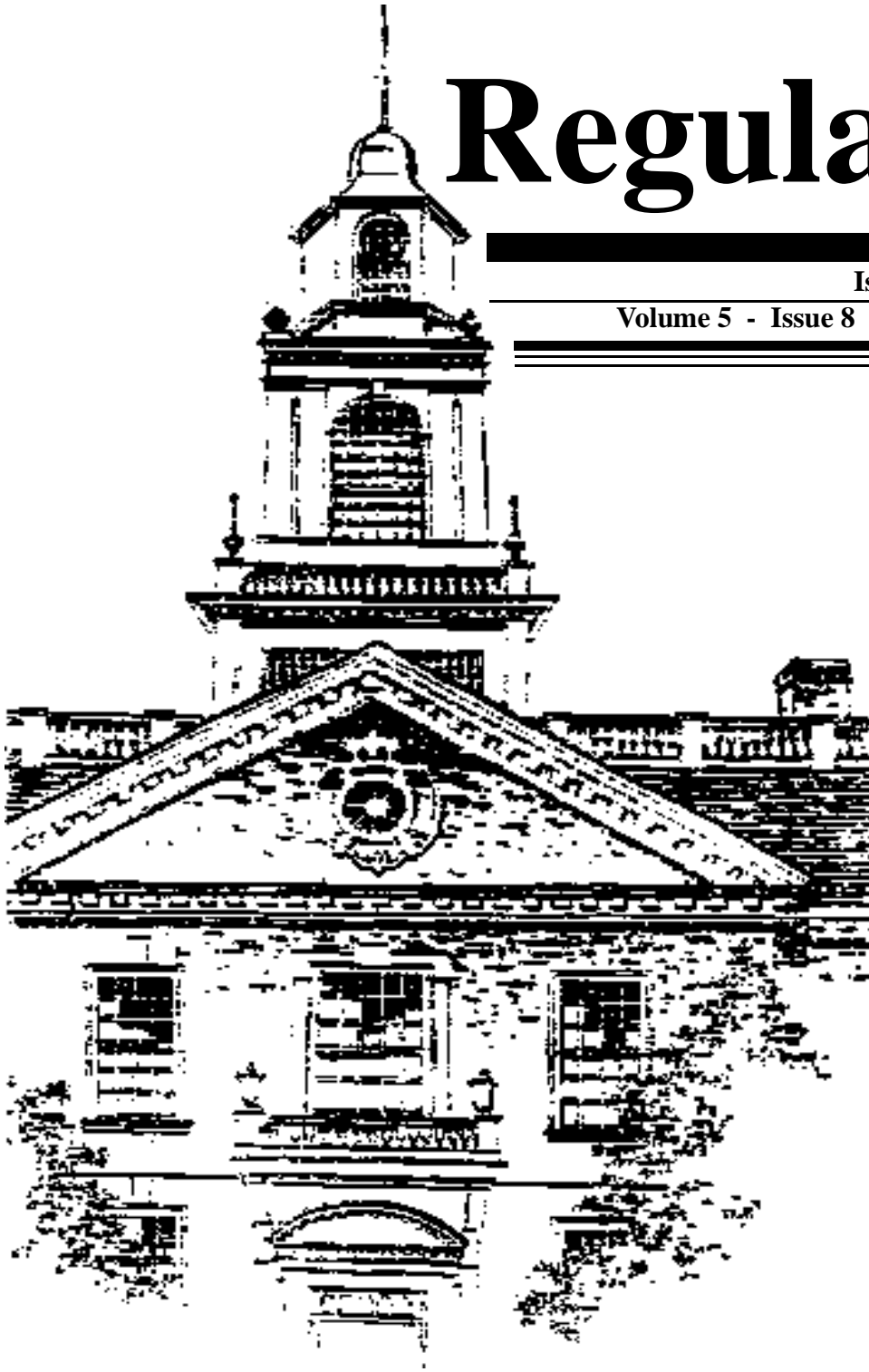

Delaware Register of Regulations



Issue Date: February 1, 2002

Volume 5 - Issue 8

Pages 1544 - 1629

IN THIS ISSUE:

Regulations:

Proposed

Final

Governor

Executive Orders

Appointments

Calendar of Events &

Hearing Notices



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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

1545

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
MARCH 1	FEBRUARY 15	4:30 P.M.
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

Walter G. Feindt, Deputy Director; **Judi Abbott**, Secretary; **Sandra F. Clark**, Administrative Assistant; **Jeffrey W. Hague**, Registrar of Regulations; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina**, Print Shop Supervisor; **Alex W. Mull**, Assistant Registrar; **Deborah A. Porter**, Administrative Assistant; **Barbara Ryan**, Public Information Clerk; **Ted Segletes**, Paralegal; **Don Sellers**, Printer; **Thom Shiels**, Legislative Attorney; **Alice W. Stark**, Legislative Attorney; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

Cumulative Tables.....1549

FINAL

PROPOSED

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Physical Therapists..... 1556
Board of Veterinary Medicine..... 1563

DEPARTMENT OF EDUCATION

245 Michael C. Ferguson Achievement Awards
Scholarship..... 1568
1526 Certification English to Speakers of Other
Languages (Esol) Teachers..... 1570
1527 Endorsement English to Speakers of Other
Languages (Esol) Teacher..... 1570

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Regulations for Assisted Living Facilities..... 1572
Regulations for Nursing Homes Admitting
Pediatric Residents..... 1592

DIVISION OF SOCIAL SERVICES

7004.3 Collection and Management of Food Stamp
Claims 1596
7007 Submission of Food Stamp Payments..... 1597
9028 Filing an Application..... 1598
9030 Interviews..... 1599
9040 Delays in Processing..... 1600
9081 Deeming of Sponsor Income..... 1600
9085 Unclear Information..... 1601
14950 Guaranteed Eligibility..... 1602

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL Division of Air & Waste Management Waste Management Section

2002 Amendments to Delaware Regulations Governing
Hazardous Waste..... 1603
Amendments to Delaware Regulations Governing
Hazardous Waste..... 1605

DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION

Board of Nursing, Joint Practice Committee,
Advanced Practice Nurses..... 1606

DEPARTMENT OF EDUCATION

201 School Shared Decision-making Transition
Planning Grants..... 1615
205 District Shared Decision-making Transition
Planning Grants..... 1616
210 Approval Of School Improvement Grants.... 1616
828 Assistance With Medications On Field Trips 1617

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL Division of Air & Waste Management Waste Management Section

Regulations Governing Hazardous Substance
Cleanup..... 1618

DEPARTMENT OF PUBLIC SAFETY DIVISION OF MOTOR VEHICLES AND THE DIVISION OF HIGHWAY SAFETY

Policy Regulation No. 91 Ignition Interlock Device,
Installation, Removal, and Monthly Monitoring and
Calibration Fees..... 1620

GOVERNOR

Executive Order 23, Establishing the Governor's
Public Works and Procurement Opportunity
Council and Setting Standards for Contracting
by State Agencies..... 1622
Executive Order 24, December 24, 2001 Holiday 1623
Executive Order 25, Reallocation of State Private
Activity Bond Volume Cap for Calendar Year
2001 and Initial Suballocation of State Private
Activity Bond Volume Cap for Calendar
Year 2002..... 1624
Appointments..... 1625

**CALENDAR OF EVENTS/HEARING
NOTICES**

Examining Board of Physical Therapists, Notice of Public Hearing.....	1626
Board of Veterinary Medicine, Notice of Public Hearing.....	1626
State Board of Education, Notice of Monthly Meeting	1626
Health and Social Services, Div. of Long Term Care Residents Protection, Regulations for Assisted Living Facilities, Notice of Public Hearing.....	1626
Regulations for Nursing Homes Admitting Pediatric Residents, Notice of Public Hearing.....	1627
Div. of Social Services, DSSM 7004.3 Collection and Management of Food Stamp Claims and DSSM 7007 Submission of Food Stamp Payments, Notice of Public Comment Period	1627
DSSM 9028, 9030, 9040, 9081, and 9085, Rules of Food Stamp Program: Noncitizen Eligibility and Certification Provisions, Notice of Public Comment Period.....	1628
DSSM 14950, Medicaid Guaranteed Eligibility for Medicaid recipients enrolled in the Diamond State Health Plan, Notice of Public Comment Period	1628
DNREC, 2002 Amendments to Delaware Regulations Governing Hazardous Waste, Notice of Public Hearing.....	1629
Amendments to Delaware Regulations Governing Hazardous Waste, Notice of Public Hearing.	1629
Delaware River Basin Commission, Notice of Public Hearing.....	1629

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

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

DELAWARE SOLID WASTE AUTHORITY

Regulations of the Delaware Solid Waste Authority.....	5	DE Reg.	100	(Final)
Differential Disposal Fee Program.....	5	DE Reg.	115	(Final)
Statewide Solid Waste Management.....	5	DE Reg.	117	(Final)

DELAWARE STATE FIRE PREVENTION COMMISSION

Criminal History Records Check Policy.....	5	DE Reg.	1006	(Prop.)
--	---	----------------	------	---------

DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Professional Regulation (TITLE 24 DELAWARE ADMINISTRATIVE CODE)

100 Board of Accountancy.....	5	DE Reg.	6	(Prop.)
			5	DE Reg. 119 (Final)
			5	DE Reg. 687 (Prop.)
200 Board of Landscape Architecture.....	5	DE Reg.	446	(Final)
			5	DE Reg. 821 (Final)
1100 Board of Dental Examiners.....	5	DE Reg.	1251	(Final)
1900 Board of Nursing, Joint Practice Committee, Advanced Practice Nurses.....	5	DE Reg.	1009	(Prop.)
2900 Real Estate Commission.....	5	DE Reg.	231	(Prop.)
			5	DE Reg. 697 (Prop.)
			5	DE Reg. 1070 (Final)
			5	DE Reg. 1387 (Final)
2925 Real Estate Commission, Education Guidelines.....	5	DE Reg.	238	(Prop.)
			5	DE Reg. 705 (Prop.)
			5	DE Reg. 1071 (Final)
			5	DE Reg. 1187 (Prop.)
			5	DE Reg. 1395 (Final)
3000 Board of Professional Counselors of Mental Health.....	5	DE Reg.	452	(Final)
			5	DE Reg. 1340 (Prop.)
3100 Board of Funeral Services.....	5	DE Reg.	606	(Final)
3300 Board of Veterinary Medicine.....	5	DE Reg.	709	(Prop.)
			5	DE Reg. 999 (Errata)
			5	DE Reg. 1400 (Final)
3500 Board of Examiners of Psychologists.....	5	DE Reg.	612	(Final)
3900 Board of Clinical Social Work Examiners.....	5	DE Reg.	1072	(Final)
5100 Board of Cosmetology and Barbering.....	5	DE Reg.	243	(Prop.)
			5	DE Reg. 1260 (Final)
5300 Board of Massage and Bodywork.....	5	DE Reg.	16	(Prop.)
			5	DE Reg. 717 (Prop.)
			5	DE Reg. 827 (Final)
			5	DE Reg. 1409 (Final)

Public Service Commission

Delaware PSC's Rules for the Provision of Telecommunications Services, Docket Nos. 10 & 45, Proposed Amendments.....	5	DE Reg.	435	(Prop.)
			5	DE Reg. 1265 (Final)
Reg. Docket No. 13, Rules & Regulations Governing Minimum Standards for Service Provided by Public Water Companies.....	5	DE Reg.	722	(Prop.)
			5	DE Reg. 1414 (Final)

Water Utilities, Proposed Regulations Governing, Including the Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience & Necessity Subject to the Jurisdiction of the PSC.....	5	DE Reg.	212	(Final)
---	---	---------	-----	---------

DEPARTMENT OF AGRICULTURE

Aquaculture Regulations	5	DE Reg.	1192	(Prop.)
Delaware Standardbred Breeders' Fund Program.....	5	DE Reg.	1274	(Final)

Food Products Inspection Section

Food Products Inspection.....	5	DE Reg.	1345	(Prop.)
-------------------------------	---	---------	------	---------

Harness Racing Commission

Rule 1, Required Days Off.....	5	DE Reg.	247	(Prop.)
			832	(Final)

Rule 3.0, State Steward/Judges.....	5	DE Reg.	250	(Prop.)
-------------------------------------	---	---------	-----	---------

			835	(Final)
--	--	--	-----	---------

Rule 4.0, Associations.....	5	DE Reg.	252	(Prop.)
-----------------------------	---	---------	-----	---------

			837	(Final)
--	--	--	-----	---------

Rule 5, Owners... ..	5	DE Reg.	253	(Prop.)
----------------------	---	---------	-----	---------

			838	(Final)
--	--	--	-----	---------

Rule 6.0, Types of Races.....	5	DE Reg.	1196	(Prop.)
-------------------------------	---	---------	------	---------

Rule 7, Rules of the Race.....	5	DE Reg.	255	(Prop.)
--------------------------------	---	---------	-----	---------

			841	(Final)
--	--	--	-----	---------

Rule 8, Medications and Foreign Substances.....	5	DE Reg.	258	(Prop.)
---	---	---------	-----	---------

			843	(Final)
--	--	--	-----	---------

Rule 8.0, Veterinary Practices, Equine Health Medication.....	5	DE Reg.	1196	(Prop.)
---	---	---------	------	---------

Plant Industries Section

Grain Inspection and Certification Regulations.....	5	DE Reg.	458	(Final)
---	---	---------	-----	---------

Thoroughbred Racing Commission

Rule 13.0, Claiming Races.....	5	DE Reg.	1214	(Prop.)
--------------------------------	---	---------	------	---------

Rule 13.01, Owners Entitled.....	5	DE Reg.	21	(Prop.)
----------------------------------	---	---------	----	---------

			849	(Final)
--	--	--	-----	---------

DEPARTMENT OF EDUCATION

101 Delaware Student Testing Program.....	5	DE Reg.	23	(Prop.)
---	---	---------	----	---------

			620	(Final)
--	--	--	-----	---------

103 School Accountability for Academic Performance.....	5	DE Reg.	724	(Prop.)
---	---	---------	-----	---------

			1281	(Final)
--	--	--	------	---------

201 School Shared Decision-making Transition Planning Grants.....	5	DE Reg.	1017	(Prop.)
---	---	---------	------	---------

205 District Shared Decision-making Transition Planning Grants.....	5	DE Reg.	1017	(Prop.)
---	---	---------	------	---------

210 Approval of School Improvement Grants.....	5	DE Reg.	1017	(Prop.)
--	---	---------	------	---------

260 General Appeal Procedures for the Child and Adult Care Food Programs				
--	--	--	--	--

of the United States Department of Agriculture.....	5	DE Reg.	461	(Final)
---	---	---------	-----	---------

303 Certification Administrative - Assistant Superintendent for Business.....	5	DE Reg.	263	(Rep.)
---	---	---------	-----	--------

			851	(Final)
--	--	--	-----	---------

315 Certification Manager Of School Bus Transportation.....	5	DE Reg.	264	(Rep.)
---	---	---------	-----	--------

			853	(Final)
--	--	--	-----	---------

316 Certification Supervisor Of School Bus Transportation.....	5	DE Reg.	265	(Rep.)
--	---	---------	-----	--------

			853	(Final)
--	--	--	-----	---------

317 Certification School Business Manager.....	5	DE Reg.	265	(Rep.)
--	---	---------	-----	--------

			853	(Final)
--	--	--	-----	---------

318 Certification Manager Of School Food Service Programs.....	5	DE Reg.	265	(Rep.)
--	---	---------	-----	--------

			854	(Final)
--	--	--	-----	---------

319 Certification Supervisor Of School Food Service Programs.....	5	DE Reg.	266	(Rep.)
---	---	---------	-----	--------

			854	(Final)
--	--	--	-----	---------

359 Certification Audiology.....	5	DE Reg.	1000	(Errata)
----------------------------------	---	---------	------	----------

			266	(Rep.)
--	--	--	-----	--------

			855	(Final)
--	--	--	-----	---------

CUMULATIVE TABLES

1551

366	Certification School Occupational Therapist.....	5	DE Reg.	266	(Rep.)
			5	DE Reg.	855 (Final)
367	Certification School Physical Therapist.....	5	DE Reg.	267	(Rep.)
			5	DE Reg.	855 (Final)
369	Certification Speech Language Pathologist	5	DE Reg.	855	(Final)
398	Degree Granting Institutions of Higher Education.....	5	DE Reg.	270	(Prop.)
			5	DE Reg.	859 (Final)
501	State Content Standards.....	5	DE Reg.	276	(Prop.)
			5	DE Reg.	865 (Final)
515	High School Diplomas and Record of Performance.....	5	DE Reg.	28	(Prop.)
			5	DE Reg.	625 (Final)
701	Unit Count... ..	5	DE Reg.	29	(Prop.)
			5	DE Reg.	627 (Final)
745	Criminal Background Checks for Public Education Employees.....	5	DE Reg.	280	(Prop.)
			5	DE Reg.	869 (Final)
828	Assistance with Medications on Field Trips.....	5	DE Reg.	284	(Prop.)
			5	DE Reg.	873 (Final)
			5	DE Reg.	1216 (Prop.)
910	General Educational Development.....	5	DE Reg.	1285	(Final)
915	James H. Groves High School.....	5	DE Reg.	1285	(Final)
925	Children with Disabilities.....	5	DE Reg.	286	(Prop.)
			5	DE Reg.	874 (Final)
1102	Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002.....	5	DE Reg.	290	(Prop.)
			5	DE Reg.	879 (Final)
1535	(formerly 305) Certification Administrative - Administrative Assistant.....	5	DE Reg.	268	(Prop.)
			5	DE Reg.	856 (Final)
1536	(formerly 306) Certification Administrative - Director.....	5	DE Reg.	268	(Prop.)
			5	DE Reg.	857 (Final)
1538	(formerly 308) Certification Administrative - Supervisor.....	5	DE Reg.	269	(Prop.)
			5	DE Reg.	858 (Final)
1584	(formerly 384) Permits - School, Classroom Aides and Autistic Residential Child Care Specialists.....	5	DE Reg.	270	(Prop.)
			5	DE Reg.	859 (Final)
	State Board of Education Procedures Manual.....	5	DE Reg.	880	(Final)

DEPARTMENT OF FINANCE**Division of Revenue****Delaware State Lottery Office**

Video Lottery Regulations 5.0, 7.0 and 14.0.....	5	DE Reg.	728	(Prop.)	
			5	DE Reg.	1286 (Final)
Video Lottery Regulation 5.0 Technology Providers: Contracts; Requirements; Duties.....	5	DE Reg.	1019	(Prop.)	
			5	DE Reg.	1417 (Final)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**Division of Long Term Care Residents Protection**

Delaware Adult Abuse Registry.....	5	DE Reg.	515	(Prop.)	
			5	DE Reg.	1073 (Final)
Group Home Facilities for Persons with Aids.....	5	DE Reg.	520	(Prop.)	
			5	DE Reg.	1079 (Final)
Training & Qualifications for Nursing Assistants & Certified Nursing Assistants	5	DE Reg.	733	(Prop.)	
			5	DE Reg.	1346 (Prop.)
			5	DE Reg.	1420 (Final)

Division of Public Health

Body Art Establishments, Regulations Governing.....	5	DE Reg.	319	(Prop.)
Care & Transportation of the Dead, Sec. 6, Preparation of Bodies Dead of Certain Diseases, Regulations Governing.....	5	DE Reg.	1337	(Emer.)

