DSS will terminate the case and issue a notice of adverse action explaining the reason for the action. Inform the household that a new application must be filed if the household wishes to continue to receive benefits.

4. When the household responds to the RFC and provides sufficient information, process the changes according to DSSM 9085.3 and DSSM 9085.4.

### **9085.5 6 Failure to Report**

[273.12(d)]

If a household fails to report a change as required under DSSM 9085 and, as a result, receives benefits to which it is not entitled, file a claim against the household in accordance with DSSM 7000. If the discovery is made within the certification period, the household is entitled to a notice of adverse action in advance if the household's benefits are reduced. A household is not to be held liable for a claim because of a change in household circumstances which it is not required to report. Do not terminate individuals for failure to report a change unless the individual is disqualified in accordance with the disqualification procedures specified in DSSM 2023 .

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

**ORDER**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Program initiated proceedings to amend policies to implement a policy change to Section 14950 of the Division of Social Services Manual. This change eliminates Medicaid Guaranteed Eligibility for Medicaid recipients enrolled in the Diamond State Health Plan. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the February, 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 28, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF INFORMATION SUBMITTED:**

The Governor's Council For Exceptional Citizens (GACEC), the State Council for Persons With Disabilities (SCPD) and the Delaware Developmental Disabilities Council (DDDC) provided similar comments:

GACEC Comment: The GACEC opposes the elimination of this option. The GACEC would like to point out that the Federal Government promotes this option to facilitate the provision of stable health care. Moreover, any savings to the State may be offset by increased administrative costs in conducting multiple eligibility redeterminations from month to month.

SCPD and DDDS Comments: First, SCPD realizes that DSS is eliminating the option to reduce budget expenditures and opposes such action as short-sighted. The Federal Government, through law, promotes the option to facilitate provision of stable health care. Moreover, any savings may be off-set by administrative costs in conducting multiple eligibility redeterminations from month to month. In addition, low-income children and adults may not receive the preventative care they need resulting in other costly services (e.g. emergency room services).

SCPD, DDDS Comments: Second, SCPD and DDDS questions the effective date of the change. This regulation was not issued as an emergency regulation and is therefore still a proposed regulation. For example, please compare 4

DE Reg. 599. Since comments are due by February 28, 2002, the existing regulation (authorizing six months guaranteed eligibility) remains in effect until at least March 1. In contrast, DSS has terminated eligibility retroactively for individuals losing eligibility January 31, 2002. It has also retroactively curtailed the six month coverage of persons otherwise losing eligibility effective December 31, 20[0]1 to May 31, 2002. In theory, the latter group was enrolled under the current regulations which contain the six months guarantee of eligibility.

DSS Response: The Division had to make this decision because there are insufficient funds to maintain this option. DSS realizes that this is a proposed regulation that will not become a final regulation until April 10, 2002 and will revise the regulation accordingly.

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the February, 2002 Register of Regulations should be adopted, as herein revised.

**THEREFORE, IT IS ORDERED**, that the proposed regulation of the Medicaid/Medical Assistance Program regarding Medicaid Guaranteed Eligibility is adopted, as herein revised, and shall be final effective April 10, 2002.

Vincent P. Meconi, Secretary, DHSS

**REVISION:****14950 Guaranteed Eligibility**

All guaranteed eligibility will end effective ~~5/31/02~~ **9/30/02**. Individuals who lose eligibility effective ~~12/31/01~~ **4/30/02** may receive up to five more months of guaranteed eligibility. Individuals who lose eligibility ~~1/31/02~~ **5/31/02** or after will not receive a period of guaranteed eligibility.

~~Section 1902(e)(2) of the Social Security Act, as amended by the Balanced Budget Act of 1997, permits up to six months of guaranteed eligibility for individuals if they are enrolled in a managed care organization. Delaware has selected this option with an effective date of December 1, 1999.~~

~~The six month period of guaranteed eligibility is available to Medicaid recipients enrolled in the Diamond State Health Plan.~~

~~The rules in this section set forth the eligibility requirements, conditions and limitations, and medical coverage benefits for the six month period of guaranteed eligibility.~~

**14950.1 Six Month Period of Guaranteed Eligibility**

~~A six month period of guaranteed eligibility is defined as a six month period of continuous enrollment in a managed~~

care organization under the Diamond State Health Plan (DSHP). The following individuals may be found eligible for a six-month period of guaranteed eligibility:

1. a first-time Medicaid recipient
2. an individual who becomes eligible for Medicaid again following a period of at least one month of ineligibility for Medicaid.

The guaranteed eligibility period begins with the first of the month in which the individual enrolls in the DSHP and continues for six consecutive months. The individual who is enrolled in DSHP retains eligibility for Medicaid services, even if the individual otherwise loses Medicaid eligibility.

#### **14950.2 Limitations on Guaranteed Eligibility**

Individuals who have been continuously enrolled in the Diamond State Health Plan for a period of six months or more are not eligible for guaranteed eligibility as of:

- a) the effective date of this policy
- b) the effective date of managed care enrollment following a Diamond State Health Plan open enrollment period.