CUMULATIVE TABLES

Control of Communicable and Other Disease Conditions.....	5	DE Reg.	156	(Final)
Cosmetology and Barbering Establishments, Regulations Governing.....	5	DE Reg.	311	(Prop.)
			5	DE Reg. 1291 (Final)
Managed Care Organizations, Application & Operation of.....	5	DE Reg.	130	(Final)
			5	DE Reg. 1025 (Prop.)
			5	DE Reg. 1435 (Final)
Non-Nurse Midwife Regulations.....	5	DE Reg.	1021	(Prop.)
Public Drinking Water Systems, Rules and Regulations Governing.....	5	DE Reg.	630	(Final)
Trauma System Rules & Regulations.....	5	DE Reg.	32	(Prop.)
			5	DE Reg. 632 (Final)
Uniform Controlled Substances Act, Rescheduling of Dronabinol.....	5	DE Reg.	747	(Prop.)
Uniform Controlled Substance Regulation No. 4.....	5	DE Reg.	750	(Prop.)
			5	DE Reg. 1460 (Final)
Office of Drinking Water				
Public Drinking Water Systems, Regulations Governing.....	5	DE Reg.	1237	(Prop.)
Office of Emergency Medical Services				
Air Medical Ambulance Services Regulations.....	5	DE Reg.	1217	(Prop.)
Division of Social Services				
DSSM				
2002Case Closures and Address Changes.....	5	DE Reg.	327	(Prop.)
			5	DE Reg. 893 (Final)
2015-2019 A Better Chance & General Assistance Program.....	5	DE Reg.	181	(Final)
4005.3 Step-Parent Income in the ABC Program.....	5	DE Reg.	644	(Final)
7002 Food Stamp Claims.....	5	DE Reg.	174	(Final)
7004 Collection & Management of Food Stamp Claims.....	5	DE Reg.	177	(Final)
7004.3 Collection and Management of Food Stamp Claims.....	5	DE Reg.	359	(Prop.)
			5	DE Reg. 929 (Final)
			5	DE Reg. 1001 (Errata)
7005 Terminating and Writing Off Claims.....	5	DE Reg.	181	(Final)
9060 Income Deductions.....	5	DE Reg.	1001	(Emer.)
			5	DE Reg. 1046 (Prop.)
			5	DE Reg. 1465 (Final)
9085 Reporting Changes.....	5	DE Reg.	1356	(prop.)
9089 DABC and/or GA Food Stamp Households.....	5	DE Reg.	535	(Prop.)
			5	DE Reg. 1094 (Final)
11004.7 Child Care Fee.....	5	DE Reg.	755	(Prop.)
			5	DE Reg. 1467 (Final)
13402 A Better Chance Welfare Reform Program.....	5	DE Reg.	183	(Final)
13403 AFDC Applicants With a Budgeted Need of Less Than \$10.....	5	DE Reg.	184	(Final)
14110.8.1Prohibitions.....	5	DE Reg.	184	(Final)
14300Citizenship and Alienage.....	5	DE Reg.	184	(Final)
14900Enrollment in Managed Care.....	5	DE Reg.	185	(Final)
15110.1Medicaid Eligibility.....	5	DE Reg.	185	(Final)
15200Transitional Medicaid.....	5	DE Reg.	185	(Final)
16100.1.2Initial Eligibility Determination.....	5	DE Reg.	186	(Final)
16230.1.4Deducations from Earned Income.....	5	DE Reg.	187	(Final)
16500.1Eligibility Requirements.....	5	DE Reg.	187	(Final)
17170Sec. 4913, Disabled Children.....	5	DE Reg.	1096	(Final)
17200Disabled Children, New 25000 Children's Community Alternative Disability Program (CCADP).....	5	DE Reg.	536	(Prop.)
			5	DE Reg. 1097 (Final)
18100.2Alien Status.....	5	DE Reg.	187	(Final)
20620.1Personal Needs.....	5	DE Reg.	1004	(Emer.)
			5	DE Reg. 1049 (Prop.)
			5	DE Reg. 1469 (Final)
Eligibility of Inmates & Eligibility of the Breast & Cervical Cancer Group.....	5	DE Reg.	359	(Prop.)
			5	DE Reg. 925 (Final)

Food Stamp Program, Noncitizen Eligibility & Certification Provisions of PL-104-193.	5 DE Reg. 328 (Prop.)
	5 DE Reg. 894 (Final)
Reimbursement Methodology for Federally Qualified Health Centers (FQHCs).....	5 DE Reg. 173 (Final)

DEPARTMENT OF INSURANCE

Reg. No. 10, Arbitration of Automobile and Homeowner’s Insurance Claims.....	5 DE Reg. 1238 (Prop.)
Reg. No. 11, Arbitration of Health Insurance Claims and Internal Review Processes of Medical Insurance Carriers.....	5 DE Reg. 1242 (Prop.)
Reg. No. 81, Prompt Payment of Settled Claims.....	5 DE Reg. 645 (Final)
Reg. No. 84, Privacy of Consumer Financial & Health Information.....	5 DE Reg. 188 (Final)
Reg. No. 85, Valuation of Life Insurance Policies.....	5 DE Reg. 1049 (Prop.)
	5 DE Reg. 1470 (Final)

DEPARTMENT OF LABOR

Division of Employment & Training

Council on Apprenticeship and Training

Delaware Apprenticeship and Training Law, Section 106.5.....	5 DE Reg. 204 (Final)
--	------------------------------

Office of Labor Law Enforcement

Prevailing Wage Regulations.....	5 DE Reg. 205 (Final)
----------------------------------	------------------------------

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Regulations Governing Delaware’s Coastal Zone.....	5 DE Reg. 930 (Final)
--	------------------------------

Division of Air & Waste Management

Regulations Governing Hazardous Substance Cleanup.....	5 DE Reg. 1249 (Prop.)
Regulation 24, Section 2, Definitions.....	5 DE Reg. 541 (Prop.)
Regulation 24, Section 11, Mobile Equipment Repair & Refinishing.....	5 DE Reg. 1478 (Final)
Regulation 24, Section 11, Mobile Equipment Repair & Refinishing.....	5 DE Reg. 363 (Prop.)
Regulation 24, Section 26, Stage IV Vapor Recovery.....	5 DE Reg. 1101 (Final)
Regulation 24, Section 26, Stage IV Vapor Recovery.....	5 DE Reg. 545 (Prop.)
Regulation 24, Section 33, Solvent Metal Cleaning.....	5 DE Reg. 1482 (Final)
Regulation 24, Section 33, Solvent Metal Cleaning.....	5 DE Reg. 367 (Prop.)
Regulation 24, Section 36, Stage II Vapor Recovery	5 DE Reg. 1106 (Final)
Regulation 24, Section 36, Stage II Vapor Recovery	5 DE Reg. 547 (Prop.)
Regulation 24, Section 46, Lightering Operations.....	5 DE Reg. 1484 (Final)
Regulation 24, Section 46, Lightering Operations.....	5 DE Reg. 379 (Prop.)
Regulation 31, Low Enhanced Inspection and Maintenance Program.....	5 DE Reg. 44 (Prop.)
Regulation 31, Low Enhanced Inspection and Maintenance Program.....	5 DE Reg. 940 (Final)
Regulation 38, Subpart T, Emission Standards for Halogenated Solvent Cleaning.....	5 DE Reg. 383 (Prop.)
Regulation 38, Subpart T, Emission Standards for Halogenated Solvent Cleaning.....	5 DE Reg. 1118 (Final)
Regulation 41, Section 1, Architectural and Industrial Maintenance Coatings.....	5 DE Reg. 389 (Prop.)
Regulation 41, Section 2, Consumer Products.....	5 DE Reg. 560 (Prop.)
Regulation 41, Section 2, Consumer Products.....	5 DE Reg. 1497 (Final)
Regulation 41, Section 3, Portable Fuel Containers.....	5 DE Reg. 398 (Prop.)
Regulation 41, Section 3, Portable Fuel Containers.....	5 DE Reg. 1125 (Final)
Regulation 42, Section 1, Control of NOx Emissions from Industrial Boilers.....	5 DE Reg. 400 (Prop.)
Regulation 42, Section 1, Control of NOx Emissions from Industrial Boilers.....	5 DE Reg. 1299 (Final)
Regulation 43, Not To Exceed California Heavy Duty Diesel Engine Standards.....	5 DE Reg. 756 (Prop.)
Regulation 43, Not To Exceed California Heavy Duty Diesel Engine Standards.....	5 DE Reg. 1302 (Final)

Division of Fish & Wildlife

Shellfish Regulation Nos. S-7(b), S-9, S-11, S-13 and S-37, Repeal of.....	5 DE Reg. 403 (Prop.)
	5 DE Reg. 496 (Errata)
	5 DE Reg. 972 (Final)
Shellfish Regulation No. S-55-A, Horseshoe Crab Dredge Permit Lottery.....	5 DE Reg. 1128 (Final)

CUMULATIVE TABLES

Shellfish Regulation Nos. S-63, S-65, S-67, S-69, S-71, S-73 and S-75 (Proposed).....	5	DE Reg.	496 (Errata)
		5	DE Reg. 972 (Final)
Tidal Finfish Regulation No. 4, Summer Flounder Size Limits; Possession Limits; Seasons	5	DE Reg.	462 (Final)
Division of Water Resources			
Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.....	5	DE Reg.	760 (Prop.)
Regulations for Licensing Operators of Wastewater Facilities.....	5	DE Reg.	1307 (Final)
Total Maximum Daily Load (TMDL) for the Murderkill River Watershed, Delaware.	5	DE Reg.	404 (Prop.)
		5	DE Reg. 1305 (Final)
Total Maximum Daily Load (TMDL) for Nutrients in the Appoquinimink Watershed	5	DE Reg.	1056 (Prop.)

DEPARTMENT OF PUBLIC SAFETY

Division of Boiler Safety

Boiler Safety, Rules & Regulations.....	5	DE Reg.	584 (Prop.)
		5	DE Reg. 1128 (Final)

Division of Highway Safety

Policy Regulation Number 91, Ignition Interlock Device Installation, Removal, and Monthly Monitoring and Calibration Fees.....	5	DE Reg.	1058 (Prop.)
---	---	----------------	--------------

Division of State Police

Bounty Hunter/Bail Enforcement Agents.....	5	DE Reg.	1059 (Prop.)
		5	DE Reg. 1523 (Final)

DEPARTMENT OF STATE

Division of Historical & Cultural Affairs

Historic Preservation Tax Credit, Regulations Governing.....	5	DE Reg.	405 (Prop.)
--	---	----------------	-------------

Office of the State Banking Commissioner

Reg. No. 5.1101(f).0001 Election to Be Treated for Tax Purposes as a Subsidiary Corporation of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principal Office in Delaware, or Out-of-state Bank That Operates a Resulting Branch in Delaware.....	5	DE Reg.	77 (Prop.)
		5	DE Reg. 647 (Final)
Reg. No. 5.1101etal.0002, Instructions for Preparation of Franchise Tax.....	5	DE Reg.	79 (Prop.)
		5	DE Reg. 649 (Final)
Reg. No. 5.1101etal.0003, Estimated Franchise Tax Report.....	5	DE Reg.	82 (Prop.)
		5	DE Reg. 652 (Final)
Reg. No. 5.1101etal.0004, Final Franchise Tax Report.....	5	DE Reg.	83 (Prop.)
		5	DE Reg. 654 (Final)
Reg. No. 5.1101etal.0005, Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State.. ..	5	DE Reg.	85 (Prop.)
		5	DE Reg. 656 (Final)
Reg. No. 5.1101etal.0006, Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware.....	5	DE Reg.	88 (Prop.)
		5	DE Reg. 659 (Final)
Reg. No. 5.1101etal.0007, Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware.....	5	DE Reg.	89 (Prop.)
		5	DE Reg. 660 (Final)
Reg. No. 5.1101etal.0009, Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-State Banks.....	5	DE Reg.	90 (Prop.)
		5	DE Reg. 661 (Final)
Reg. No. 5.1101etal.0010, Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks.....	5	DE Reg.	94 (Prop.)
		5	DE Reg. 665 (Final)

CUMULATIVE TABLES

1555

Reg. No. 5.1101etal.0011, Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks.....	5	DE Reg.	96 (Prop.)
		5	DE Reg. 667 (Final)
Reg. No. 5.1105.0008, Instructions for Calculation of Employment Tax Credits.....	5	DE Reg.	98 (Prop.)
		5	DE Reg. 669 (Final)

DEPARTMENT OF TRANSPORTATION

Outdoor Advertising, Rules & Regulations.....	5	DE Reg.	410 (Prop.)
		5	DE Reg. 1357 (Prop.)
State Scenic and Historic Highways Program.....	5	DE Reg.	595 (Prop.)
		5	DE Reg. 1129 (Final)

EXECUTIVE DEPARTMENT

Governor's Office

Appointments and Nominations.....	5	DE Reg.	218
		5	DE Reg. 465
		5	DE Reg. 1156
		5	DE Reg. 1320
		5	DE Reg. 1539
Executive Order No. 18, Delaware Spatial Data I-Team	5	DE Reg.	671
Executive Order No. 19, Delaware State Police	5	DE Reg.	976
Executive Order No. 20, State Employees' Charitable Campaign	5	DE Reg.	976
Executive Order No. 21, Establishment of Early Care & Education Council	5	DE Reg.	1318
Executive Order No. 22, Building Safety	5	DE Reg.	1319
Declaration Of Limited State Of Emergency In New Castle County, Delaware	5	DE Reg.	672
Termination Of Limited State Of Emergency in New Castle County, Delaware	5	DE Reg.	672

Delaware Economic Development Office

Direct Grants Program.....	5	DE Reg.	512 (Prop.)
		5	DE Reg. 817 (Prop.)
		5	DE Reg. 1312 (Final)
Energy Alternative Program.....	5	DE Reg.	1062 (Prop.)
		5	DE Reg. 1529 (Final)
Matching Funds Program.....	5	DE Reg.	514 (Prop.)
		5	DE Reg. 818 (Prop.)
Matching Grants Program.....	5	DE Reg.	1315 (Final)
Regulation No. 5, Procedures Governing the Delaware Strategic Fund.....	5	DE Reg.	499 (Prop.)
		5	DE Reg. 1141 (Final)

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.

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

EXAMINING BOARD OF PHYSICAL THERAPISTS

24 DE Admin. Code 2600

Statutory Authority: 24 Delaware Code,
Section 2604 (24 **Del.C.** §2604)

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2604(1), the Delaware State Examining Board of Physical Therapists proposes to revise its rules and regulations. The proposed changes reflect the statutory change that allows a physical therapist to now accept a referral from any licensed health practitioner who has been granted prescriptive authority. The proposed changes also reflect the statutory changes that delineate the requirements for practicing with a temporary license. The proposed changes define the direct supervision of an athletic trainer in a non-clinical setting. The proposed changes also specify the number of continuing education hours required for licensees whose licenses have lapsed and who have reapplied for licensure under the conditions which govern reciprocity. The proposed regulations serve to implement or clarify specific sections of 24 **Del.C.** Chapter 26.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, March 19, 2002 at 6:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan

Miccio 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 Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 744-4506.

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

- 1.0 Definitions
- 2.0 Board
- 3.0 Physical Therapist Assistants
- 4.0 Athletic Trainers
- 5.0 Support Personnel
- 6.0 Qualifications of Applicant
- 7.0 Mandatory Continuing Education Units
- 8.0 Admission to Practice: License by Reciprocity
- 9.0 Temporary Licensure
- 10.0 Foreign Trained Applicant for Licensure
- 11.0 Reactivation and Reinstatement
- 12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Definitions

1.1 Consultation (24 **Del.C.** § 2612)

1.1.1 Consultation in direct access. A physician licensed health practitioner who has been granted prescriptive authority must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation

can be made by telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal ~~physician~~ licensed health practitioner. If the patient does not have a personal licensed health practitioner ~~physician~~, the Physical Therapist is to offer the patient at least three ~~physicians~~ licensed health practitioners from which to choose. The referral to a ~~physician~~ licensed health practitioner after the initial thirty day period must not be in conflict with 24 *Del. C.* § 2616 (a)(8) which deals with referral for profit. If no ~~physician~~ licensed health practitioner consult has been made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a ~~physician~~ licensed health practitioner consult.

1.1.2 Consultation with written prescription from a ~~physician, dentist, podiatrist, or chiropractor~~ licensed health practitioner. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

1.2 Direct Supervision (24 **Del.C.** § 2611 (a))

1.2.1 Direct supervision in connection with a Physical Therapist practicing under a temporary license means:

1.2.1.1 a licensed Physical Therapist supervisor shall be on the premises when the individual with a temporary license is practicing and

1.2.1.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed Physical Therapist supervisor.

1.2.2 Direct supervision in relation to a Physical Therapist Assistant with less than one (1) year experience means a Physical Therapist shall be on the premises at all times and see each patient.

1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that a Physical Therapist Assistant must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.

1.2.4 The Physical Therapist is responsible for the actions of the Physical Therapist Assistant when under his/her supervision. All supervision must be documented.

1.2.5 Direct supervision in connection with an Athletic Trainer means a Physical Therapist shall be on the premises at all times in a clinical setting and see every patient.

1.2.6 Direct supervision in connection with an athletic trainer in a non-clinical setting means that the supervising athletic trainer should be personally present and immediately available to the treatment area.

1.2.6 7 At no time may a Physical Therapist supervise more than 2 Physical Therapist Assistants, 2 Athletic Trainers or 1 Physical Therapist Assistant and 1 Athletic Trainer. A Physical Therapist may only supervise 1 Physical Therapist Assistant off site. Athletic Trainers must be supervised on site.

1.2.7 8 Direct supervision in connection with support personnel means a licensed Physical Therapist or Physical Therapist Assistant shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed.

1.3 On site or on premises (24 **Del.C.** § 2602 (5)), in connection with supervision of a Physical Therapist Assistant or Athletic Trainer, means that the Physical Therapist Assistant or Athletic Trainer must be in the same physical building as the supervising Physical Therapist. On site or on premises does not refer to attached buildings.

1.4 Support personnel (24 **Del.C.** § 2615) means a person(s) who performs certain routine, designated physical therapy tasks under the direct supervision of a licensed Physical Therapist or Physical Therapist Assistant. There shall be documented evidence of sufficient in-service training to assure safe performance of the duties assigned to the support personnel.

1.5 Unprofessional Conduct (24 **Del.C.** § 2616 (7)). Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which proceeding actual injury to a patient need not be established. 24 **Del.C.** § 2616 (7). Such unprofessional conduct shall include, but not be limited to, the following:

1.5.1 - Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.

1.5.2 - The Physical Therapist who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.

1.5.3 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs prohibited activities is guilty of unprofessional conduct.

1.5.4 - The Physical Therapist or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.

1.5.5 - Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

1.5.6 - Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

1.5.7 - Inaccurately recording, falsifying, or altering a patient or facility record.

1.5.8 - Committing any act of verbal, physical, mental or sexual abuse of patients.

1.5.9 - Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.

1.5.10 - Failing to supervise individuals to whom physical therapy tasks have been delegated.

1.5.11 - Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

1.5.12 - Violating the confidentiality of information concerning the patient.

1.5.13 - Failing to take appropriate action in safeguarding the patient from incompetent health care practice.

1.5.14 - Practicing physical therapy as a Physical Therapist or Physical Therapist Assistant or athletic training as an Athletic Trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.

1.5.15 - Practicing as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer when physical or mental ability to practice is impaired by alcohol or drugs.