#### **14950.3 Individuals Who Become Eligible for Medicaid Following at Least One Month of Ineligibility**

Individuals who are disenrolled from the DSHP and are subsequently reenrolled because they become eligible for Medicaid again, may receive a new six-month period of guaranteed eligibility. This includes individuals who have already had a six-month period of guaranteed eligibility. There must be at least a one-month lapse in Medicaid eligibility in order to receive a new guaranteed eligibility period.

These individuals will be reenrolled in the same managed care organization in which they were a member prior to the month of ineligibility for Medicaid unless it has been more than one year since the loss of eligibility. If it has been more than one year since the individual's eligibility for Medicaid, the individual may choose a new managed care organization.

#### **14950.4 Individuals Who Become Exempt from Enrollment in the DSHP**

For individuals who become exempt from enrollment in the DSHP during the six-month period of guaranteed eligibility but are still Medicaid eligible, the remaining portion of the six-month guaranteed eligibility period will accrue to the individual. If the individual loses his or her exempt status and must reenroll, the remaining portion of the guaranteed eligibility period will be granted to the individual.

#### **14950.5 Individuals Who Transfer Between DSHP Managed Care Organizations**

For individuals who transfer from one DSHP managed

care organization to another DSHP managed care organization prior to the end of the six-month period of guaranteed eligibility, the remaining portion of the guaranteed period will follow the individual to the new managed care organization

#### **14950.6 Termination of Guaranteed Eligibility**

The six-month period of eligibility terminates the earliest of:

the last day of the sixth month following the effective date of enrollment in the DSHP or the last day of the month in which the individual:

- a) dies
  - b) moves out of state or is no longer a Delaware resident
  - c) becomes an inmate of a public institution
  - d) requests termination of Medicaid eligibility and/or managed care enrollment
  - e) becomes eligible for long term care Medicaid
  - f) becomes eligible for or entitled to Medicare
  - g) becomes eligible for CHAMPUS
  - h) becomes eligible for another comprehensive medical managed care program administered by the Delaware Medical Assistance Program
  - i) is otherwise ineligible for the DSHP.
-

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER TWENTY-NINE**

**RE: DECLARATION OF DROUGHT  
WARNING; NOTICE OF POTENTIAL  
MANDATORY WATER  
CONSERVATION MEASURES; AND  
OTHER RELATED ACTION**

WHEREAS, in recent months, the State of Delaware and surrounding areas have experienced an extended period of unusually low rainfall and dry conditions; and

WHEREAS, as a consequence of dry conditions within the State, many streams and water sources haven fallen substantially below their normal levels; and

WHEREAS, the absence of rainfall and potentially increasing demand for water supplies during the upcoming spring and summer months necessitate the adoption of appropriate water conservation measures; and

WHEREAS, the Governor's Drought Advisory Committee has recommended that I issue a drought warning pursuant to 20 *Del. C.* § 3116(a)(5), in order to effectuate a drought warning and implement voluntary conservation measures; and

WHEREAS, such measures are necessary to avoid or mitigate the adverse impact of continued drought that may require a state of emergency to be declared; and

WHEREAS, the current dry conditions experienced in Delaware are adversely affecting fresh water supplies and have created a condition of water scarcity that will likely result in conflicts among competing water uses; and

WHEREAS, the adoption of mandatory directives for reducing water use will likely have a substantial effect on the State's environment and economy and affect a wide range of water users and interests; and

WHEREAS, instream water needs to protect fish and wildlife and to maintain water quality standards must also be addressed; and

WHEREAS, a high degree of cooperation among various water users of Delaware will be necessary throughout the period of drought and such cooperation can best be implemented with input from persons regulating and/or representing such interests; and

WHEREAS, the State's Comprehensive Water Resources Management Plan has established a phased approach in implementing drought contingency,

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. This Executive Order shall constitute a drought warning for the State of Delaware, pursuant to 20 *Del. C.* § 3116(a)(5).

2. All State facilities shall impose a ban on all non-essential use of water as set forth more fully in paragraph 3 below:

3. All citizens of the State are urged to restrict voluntarily the non-essential use of water, including but not limited to, the following:

(a) The use of fresh water for non-agricultural irrigation and watering of lawns and outdoor gardens, landscaped areas; athletic fields, trees, shrubs and outdoor plants, except through use of hand-held containers or hand-held low-pressure perforated hoses, and except during the hours of 5:00 p.m. and 9:00 a.m.;

(b) The use of fresh water for watering of golf courses, except by watering only tees, greens and newly re-sodded or seeded portions of fairways, and utilizing such water in the minimum amount necessary for the survival thereof, and except during the hours of 5:00 p.m. and 9:00 a.m.;

(c) The use of water for washing paved surfaces such as streets, roads, sidewalks, driveways, parking areas, tennis or other athletic courts, and patios;

(d) The use of water for ornamental purposes including fountains, artificial waterfalls, and reflecting pools;

(e) The use of water for non-commercial washing and cleaning of vehicles, except by the use of hand-held buckets and hand-held hoses with automatic flow control nozzles and where use is restricted to the minimum volume necessary and is performed only on unpaved surfaces;

(f) The use of water from a fire hydrant for any purpose except for fire fighting;

(g) The use of water for flushing sewers and hydrants, except as deemed necessary in the interest of public health and safety; and

(h) The service of water to patrons in restaurants, bars, pubs, clubs, and entertainment establishments, except at the request of a customer.