1.5.16 - Diverting drugs, supplies or property of a patient or a facility.

1.5.17 - Allowing another person to use his/her license.

1.5.18 - Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer.

1.5.19 - Impersonating any applicant or acting as proxy for the applicant in a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer licensing examination.

1.5.20 - Continuing to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a physician licensed health practitioner consult.

1.5.21 - Substantially modifying a treatment prescription without consulting the referring physician licensed health practitioner.

1.5.22 - Failing to comply with the mandatory continuing education requirements of 24 **Del.C.** § 2607 (a) and Section 7 of these rules and regulations.

See 4 DE Reg. 1114 (1/1/01)

2.0 Board

2.1 Specific duties of the officers:

2.1.1 The Chairperson:

2.1.1.1 Shall call meetings of the Board at least twice a year.

2.1.1.2 Shall represent the Board in all official functions and act as Board spokesperson.

2.1.2 The Vice-Chairperson:

2.1.2.1 Shall substitute for the Chairperson during the officer's absence.

2.1.3 The Secretary:

2.1.3.1 Shall preside when the Chairperson and Vice-Chairperson are absent.

3.0 Physical Therapist Assistants (24 Del.C. § 2602 (3))

The Physical Therapist Assistant may treat patients only under the direction of a Physical Therapist as defined in Sections 1.2.2 and 1.2.3. The Physical Therapist Assistant may perform physical therapy procedures and related tasks that have been selected and delegated by the supervising Physical Therapist. The Physical Therapist Assistant may administer treatment with therapeutic exercise, massage, mechanical devices, and therapeutic agents that use the properties of air, water, electricity, sound or light. The Physical Therapist Assistant may make minor modifications to treatment plans within the predetermined plan of care, assist the Physical Therapist with evaluations, and document treatment progress. The ability of the Physical Therapist Assistant to perform the selected and delegated tasks shall be assessed by the supervising Physical Therapist. The Physical Therapist Assistant shall not perform interpretation of referrals, physical therapy evaluation and reevaluation, major modification of the treatment plan, final discharge of the patient, or therapeutic techniques beyond the skill and knowledge of the Physical Therapist Assistant or without proper supervision.

4.0 Athletic Trainers (24 Del.C. § 2602)

The Athletic Trainer in a *clinical* setting - 24 **Del.C.** § 2602 (5)).

The Athletic Trainer in a *nonclinical* setting - 24 **Del.C.** § 2602(5)).

5.0 Support Personnel (24 Del.C. § 2615)

5.1 Treatments which may be performed by support personnel under direct supervision are:

5.1.1 ambulation

5.1.2 functional activities

5.1.3 transfers

5.1.4 routine follow-up of specific exercises

5.1.5 hot or cold packs

5.1.6 whirlpool/Hubbard tank

5.1.7 contrast bath

5.1.8 infrared

5.1.9 paraffin bath

5.1.10 ultra sound

5.2 Exceptions - A support person may perform:

5.2.1 patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and

5.2.2 set up and preparation of patients requiring treatment using Physical Therapist modalities.

5.3 Prohibited Activities - support personnel may not perform:

5.3.1 evaluation, or

5.3.2 treatments other than those listed in Section

5.1.

See 4 DE Reg. 1114 (1/1/01)

6.0 Qualifications of Applicant (24 Del.C. § 2606)

6.1 Applications, copies of the rules and regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

6.2 Applicants for Physical Therapist or Physical Therapist Assistant licensure shall not be admitted to the examination without the submission of the following documents:

6.2.1 Professional Qualifications - proof of graduation (official transcript) from an educational program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.

6.2.2 A fee in check or money order payable to the State of Delaware.

6.2.3 A completed application form.

6.3 The Board may use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy and the APTA, respectively.

6.4 All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in Section 6.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

6.5 Applicants for licensure as an Athletic Trainer must submit to the Board the following:

6.5.1 Professional Qualifications - proof of graduation (official transcript) from an educational program described in 24 Del.C. § 2606(a)(1), whether an accredited program or National Athletic Trainers Association Board of Certification (NATA BOC) internship.

6.5.2 Official letter of Athletic Trainer certification from NATABOC.

6.5.3 A check or money order made payable to the State of Delaware.

6.5.4 The completed application form.

6.6 Licenses shall expire biennially on every odd numbered year. The following items shall be submitted

upon application for renewal:

6.6.1 completed renewal application form,

6.6.2 applicable fee, and

6.6.3 for individuals seeking renewal, evidence of continuing education courses as provided by Section 7.

7.0 Mandatory Continuing Education Units (CEU's) (24 Del.C. §2607 (a))

7.1 Three CEU's are required for every biennial license renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. The Continuing Education Unit Activity Record (CEUAR) credits shall be received at the Division of Professional Regulation, Dover, Delaware, no later than November 30th of every even numbered year and shall be received every 2 years after such date.

7.2 Individuals shall maintain the following items in order to receive credit for CEU's:

7.2.1 name of applicant seeking renewal

7.2.2 license classification (Physical Therapist, Physical Therapist Assistant, Athletic Trainer)

7.2.3 license number of applicant

7.2.4 proof of attendance at CEU course

7.2.5 date of CEU course

7.2.6 instructor(s) of CEU course

7.2.7 sponsor of CEU course

7.2.8 title of CEU course

7.2.9 number of hours of CEU course

7.3 Continuing Education Regulations, (24 Del.C. § 2607 (a)). Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The purpose of this is to help Physical Therapists, Physical Therapist Assistants, and Athletic Trainers become more efficient in achieving their objectives.

7.3.1 For a licensee to renew a license, the licensee must complete three continuing education units over the two year period immediately preceding November 30th of each even year. CEU's completed before November 30th of the even year shall not be carried over to the next renewal period. Any continuing education completed in the December or January preceding renewal will apply to the next renewal period. CEU requirements shall be prorated for new licensees. If the license is granted during the six month period shown below, the following will be required for renewal:

Odd Numbered Year	Even Numbered Year
1/1- 6/30 2.5 CEUs	1/1- 6/30 1.5 CEUs
7/1-12/31 2.0 CEUs	7/1-12/31 .5 CEUs

7.3.2 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour =

.1 CEU). Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists. Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's. Any sponsors or licensees wishing to receive prior written approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU's may not be carried over from one biennial period to the next one.

7.3.3 At the time of license renewal, the appropriate forms will be supplied by the Board. Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation of the CEU's. The CEUAR is due November 30th of the even year. All questionable CEUAR's will be re-evaluated.

7.3.4 In the event a licensee shall fail to complete the required credits by November 30, 2000, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 7.3.3 is accompanied by a specific plan for making up the deficiency of necessary credits by March 31, 2001. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full completion of the licensee's plan shall be reported by CEUAR not later April 15, 2001. Failure to complete the specific plan may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 1.5.22. This provision no longer applies effective with the 2003 renewal.

7.3.5 The Board has the power to waive any part of the entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than November 30th of the end of the respective CEU term.

7.3.6 CEU's may be earned through Board approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars, conferences, lectures, videotapes, professional presentations and publications, and in-services oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable direction and qualified instruction. The program may include staff development activities of

agencies and cross-disciplinary offerings.

7.3.7 The following are examples of acceptable continuing education which the Board may approve. The Board will determine the appropriate number of contact hours for these categories of continuing education, subject to any limitation shown below.

7.3.7.1 professional meetings including national, state, chapter, and state board meetings

7.3.7.2 seminars/workshops

7.3.7.3 staff/faculty in-services

7.3.7.4 first time presentation of professionally oriented course/lecture (0.3 CEU/hour per presentation)

7.3.7.5 approved self studies including:

- videotapes, if:

-there is a sponsoring agency

-there is a facilitator or program official

present

-the program official is not the only

attendee

- correspondence course, if a sponsoring agency provides a certificate of completion

7.3.8 The following are also examples of acceptable continuing education in the amount of CEU's shown.

7.3.8.1 university/college courses:

1.0 CEU for semester

0.8 CEU for trimester

0.7 CEU for quarter

7.3.8.2 passing of licensing examination (1.5 CEU's)

7.3.8.3 original publication in peer reviewed publication (0.3 CEU)

7.3.8.4 original publication in non-peer reviewed publication (0.1 CEU)

7.3.8.5 holding of an office (0.3 CEU), to include:

- executive officer's position for the national or state professional associations (President, Vice-President, Secretary, Treasurer)

- member, Examining Board of Physical Therapists

7.3.8.6 acting as the direct clinical instructor providing supervision to a Physical Therapist, Physical Therapist Assistant or Athletic Trainer student officially enrolled in an accredited institution during an internship (40 contact hours = 0.1 CEU)

8.0 Admission to Practice, Licensure by Reciprocity (24 Del.C. § 2610)

Definition - The granting of a license to an applicant who meets all the requirements set forth in this section and 24 Del.C. § 2610.

8.1 The reciprocity applicant shall submit the documentation listed in rules 6.2 or 6.5.

8.2 An applicant shall be deemed to have satisfied this section upon evidence satisfactory to the Board that he/she has complied with the standards set forth below:

8.2.1 The Physical Therapist or Physical Therapist Assistant applicant has passed the examination in the state, territory, or the District of Columbia in which he/she was originally licensed/registered. The passing score shall be 1.5 standard deviation below the national norm for those Physical Therapists and Physical Therapist Assistants having taken the examination prior to 1990.

8.2.2 All Physical Therapist/Physical Therapy Assistant reciprocity applicants shall supply his/her examination scores to the Board. The applicant may obtain his/her scores from the regulatory body of the state, territory, or the District of Columbia in which he/she was originally licensed/registered or from the FSBPT Score Transfer Service. From Physical Therapist applicants who were licensed/registered by a state, territory, or the District of Columbia only prior to 1963, the Board shall accept the following:

8.2.2.1 - Professional Examination Service-American Physical Therapy Association (PES-APTA) examination scores with a passing grade of 1.5 standard deviation below the national norm on all sections, or

8.2.2.2 - other examining mechanisms which in the judgment of the Board were substantially equal to the mechanisms of the State of Delaware at the time of examination.

8.2.3 For the Athletic Trainer candidate, the passing score shall be that which was established at time of examination. All sections of the examination shall be passed. The reciprocity applicant shall supply his/her examination scores to the Board.

9.0 Temporary Licensure (24 Del.C. § 2611)

9.1 The Board may issue a temporary license to all applicants who have submitted to the Board the documents listed in Rule 6.2 and Rule 6.5, respectively, and who have been determined to be eligible to take the examination. The Board shall accept a letter signed by the Physical Therapist or Physical Therapist Assistant applicant's school official stating that the applicant has completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. The Board will determine the Physical Therapist or Physical Therapist Assistant applicant's eligibility to take the examination. In the case of Athletic Trainer applicants for temporary license, a letter from NATA stating the applicant's eligibility to take the NATA examination will be required. ~~All applicants may practice only under the direct supervision of a licensed Physical Therapist.~~ The license shall remain effective for 90 days from the date of approval. ~~It shall automatically expire upon notice to the applicant of his/her failure to pass the license~~

~~examination. After the applicable fee and written application have been submitted, the Board may renew the temporary license if the applicant is eligible to retake the examination. The temporary license of an applicant may be extended at the discretion of the Board chair or other officer, upon a showing of extenuating circumstances pending the next scheduled Board meeting. Physical Therapist and Physical Therapist Assistant applicants may practice only under the direct supervision of a licensed Physical Therapist. Athletic Trainer applicants may practice only under the direct supervision of a licensed Athletic Trainer in a non-clinical setting. In a clinical setting, Athletic Trainer applicants may practice only under the direct supervision of a licensed Physical Therapist. A temporary license shall expire upon notice to the applicant of his/her failure to pass the license examination and may not be renewed. In all other cases, a temporary license may be renewed only once.~~

9.2 Applicants requesting reciprocity as a Physical Therapist, Physical Therapist Assistant, and Athletic Trainer. The Board may issue a temporary license to an applicant upon the applicant's submission of letters of good standing from all jurisdictions in which the applicant is or has ever been licensed. The temporary licensee may practice only under the direct supervision of an applicable licensed professional.

9.3 Applicants engaged in a special project, teaching assignment, or medical emergency as described in 24 Del.C. § 2611 (b) must submit letters of good standing from all jurisdictions in which the applicant is or has ever been licensed.

10.0 Foreign Trained Applicant for Licensure (24 Del.C. § 2606 (b))

10.1 Applicants for licensure who are graduates of a Physical Therapist, Physical Therapist Assistant school or Athletic Trainer program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

10.1.1 - The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards in the Course Work Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States. The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by one of four independent agencies:

International Educational Research Foundation, Inc.

P.O. Box 3665

Culver City, CA 90231

(Address change 2/1/01)

International Consultants of Delaware, Inc.

109 Barksdale Professional Center
Newark, DE 19711

Educational Credential Evaluators, Inc.
P.O. Box 92970
Milwaukee, WI 53202-0970

Foreign Credentialing Commission for Physical
Therapists
P.O. Box 25827
Alexandria VA 22313-9998

10.1.2 The applicant shall complete the requirements of rules 6.2 or 6.5.

10.1.3 The applicant shall pass the examination described in rules 6.3 and 6.4.

11.0 Reactivation and Reinstatement (24 Del.C. § 2607)

11.1 Any person who has been registered in the State and is neither residing within the State nor actively engaged in the practice of physical therapy in the State may at their request be placed on the inactive register for the remainder of the biennial licensure period. Subsequent requests for extensions of inactive status should be submitted biennially. The Board may reactivate an inactive license if the Physical Therapist, Physical Therapist Assistant or Athletic Trainer:

11.1.1 files a written request for reactivation;

11.1.2 has been actively engaged in the practice for the past five years. If the licensee has not met this condition, the following requirements shall be completed:

11.1.2.1 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer working in a clinical setting shall work under the direct supervision of a Physical Therapist/Athletic Trainer in Delaware for a minimum of six months.

11.1.2.2 - The Athletic Trainer working in a nonclinical setting shall work under the direct supervision of an Athletic Trainer in Delaware for a minimum of six months.

11.1.2.3 - At the end of the period, the supervising Physical Therapist/Athletic Trainer shall certify to the applicant's clinical competence on forms supplied by the Board;

11.1.3 submits proof of completion of 1.5 CEU's during the previous 12 months.

11.2 Provided reinstatement is requested within 5 years of the expiration date, the Board may reinstate the license of a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who allowed their license to lapse without requesting placement on the inactive register if the Physical Therapist, Physical Therapist Assistant, or Athletic Trainer:

11.2.1 completes a form supplied by the Board

11.2.2 provides proof of completion of 3.0 CEU's during the previous 24 months

11.3 If the license has been expired over five years, the Physical Therapist/Physical Therapist Assistant/Athletic Trainer must file a new application and provide proof of completion of 3.0 CEU's when reapplying under the provisions which govern reciprocity.

12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

12.1 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.

12.2 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.

12.3 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).

12.4 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.

12.5 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.

12.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

12.6.1 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.

12.6.2 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.

12.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

12.6.4 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.

12.6.5 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.

12.6.6 Compliance by the regulated professional

with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

12.7 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.

12.8 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.

12.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

12.10 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.

12.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

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

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))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3306 (a) (1), the Delaware State Board of Veterinary Medicine proposes to revise its rules and regulations. The proposed change

concerns the retention of veterinary medical records. The proposed revision seeks to define unprofessional conduct for a veterinarian as the destruction of veterinary medical records before a period of three (3) years have elapsed from the last entry into the medical record. The proposed regulation serves to implement or clarify specific sections of 24 *Del.C.* Chapter 33.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, 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, 19904. The Board will receive and consider input in writing from any person on the proposed regulation. Any written comments should be submitted to the Board in care of Susan Miccio 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 regulation or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 744-4506.

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

- 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.

DEPARTMENT OF EDUCATION

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

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

245 Michael C. Ferguson Achievement Awards Scholarship

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 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 (2.0), to clarify that the post secondary institutions or programs that the scholarship winners attend must be accredited either nationally, regionally or by a state (4.0), and to remove some unnecessary procedural language in the amended (5.4 and 5.4.1).

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation serves as an incentive to students to do well on the DSTP that measures the state achievement standards.

2. Will the amended regulation help ensure that all

students receive an equitable education? The amended regulations define the conditions of the scholarship awards and insure that the awards are distributed in an equitable way.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the conditions of the scholarship award not student's legal rights.

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

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

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

8. Will the 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?

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The Department of Education is required by statute to maintain regulations in this area.

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 amended regulation.

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 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

1.1.2 The tenth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

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 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

1.2.2 The tenth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

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 8th and their 10th grade scores.

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.

~~5.0~~ ~~3-0~~ 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.

~~5.1~~ ~~3-1~~ 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.

~~5.2~~ ~~3-2~~ 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.

~~5.3~~ ~~3-3~~ The Department of Education shall annually announce the winners of Michael C. Ferguson Scholarships.

~~5.4~~ ~~3-4~~ 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

~~5.4.1~~ ~~3-4.1~~ ~~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.

~~5.4.2~~ ~~3-4.2~~ If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the 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.

~~5.4.3~~ ~~3-4.3~~ 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 Educational Impact Analysis Pursuant to 14 Del. C. Section 122(d)

See DE Reg. 224 (7/1/00)

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

1526 Certification English to Speakers of Other Languages (Esol) Teachers

1527 Endorsement English to Speakers of Other Languages (Esol) Teacher

A. Type of Regulatory Action Requested

Reauthorization of Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board seeks the approval of the State Board of Education to reauthorize the following regulations: 1526 Certification English to Speakers of Other Languages (ESOL) Teachers and 1527 Endorsement English to Speakers of Other Languages (ESOL) Teacher. These regulations have been renumbered to reflect their movement to the Professional Standards Board section of the regulations. 1526 Certification English to Speakers of Other Languages (ESOL) Teachers was formerly numbered 326. 1527 Endorsement English to Speakers of Other Languages (ESOL) Teacher was formerly numbered 327. There have been no other changes in the regulations.

C. Impact Criteria

1. Will the reauthorized regulations help improve student achievement as measured against state achievement standards? The reauthorized regulations address certification requirements for educational personnel which affects student achievement.

2. Will the reauthorized regulations help ensure that all students receive an equitable education? The reauthorized regulations address certification requirements for educational personnel. The regulations address requirements for teachers who serve students who are speakers of other languages to help to ensure that those students receive an equitable education.

3. Will the reauthorized regulations help to ensure that all students' health and safety are adequately protected? The reauthorized regulations address certification requirements for educational personnel, not health and safety.

4. Will the reauthorized regulations help to ensure that all students' legal rights are respected? The reauthorized regulations address certification requirements for educational personnel. The regulations address requirements for teachers who serve students who are speakers of other languages to help to ensure that those students' legal rights are respected.

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

decision makers at the local board and school level.

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

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

8. Will the reauthorized regulations 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 reauthorized regulations 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 the Professional Standards promulgate these regulations.

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

1526 ~~326~~ Certification English To Speakers Of Other Languages (ESOL) Teachers

Effective July 1, 1993 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 and, 3 semester hours

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.

3.0 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~~ 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:

1.3.1 Second Language Acquisition/Psycholinguistics 3 semester hours

1.3.2 Methods of teaching English as a Second Language 3 semester hours

1.3.3 Structure of the English Language 3 semester hours

1.3.4 Second Language Testing 3 semester hours

1.3.5 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) ~~that~~ which the individual is teaching to speakers of other languages.

3.0 Endorsements issued for this position may include Standard and Limited Standard.

Scholarship, and may not extend payment beyond the five year limit.