Citizens of the State are further urged to voluntarily conserve water through other measures, including repairing leaky water fixtures, flushing toilets only when necessary, minimizing splashing from pools, avoiding evaporation by covering pools when not in use, and installing shower flow restrictors, toilet tank dams and faucet aerators.

4. Delaware water suppliers are encouraged and requested to consider the adoption of such other water conservation measures as may be practicable.

5. The Department of Natural Resources and Environmental Control ("DNREC") shall implement the drought warning directives set forth in the Comprehensive Water Resources Management Plan.

6. Upon recommendation of the Drought Advisory

Committee, DNREC may schedule a public hearing upon not less than seven days' notice to consider the implementation of the mandatory water usage restrictions as contemplated by *20 Del. C. § 3116(a)(5)*. Stewart E. Lovell, Section Manager for DNREC's Water Supply Section, is appointed the Hearing Officer to preside at any such hearing, and shall make a written report as required by *20 Del. C § 3116(a)(5)*.

7. The Drought Advisory Committee shall consult with municipalities, water suppliers and other public and private agencies and organizations, in carrying out the above-described activities.

Approved this 5th day of March, 2002.

Ruth Ann Minner, Governor

Attest:

Harriet Smith Windsor, Ed.D.

Secretary of State

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# GOVERNOR'S APPOINTMENTS

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Board of Dental Examiners	Robert P. Marier, D.D.S.	10/16/04
Board of Directors of the Riverfront Development Corporation	Mr. John R. Malloy	Pleasure of the Governor
Board of Occupational Therapy	Ms. Mara Beth Schmittinger	1/07/05
Child Placement Review Board Executive Committee	Ms. Barbara H. Blair	5/25/04
Council on Real Estate Appraisers	Ms. Lynn A. Perrine-Manus Mr. Charles L. Witt	1/24/05 1/24/05
Council on Shell Fisheries	Mr. Patrick M. Gaffney Mr. Leonard Voss, Jr.	1/31/05 1/31/05
Council on Transportation	Mr. Irwin G. Burton Mr. Marvin J. Davis	2/07/05 2/07/05
Delaware Commission for Women	Kathleen Jacobs, Ph.D. Ms. Geraldine Lewis-Loper	1/14/05 1/14/05
Delaware Criminal Justice Information System Board of Managers	Mr. Thomas H Jarrett	Pleasure of the Governor
Governor's Council on Lifestyles & Fitness	The Honorable John C. Carney, Jr. Mr. Thomas Hall Ms. Vicki Huber Mr. Paul Schweizer Ms. Joann Wilkins	1/29/04 1/29/04 1/29/04 1/29/04 1/29/04
State Board of Electrical Examiners	Mr. John J. Walsh, III	2/27/05
State Board of Veterinary Medicine	Ms. Madelyn M. Nellius	2/08/05
State Committee of Dietetics and Nutritionists	Ms. Marjorie D. Ressler	9/06/04
State Emergency Response Commission	Mr. A. Bryan Pecht	11/14/03
State Rehabilitation Advisory Council	Mr. Doyle R. Dobbins Ms. Elisabeth A. Furber Ms. Melissa H. Shahan	1/16/05 1/16/05 1/16/05

**DELAWARE FIRE PREVENTION  
COMMISSION**

Statutory Authority: 16 Delaware Code,  
Section 9806(b)(7) (16 **Del.C.** §9806(b)(7))

**NOTICE OF SFPC POLICY**

The Delaware State Fire Prevention Commission has adopted the policy of "Procedures to Implement 16 **Del. C.** §9806(b)(7)" which gives the 3 county EMS medical directors authority to suspend EMS providers immediately from patient treatment for a period not to exceed 30 days, if they determine that it is necessary in order to prevent a clear and immediate danger to the public health. The policy was adopted and effective on February 15, 2002 at the regularly scheduled Commission meeting held at the Delaware State Fire Prevention Commission 1463 Chestnut Grove Rd., Dover, DE 19904.

**PROCEDURES TO IMPLEMENT  
16 Del.C. § 9806 (b)(7)**

1. Title 16 Del. C. § 9806(b)(7) states:
  - (b) As part of their responsibilities, the 3 county EMS medical directors shall:
    - (7) Have authority to suspend EMS providers immediately from patient treatment for a period not to exceed 30 days, if they determine that it is necessary in order to prevent a clear and immediate danger to the public health.
2. Prior to suspending an EMS provider, the county EMS medical director shall investigate the incident, and in this investigation the county EMS medical director will comply with the procedures for the Incident Review Committee authorized by 16 Del. C. § 6712(b).
3. If as a result of the investigation by the Incident Review Committee, the county EMS medical director suspends an EMS provider, the county EMS medical director will inform the EMS provider of his opportunity to appeal the suspension decision to the State Fire Prevention Commission and forward a copy of the suspension letter to the Commission.
4. When the Commission receives a copy of a letter suspending an EMS provider, the letter should be forwarded to the Commission member who participated in The Incident Review Committee investigation of the EMS provider, and the Commission member, based on his knowledge of the incident, will recommend to the Commission whether further action is needed.

5. If the Commission member who reviews the suspension letter indicates that further action is needed, the matter will be placed on the Commission's next monthly agenda for review by the Commission. If the Commission agrees that further action is needed, the matter will be scheduled for a Commission hearing and notice given to the EMS provider.

6. If the Commission member who reviews the suspension letter indicates that no further action is needed, the letter is filed with the Commission.

7. If the EMS provider appeals the County EMS medical director's decision to suspend the provider to the Commission, the Commission will schedule a hearing for the next monthly Commission meeting giving notice to both the EMS provider and the County medical director.

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**DELAWARE RIVER BASIN  
COMMISSION****NOTICE OF PROPOSED RULEMAKING**

The Delaware River Basin Commission (Commission) is a federal-state regional agency charged with managing the water resources of the Basin without regard to political boundaries. Its members are the governors of the four Basin states – New Jersey, New York, Pennsylvania and Delaware – and a Federal representative appointed by the President of the United States. The Commission is not subject to the requirements of 29 Delaware Code Chapter 101. This notice is published by the Commission for informational purposes

**Proposed Amendments to the Administrative  
Manual - Rules of Practice and Procedure  
Concerning Fees Associated with Responses  
to FOIA Requests**

**Summary:** The Commission will hold a public hearing to receive comments on proposed amendments to the agency's *Administrative Manual - Rules of Practice and Procedure* updating the fee schedule associated with Commission responses to Freedom of Information Act (FOIA) requests. The current schedule of fees was promulgated in 1975 and has not been updated since. Over the past quarter of a century, computer technologies have introduced new methods of recording and reproducing information that were not contemplated by the 1975 regulations, and administrative costs have increased. The proposed fee structure reflects current technologies and costs.

**Dates:** The public hearing will be held on Friday, May 31, 2002 during the Commission's regular business meeting, which will begin at 1:00 p.m. The meeting on May 31 must end by 3:00 p.m., but if necessary, the hearing will continue at the Commission's next scheduled business meeting until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify are asked to register in advance with the Commission Secretary by phoning 609-883-9500 ext. 203. Written comments will be accepted through the close of the public hearing; however, earlier submittals would be appreciated.

**Addresses:** The public hearing will be held at Grey Towers National Historic Landmark, 151 Grey Towers Drive, Milford, PA. Directions to Grey Towers will be posted on the Commission's web site at <http://www.drbc.net> by April 1, 2002. Written comments should be addressed to the Commission Secretary at DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360.

**Further Information, Contacts:** Please contact Pamela Bush, ext. 203, with questions about the proposed amendments or the rulemaking process.

**It is proposed to** amend Article 8, Section 2.8.10 "Fees" of the Delaware River Basin Commission *Administrative Manual - Rules of Practice and Procedure*, by striking the language of sub-section A of that section and replacing it with the following:

A. Unless waived in accordance with the provisions of Section 2.8.11, the following fees shall be imposed for production of any record pursuant to this part.

1. Administrative Fees.

a. Charges for administrative fees include staff time associated with:

- (i) Processing FOIA requests;
- (ii) Locating and reviewing files;
- (iii) Monitoring file reviews;
- (iv) Generating computer records (electronic print-outs); and

(v) Preparing logs of records deemed non-public.

b. Administrative charges will be calculated as follows: Administrative charges will be billed to the requester per quarter hour following the first quarter hour. These charges will be billed at the current, hourly paygrade rate (pro-rated for quarter hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.

c. Appointment Rescheduling/Cancellation – Requesters that do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Commission in preparing the requested records. The Commission will prepare an itemized invoice

of these charges and mail it to the requester for payment.

2. Photocopying Fees - The following are charges for photocopies of public records made by Commission personnel:

a. Standard Sized, Black and White Copies

The charge for copying standard sized, black and white public records shall be \$0.15 per printed page (i.e., single-sided copies are \$0.15 and double-sided copies are \$0.30). This charge applies to copies on the following standard paper sizes:

- (i) 8.5" x 11"
- (ii) 8.5" x 14"
- (iii) 11" x 17"

b. Color Copies/Printouts

The charge for color copies or color printouts shall be as follows:

- (i) 8.5" x 11" - \$1.00 per page
- (ii) 8.5" x 14" - \$1.50 per page
- (iii) 11" x 17" - \$2.00 per page

(iv) The charge for all color copies larger than 11" x 17" (including, but not limited to: photographic imagery, GIS print-outs, and maps) shall be calculated at the rate of \$2.50 per square foot.

c. Electronically Generated Records

Charges for copying records maintained in electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.

d. Other Copying Fees

The Commission, at its discretion, may arrange to have records copied by an outside contractor if the Commission does not have the resources or equipment to copy such records. In this instance, the requester will be liable for payment of these costs.