See 4 DE Reg. 224 (7/1/00)

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF LONG TERM CARE
RESIDENTS PROTECTION**

Statutory Authority: 16 Delaware Code,
Section 1101 (16 Del. C. §1101)

**Regulations for Assisted Living Facilities
Public Notice**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared draft regulations pertaining to assisted living facilities. These proposed regulations are intended to replace in their entirety assisted living regulations adopted in December, 1997. The proposed regulations specify required services in assisted living facilities including licensing requirements, specialized care for memory impairment, medication management, resident assessments, resident contracts and service agreements, staffing and physical plant requirements as well as provisions for resident waivers and conditions which preclude admission. The proposed regulations also include a Uniform Assessment Instrument to be used for initial and all subsequent assessments of

applicants and residents of assisted living facilities.

Invitation for Public Comment

Public hearings will be held as follows:

Monday, March 11, 2002, 10:00 AM

Department of Natural Resources &
Environmental Control Auditorium

89 Kings Highway

Dover

Friday, March 15, 2002, 9:00 AM

Room 301, Main Building

Herman Holloway Campus

1901 N. DuPont Highway

New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

Katie McMillan

Division of Long Term Care Residents Protection

3 Mill Road, Suite 308

Wilmington, DE 19806

The last time to submit written comments will be at the public hearing March 15, 2002.

Delaware Regulations for Assisted Living Agencies
December 15, 1997

Title 16 – Health and Safety

~~Part II, Chapter 11 Sanatoria, Rest Homes, Nursing Homes, Boarding Homes and Related Institutions.~~

~~“Sanatorium, rest home, nursing home, boarding home and related institutions,” within the meaning of this chapter, mean any institution, building or agency in which accommodation is maintained, furnished or offered for any fee, gift, compensation or reward for the care of more than 1 aged, infirm, chronically ill, adult psychiatrically disabled or convalescent person. The word “person” shall not include mother, father, sister, brother, niece, nephew, mother-in-law, father-in-law, sister-in-law or brother-in-law of any individual operating a facility under this chapter.~~

~~SECTION 63.0 PURPOSE~~

~~Assisted Living is a major component of a comprehensive community-based residential long term care continuum that provides the necessary level of services to a dependent elderly or persons with disabilities in the appropriate environment. The services are provided based on a social philosophy of care and must include oversight, food, shelter, and the provision or coordination of a range of services that promote the quality of life of the individual. The social~~

philosophy of care promotes the consumer's independence, privacy, dignity and is provided in a homelike environment. These regulations shall be construed to be consistent with this section.

SECTION 63.1GLOSSARY OF TERMS

63.101Assisted Living — Assisted living is a residential arrangement for fee for dependent elderly and adults with disabilities which provides assistance with activities of daily living and other services that promote the consumers quality of life.

63.102Activities 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.

63.103 Assistive Technology — Any item, piece of equipment or product system whether acquired commercially off the shelf, modified, or customized that is used to increase or improve functional capabilities of adults with disabilities.

63.104Bounded choice — limits placed by the assisted living agency on a consumer's choices as a result of limited consumer capacity, societal norms, and/or available resources. These boundaries include the prevention of imminent danger or harm to self and/or others, and the maintenance of respect for the dignity of others.

63.105Consumer — a person receiving services in the assisted living agency.

63.106Durable Medical Equipment — equipment capable of withstanding repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of an illness or injury and is needed to maintain the consumer in the home, i.e. wheelchairs, hospital beds, oxygen tanks.

63.107Homelike — an environment having the qualities of a home, including privacy, comfortable surroundings supported by the use of residential building materials and furnishings, and the opportunity to modify one's living area to suit one's individual preferences. A homelike environment provides consumers with an opportunity for self-expression and encourages interaction with community, family and friends.

63.108Incapable of making decisions — inability of a consumer, based on a service assessment, to understand his/her own needs for supportive, personal or nursing services; to choose what, if any, services one wants to receive to meet those needs; and to understand the outcome likely to result from that choice. The term refers to the decision and not the content or result of the decision.

63.109Individual Living Unit — a self-contained dwelling unit which has bathing facilities, living and sleeping space as provided in these regulations.

63.110Managed risk agreement — the process of

balancing consumer choice and independence with the health and safety of the consumer. If a consumer's preference or decision places the consumer at risk or is likely to lead to adverse consequences, such risks and consequences are discussed with the consumer, and his/her representative if appropriate, the outcome of which becomes a part of the service agreement. In no event shall the managed risk agreement place other consumers at risk.

63.111Qualified Interpreter — an interpreter who is able to interpret effectively accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

63.112Representative — a person acting on behalf of the consumer under Delaware law.

63.113Shared responsibility — the concept that consumers, their representatives if any, and providers of assisted living services share responsibility for planning and decision making affecting the consumer in an assisted living program. To participate fully in shared responsibility, consumers shall be provided with clear and understandable information about the possible consequences of their decision-making.

63.114Service Agreement — a written document for each consumer which describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, how often services will be provided and the expected outcome.

63.115Service Assessment — a written document for each consumer developed by the provider which is used to identify what services a consumer needs. This assessment shall be utilized by the provider to determine if services needed and desired by the consumer can be met by the provider.

SECTION 63.2LICENSING — REQUIREMENTS — AND PROCEDURES

63.201 License Requirement

No person or entity shall hold itself out as being an Assisted Living Agency unless such person or entity has been duly licensed under these regulations.

A. Issuance of Licenses

(1) Annual License. — An annual license (12 months) may be renewed yearly if the holder is in full compliance with the provisions of this chapter and the rules and regulations of the Department of Health and Social Services.

(2) Provisional License. — A provisional license shall be granted for a term of ninety (90) days only, and shall be granted only to an agency which, although not in full compliance, is nevertheless demonstrating evidence of improvement.

(3) Restricted License. — A restricted license shall be granted for a term of ninety (90) days when the agency is not in compliance with the provisions of this chapter, and

does not demonstrate evidence of improvement. The holder of a restricted license may not admit consumers to the agency to which the restricted license applies during the period of restriction, but the agency may remain in operation until such license is revoked, expires, becomes annual or provisional.

Restricted licenses may be issued by the Office of Health Facilities Licensing and Certification without advance notice if the Secretary or his/her designee determines that any deficiency immediately and seriously jeopardizes the health or safety of any consumer. The holder of the license may appeal the issuance of the restricted license to the Secretary or his/her designee, however, the restricted license will remain in effect during the pendency of the appeal.

B. Suspension or Revocation of Licenses

The Secretary of the Department of Health and Social Services or his/her designee may suspend or revoke a license issued under this chapter on any of the following grounds:

(1) Violation of any of the provisions of this chapter or the rules and regulations issued pursuant thereto.

(2) Permitting, aiding, or abetting the commission of any illegal act in the agency.

(3) Conduct or practices detrimental to the welfare of the consumer.

Before any license issued under this chapter is suspended or revoked, thirty (30) days notice shall be given in writing to the holder of the license, during which he/she may appeal for a hearing before the Secretary of the Department of Health and Social Services or his/her designee.

C. 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.

63.202 Separate Licenses

A. Separate licenses are required for agencies 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.

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

D. The Department of Health and Social Services may grant a waiver of Section 63.202A upon written request of the assisted living provider if the separate locations are located within a reasonably close physical area or development address provided the licensee can demonstrate the ability to meet the requirements set forth in the regulations.

63.203 Inspections

Every assisted living agency for which a license has been issued under this chapter shall be periodically inspected by a representative of the Division of Public Health.

63.204 Application Process

A. All persons or entities applying for a license shall request a licensure application from the Division of Public Health, Office of Health Facilities Licensing and Certification.

B. Applicants shall also submit to the Division of Public Health, Office of Health Facilities Licensing and Certification 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; and

4. name of the individual responsible for the management of the assisted living agency.

63.205 The Department of Health and Social Services may adopt, amend, or repeal regulations governing the operation of the agencies defined in Section 1101 of this title and shall establish reasonable standards of equipment, capacity, sanitation, and any other conditions which might influence the health or welfare of the consumers of such agencies.

SECTION 63.3 GENERAL REQUIREMENTS

63.301 All records maintained by the assisted living agency shall at all times be open to inspection by the authorized representatives of the Division of Public Health, Office of Health Facilities Licensing and Certification and Division of Services for Aging and Adults with Physical Disabilities, Long Term Care Ombudsman.

63.302 No policies shall be adopted by the assisted living agency which are in conflict with these regulations.

63.303 The assisted living agency shall establish written policies regarding the rights and responsibilities of consumers, and these policies and procedures shall be made available to authorized representatives of the Division of Public Health.

~~63.304~~For cognitively impaired consumers, the assisted living agency shall develop policies and procedures to:-

~~A. prevent cognitively impaired consumers from wandering away from safe areas; and~~

~~B. provide for the safe storage of medications.~~

~~63.305~~Each assisted living agency shall provide with the admission agreement to all consumers a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the consumer during the period of occupancy.

~~63.306~~Each agency shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.

~~63.307~~The assisted living agency shall arrange for emergency transportation and care.

~~63.308~~Upon the agency's reasonable belief that the medical needs of a consumer exceed the needs addressed in the service agreement, the agency shall promptly discuss and document with the consumer his need for medical assessment and shall document the outcome of that discussion.

~~63.309~~Reports of the results of the most recent licensure survey and plan of correction shall be readily available for review by the consumer.

~~SECTION 63.4~~CONSUMER APPLICATION AND CONTRACTS

~~63.401~~All information provided by the assisted living agency shall be accurate, precise, easily understood and readable by a consumer, and in compliance with all applicable laws.

~~63.402~~The assisted living agency shall have a written application process and provide clear reasons in writing if an applicant is rejected.

~~63.403~~The assisted living agency shall recommend review of the contract by an attorney or other representative chosen by the consumer.

~~63.404~~The assisted living agency's contract shall:

~~A. be easily understood and readable by a consumer or his/her representative if the consumer is incapable of making decisions, and any other party signing the contract;~~

~~B. be signed by the consumer or his/her representative if the consumer is incapable of making decisions;~~

~~C. conform to all relevant state and local laws and requirements;~~

~~D. cover the following topics:~~

~~1. clear and specific occupancy criteria and procedures (admission, transfer, and discharge);~~

~~2. rate structure and payment provisions that are clear on:~~

~~a. covered and non-covered services;~~

~~b. service packages and fee for services;~~

~~c. regular and extra fees;~~

~~d. fees and payment arrangements for any third-party providers;~~

~~e. the provision of at least 60 days written notice of any rate increases or fee changes;~~

~~f. the minimum notification a consumer or his/her representative if the consumer is incapable of making decisions must furnish when he/she plans to move out of the setting for reasons other than health emergencies (notification requirements may not exceed sixty (60) days);~~

~~g. the provisions regarding payment during unavoidable or optional absences (e.g., hospitalization, recuperation in a nursing home, or a vacation);~~

~~h. the provision of fair and reasonable billing, payment, and credit policies; and~~

~~i. the procedure if consumer can no longer pay for services.~~

~~3. division of responsibility between the assisted living agency and the consumer or his/her representative if the consumer is incapable of making decisions (e.g., arranging for or overseeing medical care, purchases of essential or desired supplies, emergencies, monitoring of health, handling of finances);~~

~~4. consumer's rights set forth in Section 63.7; and~~

~~5. explanation of grievance/complaint procedure and appeals process as set forth in Section 63.714, including information on outside agencies to which appeals may be made.~~

~~E. include that the assisted living agency shall not provide services to consumers whose admission is prohibited under 63.505.~~

~~63.405~~No contract shall be signed before a full assessment of the consumer has been completed and a service agreement, with costs, has been executed. If a deposit is required prior to move-in, the deposit shall be fully refundable if the parties cannot agree on the services and fees upon completion of the assessment.

~~SECTION 63.5~~SERVICE ASSESSMENT

~~63.501~~A consumer seeking entrance shall have an initial service assessment completed by appropriately qualified individuals no more than thirty (30) days prior to admission which shall be reviewed and revised, if appropriate, within fourteen (14) days of admission, and as frequently as needed thereafter. If the consumer requires specialized medical, therapeutic, or nursing services, that component of the assessment must be performed by personnel qualified in that specialty area. Regular assessments shall indicate whether the needs of the consumer are or can be met or arranged for by the assisted living agency.

~~63.502~~The service assessment shall include a medical evaluation completed by a physician within thirty (30) days prior to admission.

~~63.503~~The service assessment tool shall be developed by the assisted living agency and shall include an evaluation

of the physical and psychosocial needs of the consumer.

63.504 This assessment shall be completed by the assisted living agency in conjunction with the consumer or his/her representative if the consumer is incapable of making decisions.

63.505 The assisted living agency shall not admit any consumer who needs services which cannot be provided or arranged for by the assisted living agency. The assisted living agency shall not provide services to consumers who:

1. need 24 hour nursing services whose medical conditions are unstable to the point that they require frequent observation, assessment and intervention by a licensed professional nurse, including unscheduled nursing services, unless the attending physician certifies that despite the presence of this factor, the consumer's needs may be safely met by a service agreement developed by the assisted living agency, the attending physician, a registered nurse, the consumer or his/her representative if the consumer is incapable of making decisions, and other appropriate health care professionals as determined by the consumer's needs;

2. are bedridden for 14 consecutive days unless a physician certifies that despite the presence of this factor, the consumer's needs may be safely met by a service agreement developed by the assisted living agency, the attending physician, a registered nurse, the consumer or his/her representative if the consumer is incapable of making decisions, and other appropriate health care professionals as determined by the consumer's needs;

3. need transfer assistance by more than one person and a mechanical device unless special staffing arrangements have been made to ensure safe care and evacuation;

4. have conditions that exceed program capabilities (to be enumerated on the contract by the assisted living agency); or

5. present a danger to self or others or engage in illegal drug use.

63.506 Assisted living agencies are not intended for persons who require nursing home services that are beyond the capabilities of the assisted living agency. Under certain conditions services may be provided as per 63.505.

SECTION 63.6 SERVICE AGREEMENTS

63.601 A service agreement based on the needs identified in the service assessment shall be developed prior to entrance. The service agreement shall include the scope, frequency, and duration of services and monitoring. The consumer, or his/her representative if the consumer is incapable of making decisions, shall review the agreement, and determine which services he/she will utilize. The consumer or his/her representative if the consumer is incapable of making decisions and other persons with obligations under the service agreement shall sign the agreement and shall receive a copy of the signed agreement.

All persons who sign the agreement will be able to fully comprehend and perform their obligations under the agreement.

63.602 At a minimum, the service agreement must address the need for the following:

- A. personal services;
- B. nursing services;
- C. food services;
- D. environmental services including housekeeping, laundry, safety, trash removal;
- E. social/emotional services including those related to cognitive deficits;
- F. financial management services;
- G. transportation services;
- H. individual living unit furnishings;
- I. notification of family when there is a change in the health status of the consumer;
- J. Assistive technology and durable medical equipment;
- K. rehabilitation services;
- L. qualified interpreters for people who are deaf and hard of hearing; and
- M. reasonable accommodations for persons with disabilities.

63.603 The service agreement shall be developed and followed for each consumer consistent with that person's unique physical and psychosocial needs with recognition of his/her capabilities and preferences. Each consumer or his/her representative if the consumer is incapable of making decisions shall be entitled to actively participate in the development of the service agreement.

63.604 The service agreement shall be reviewed by the provider and the consumer upon observation of the provider that the needs of the consumer have changed, or upon the request of the consumer or his/her representative if the consumer is incapable of making decisions, but no less frequently than annually.

63.605 The assisted living agency shall be responsible and accountable for providing the services delineated in the service agreement.

63.606 The service agreement shall be based on the concepts of shared responsibility and consumer choice, including bounded choice.

63.607 Consumers admitted pursuant to 63.505 shall be prohibited from executing managed risk agreements.

63.608 Choices may be included in the managed risk agreement section of the service agreement if:

- A. The risks are tolerable to all parties participating in the development of the service agreement;
- B. Mutually agreeable action is negotiated;
- C. The consumer making the choices or his/her representative is capable of making decisions and understanding the consequences.

63.609 Consistent with the philosophy of bounded

choice, choice shall be limited to the extent necessary to prevent harm in cases where the choice may result in severe or immediate negative consequences to the consumer or others. Severe or immediate negative consequences shall include but not be limited to serious property damage and significant physical or psychological harm to the consumer making the choice, another consumer, a staff member or a visitor.

63.610 If a managed risk agreement is made a part of the service agreement, it shall:

A. clearly describe the problem, issue or service that is the subject of the managed risk agreement;

B. describe the choices available to the consumer as well as the risks and benefits associated with each choice, the assisted living agency's recommendations or desired outcome, and the consumer's desired preference or the preference that the consumer's representative believes would be the consumer's desired preference if the consumer is incapable of making decisions;

C. indicate the agreed upon option;

D. describe the agreed upon responsibilities of the assisted living agency, the consumer and any third party providers;

E. become a part of the service agreement, be signed separately by the consumer or his/her representative if the consumer is incapable of making decisions, the assisted living agency, and any third party with obligations under the managed risk agreement that the third party is able to fully comprehend and perform; and

F. include a time frame for review.

63.611 The assisted living agency shall make no attempt to use the managed risk portion of the service agreement to abridge a consumer's rights or to avoid liability for harm caused to a consumer by the negligence of the assisted living agency and any such abridgment or disclaimer shall be void.

SECTION 63.7 CONSUMER'S RIGHTS

63.701 Assisted living agencies are required by Title 16 Del.C., Chapter 11, Subchapter II to comply with the provisions of the Rights of Patients covered therein.

Not all of the rights contained in Subchapter II are enumerated in these regulations because not all of the rights are equally relevant for consumers of assisted living services. However, consumers of assisted living services are entitled to all of the rights set forth in Subchapter II, regardless whether they are specifically regulated herein.

63.702 Each consumer shall be treated with consideration, respect and full recognition of their dignity and individuality.

63.703 Each consumer shall receive care, treatment and services which are adequate and appropriate to their needs. Each consumer shall have the right to an attending physician of their choice.

63.704 Each consumer or his/her representative if the consumer is incapable of making decisions, prior to or upon admission, and during their stay, shall receive a written statement of the services provided by the assisted living agency including those required to be offered on an "as-needed" basis.

A. They shall also receive a statement of related charges, including any charges for services not covered under Medicare, Medicaid or the assisted living agency's basic per diem rate.

B. Upon receiving such statement, the consumer or his/her representative if the consumer is incapable of making decisions, shall sign a written receipt which shall be retained by the assisted living agency.

63.705 Each consumer or his/her representative if the consumer is incapable of making decisions shall be entitled to participate in the planning of all of their services including their medical treatment.

63.706 Each consumer's medical care program shall be conducted discreetly and in accordance with the consumer's need for privacy.

A. Other than the representatives of consumers who are incapable of making decisions, persons not directly involved in the provision of care shall not be present during medical examinations, treatment and case discussion, unless requested by the consumer or his/her representative if the consumer is incapable of making decisions.

B. Personal and medical records shall be treated confidentially; shall not be made public without the consent of the consumer or his/her representative if the consumer is incapable of making decisions or a court order and shall not be released to any person inside or outside the assisted living agency who has no demonstrable need for such records. Authorized representatives of the Department of Health and Social Services with oversight review or inspection responsibilities shall have full access to all personal and medical records.

63.707 Each consumer shall receive from the staff of the assisted living agency a timely, courteous and reasonable response to their requests.

63.708 The assisted living agency shall disclose to each consumer or his/her representative if the consumer is incapable of making decisions the identity of each entity with which it contracts for consumer care services and any ownership interest in any health care facility that it recommends to the consumer.

63.709 Each consumer may associate privately with people and groups of his/her own choice at any reasonable hour.

63.710 Each consumer may send and receive mail promptly and unopened.

63.711 Each consumer shall have 24 hour access to a telephone where he/she may speak privately.

63.712 Each consumer has the right to manage his/her

own financial affairs.

A. If, by written request, the assisted living agency manages the consumer's financial affairs, it shall have available for inspection a monthly accounting and shall furnish a quarterly statement to the consumer or a designated representative.

B. The consumer shall have unrestricted access to such accounts at reasonable hours.

63.713 Each consumer has the right of privacy in his/her room, including a door that locks, consistent with the safety needs of the consumer.

63.714 Each consumer has the right, personally, or through others, to present grievances/complaints to the agency's staff or director, to the Division of Services for Aging and Adults with Physical Disabilities, the Ombudsman or to others including the Division of Public Health, Office of Health Facilities Licensing and Certification.

A. The assisted living agency and its staff shall not impose any reprisal, restraint, interference, coercion or discrimination of the consumer as a result of such grievance/complaint or suggestion.

B. The assisted living agency shall report immediately and in writing any alleged violation of any of the provisions of Section 63.7 of these Rules and Regulations to the Ombudsman.

C. The Ombudsman shall consult with the complainant to determine if he/she wishes to pursue an investigation. If the complainant wishes to pursue the matter, the Ombudsman shall work closely with the complainant and the assisted living agency to resolve the matter. In any case, the confidentiality of the complainant shall not be revealed except in accordance with applicable law.

D. On completion of the investigation, the Ombudsman shall report the findings to the complainant and with the complainant's consent to the assisted living agency wherein the complaint originated.

E. If the grievance/complaint is not resolved to the satisfaction of the consumer at the end of the investigation by the Ombudsman, the grievance/complaint findings shall be forwarded to the Division of Public Health, Office of Health Facilities Licensing and Certification for appropriate action after obtaining the consent of the complainant.

F. Nothing in this regulation abrogates any person's duties under the Patient Abuse Law, 16 Del. C. §1131 et seq.

63.715 The assisted living agency shall investigate and address all grievances/complaints, verbal or written, made by consumers or their representatives and must document both the existence of the grievance/complaint and the resolution of the grievance/complaint. Records of all such investigations shall be maintained by the assisted living agency for five years for review.

63.716 The assisted living agency shall develop a formal internal grievance/complaint process which protects consumers from reprisal from employees.

63.717 This written grievance/complaint process shall be provided to consumers upon admission to the assisted living agency.

63.718 A consumer shall not be required to perform services for the assisted living agency.

63.719 Each consumer shall have the right to retain and use their personal clothing and possessions where reasonable and shall be entitled to security in their storage and use.

63.720 No consumer shall be transferred or discharged by an assisted living agency except for the following:

A. For medical reasons;

B. For the consumer's own welfare or the welfare of the other consumers;

C. For non-payment of justified charges; or

D. For failure to negotiate a service agreement or managed risk agreement where applicable.

63.721 If good cause for transfer or discharge exists, the consumer shall be given thirty (30) days advance notice of the proposed action and the reasons for the action and may request an impartial hearing. In emergency situations, such notice need not be given.

63.722 If a hearing is requested under Section 63.721, it shall be held within twenty (20) days of the request. The hearing shall be conducted by the Division of Public Health in accordance with Subchapter III of Del.C., Ch. 101 Administrative Procedure's Act. The Deputy Attorney General for the Division of Public Health may attend as legal officer in these hearings.

63.723 If the hearing determines in favor of the consumer, the assisted living agency shall be instructed to comply. If the assisted living agency refuses to comply, this refusal may be grounds for revocation of the license.

63.724 The consumer's rights shall be posted conspicuously in a public place in each assisted living agency.

63.725 Copies of the consumer's rights shall be furnished to the consumer or his/her representative if the consumer is incapable of making decisions, upon admission.

63.726 Receipts for the consumer's rights statements signed by the above parties shall be retained in the assisted living agency's files.

SECTION 63.8 QUALITY ASSURANCE

63.801 The assisted living agency shall develop and implement a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures consumer satisfaction.

63.802 On at least a semi-annual basis, the assisted living agency shall survey each consumer or his/her representative if the consumer is incapable of making

decisions regarding their satisfaction with services provided.

A. The assisted living agency shall retain all surveys which shall be reviewed during inspections.

B. The assisted living agency shall maintain documentation which addresses what actions were taken as a result of the surveys.

63.803 The grievance/complaint process shall be incorporated into the quality assurance program.

SECTION 63.9 STAFFING

63.901 A staff of persons sufficient in number and adequately trained, certified or licensed to meet the requirements of the consumers shall be employed and comply with 24 Del.C., Chapter 19 and other applicable state law and corresponding Rules and Regulations.

63.902 The assisted living agency shall develop a staffing plan sufficient in number to meet the needs of the consumers based on the service agreements in effect at any given time.

63.903 The assisted living agency shall maintain staffing records which document what personnel were on duty as well as specific hours worked for each day.

63.904 The assisted living agency should provide appropriate training to staff in compliance with 24 Del. C., Chapter 19 and other applicable state law and corresponding rules and regulations to meet the needs of the consumer. The content of both individual training and staff training programs and attendance shall be documented.

63.905 The assisted living agency shall provide orientation training to all new staff.

63.906 All personnel records, including employment applications, shall be maintained consistent with the assisted living agency policies and applicable state laws.

63.907 Each assisted living agency that is licensed shall have a director who is responsible for the operation of the program.

63.908 The assisted living agency shall provide either onsite or on call supervision 24 hours per day.

63.909 The assisted living agency must be available 24 hours per day to respond if called by the consumer for assistance.

SECTION 63.10 ENVIRONMENT

63.10.1 All accommodations shall comply with applicable federal, state and local laws including:

A. Rehabilitation Act of 1973, Section 504;

B. Fair Housing Amendments Act of 1988; and

C. Americans with Disabilities Act of 1990.

63.10.2 Kitchens shall be available to consumers either in their individual living unit or in an area readily accessible to each consumer.

63.10.3 Individual living units without kitchens shall have an appropriately designed central kitchen readily accessible to the consumer. The assisted living agency shall

establish policies and procedures to ensure that this kitchen is used and maintained in such a way as to provide for the following:

A. a clean and sanitary environment;

B. safe storage of food; and

C. a means to enable hand washing and sanitizing of dishes, utensils and food preparation equipment.

63.10.4 Bathing facilities shall be available to consumers either in their individual living unit or in an area readily accessible to each consumer.

63.10.5 Assisted living agencies that prepare meals to consumers shall meet the State of Delaware Regulations Governing Public Eating Places.

63.10.6 The assisted living agency shall provide a homelike environment in all common areas.

63.10.7 Sharing of a bedroom shall be limited to two consumers, upon their mutual consent.

SECTION 63.11 FIRE SAFETY AND EVACUATION PLANS

63.11.1 Fire safety in assisted living agencies shall comply with the adopted Rules and Regulations of the State Fire Prevention Commission. All applications for license or renewal of license must include with the application a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of non-compliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for revocation of the license.

63.11.2 The assisted living agency shall develop an evacuation plan for each consumer in the event of an emergency.

63.11.3 The assisted living agency shall be responsible to have adequate staff to meet the evacuation plan needs of each consumer at any given time.

SECTION 63.12 RECORDS

63.12.1 The assisted living agency shall be responsible for maintaining appropriate records for each consumer. These records shall document the implementation of the service agreement for each consumer. Clinical records for consumers shall conform to professional standards for medical records.

63.12.2 Records shall be available at all times to legally authorized persons; otherwise such records shall be held confidential. The consent of the consumer or his/her representative if the consumer is incapable of making decisions shall be obtained before any personal information is released from his/her records as authorized by these regulations or Delaware law.

63.12.3 The assisted living agency consumer records shall be retained for a minimum of five (5) years before being destroyed following discharge.

Delaware Regulations for Assisted Living Facilities**These regulations are promulgated in accordance with
16 Del. C., Chapter 11,
December 31, 2001**

When finalized, these regulations will replace the December 15, 1997 regulations.

SECTION 63.0 PURPOSE

The Department of Health and Social Services is issuing these regulations to promote and ensure the health, safety, and well-being of all residents of assisted living facilities. These regulations are also meant to ensure that service providers will be accountable to their residents and the Department and to differentiate assisted living care from nursing home care. The regulations establish the minimal acceptable level of services for residents of assisted living facilities.

SECTION 63.1 AUTHORITY AND APPLICABILITY

These regulations are promulgated in accordance with 16 Del. C. Chapter 11 and shall apply to any facility providing assisted living to elderly individuals or adults with disabilities. The term "assisted living" shall not be used as part of the official name of any facility in this State unless the facility has been so licensed by the Department of Health and Social Services.

SECTION 63.2 GLOSSARY OF TERMS

63.201 Activities of Daily Living ("ADLs") - Normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating, and toileting.

63.202 Administration of Medication - The process whereby a single dose of a prescribed drug is given to a resident by an authorized licensed person, as described in 24 Del. C., Section 1902.

63.203 Assisted Living - A special combination of housing, supportive services, supervision, personalized assistance and health care designed to respond to the individual needs of those who need help with activities of daily living and/or instrumental activities of daily living.

63.204 Assisted Living Facility - A licensed entity that provides the services described in 63.203.

63.205 Assistive technology - Any item, piece of equipment or product system whether acquired commercially off the shelf, modified, or customized that is used to increase or improve functional capabilities of adults with disabilities.

63.206 Assistance With Self-Administration of Medication ("AWSAM") - Help with medication provided by facility personnel who are not nurses or nurse practitioners but who have successfully completed a Board

of Nursing-approved medication training program in accordance with the Delaware Nurse Practice Act, 24 Del. C., Chapter 19, and applicable rules and regulations. Help with medication includes holding the container, opening the container, and assisting the resident in taking the medication, other than by injection, following the directions of the original container, and documenting in the medication log that each medication has been taken by the residents.

63.207 Communicable Disease - An illness caused by a microorganism or its toxin characterized by spread from host to victim by air, contact, blood, or bodily fluids.

63.208 Contract - A legally binding written agreement between the facility and the resident which enumerates all charges for services, materials, and equipment, as well as non-financial obligations of both parties, as specified in these regulations.

63.209 Cueing - The act of guiding residents, verbally or by gestures, to facilitate memory and/or organize verbal and/or behavioral responses.

63.210 Department - Department of Health and Social Services.

63.211 Division - Division of Long Term Care Residents Protection.

63.212 Durable Medical Equipment - Equipment capable of withstanding repeated use, primarily and customarily used to serve a medical purpose, generally not useful to a person in the absence of an illness or injury, and needed to maintain the resident in the facility, i.e., wheelchairs, hospital beds, oxygen tanks.

63.213 Homelike - An environment having the qualities of a home, including privacy, comfortable surroundings supported by the use of residential building materials and furnishings, and the opportunity to modify one's living area to suit one's individual preferences, in accordance with the facility's policies. A homelike environment provides residents with an opportunity for self-expression and encourages interaction with community, family, and friends.

63.214 Hospice - An agency licensed by the State of Delaware that provides palliative and supportive medical and other health services to terminally ill residents and their families.

63.215 Incident - An occurrence or event, a record of which must be maintained in facility files, that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors or omissions in medication/treatment. (Also see Reportable Incident, 63.222.)

63.216 Individual Living Unit - A separate dwelling area within an assisted living facility which has living and sleeping space for one or more residents, as prescribed in these regulations.

63.217 Instrumental Activities of Daily Living (“IADLs”) - Home management skills, such as shopping for food and personal items, preparing meals, or handling money.

63.218 Managed/Negotiated Risk Agreement – A signed document between the resident and the facility, and any other involved party, which describes mutually agreeable action balancing resident choice and independence with the health and safety of the resident or others.

63.219 Medication Log – A written document in which licensed personnel and unlicensed personnel who have completed AWSAM training record administration/assistance with the resident’s medications. The log shall list the resident’s name; date of birth; allergies; reason the medication is given; prescribing practitioner and phone number; special instructions; and the dosage, route(s), and time(s), for all medications received/taken with staff administration or staff assistance. The log is signed/initialed by a staff member after each resident has received/taken the appropriate medication, or when the medication was not taken/given as prescribed.

63.220 Medication Management by an Adult Family Member/Support Person – Any help with prescription or non-prescription medication provided by an adult family member/support person, as identified in the resident’s contract and service agreement.

63.221 Personal Care Supplies - Those supplies, often disposable, used by a resident, such as incontinence products and hygiene supplies.

63.222 Reportable Incident - An occurrence or event which must be reported at once to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation. Reportable incident also includes an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident’s health and safety. (Also see Incident, 63.215.)

63.223 Representative - A person acting on behalf of the resident pursuant to Delaware law.

63.224 Resident - An individual 18 years old or older who lives in an assisted living facility. Where appropriate in the context of these regulations, “resident” as used herein includes an authorized representative as defined in 63.223.

63.225 Resident Assessment - Evaluation of a resident’s physical, medical, and psychosocial status as documented in a Uniform Assessment Instrument (UAI), by a registered nurse.

63.226 Resident Assistant – Any unlicensed direct caregiver who, under the supervision of the assisted living director or director of health services, assists the resident with personal needs and monitors the activities of the resident while on the premises to ensure his/her health,

safety, and well-being.

63.227 Secretary - Secretary of the Department of Health and Social Services.

63.228 Service Agreement - A written document developed with each resident which describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, and, if applicable, the expected outcome.

63.229 Shared Responsibility - The concept that residents and assisted living facilities share responsibility for planning and decision-making affecting the resident.

63.230 Significant Change - A major deterioration or improvement in a resident’s health status or ability to perform ADLs; a major alteration in behavior or mood resulting in ongoing problematic behavior or the elimination of that behavior on a sustained basis. Significant change does not include ordinary, day-to-day fluctuations in health status, functioning, and behavior, or a short-term illness such as a cold, unless these fluctuations continue to recur, nor does it include deterioration that will normally resolve without further intervention.

63.231 Third-Party Provider - Any party, including a family member, other than the assisted living facility which furnishes services/supplies to a resident.

63.232 Uniform Assessment Instrument (“UAI”) - A document setting forth standardized criteria developed by the Division to assess each resident’s functional, cognitive, physical, medical, and psychosocial needs and status. The assisted living facility shall be required to use the UAI to evaluate each resident on both an initial and ongoing basis in accordance with these regulations.

SECTION 63.3 LICENSING REQUIREMENTS AND PROCEDURES

63.301 No entity shall hold itself out as being an assisted living facility unless such entity has been duly licensed under these regulations and in accordance with state law. The Secretary or his/her designee shall issue a provisional or annual license for a specified number of beds.

63.302 Procedures for assisted living facility applications and for issuance, posting, and renewal of licenses shall be in accordance with 16 Del. C., Chapter 11, Subchapter I., Licensing By The State.

63.303 Inspections and monitoring shall be conducted in accordance with 16 Del. C., Chapter 11, Subchapter I., Licensing By The State.

63.304 Upon receipt of written notice of a violation of these regulations, the assisted living facility shall submit a written plan of action to correct deficiencies cited within 10 working days or such other time period as may be required by the Department. The plan of action shall address corrective actions to be taken and include all measures and completion dates to prevent their recurrence: 1) how the corrective action will be accomplished for those residents

found to have been affected by the deficient practice; 2) how the facility will identify other residents having the potential to be affected by the same deficient practice; 3) what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur; and 4) how the facility will monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur, i.e., what program will be put into place to monitor the continued effectiveness of the systemic changes.

63.305 The Department may impose civil money penalties and/or other enforcement remedies in accordance with the procedures outlined in 16 Del. C., Chapter 11, Subchapter I., Licensing By The State.

63.306 The Department may suspend or revoke a license, or refuse to renew it, in accordance with 16 Del. C., Chapter 11, Subchapter I., Licensing By The State.

63.307 Separate licenses are required for agencies maintained in separate locations, even though operated under the same management. A separate license is not required for separate buildings maintained by the same management on the same grounds. Under conditions of assignment or transfer of ownership, a new license shall be required.

63.308 If a facility or part of a facility plans to close:

A. The assisted living facility shall notify representatives of the appropriate state agencies of the plan of closure at least 90 days before the planned closure.

B. The facility staff must notify each resident advising him/her of the action in progress at least 90 days before the planned closure.

C. The resident must be given the opportunity to designate a preference for a specific facility or for other arrangements.

D. The assisted living facility must arrange for the relocation to other facilities in the area in accordance with the residents' preference, if possible.

E. Any applicant for admission to the assisted living facility shall be advised of the planned closure date.

F. All residents' records and any medications must accompany the residents to their new residences.

63.309 The Department may adopt, amend or repeal regulations governing the operation of the agencies defined in 16 Del. C., Chapter 11, Subchapter I., Licensing By The State.

SECTION 63.4 GENERAL REQUIREMENTS

63.401 All written information provided by the assisted living facility shall be accurate, precise, easily understood and readable by a resident, and in compliance with all applicable laws.

63.402 All records maintained by the assisted living facility shall at all times be open to inspection by the authorized representatives of the Department, as well as other agencies as required by state and federal laws and

regulations. Such records shall be made available in accordance with 16 Del. C., Chapter 11, Subchapter I., Licensing By The State.

63.403 The assisted living facility shall adopt internal written policies and procedures pursuant to these regulations. No policies shall be adopted by the assisted living facility which are in conflict with these regulations.

63.404 The assisted living facility shall establish and adhere to written policies and procedures regarding the rights and responsibilities of residents, and these policies and procedures shall be made available to authorized representatives of the Department, facility staff, and residents.

63.405 The assisted living facility shall develop and adhere to policies and procedures to prevent residents with diagnosed memory impairment from wandering away from safe areas. However, residents may be permitted to wander safely within the perimeter of a secured unit.

63.406 The assisted living facility shall arrange for emergency transportation and care.

63.407 Inspection summaries and compliance history information shall be posted by the facility in accordance with 16 Del. C., Chapter 11, Subchapter I., Licensing By The State.

63.408 An assisted living facility shall recognize the authority of a representative acting on the resident's behalf pursuant to Delaware law, as long as such representative does not exceed his/her authority. The facility shall request and keep on file any documents such as an advance directive, living will, do not resuscitate, and power(s) of attorney.

63.409 An assisted living facility shall not admit, provide services to, or permit the provision of services to individuals who, as established by the resident assessment:

A. Require care by a nurse that is more than intermittent or for more than a limited period of time;

B. Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is an RN to provide appropriate care;

C. Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;

D. Are bedridden for more than 14 days;

E. Have developed stage three or four skin ulcers;

F. Require a ventilator;

G. Require treatment for a disease or condition which requires more than contact isolation;

H. Have an unstable tracheotomy or have a stable tracheotomy of less than 6 months' duration;

I. Have an unstable peg tube;

J. Require an IV or central line;

K. Wander such that the assisted living facility would be unable to provide adequate supervision and/or

security arrangements;

L. Exhibit behaviors that present a threat to the health or safety of themselves or others, such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable documented progress within 45 days; and

M. Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented, reasonable efforts within 60 days.

63.410 The provisions of Section 63.409 above do not apply to residents under the care of a Hospice program licensed by the Department as long as the Hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.