3. Forwarding material to destination. Postage, insurance, and special fees will be charged on an actual cost basis.

PAMELA M. BUSH, ESQ.  
Commission Secretary  
March 7, 2002

**DELAWARE RIVER BASIN  
COMMISSION****NOTICE OF FINAL RULEMAKING****Amendment to the Delaware River Basin Commission's  
Water Code and  
Comprehensive Plan to Establish Water Usage  
Reporting Requirements and  
Modify Water Metering Requirements****SUMMARY:**

At its April 19, 2001 business meeting, the Delaware River Basin Commission ("Commission") amended its **Water Code** and **Comprehensive Plan** to establish water usage reporting requirements for source water withdrawals and water service and to modify its existing water metering requirements for consistency with the new reporting provisions. Today's notice fulfills a requirement of the Delaware River Basin Compact, Pennsylvania Act No. 268 of 1961, that rules adopted by the Commission be filed in accordance with the laws of the signatory parties.

**EFFECTIVE DATE:**

This rule is effective immediately.

**SUPPLEMENTAL INFORMATION:**

On October 23, 2000 the Commission published on its web site a Notice of Proposed Rulemaking to establish water usage reporting requirements to ensure that the Commission has the source and service information needed to evaluate how and where water is being used in the basin. Notice was published in the **Federal Register** on November 29, 2000, the **Delaware Register of Regulations** on December 1, 2000, the **New Jersey Register** on December 4, 2000, the **New York State Register** on November 22, 2000 and the **Pennsylvania Register** on November 11, 2000. A public hearing was held on January 9, 2001. The proposed amendments were substantively revised on the basis of the written and oral testimony received, and a notice of revised proposed rulemaking was published in the Federal Register on March 1, 2001, the **Delaware Register of Regulations** on March 1, 2001, the **New Jersey Register** on March 5, 2001, the **New York State Register** on February 28, 2001 and the **Pennsylvania Bulletin** on March 3, 2001. An additional comment period and public hearing were provided. The final rule was approved by the Commission at the conclusion of the hearing on April 19, 2001.

The final rule amends Section 2.50.1, "Service Metering" and Section 2.50.2, "Source Metering, Recording and Reporting" of the Commission's Water Code and adds a new Section 2.50.3, "Reporting Requirements." The title of Section 2.50 is revised to read, "Water Metering and

Reporting Requirements." Section 2.50.1 is amended to authorize, rather than require, the Executive Director to enter into administrative agreements with the implementing agencies of the signatory states, whereby the appropriate state agencies will administer and enforce the provisions of the regulation. Section 2.50.1 is further amended to provide that in the absence of such an administrative agreement, the Commission shall serve as the agency for administration and enforcement. Section 2.50.2 is amended to provide that the Commission shall administer and enforce the regulation in the New York portion of the basin. New Section 2.50.3 enumerates the types of source and service data to be reported for water supply systems serving the public and for other withdrawals subject to the requirements of Section 2.50.1, Section 2.50.2 and the Commission's Ground Water Protected Area Regulations. In order to avoid redundant reporting, Section 2.50.3 enumerates different reporting requirements for the year 2000 than for subsequent years. For the year 2000, a greater one-time effort is required to initiate reporting. For subsequent years, a much smaller effort is required to continue reporting.

**FURTHER INFORMATION, CONTACT:**

Additional information, including background on the need for water usage reporting requirements and an account of the process by which the amendments were developed, is contained in the original Notice of Proposed Rulemaking, December 1, 2000. The text of the new reporting requirements and the complete **Water Code** as amended are available on the Commission's web site at <http://www.DRBC.net>, or upon request from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628-0360. For further information, contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, (609)-883-9500 (x203).

Pamela M. Bush, Esq.  
Commission Secretary  
March 11, 2002

## DELAWARE FIRE PREVENTION COMMISSION

### NOTICE OF PUBLIC HEARING

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** Ch. 101, to receive public comment regarding a proposed change to the State Fire Prevention Regulations. The Commission is proposing to amend Chapter III, Forms, of the Ambulance Service Regulations as follows:

Add Section XVII - Ambulance Company's Intent to Discontinue Service

Add Section XVIII - Basic Life Support Data Assessment Committees

#### DATE, TIME AND PLACE OF PUBLIC HEARING

DATE: Tuesday, May 28, 2002

TIME: 9:00 AM and 7:00 PM

PLACE: Commission Chamber

Delaware State Fire School  
Delaware Fire Service Center  
1463 Chestnut Grove Road  
Dover, Delaware 19904

Persons may view the proposed addition to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission Office, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904.

Persons may present their views in writing by mailing their views to the Commission at the above address prior to the hearing or by offering testimony at the public hearing. If the number of persons desiring to testify at the public hearing is large, the amount of time allotted to each speaker will be limited.

#### Ambulance Company's Intent To Discontinue Service

##### STEP 1

Any fire department and/or ambulance company desiring to terminate ambulance service in the state of Delaware must notify the Delaware State Fire Prevention Commission in writing 120 days before terminating service.

##### STEP 2

Immediately upon notification of a fire department and/or ambulance company's desire to terminate service, the Chairman or the Vice Chairman of the Delaware State Fire Prevention Commission shall notify the president of the county firemen's association in which the fire department and/or ambulance company provides service to the

residences and visitors of the state of Delaware for that district.

##### STEP 3

Immediately upon receiving notification of a fire department and or ambulance company's desire to terminate service the county firemen's association president shall appoint a committee. The committee shall include, but not be limited to: two members shall be the President's of the County Fire Chief's and County Ambulance Associations or their designees. The County President shall have the right to appoint other members to this committee as he and/or she may deem necessary.

1. To communicate and offer assistance to the terminating company in an effort to help them continue service.

2. In the event that the county committee is unable to get the company to continue service, they shall then contact the surrounding departments and ascertain and/or develop a plan for those departments to divide the district and continue service.

3. In the event that steps one and two fail the county committee may put forth any and all suggestions they deem viable in order to provide ambulance service to the residences and visitors of the state of Delaware for that district.

4. The committee, through the County President, shall report to the Delaware State Fire Prevention Commission within 60 days with their recommendations and/or findings.

#### BASIC LIFE SUPPORT DATA ASSESSMENT COMMITTEES

**MEMBERS:** The State Fire Prevention Commission, hereinafter referred to as the Commission, hereby establishes Basic Life Support (BLS) Data Assessment Committees, hereinafter referred to as the Committees.

There shall be three committees, one in each county of the State of Delaware. Members shall consist of representatives from the County Volunteer Firemen's Association, the County Fire Chief's Association, the County Ambulance Association, and the County or local Fire and Emergency Medical (EMS) Dispatch Center dispatching the respective Company's EMS calls.

The President of his or her respective Association shall appoint each representative. The manager of the Fire and EMS Dispatch Center dispatching the Company's BLS incidents shall appoint the Dispatch Center representative.

The representative from each Association shall serve on their respective Committee until a letter of appointment is received from the respective Association or Dispatch Center indicating replacement of their current representative.

**GOAL:** Each Committee shall meet at least biannually, or as necessary, to review their respective County's Fire and

EMS Dispatch Center's Basic Life Support (BLS) data. They shall review the monthly data for each Ambulance Provider, hereinafter referred to as Provider, in their County. Criteria for review shall include numbers of dispatched calls, scratches, and special circumstances.

If the Committee deems that a Provider needs improvement in an area, the Committee shall schedule a meeting with that Provider to determine if they can support the Provider in solving the identified problem(s). When meeting with the Provider, the Committee, by consensus, shall select a Chair to mediate discussions presented by the Committee to the Provider.

In the event that the Committee has problems with the Provider, or the Provider has problems with the Committee, either may forward the problem to the Commission through the normal Grievance Procedures, previously adopted by the Commission.

Each Committee shall submit an annual written report to the Commission, reporting on their reviews, and any suggestions they might have to improve the BLS system or Committee procedures.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
REAL ESTATE COMMISSION**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Real Estate Education Requirement. The proposed amendments revise Guideline 6.1.2 to permit the listing of specific courses of instruction that are acceptable for continuing education credit towards the requirement for renewal. The proposed revisions include insertion of a new Guideline 6.2.1 permitting up to three credits of continuing education applicable to legislative update for Delaware Association of Realtor members who serve on the State Government Affairs Committee provided that they attend no less than eighty percent of the annual meetings of that committee and attendance is certified in the form and manner prescribed by the Commission.

A public hearing will be held on the proposed Education Guidelines on Thursday, May 9, 2002 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Education Guidelines. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled

public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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**DEPARTMENT OF AGRICULTURE  
AQUACULTURE REGULATIONS**

The Department proposes these regulations pursuant to 3 **Del.C.** § 407(a). The proposed regulations contain the following general sanctions: Definitions, Aquaculture Registration, General Aquaculture Permits, Restricted Aquaculture Permits, Aquaculture Stock Certification, Aquaculture Broodstock, Identification and Certification, Inspection of Premises, Enforcement, Future Considerations, Fee Fishing, Aquaculture Facility Protection and Civil Penalties. These regulations are intended to more clearly define the role of the Department in the Delaware aquaculture industry. The proposed regulations will be considered at a public hearing scheduled for May 10, 2002 at 1:00 p.m. at the Delaware Department of Agriculture Building, Conference Room #1. Copies of the proposed regulations may be obtained from the State Veterinarian's office. Comments may be submitted in writing to Bruce R. Walton on or before 1:00 p.m. on May 10, 2002 and/or in person at the hearing. The Delaware Department of Agriculture is located at 2320 S. DuPont Highway, Dover, Delaware 19901 and the phone number is (302) 698-4503.