SECTION 63.5 RESIDENT WAIVERS

63.501 An assisted living facility may request a resident-specific waiver so that it may serve a current resident who temporarily requires care otherwise excluded in section 63.409. A waiver request shall contain documentation by a physician stating that the resident's condition is expected to improve within 90 days.

63.502 The facility shall provide interim needed services by appropriate health care professionals while any waiver request is pending.

63.503 The assisted living facility shall submit in writing a request for a waiver, which shall include the following information:

A. An explanation of why the assisted living facility is seeking the waiver, to include physician documentation and a service agreement which details how staff will provide care;

B. An explanation of why denial of the waiver will impose a substantial hardship for the resident;

C. An explanation of why the waiver will not adversely affect the resident for whom the waiver is sought or other residents; and

D. The duration of the waiver, not to exceed 90 days.

63.504 In evaluating a waiver request submitted under this regulation, the Department shall review the statements in the application and may:

A. Inspect the assisted living facility;

B. Confer with the Assisted Living Director or his/her designee;

C. Discuss the request with the resident to determine whether he/she believes a waiver is in his/her best interest; and/or

D. Review other waivers currently in place at the assisted living facility.

63.505 The Department shall issue a written decision

on a waiver request submitted pursuant to these regulations within 5 business days of receipt of the request. If the Department grants the waiver, the written decision shall include the waiver's duration. If the Department denies the waiver, the written decision shall explain the reason(s) for the denial. The assisted living facility may submit a revised waiver request no later than five days after the receipt of the denial. While the second waiver request is pending, the facility shall provide needed services by health care professionals as outlined in the second waiver request.

63.506 If an assisted living facility violates any condition of a waiver, or if it appears to the Department that the health or safety of residents will be adversely affected by the continuation of a waiver, the Department may revoke it. The revocation may be appealed; however, discharge proceedings shall be commenced immediately.

SECTION 63.6 SPECIALIZED CARE FOR MEMORY IMPAIRMENT

63.601 Any assisted living facility which offers to provide specialized care for residents with memory impairment shall be required to disclose its policies and procedures which describe the form of care or treatment provided, in addition to that care and treatment required by the rules and regulations herein.

63.602 Said disclosure shall be made to the Department and to any person seeking specialized care for memory impairment in an assisted living facility.

63.603 The information disclosed shall explain the additional care that is provided in each of the following areas:

A. Philosophy: a written statement of the agency's overall philosophy and mission which reflects the needs of residents affected by memory impairment;

B. Resident Population: a description of the resident population to be served;

C. Pre-Admission, Admission & Discharge: the process and criteria for placement, transfer or discharge from this specialized care;

D. Assessment, Care Planning & Implementation: the process used for assessment and establishing and updating the service agreement and its implementation;

E. Staffing Plan & Training Policies: staffing plan, orientation, and regular in-service education for specialized care;

F. Physical Environment: the physical environment and design features, including security systems, appropriate to support the functioning of adults with memory impairment;

G. Resident Activities: the frequency and types of resident activities;

H. Family Role in Care: the family involvement and family support programs;

I. Psychosocial Services: the process for

addressing the mental health, behavior management, and social functioning needs of the resident;

J. Nutrition/Hydration: the frequency and types of nutrition and hydration services provided; and

K. Program Costs: the cost of care and any additional fees.

63.604 Any significant changes in the information provided by the assisted living facility shall be reported to the Department at the time the changes are made.

SECTION 63.7 MEDICATION MANAGEMENT

63.701 An assisted living facility shall establish and adhere to written medication policies and procedures which shall address:

A. Obtaining and refilling medication;

B. Storing and controlling medication;

C. Disposing of medication; and

D. Administration of medication, self-administration of medication, assistance with self-administration of medication, and medication management by an adult family member/support person.

63.702 Each assisted living facility shall have a drug reference guide, with a copyright date no older than 2 years, available and accessible for use by employees.

63.703 Medication stored by the assisted living facility shall be stored and controlled as follows:

A. Medication shall be stored in a locked container, cabinet, or area that is only accessible to authorized personnel;

B. Medication that is not in locked storage shall not be left unattended and shall not be accessible to unauthorized personnel;

C. Medication shall be stored in the original labeled container;

D. A bathroom or laundry room shall not be used for medication storage; and

E. All expired or discontinued medication, including those of deceased residents, shall be disposed of according to the assisted living facility's medication policies and procedures.

63.704 Residents who self-administer medication shall be provided with a locked container.

63.705 A separate medication log must be maintained for each resident documenting administration of medication by staff and staff assistance with self-administration.

63.706 Within 30 days after a resident's admission and concurrent with all UAI-based assessments, the assisted living facility shall arrange for an on-site review by an RN of the resident's medication regime if he or she self-administers medication. The purpose of the on-site review is to assess the resident's cognitive and physical ability to self-administer medication or the need for assistance with or staff administration of medication.

63.707 The assisted living facility shall ensure that the

review required by section 63.706 is documented in the resident's records, including any recommendations given by the reviewer.

63.708 Concurrently with all UAI-based assessments, the assisted living facility shall arrange for an on-site medication review by a registered nurse, for residents who need assistance with self-administration or staff administration of medication, to ensure that:

A. Medications are properly labeled, stored and maintained;

B. Each resident receives the medications that have been specifically prescribed in the manner that has been ordered;

C. The desired effect of each medication is achieved, and if not, that the appropriate authorized prescriber is so informed;

D. Any undesired side effects, adverse drug reactions, and medication errors are identified and reported to the appropriate authorized prescriber; and

E. Any unresolved discrepancy of controlled substances shall be reported to the Delaware Office of Narcotics and Dangerous Drugs.

63.709 Records shall be kept on file at the facility for those who have completed the AWSAM course which is required by 24 Del. C., Chapter 19 for those who assist the residents with self-administration of medication.

63.710 Each assisted living facility shall complete an annual AWSAM report on the form provided by the Board of Nursing. The report must be submitted pursuant to the Delaware Nurse Practice Act, 24 Del. C., Chapter 19.

SECTION 63.8 INFECTION CONTROL

63.801 The assisted living facility shall establish written procedures to be followed in the event that a resident with a communicable disease is admitted or an episode of communicable disease occurs. It is the responsibility of the assisted living facility to see that:

A. The necessary precautions stated in the written procedures are followed; and

B. All rules of the Delaware Division of Public Health are followed so there is minimal danger of transmission to staff and residents.

63.802 Any resident found to have active tuberculosis in an infectious stage may not continue to reside in an assisted living facility.

63.803 A resident, when suspected or diagnosed as having a communicable disease, shall be placed on the appropriate isolation or precaution as recommended for that disease by the Centers for Disease Control. Those with a communicable disease which has been determined by the Director of the Division of Public Health to be a health hazard to visitors, staff, and other residents shall be placed on isolation care until they can be moved to an appropriate room or transferred.

63.804 The admission or occurrence of a resident with a notifiable disease within an assisted living facility shall be reported to the County Public Health Administrator. See Appendix A.

63.805 The assisted living facility shall have on file results of tuberculin tests:

1) performed annually for all employees and 2) performed on all newly admitted residents. The tuberculin test to be used is the Mantoux test containing 5 TU-PPD stabilized with Tween, injected intradermally, using a needle and syringe, usually on the volar surface of the forearm. Persons found to have a significant reaction (defined as 10 mm of induration or greater) to tests shall be reported to the Division of Public Health and managed according to recommended medical practice. A tuberculin test as specified, done within the twelve months prior to employment, or a chest x-ray showing no evidence of active tuberculosis shall satisfy this requirement for asymptomatic individuals. A report of this skin test shall be kept on file.

63.806 The assisted living facility shall have on file evidence of annual vaccination against influenza for all residents, as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against influenza must be fully informed by the facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.

63.807 The assisted living facility shall have on file evidence of vaccination against pneumococcal pneumonia for all residents older than 65 years and as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against pneumococcal pneumonia must be fully informed by the facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.

63.808 The assisted living facility shall have policies and procedures for infection control as it pertains to staff, residents, and visitors.

63.809 All assisted living facility staff shall be required to use Standard Precautions.

SECTION 63.9 RESIDENT APPLICATIONS AND CONTRACTS

63.901 The assisted living facility shall have a written application process and provide clear reasons in writing if an applicant is rejected.

63.902 The assisted living facility shall recommend review of the contract by an attorney or other representative chosen by the resident.

63.903 Prior to executing the contract, each assisted living facility shall provide to the prospective resident a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to

the resident during the period of occupancy.

63.904 The resident shall sign a contract within 3 business days after admission that:

A. Is a clear and complete reflection of commitments agreed to by the parties and the actual practices that will occur in the assisted living program;

B. Is accurate, precise, legible, and written in plain language; and

C. Conforms to all relevant state and local laws and regulations.

63.905 The assisted living facility shall retain the contract on-site and make it available for review by the Department or its designee. The facility shall also provide a copy to the resident.

63.906 The contract or service agreement shall include, at a minimum, the following non-financial provisions:

A. A listing of basic and optional services provided by the assisted living facility including the availability of licensed nursing staff;

B. A listing of optional services that may be provided by third parties;

C. A statement of the resident's rights, as set forth in 16 Del. C., Chapter 11, Subchapter II and an explanation of the assisted living facility's grievance procedures;

D. Occupancy provisions, including:

1. Policies regarding bed and room assignment, including the specific room and bed assigned to the resident at the time of admission;

2. Policies regarding residents modifying their living area;

3. Procedures to be followed when the assisted living facility temporarily or permanently changes the resident's accommodation by:

a. Relocating the resident within the facility;

b. Making a change in roommate assignment; and

c. Increasing or decreasing the number of individuals occupying a room.

4. Procedures to be followed in transferring the resident to another facility;

5. Security procedures which the licensee shall implement to protect the resident and the resident's property;

6. The staff's right to enter a resident's room;

7. The resident's rights and obligations concerning use of the facility, including common areas;

8. The assisted living facility's policy in case of unavoidable or optional absences such as hospitalizations, recuperative stays in other settings, or vacation, and payment terms;

9. Provisions for interim service in the event of an emergency; and

10. An acknowledgment that the resident has reviewed all assisted living facility rules, requirements, restrictions, or special conditions that the facility will impose on the resident.

E. Discharge/temporary absence policies and procedures, including:

1. Those actions, circumstances, or conditions that temporarily disqualify individuals from continued residence in the assisted living facility or may result in the resident's discharge from the facility;

2. The procedures which the assisted living facility shall follow if it intends to discharge a resident and thereby terminate the contract, including a provision under which the assisted living facility shall give at least 30 days notice to the resident before the effective date of the discharge and termination of the contract, except in the case of a health emergency or substantial risk to the health and safety of the other residents or facility staff;

3. The procedures which the resident shall follow if the resident wishes to terminate the contract, including a provision that the resident, or appropriate representative, shall give at least 30 days notice to the assisted living facility before the effective date of the termination, except in the case of a health emergency;

4. The procedures which the assisted living facility shall follow in helping the resident find an appropriate placement;

5. In a living unit in which more than one resident is the contracting party, the terms under which the contract may be modified in the event of one of the resident's discharge or death, including the provisions for termination of the contract and appropriate refunds.

F. Obligations of the facility and the resident as to:

1. Arranging for or overseeing medical care;

2. Monitoring of the status of the resident.

G. The assisted living facility's formal internal grievance process which shall protect residents from reprisal by the facility or its employees.

H. An inventory of the resident's personal belongings, if the resident so desires.

63.907 The contract shall include, at a minimum, the following financial provisions:

A. Party responsible for:

1. Handling the finances of the resident;

2. Purchasing or renting essential or desired equipment and supplies;

3. Arranging and contracting for services not covered by the contract;

4. Ascertaining the cost of and purchasing durable medical equipment; and

5. Disposing of the resident's property upon discharge or death of the resident.

B. Rate structure and payment provisions including:

1. All rates to be charged to the resident, including, but not limited to:

a. Service packages;

b. Fee for service rates; and

c. Other ancillary charges.

2. Notification of the rate structure and the criteria to be used for imposing additional charges for the provision of additional services, if the resident's service and care needs change;

3. Identification of the persons responsible for payment of all fees and charges and a clear indication of whether the person's responsibility is or is not limited to the extent of the resident's funds;

4. A provision which provides at least 60 days notice of any rate increase, except if necessitated by a change in the resident's medical condition;

5. Billing, payment, and credit policies, including the procedures that the assisted living facility will follow in the event the resident can no longer pay for services provided or for services or care needed by the resident; and

6. A description of any prepaid fees or charges and the terms governing refund of those fees or charges in the event of a resident's discharge from the assisted living facility or termination of the contract.

63.908 The contract shall be amended by the parties to reflect any applicable increase or decrease in charges.

63.909 All notices to be provided pursuant to an assisted living contract shall be in writing and mailed or hand-delivered to the resident.

63.910 No contract shall be signed before a full assessment of the resident has been completed and a service agreement has been executed. If a deposit is required prior to move-in, the deposit shall be fully refundable if the parties cannot agree on the services and fees upon completion of the assessment.

SECTION 63.10 RESIDENT ASSESSMENT

Each assisted living facility shall use a Uniform Assessment Instrument (UAI) developed by the Division. The UAI shall be used in conducting all resident assessments.

63.1002 A resident seeking entrance shall have an initial UAI-based resident assessment completed by a registered nurse (RN) acting on behalf of the assisted living facility no more than 30 days prior to admission. In all cases, the assessment shall be completed prior to admission. Such assessment shall be reviewed by an RN within 30 days after admission and, if appropriate, revised. If the resident requires specialized medical, therapeutic, nursing services, or assistive technology, that component of the assessment must be performed by personnel qualified in that specialty

area.

63.1003 Within 30 days prior to admission, a prospective resident shall have a medical evaluation completed by a physician.

63.1004 The resident assessment shall be completed in conjunction with the resident.

63.1005 The UAI, developed by the Department, shall be used to update the resident assessment. At a minimum, regular updates must occur 30 days after admission, annually and when there is a significant change in the resident's condition.

63.1006 If the needs of a resident exceed the care which the assisted living facility can provide and a waiver has not been requested, the facility shall assist the resident in making arrangements for an appropriate transfer within 30 days. While a transfer is pending, the assisted living facility shall coordinate the provision of services needed by the resident.

63.1007 The assisted living facility shall provide an instrument to assess interests, strengths, talents, skills and preferences of each resident within 30 days of admission to be used in activity planning.

SECTION 63.11 SERVICES

63.1101 The assisted living facility shall ensure that:

A. Three meals, snacks and prescribed food supplements are available during each 24-hour period, 7 days per week;

B. Meals and snacks are varied, palatable, and of sufficient quality and quantity to meet the daily nutritional needs of each resident with specific attention given to the special dietary needs of each resident;

C. Food service complies with the Delaware Food Code; and

D. A resident who chooses not to follow prescribed dietary recommendations shall be provided documented counseling on potential adverse outcomes.

63.1102 As part of the licensure approval and renewal process, an assisted living applicant or licensee shall submit at least a 4-week menu cycle with documentation by a dietician or nutritionist that the menus are nutritionally adequate. Thereafter, menus are to be written at least one week in advance and maintained on file, as served, for two months.

63.1103 The assisted living facility shall ensure that the resident's service agreement is being properly implemented.

63.1104 In accordance with the service agreement, the assisted living facility shall provide or ensure the provision of all necessary personal services, including all activities of daily living, and shall ensure that personal care supplies are available.

63.1105 The assisted living facility shall ensure that laundry and housekeeping services are offered and that all areas of the facility are maintained in a clean and orderly condition.

63.1106 In accordance with the service agreement, the assisted living facility shall be responsible for facilitating access to appropriate health care and social services for the resident.

63.1107 The assisted living facility shall assess each resident and provide or arrange appropriate opportunities for social interaction and leisure activities which promote the physical and mental well-being of each resident, including facilitating access to spiritual activities consistent with the preferences and background of the resident.

SECTION 63.12 SERVICE AGREEMENTS

63.1201 A service agreement based on the needs identified in the UAI shall be completed prior to or no later than the day of admission. The resident shall participate in the development of the agreement. The resident and the facility shall sign the agreement and each shall receive a copy of the signed agreement. All persons who sign the agreement must be able to comprehend and perform their obligations under the agreement.

63.1202 The service agreement or contract shall address the physical, medical, and psychosocial services that the resident requires as follows:

A. Assistance with activities of daily living and instrumental activities of daily living;

B. Services provided by licensed nurses;

C. Food, nutrition, and hydration services;

D. Environmental services including housekeeping, laundry, safety, trash removal;

E. Psychosocial/emotional services including those related to memory impairment and other cognitive deficits;

F. Banking, record keeping, and personal spending services;

G. Transportation services;

H. Individual living unit furnishings;

I. Notification procedures when an incident occurs or there is a change in the health status of the resident;

J. Assistive technology and durable medical equipment;

K. Rehabilitation services;

L. Qualified interpreters for people who have a hearing impairment or do not speak English; and

M. Reasonable accommodations for persons with disabilities as defined by applicable state and federal law.

63.1203 The resident's personal attending physician(s) shall be identified in the service agreement by name, address, and telephone number.

63.1204 The facility shall be responsible for appropriate documentation in the service agreement for services provided or arranged by the facility.

63.1205 The service agreement shall be developed and followed for each resident consistent with that person's unique physical and psychosocial needs with recognition of

his/her capabilities and preferences.

63.1206 The service agreement shall be reviewed when the needs of the resident have changed and, minimally, in conjunction with each UAI. Within 10 days of such assessment, the resident and the assisted living facility shall execute a revised service agreement, if indicated.

63.1207 The service agreement shall be based on the concepts of shared responsibility and resident choice. To participate fully in shared responsibility, residents shall be provided with clear and understandable information about the possible consequences of their decision-making. If a resident's preference or decision places the resident or others at risk or is likely to lead to adverse consequences, a managed/negotiated risk agreement section may be included in the service agreement.

63.1208 The following are criteria for a managed/negotiated risk agreement:

A. The risks are tolerable to all parties participating in the development of the managed/negotiated risk agreement;

B. Mutually agreeable action is negotiated to provide the greatest amount of resident autonomy with the least amount of risk; and

C. The resident living in the facility is capable of making choices and decisions and understanding consequences.

63.1209 If a managed/negotiated risk agreement is made a part of the service agreement, it shall:

A. Clearly describe the problem, issue or service that is the subject of the managed/negotiated risk agreement;

B. Describe the choices available to the resident as well as the risks and benefits associated with each choice, the assisted living facility's recommendations or desired outcome, and the resident's desired preference;

C. Indicate the agreed-upon option;

D. Describe the agreed upon responsibilities of the assisted living facility, the resident, and any third parties;

E. Become a part of the service agreement, be signed separately by the resident, the assisted living facility, and any third party with obligations under the managed/negotiated risk agreement that the third party is able to fully comprehend and perform; and

F. Include a time frame for review.

63.1210 The assisted living facility shall have sufficient staff to meet its responsibilities under the managed/negotiated risk agreement.

63.1211 The assisted living facility shall not use managed/negotiated risk agreements to provide care to residents with needs beyond the capability of the facility. A managed/negotiated risk agreement shall not be used to supersede any requirements of these regulations.

63.1212 The assisted living facility shall make no attempt to use the managed/negotiated risk portion of the service agreement to abridge a resident's rights or to avoid

liability for harm caused to a resident by the negligence of the assisted living facility and any such abridgement or disclaimer shall be void.

SECTION 63.13 RESIDENT RIGHTS

63.1301 Assisted living facilities are required by 16 Del. C., Chapter 11, Subchapter II, to comply with the provisions of the Rights of Patients covered therein.

63.1302 Each resident has the right of privacy in his/her room, including a door that locks, consistent with the safety needs of the resident.

SECTION 63.14 QUALITY ASSURANCE

63.1401 The assisted living facility shall develop, implement, and adhere to a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction.

63.1402 On at least a semi-annual basis, the assisted living facility shall survey each resident regarding his/her satisfaction with services provided.

A. The assisted living facility shall retain all surveys for at least one year which shall be reviewed during inspection.

B. The assisted living facility shall maintain documentation for at least one year which addresses what actions were taken as a result of the surveys.

SECTION 63.15 STAFFING

63.1501 As used herein "staff" includes permanent employees of the assisted living facility and independent contractors, including "temps."

63.1502 A staff of persons sufficient in number and adequately trained, certified or licensed to meet the requirements of the residents shall be employed and shall comply with applicable state laws and regulations.

63.1503 All direct care staff shall be familiar with the service agreement for each resident for whom they provide care.

63.1504 Every assisted living facility shall have a Director. Facilities licensed for 25 beds or more shall have a full-time Nursing Home Administrator. Facilities licensed for 5 through 24 beds shall have a part-time Nursing Home Administrator on-site and on-duty at least 20 hours a week. If the assisted living facility is part of a continuing care retirement community (CCRC) or part of a campus under the same ownership, the CCRC or campus may operate under one licensed Nursing Home Administrator.

63.1505 The Nursing Home Administrator shall comply with the provisions of 24 Del. C., Chapter 52, and the Board's Rules and Regulations.

63.1506 The Director/Nursing Home Administrator shall have overall responsibility for managing the assisted living facility such that all requirements of state law and

regulations are met.

63.1507 The Director of a facility for 4 beds or fewer shall meet one of the following criteria:

A. A baccalaureate degree in a health or social services field or business administration; or

B. An associates degree in a health or social services field or business administration and at least 2 years of full-time equivalent work experience in these disciplines; or

C. An RN with a combined total of 4 years full-time equivalent education and related work experience; or

D. At least 4 years full-time equivalent work experience as an LPN, or 5 years full-time equivalent work experience in a health or social services field or business administration.

63.1508 The Director of a Facility for 4 beds or fewer shall be on-site at least 8 hours a week.

63.1509 Each facility for 4 beds or fewer shall have a full-time, on-site house manager who shall at a minimum:

A. Possess a high school diploma or its equivalent;

B. Be certified as a CNA with at least three years experience providing care in a health care setting;

C. Complete an orientation program in accordance with the CNA regulations; and

D. Receive, at a minimum, 12 hours of regular in-service education annually, which may include but not be limited to the topics listed below:

1. The health and psychosocial needs of the population being served;

2. The resident assessment process;

3. Use of service agreements;

4. Cuing, coaching, and monitoring residents who self-administer medications, with or without assistance;

5. Providing assistance with ambulation, personal hygiene, dressing, toileting, and feeding;

6. 16 Del. C., Chapter 11, pertaining to resident's rights; reporting of abuse, neglect, mistreatment, and financial exploitation; and the Ombudsman Program;

7. Fire and life safety, and emergency disaster plans;

8. Infection control, including Standard Precautions;

9. Basic food safety;

10. Basic first aid, CPR, and the Heimlich Maneuver; and

11. Hospice services.

63.1510 Assisted living facilities administering therapies and/or treatments shall have staff adequate in number and appropriately qualified and/or licensed.

63.1511 Every assisted living facility shall have a Director of Nursing who is a registered nurse. Facilities licensed for 25 assisted living beds or more shall have a full-time Director of Nursing. Facilities licensed for 5 through

24 assisted living beds shall have a part-time Director of Nursing on-site and on-duty at least 20 hours a week. The nursing director of a facility for 4 assisted living beds or fewer shall be on-site at least 8 hours a week.

63.1512 The Director of Nursing shall comply with the provisions of 24 Del. C., Chapter 19 and the rules and regulations of the Board of Nursing.

63.1513 The Director of Nursing shall have overall responsibility for the coordination, supervision and provision of the nursing department /services.

63.1514 Assisted living facility resident assistants shall, at a minimum:

A. Be at least 18 years old;

B. Participate in a facility-specific orientation program that covers the following topics:

1. Fire and life safety, and emergency disaster plans;

2. Infection control, including Standard Precautions;

3. Basic food safety;

4. Basic first aid and the Heimlich Maneuver;

5. Job responsibilities;

6. The health and psychosocial needs of the population being served;

7. The resident assessment process; and

8. The use of service agreements;

9. 16 Del. C., Chapter 11, pertaining to residents' rights; reporting of abuse, neglect, mistreatment, and financial exploitation; and the Ombudsman Program;

10. Hospice services.

C. Receive, at a minimum, 12 hours of regular in-service education annually which may include but not be limited to the topics listed in 63.1514 B;

D. Receive training to competently assist in activities of daily living or provide documentation of such training, and

E. Complete a Delaware Board of Nursing-approved AWSAM training course if assisting with self-administration of medications.

63.1515 The assisted living facility shall have a staffing plan which shall specify supervisory responsibilities, including the person responsible in the Assisted Living Director's absence.

63.1516 The assisted living facility shall maintain staffing records which document what personnel were on duty as well as specific hours worked for each day.

63.1517 The assisted living facility shall maintain a copy of each employee's signature and handwritten initials.

63.1518 The assisted living facility shall maintain records of each employee's regular in-service education hours.

63.1519 The assisted living facility shall provide orientation training to all new staff.

63.1520 Temporary agency staff placed in a facility in which they have not worked within the past 6 months shall undergo an orientation prior to beginning their first shift. The orientation shall cover the following topics:

- A. Tour of the facility;
- B. Fire and disaster plans;
- C. Emergency equipment and supplies;
- D. Communication and documentation

requirements of the facility;

E. Process for reporting emergencies and change of condition; and

F. Review of current assigned resident issues/needs.

63.1521 All personnel records for permanent employees, including employment applications, shall be maintained for a minimum of five years consistent with the assisted living facility policies and applicable state laws.

63.1522 At a minimum, every assisted living facility shall have an awake staff person on-site 24 hours per day who is qualified to administer or assist with self-administration of medication ("AWSAM") and who has knowledge of emergency procedures, basic first aid, CPR, and the Heimlich Maneuver.

63.1523 Written policies and procedures shall be required and adhered to for any assisted living facility utilizing volunteers.

SECTION 63.16 ENVIRONMENT AND PHYSICAL PLANT

63.1601 Each assisted living facility shall comply with applicable federal, state and local laws including:

- A. Rehabilitation Act, Section 504;
- B. Fair Housing Act as amended; and
- C. Americans with Disabilities Act.

63.1602 Assisted living facilities shall:

- A. Be in good repair;
- B. Be clean;
- C. Have a hazard-free environment; and
- D. Have an effective pest control program.

63.1603 Heating and cooling systems in common areas shall be maintained at a temperature between 68° F and 85° F. A resident with an individual temperature-controlled residential room or unit may heat and cool to provide individual comfort.

63.1604 Common areas shall be lighted to assure resident safety.

63.1605 For all new construction and conversions of assisted living facilities with more than 10 beds, there shall be at least 100 square feet of floor space, excluding alcoves, closets, and bathroom, for each resident in a private bedroom and at least 80 square feet of floor space for each resident sharing a bedroom.

A. Sharing of a bedroom shall be limited to 2 residents;

B. Each facility shall have locked storage available for the resident's valuables, in accordance with the facility's policies;

C. Bedrooms and all bathrooms used by residents in assisted living facilities, except in specialized care units for memory impairment, shall be equipped with an intercom or other mechanical means of communication for resident emergencies. For specialized care units for memory impairment, staff must be equipped to communicate resident emergencies immediately.

63.1606 Resident kitchens shall be available to residents either in their individual living unit or in an area readily accessible to each resident. Residents shall have access to a microwave or stove/conventional oven, refrigerator, and sink. The assisted living facility shall establish and adhere to policies and procedures to ensure that common kitchens are used and maintained in such a way as to provide:

- A. A clean and sanitary environment;
- B. Safe storage of food; and

C. A means to enable hand washing and sanitizing of dishes, utensils and food preparation equipment.

63.1607 Bathroom facilities shall be available to residents either in their individual living units or in an area readily accessible to each resident. There shall be at least 1 working toilet, sink, and tub/shower for every 4 residents.

63.1608 Hot water at resident bathing and hand-washing facilities shall not exceed 120 degrees Fahrenheit.

SECTION 63.17 FIRE SAFETY AND OTHER EMERGENCY PLANS

63.1701 The assisted living facility shall comply with all applicable state and local fire and building codes. All applications for license or renewal of license shall include a letter certifying compliance by the Fire Marshal having jurisdiction. Notification by the Fire Marshal of non-compliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for enforcement remedies in 16 Del. C., Chapter 11, Subchapter I, Licensing By The State.

63.1702 The assisted living facility shall:

A. Develop and implement through staff training and drills a plan for use in fire and other emergencies, which clearly outlines the procedures to be followed and the responsibilities designated to staff.

63.1703 Develop a plan for relocation and/or evacuation and continuous provision of services to residents in the event of permanent or temporary closure of the assisted living facility. The evacuation plan shall be approved by the Fire Marshal having jurisdiction and shall include the evacuation route, which shall be conspicuously posted on each floor and in each unit.

63.1704 The assisted living facility shall promote staff knowledge of fire and other emergency safety by:

- A. Orienting staff to the emergency plan and to

individual responsibilities within 24 hours of the commencement of job duties;

B. Documenting completion of orientation in staff member's personnel file with employee's signature;

C. Conducting facility fire drills in accordance with State of Delaware Fire Prevention Regulations;

D. Conducting other facility emergency drills or training sessions on all shifts at least annually; and

E. Maintaining records for two years of facility fire and other emergency drills/training sessions.

63.1705 The assisted living facility shall promote resident fire and other emergency safety by:

A. Orienting residents to the emergency plan within 24 hours of their admission into the assisted living facility;

B. Documenting the orientation such that it is signed and dated by the resident; and

C. Maintaining records identifying residents needing assistance for evacuation.

SECTION 63.18 RECORDS AND REPORTS

63.1801 The assisted living facility shall be responsible for maintaining appropriate records for each resident. These records shall document the implementation of the service agreement for each resident.

63.1802 Records shall be available, along with the equipment to read them if electronically maintained, at all times to legally authorized persons; otherwise such records shall be held confidential.

63.1803 The assisted living facility resident clinical records shall be retained for a minimum of 5 years following discharge before being destroyed.

63.1804 In cases in which facilities have created the option for an individual's record to be maintained by computer, rather than hard copy, electronic signatures shall be acceptable. In cases when such attestation is done on computer records, safeguards to prevent unauthorized access and reconstruction of information must be in place. The following is an example of how such a system may be set up:

A. There is a written policy, at the assisted living facility, describing the attestation policy(ies) in force at the facility;

B. The computer has built-in safeguards to minimize the possibility of fraud;

C. Each person responsible for an attestation has an individualized identifier;

D. The date and time is recorded from the computer's internal clock at the time of entry;

E. An entry is not to be changed after it has been recorded; and

F. The computer program controls what sections/areas any individual can access/enter data based on the individual's personal identifier.

63.1805 Incident reports, with adequate documentation,

shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate.

Incident reports shall be kept on file in the facility. Reportable incidents shall be communicated immediately to the Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806; phone number: 1-877-453-0012; fax number: 1-877-264-8516.

63.1806Waivers may be granted by the Division for good cause.

63.1807Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

APPENDIX A Notifiable Diseases

Acquired Immune Deficiency Syndrome (S)

Anthrax (T)

Botulism (T)

Brucellosis

Campylobacteriosis

Chancroid (S)

Chlamydia trachomatis infections (S)

Cholera

Cryptosporidiosis

Cyclosporidiosis

Diphtheria (T)

E. Coli O157:H7 infection (T)

Encephalitis

Ehrlichiosis

Foodborne Disease Outbreaks (T)

Giardiasis

Gonococcal infections (S)

Granuloma Inguinale (S)

Hansen's Disease (Leprosy)

Hantavirus infection (T)

Hemolytic uremic syndrome (HUS)

Hepatitis A (T)

Hepatitis B (S)

Hepatitis C & unspecified

Herpes (congenital) (S)

Herpes (genital) (N)

Histoplasmosis

Human Immunodeficiency Virus (HIV) (N)

Human papillomavirus (genital warts) (N)

Influenza (N)

Lead Poisoning

Legionnaires Disease
Leptospirosis
Lyme Disease
Lymphogranuloma Venereum (S)
Malaria
Measles(T)
Meningitis (all types other than meningoccal)
Meningococcal infections (all types) (T)
Mumps (T)
Pelvic Inflammatory Disease (resulting from gonococcal and/or chlamydial infections) (S)
Pertussis (T)
Plague (T)
Poliomyelitis (T)
Psittacosis
Rabies (man, animal) (T)
Reye's Syndrome
Rocky Mountain Spotted Fever
Rubella (T)
Rubella (congenital)(T)
Salmonellosis
Shigellosis
Smallpox (T)
Streptococcal disease (invasive group A)
Streptococcal toxic shock syndrome (STSS)
Syphilis (S)
Syphilis (congenital) (T)
Tetanus
Toxic Shock Syndrome
Trichinosis
Tuberculosis
Tularemia
Typhoid Fever (T)
Vaccine Adverse Reactions
Varicella
Waterborne Disease Outbreaks (T)
Yellow Fever (T)

Also, any unusual disease and adverse reaction to vaccine

(T) report by rapid means

(N) report in number only when so requested

For all diseases not marked by (T) or (N):

(S) – sexually transmitted disease, report required in 1 day

Others – report required in 2 days

County Health Offices:

<u>New Castle County</u>	<u>995-863</u>
<u>Kent County</u>	<u>739-5305</u>
<u>Sussex County</u>	<u>856-5355</u>

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code,
Section 1119C (16 Del.C. §1119C)

Regulations for Nursing Homes Admitting Pediatric Residents

Public Notice

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared draft regulations pertaining to nursing homes admitting pediatric residents. These regulations are intended to supplement, and not supplant, general nursing home regulations and other applicable laws. The regulations specify required services for pediatric residents including facility, medical, therapy, nutritional, nursing, educational and family services.

Invitation for Public Comment

Public hearings will be held as follows:

Monday, March 4, 2002, 10:00 AM

Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover

Wednesday, March 6, 2002, 9:00 AM

Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

Robert Smith
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing March 6, 2002.

Section 79.100 - Purpose

79.101 - As set forth in 16 Del. C., Chapter 11, Section 1101:

“...the primary purpose of the licensing and regulation of nursing facilities and similar facilities is to ensure that these facilities provide a high quality of care and quality of life to their residents.”

79.102 - Given that most nursing facilities and similar

facilities provide services to adults who are elderly and/or physically disabled, children with special needs housed in these facilities require unique and carefully coordinated plans of pediatric care as well as developmentally appropriate, family-friendly environments.

79.103 - These regulations outline minimum acceptable levels of care and treatment for this population.

79.104 - A facility must be in compliance with all state and local laws and regulations applicable to facility personnel, provision of services and physical plant.

Section 79.200 - Authority and Applicability

79.201 - These regulations are adopted in implementation of 16 Del. C., Chapter 11 and are applicable to any licensed nursing facility which provides care or services to one or more persons under 18 years of age.

79.202 These regulations are intended to supplement, and not supplant, general regulations promulgated in conformity with 16 Del. C., Chapter 11 and other applicable laws.

Section 79.300 - Definitions

79.301 - "Adult Resident" - any person residing in the facility 18 years of age and older.

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

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

79.304 "Department" - Department of Health and Social Services.

79.305 "Division" - Division of Long Term Care Residents Protection.

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

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

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

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

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

Section 79.400 - General Requirements

79.401 - Prior to admission, an interdisciplinary team of healthcare professionals shall evaluate the potential pediatric resident to determine whether the licensee can meet the pediatric resident's needs. The care plan must contain documentation of the pre-admission assessment with approval by the primary care provider and parents/guardian with notification to the responsible state agencies.

79.402 The licensee shall admit and retain only children with special needs whose specific medical, nursing, and psychosocial needs the licensee can meet.

79.403 The licensee through licensed healthcare professionals shall ensure that an interdisciplinary team is formulated for each pediatric resident. The interdisciplinary team shall include, but not be limited to, the Primary Care Nurse, a representative from each pediatric service received by the pediatric resident, a nutritionist, a representative from the educational program, social worker and Primary Care Provider. The team shall meet quarterly or more frequently as needed and review and document the care plan and Individual Education Plan (IEP) formulated for the pediatric resident.

Section 79.500 - Facility Requirements

79.501- Pediatric residents shall only share rooms with other residents of the same sex.

79.502 The licensee must provide a tobacco-free environment for pediatric residents.

79.503 The licensee must provide and maintain all clinically indicated pediatric resuscitation equipment for children with special needs. Oxygen, suction equipment, and electrical outlets must be at each bedside with access to an emergency power system. A pediatric resuscitation cart shall be provided on each pediatric unit/wing and shall include: dosage appropriate emergency drugs, resuscitation equipment including a pediatric backboard for cardiopulmonary resuscitation (CPR), an easily readable list of drug dosages. A defibrillator designed for pediatric use with paddle sizes appropriate for pediatric residents and an

easily readable chart indicating jolt dosages must be provided on each pediatric unit/wing. Equipment must be in good working order and must be checked daily by a registered nurse for proper functioning and must be documented as such.

79.504 - A nursing staff member certified in Pediatric Advanced Life Support (PALS) shall be present in the unit where pediatric residents reside and when pediatric residents are present.

79.505 - All nurses caring for pediatric residents must be certified in infant and pediatric cardiopulmonary resuscitation (CPR).

79.506 - An audio monitoring system shall be utilized whenever a pediatric resident is left unattended. The monitoring system must include heart rate and respiratory rate alarms audible to the nursing station. Any pediatric resident with a tracheotomy and/or ventilator must also be monitored by a pulse oximetry with alarms audible to the nursing station. The monitors must be used when pediatric residents are unsupervised and/or in their rooms for quiet time and nap/bed time. A plan to answer and respond to alarms must be in place and reviewed by all facility staff members.

79.507 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident is assessed by appropriate professionals for the need for assistive technology. The licensee shall ensure provision of appropriate assistive technology as prescribed as well as training in its use for staff members.

Section 79.600 - Medical Services

79.601 - The licensee through licensed healthcare professionals shall ensure the delivery of individualized, comprehensive services to each pediatric resident in conformity with a care plan.

79.602 - The PCN shall be the liaison among treating physicians.

79.603 - Pediatric services must be multidisciplinary and individualized. The services provided to each pediatric resident must be developmentally specific and appropriate to the age group being served.

79.604 - The licensee shall provide access to emergency medical care 24 hours a day, 7 days a week, as outlined in a written policy which is updated annually. The policy shall be reviewed with all staff members and mock situations performed and documented at least twice a year.

79.605 - The licensee through licensed healthcare professionals shall ensure complete physical assessments are performed on pediatric residents by the PCP or a Primary Care Nurse on admission/readmission and monthly thereafter. Documentation of complete physical assessment must be included in the pediatric resident's chart for review by all medical and nursing staff.