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**DEPARTMENT OF AGRICULTURE  
Forest Service Regulations**

The Department proposes these amendments to the Forest Service's Regulations pursuant to 3 **Del.C.** § 1011. It's purpose in proposing these amendments is to streamline the procedures for responding to potential or existing water quality problems arising from silvicultural activities and to establish an enforcement and penalty scheme for those who fail to obtain and file the necessary permits before commencing timber harvesting activities.

The proposed amendments to the regulations will be considered at a public hearing scheduled for May 8, 2002 at 4:00 PM at the Delaware Department of Agriculture Building, conference Room No. 1. Copies of the proposed amendments to the regulations may be obtained from the State Forester's Office. Public comments may be submitted

in writing to E. Austin Short, III on or before 4:00 PM on May 8, 2002 and/or in person at the public hearing. The Delaware Department of Agriculture is located at 2320 South DuPont Highway, Dover, Delaware and the telephone number is (302) 698-4503.

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## **STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, April 18, 2002 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**DIVISION OF PUBLIC HEALTH**  
Office of Health Facilities Licensing  
and Certification  
**Notice of Public Hearing**

The Office of Health Facilities Licensing and Certification, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Delaware Regulations for Adult Day Care Facilities.

The regulations for Adult Day Care Facilities apply to any program that provides health, social, and related support services as described in these regulations for four or more functionally impaired adults who reside in the community and are in need of these services as determined by a pre-admission assessment. Adult Day Care facilities do not include programs intended exclusively or primarily to provide activities or training to the developmentally disabled or mentally ill. These services are provided to adults for a period of less than 12 hours during the day and are provided in a setting other than a participant's home or the residence of the facility operator.

The public hearing will be held April 25, 2002 at 1:00 PM in the 3<sup>rd</sup> Floor Conference Room, Jesse Cooper Building, Federal and Water Streets, Dover, Delaware 19903.

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

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

Anyone wishing to present his or her oral comments at this hearing should contact Ms. Vanette Seals at (302) 995-8521 by April 16, 2002. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by May 1, 2002 to:

David P. Walton, Hearing Officer  
Division of Public Health  
P.O. Box 637  
Dover, Delaware 19903-0637

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### **DIVISION OF SOCIAL SERVICES** **PUBLIC NOTICE** **Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement new policy in the Division of Social Services Manual (DSSM): DSSM 6011 - 6111. The proposed new policy establishes the Relative Caregivers' (Non-Parent) Transitional Resource Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by April 30, 2002.

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

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### **DIVISION OF SOCIAL SERVICES** **PUBLIC NOTICE** **Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement a policy change to the following section of the Division of

Social Services Manual (DSSM): DSSM 15400.6.1. The proposed change clarifies the Medicaid eligibility termination date for Foster Children who move out-of-state.

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 Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by April 30, 2002.

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

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**DIVISION OF SOCIAL SERVICES**

**PUBLIC NOTICE**

**Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement Title XIX Medicaid State Plan changes mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Subtitle F of HIPAA, the Administrative Simplification section, standardizes the format of electronic data interchange of certain types of administrative and financial transactions used in healthcare. These changes reflect the replacement of local reimbursement code sets with the use of standard, more generic national codes for services.

**Summary of Changes - Reimbursement Methodology**

1. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services:

- dental treatment and specialized dental services - change reimbursement from fee-for-service to a percentage of charges
- add to the list of EPSDT services, Private Duty Nursing in excess of eight (8) hours with prior authorization.

2. Extended Services to Pregnant Women:

- change reimbursement language from the locally specific "hourly" rate to the generic "unit" rate; unit rates are based on fifteen (15) minute increments.

3. Home Health Services

- simplify the reimbursement methodology language and change reimbursement language from the locally specific per "visit" and "hour" rates to the generic "unit" rate; unit rates are based on fifteen (15) minute increments.

4. Private Duty Nursing

- change reimbursement language from the locally specific "hourly" rate to the generic "unit" rate; unit rates are based on fifteen (15) minute increments.

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 Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by April 30, 2002.

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

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**DELAWARE RIVER BASIN  
COMMISSION**

**25 STATE POLICE DRIVE**

**P.O. BOX 7360**

**WEST TRENTON, NJ 08628-0360**

**NOTICE OF PUBLIC HEARING**

The Delaware River Basin Commission ("DRBC" or "Commission") is a federal-state regional agency charged with managing the water resources of the Basin without regard to political boundaries. Its members are the governors of the four Basin states – New Jersey, New York, Pennsylvania and Delaware – and a Federal representative appointed by the President of the United States. As such, the Commission is exempt from the requirements of 29 Delaware Code Chapter 101. The following notice is published by the Delaware River Basin Commission for informational purposes.

**Proposed Guidance for Developing Integrated  
Resource Plans**

**Summary.** This notice is published by the Commission pursuant to a decision of the commissioners to hold a public hearing and solicit written comment on the proposed "Guidelines for Developing an Integrated Resource Plan Under the Delaware River Basin Commission



Southeastern Pennsylvania Ground Water Protected Area Regulations” (*Guidelines*). Integrated resource plans (“IRPs”) evaluate water resources availability and demands on a watershed level, providing a comprehensive approach to water resource management. Such plans have regulatory significance in the Basin only within the Ground Water Protected Area of Southeastern Pennsylvania. However, the Commission recognizes the value of IRPs for improving water resource planning at the local level and will support their development in watersheds throughout the basin by providing guidance and technical assistance to the sponsoring agencies or municipalities. The *Guidelines* are not a regulation, and the DRBC does not intend to give them that weight or deference. The *Guidelines* may be viewed on the Commission’s web site, at <http://www.drbc.net>.

**Dates.** The public hearing will be held on April 3, 2002 during the Commission’s regular business meeting, which will begin at 1:00 p.m. The hearing will continue until all those present who wish to testify are afforded an opportunity to do so. Persons wishing to testify are asked to register in advance with the Commission Secretary, by phoning 609-883-9500 ext. 203. Written comments will be accepted through the close of the public hearing.

**Addresses.** The public hearing will be held at the Commission’s offices at 25 State Police Drive in West Trenton, New Jersey. Directions are posted on the Commission’s web site at <http://www.drbc.net>. Written comments should be addressed to the Commission Secretary at DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360.

**Further Information, Contacts.** Please contact Jonathan Zangwill at 609-883-9500 x307 with questions about the proposed *Guidelines* and Pamela Bush, ext. 203, with questions about the hearing process.

PAMELA M. BUSH, ESQ.  
Commission Secretary  
March 6, 2002

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**DELAWARE RIVER BASIN  
COMMISSION**

**25 STATE POLICE DRIVE  
P.O. BOX 7360  
WEST TRENTON, NJ 08628-0360**

The **Delaware River Basin Commission** will meet Wednesday, April 3, 2002 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

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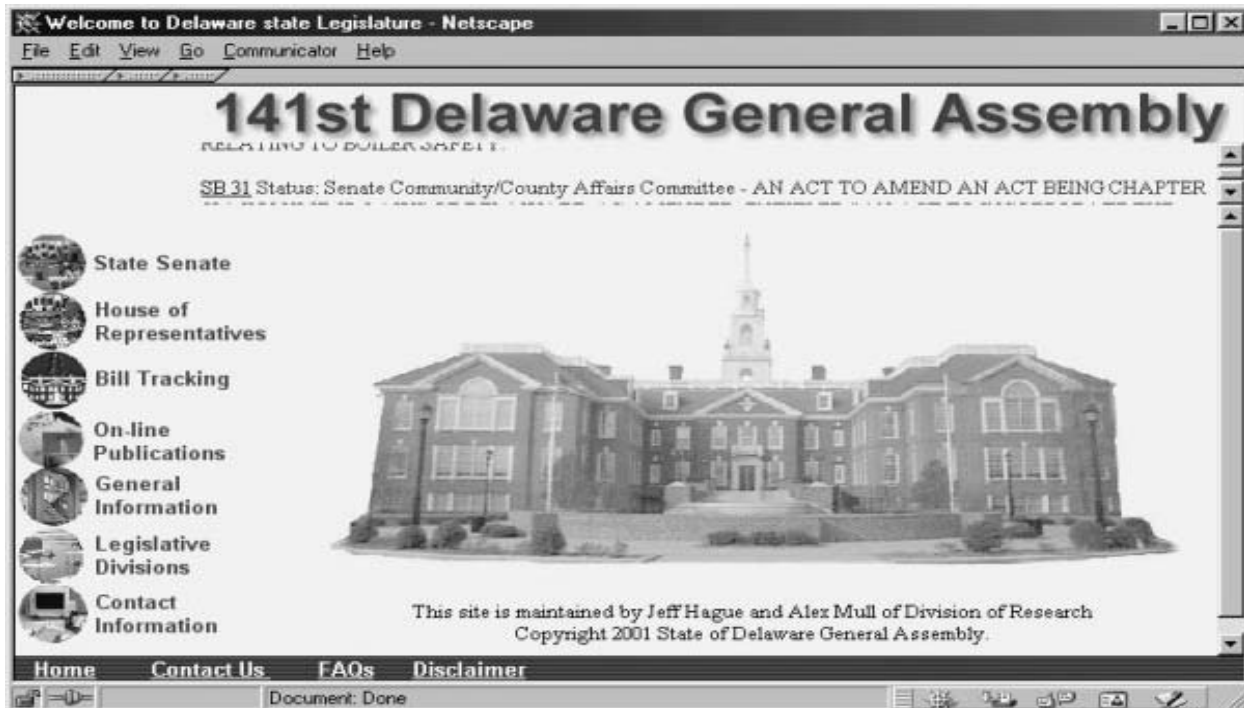
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