79.606 - The licensee through licensed healthcare

professionals shall ensure that each pediatric resident receives immunizations in accordance with current national pediatric standards.

79.607 - The licensee through licensed healthcare professionals shall ensure timely medically necessary referrals to pediatric medical sub-specialists and pediatric surgical specialists as needed.

79.608 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident over the age of 3 years receives an annual dental exam and necessary treatment.

79.609 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident has an age-appropriate eye, hearing and vision exam according to current national pediatric standards.

Section 79.700 - Therapy Services

79.701 - The licensee shall ensure that qualified individuals specializing in the healthcare of children with special needs (e.g., physical therapist, occupational therapist, speech therapist, nutritionist) plan and administer the treatments for each pediatric resident.

79.702 - The licensee through licensed healthcare professionals shall ensure that the plan for therapy and progress toward goals is reviewed and revised at least quarterly and is incorporated into the care plan. The nature, duration, frequency, and provider of therapy services shall be specified in the care plan.

Section 79.800 - Nutritional Services

79.801 - The licensee through licensed healthcare professionals shall ensure that each pediatric resident has an individually appropriate care plan that addresses the nutritional needs of that resident including the recommended daily allowance (RDA) of vitamins and minerals according to current national pediatric standards.

79.802 - The licensee through licensed healthcare professionals shall ensure that infants and children are held during oral feeding as needed.

79.803 - The licensee through licensed healthcare professionals shall consult with the PCP regarding the introduction of solid foods and the pediatric resident's progress in advancing to table foods.

79.804 - The licensee through licensed healthcare professionals shall ensure each pediatric resident is meeting his/her optimal developmental potential regarding eating habits/eating techniques.

79.805 - The licensee through licensed healthcare professionals and support staff shall assist pediatric residents to convene in a common dining area and partake in social gatherings around meal times, including children who are fed by tube.

79.806 - The licensee shall ensure proper documentation of meal intake every shift.

Section 79.900 - Nursing Services

79.901 - The licensee shall ensure that at least one registered nurse is present on every shift. That nurse must have at least one year of previous employment in a pediatric setting. This nurse may be the Primary Care Nurse (PCN).

79.902 The licensee through licensed healthcare professionals shall ensure that a sufficient number of nursing staff are assigned to the pediatric care unit to provide care in accordance with each pediatric resident's care plan and to meet each pediatric resident's needs. The licensee shall provide sufficient nursing and support staff so that each pediatric resident receives daily interaction from a variety of staff members. Interaction includes, but is not limited to, frequent conversation, play and holding/cuddling of pediatric residents to provide daily stimulation.

79.903 The licensee shall ensure that all pediatric nursing procedures are written in a policy and procedure manual. The manual must be accessible to all staff members caring for pediatric residents. Each individual policy must be reviewed and updated at least annually.

79.904 - In addition to the facility standard orientation, the licensee shall ensure that upon hiring, all pediatric nursing and support staff complete an orientation to the pediatric unit/wing which is documented in the staff members' personnel files.

79.905 - The licensee shall ensure that each nursing and support staff member providing care to pediatric residents receives training and demonstrates competence prior to performing any specialized skill or procedure on a pediatric resident. Written evidence of training and demonstration of competence must be included in each nursing and support staff member's personnel file.

79.906 - The licensee through licensed healthcare professionals and support staff shall ensure that mouth care, skin care, passive range of motion, hygiene and other dependent care activities are performed as specified in the care plan.

Section 79.1000 - Educational Services

79.1001 - The licensee in coordination with appropriate educational professionals shall ensure that each pediatric resident eligible for services under the Individuals with Disabilities Education Act (IDEA) is offered such services in conformity with 14 Del.C., Chapter 31 and 16 Del. C., Chapter 2, Subchapter II, and any regulations implemented under those laws.

79.1002 The licensee shall maximize the coordination of each pediatric resident's care plan with any Individual Education Plan (IEP) or Individual Family Service Plan (IFSP) to ensure consistency and promotion of the pediatric resident's optimal benefit. In implementation of this duty, the PCN and Social Worker shall collaborate with responsible schools or school districts in development and revision of care plans, IEPs, and IFSPs.

Section 79.1100 - Family Services

79.1101 - The Social Worker and other involved staff members shall promote positive family interaction and provide comprehensive instruction in providing care, as needed. The licensee shall have written guidelines for:

- family visits to the facility and flexibility in accommodating such visits,
- the pediatric resident's visits to the home setting,
- telephone contacts between the pediatric resident and the family,
- the provision of privacy between the pediatric resident and the family,
- the inclusion of the family in planning of care.

79.1102 The Social Worker and other involved staff members shall ensure that family support services are provided which include, but are not limited to, transportation, health education, counseling/support groups, home visiting, and coordination of care. The provision of quality services shall be family-based, community-based and culturally appropriate.

79.1103 The Social Worker shall provide assistance to families to obtain services including Social Security, Medicaid, and other public/private assistance programs.

79.1104 The licensee through licensed healthcare professionals shall facilitate discharge planning and coordination of outside resources. The licensee shall encourage the option of discharging the pediatric resident to the home if resources are available and the family is willing.

Section 79.1200 - Miscellaneous Services

79.1201 - The licensee shall ensure that each pediatric resident has adequate, clean, well-fitting clothing that is weather appropriate. Clothing must be used exclusively by one pediatric resident and not shared in common.

79.1202 The licensee shall ensure that each pediatric resident has individual personal hygiene items that are in proper condition for use and are not shared for use with other residents. These items include, but are not limited to, bathing soap, toothbrush, toothpaste, hair brushes/comb, and other toiletries.

79.1203 The licensee through licensed healthcare and educational professionals shall ensure that each pediatric resident engages in activities on a daily basis which directly relate to the following developmental areas:

- o neurosensory,
- o fine motor development,
- o gross motor development,
- o social/emotional,
- o speech/language/communication.

79.1204 - The licensee shall ensure adequate staff to enable pediatric residents to participate in daily play activities and crafts. The licensee shall provide indoor and outdoor play and activity equipment that is appropriate for the ages and developmental levels of the pediatric residents.

79.1205 - The licensee shall provide recreational therapy for the pediatric residents which will include supervised outdoor activity and play time, weather permitting and the pediatric resident's condition permitting.

79.1206 - The licensee though the Activities Director shall ensure that appropriate alternative recreational activities are provided for pediatric residents unable to participate in group activities.

79.1207 - The licensee shall ensure that all shared play equipment is properly disinfected and that needed infection control precautions are taken.

79.1208 - The licensee shall ensure that pediatric residents are transported in accordance with current national safety standards.

79.1209 - A registered nurse must accompany pediatric residents on all school-related field trips. Portable resuscitation equipment must be supplied and accompany the pediatric residents.

Section 79.1300 - Resuscitation Orders

79.1301 - Upon admission to the facility, the PCP and PCN shall discuss with the parents/guardian of the pediatric resident procedures to follow in terms of a Do Not Resuscitate (DNR) status and shall include in the pediatric resident's chart, documentation of either DNR or Full Code status.

79.1302 - The DNR status of a pediatric resident shall not prohibit full participation by that pediatric resident in school/recreational field trips and/or events.

Section 79.1400 - Waiver

79.1401 - Waivers may be granted by the Division for good cause.

Section 79.1500 - Severability

79.1501 - Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. §505)

Public Notice
Division of Social Services
Food Stamp 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 / Food Stamp Program is proposing to implement policy changes to the following sections of the Division of Social Services Manual, Section 7004.3 and 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.

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 February 28, 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

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.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,
Section 505 (31 Del.C. §505)

Public Notice

Division of Social Services Food Stamp 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 / Food Stamp Program is proposing to implement policy changes to the following sections of the Division of Social Services Manual: 9028, 9030, 9040, 9081, and 9085. These changes are based on the Federal Final Rules of Food Stamp Program: Noncitizen Eligibility and Certification Provisions of Public Law 104-193, as Amended by Public Laws 104-208, 105-33, 105-185.

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.

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 February 28, 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

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, 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 30th 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)

Public Notice
Division of Social Services
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 14950. The proposed change eliminates Medicaid Guaranteed Eligibility for Medicaid recipients enrolled in the Diamond State Health Plan.

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 February 28, 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:

14950 Guaranteed Eligibility

All guaranteed eligibility will end effective 5/31/02. Individuals who lose eligibility effective 12/31/01 may receive up to five more months of guaranteed eligibility. Individuals who lose eligibility 1/31/02 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.~~

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

Statutory Authority: 7 Delaware Code, Chapters
60 and 63 (7 Del.C. Ch. 60 and 63)

1. Title of the Regulations:

Delaware Regulations Governing Hazardous Waste (DRGHW).

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

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing miscellaneous changes to the DRGHW that correct existing errors, adds clarification or enhances the current program.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 & 63.

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

None

6. Notice of Public Comment:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday March 12, 2002 beginning at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. In addition, those affected by the proposed amendments are invited to attend a workshop to be conducted on March 27, 2002 at the Smyrna Rest Area, Smyrna, DE. Pre-registration for the workshop is required.

7. Prepared By:

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

**2002 Amendments to Delaware Regulations
Governing Hazardous Waste**

Synopsis

This synopsis presents a brief description of the 2002 amendments to *Delaware Regulations Governing Hazardous Waste* (DRGHW) and a list of those sections generally affected by the amendments. This summary is provided solely for the convenience of the reader.

These changes incorporate certain RCRA amendments promulgated by U. S. EPA into Delaware's hazardous waste management program. The State is required to adopt these

amendments in order to maintain its hazardous waste program delegation and remain current with the Federal RCRA hazardous waste program.

The State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

Summaries for the regulatory amendments are listed below and organized by EPA's promulgating Federal Register notice. For additional information, please contact the Solid and Hazardous Waste Management Branch at (302) 739-3689.

1. Title: Chlorinated Aliphatics Listing and LDRs for Newly Identified Wastes

Federal Register Reference: 65 FR 67068-67133
Federal Promulgation Date: November 8, 2000

Summary: This amendment adds two wastes (K174 and K175) generated by the chlorinated aliphatics industry to the list of hazardous wastes at 40 CFR 261.32. The new wastes will be subjected to stringent management and treatment standards under RCRA, and to emergency notification requirements. EPA is allowing a contingent-management listing approach for one of these new wastes. Under this approach, the waste will not be a listed hazardous waste if sent to a specific type of management facility.

Sections of the DRGHW effected by this amendment: §261.32; Part 261 Appendix VII & VIII; §268.33; §268.40/Table; and §268.48(a)/Table.

2. Title: Mixed Waste Rule

Federal Register Reference: 66 FR 27218 - 27266
Federal Promulgation Date: May 16, 2001

Summary: This rule promulgates conditional exemptions for: (1) low-level mixed wastes (LLMW) from most RCRA Subtitle C storage and treatment regulations, and (2) LLMW and technologically enhanced naturally occurring and/or accelerator-produced radioactive material (NARM) from most RCRA Subtitle C manifesting, transportation, and disposal regulations when specified conditions are met. With this rule, the EPA intends to provide regulatory flexibility and relief to facilitate the disposal of certain LLMW and eligible NARM.

Sections of the DRGHW effected by this amendment: New subpart N (§§266.210 to 266.360) is added to Part 266.

3. Title: Mixture and Derived-From Revisions

Federal Register Reference: 66 FR 27266 - 27297
Federal Promulgation Date: May 16, 2001

Summary: This rule finalizes the retention of the mixture rule and the derived-from rule with two revisions. The first revision expands the exclusion for mixtures and/or derivatives of wastes listed solely for the ignitability, corrosivity and/or reactivity characteristic. The second revision is a new conditional exemption from the mixture and derived-from rules for mixed wastes.

Sections of the DRGHW effected by this amendment: §261.3, paragraphs (a), (c), (g), and (h).

4. Title: Change of Official EPA Mailing Address

Federal Register Reference: 66 FR 34374 - 34376
Federal Promulgation Date: June 28, 2001

Summary: This rule updates the official mailing address for EPA, due to the relocation of the majority of its Headquarters offices to downtown Washington, DC.

Sections of the DRGHW effected by this amendment: §260.11(a)(11).

5. Miscellaneous Changes

Summary: Proposed miscellaneous changes to DRGHW include non-substantive corrections for typographical or grammatical errors; reinsertion of paragraph (i) in §265.1085 that was correctly adopted but not incorporated in the final regulations; a degree symbol in §279.11, Table 1 is corrected; and the title of Appendix VIII to Part 268 is corrected.

In addition, the SHWMB proposes to: delete language referencing approval by the Secretary of alternative test methods for ignitability found at the end of §§261.21(a)(1) and (a)(3); require generators subject to contingency plan requirements in §264.53 to maintain a printed copy of the plan; prohibit use of a letter to request an EPA Identification Number by used oil transporters; and requiring the first attempt at repair of devices subject to subparts AA, BB, and CC of parts 264 and 265 to begin immediately after detecting a leak or defect in the device.

Sections of the DRGHW effected by this amendment: §§260.21(a)(1) and (a)(3); §264.53(a), §264.344(c)(1), §264.1033(i)(3)(ii), §§264.1052(c)(2) and (d)(6)(iii), §264.1053(g)(2), §264.1057(d)(2), §264.1058(c)(2), §264.1084(k)(1), §264.1085(f)(1), §264.1086(c)(4)(iii), §265.37(a), §265.1033(k)(3)(ii), §265.1052(d)(6)(ii), §265.1053(g)(2), §265.1057(d)(2), §265.1058(c)(2), §265.1085(i), §265.1085(k)(1), §265.1086(f)(1), §265.1087(c)(4)(iii), Part 265 Appendix I, Part 268 Appendix VIII, §279.11 Table 1, and §279.42(b).

**DIVISION OF AIR AND WASTE MANAGEMENT
WASTE MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Chapters
60 and 63 (7 Del.C. Ch. 60 and 63)

1. Title of the Regulations:

Delaware Regulations Governing Hazardous Waste (DRGHW).

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

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 & 63.

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

None

6. Notice of Public Comment:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday March 12, 2002 beginning at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. Prepared by:

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

**Amendments to Delaware Regulations Governing
Hazardous Waste
Synopsis**

This synopsis presents a brief description of the amendments to Delaware Regulations Governing Hazardous Waste (DRGHW) and a list of those sections generally affected by the amendments. This summary is provided solely for the convenience of the reader.

This change incorporates three new hazardous waste streams promulgated by EPA into Delaware's hazardous

waste management program. The State is required to maintain equivalency with the Federal hazardous waste program in order to maintain its RCRA program delegation.

A summary of the proposed regulatory amendment is listed below and references EPA's promulgating Federal Register notice. For additional information, please contact the Solid and Hazardous Waste Management Branch at (302) 739-3689.

1. Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities

Federal Register Reference: 65 FR 58258-58300

Federal Promulgation Date: November 20, 2001

Federal Effective Date: May 20, 2002

Summary: On November 20, 2001 the Environmental Protection Agency (EPA) promulgated a listing as hazardous three wastes generated from inorganic chemical manufacturing processes to be identified with the waste codes K176, K177, and K178. EPA promulgated these regulations under the Resource Conservation and Recovery Act (RCRA), which directed EPA to determine whether certain wastes generated by inorganic chemical manufacturing industries presented a substantial hazard to human health or the environment. The effects of listing these three wastes as hazardous are to subject them to: comprehensive management and treatment standards under Subtitle C of RCRA; and emergency notification requirements for releases to the environment under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The final rule also added the toxic constituents found in the wastes being listed as hazardous to the list of constituents that serves as the basis for classifying wastes as hazardous and establishing treatment standards for the wastes.

Finally, EPA applied universal treatment standards (UTS) under the Land Disposal Restrictions program to the inorganic chemical manufacturing wastes listed in that rulemaking. The listed wastes must be treated to meet these treatment standards for specific constituents prior to land disposal.

Sections amended by these changes: DRGHW §§261.4(b)(15), 261.32, Appendix VII to Part 261; adds new §268.36, and amends §268.40/Table.

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING
24 DE Admin. Code 1900
Statutory Authority: 24 Delaware Code,
Section 1906(19) (24 Del.C. §1906(19))**

Order

WHEREAS, pursuant to 24 Del. C. §1906(19) the Board of Nursing is empowered to create a regulatory committee entitled the Joint Practice Committee which, with the approval of the Board of Medical Practice, has the responsibility for promulgating Rules and Regulations regarding advanced practice nurses who have independent practice and/or independent prescriptive authority; and,

WHEREAS, the Committee has proposed to adopt amendments to the Rules and Regulations which govern certain complaints against advance practice nurses and to establish guidelines for the membership on and the operation of the Joint Practice Committee as more specifically set forth in the Notice and proposed Rules and Regulations appearing in the Delaware Register of Regulations, VOLUME 5, ISSUE 5, published November 1, 2001; and,

WHEREAS, pursuant to 29 Del. C. §10115, notice was given to the public that a hearing would be held on December 18, 2001, at 5:30 p.m. in Room 216 of the Delaware Technical and Community College Stanton

Campus, 400 Christiana-Stanton Road, Newark, Delaware to consider the proposed Rules and Regulation changes; and,

WHEREAS, the notice invited interested persons to submit comments orally or in writing regarding the proposed amendments and a hearing was held on December 18, 2001 at which a quorum of the Joint Practice Committee was present; and,

WHEREAS, there were no written comments submitted by the public at the public hearing. There were written comments filed by the Executive Director of the Board of Medical Practice making suggestions to add the word "Nursing" prior to the term "Membership" and that the word "selected" be replaced by the word "appointed" referring to membership on the Joint Practice Committee. The Committee has determined that 24 Del. C. §1906(19) sets the statutory basis for selection of the membership of the Joint Practice Committee for both nurse members and non nurse members and thus the section will be modified in accordance with the suggested changes to address only membership appointed by the Board of Nursing. Also, the figures "24" will be inserted to clarify the reference to the Delaware Code.

NOW, THEREFORE, based on the authority of the Joint Practice Committee to promulgate, adopt and revise rules and regulations pursuant to 24 Del. C. §1906(20), it is the decision of the Joint Practice Committee of the Board of Nursing with the minor changes discussed above, subject to the approval of the Board of Medical Practice, to adopt as proposed the Rules and Regulations modifications and additions (with the minor non substantive modifications

noted above), a copy of which are attached hereto as Exhibit "A" and incorporated herein. The Joint Practice Committee finds that appropriate notice of the proposed changes and additions to the Rules and Regulations has been given in accordance with the Delaware Administrative Procedures Act (29 Del. C. ch 101). The Committee also finds that such changes and modifications serve to clarify the process for investigating and adjudicating complaints against Advanced Practice Nurses in matters concerning independent practice and prescriptive authority and to establish guidelines for the selection of Committee members as well as for the staffing and operation of the Joint Practice Committee. The Committee therefore concludes that such Rules and Regulations should be adopted after the approval of the Board of Medical Practice, with an effective date of ten (10) days from the date of publication of this Order in the Delaware Register of Regulations, pursuant to 29 Del. C. §10118(e). Such publication shall be made only after approval of the attached Rules and Regulations has been granted by the Board of Medical Practice.

IT IS SO ORDERED this 18th day of December 2001.

**Joint Practice Committee Of The Board Of Nursing
(As Authenticated By A Quorum Of The Committee):**

Judith Hendricks	Deborah Maichle
Robert Lawson	Patricia Heinemann
Cal Friedman	Tony Bianchetta, MD
Jean Raymond	

Order

AND NOW, to-wit, this 8th day of January, 2002 the Board of Medical Practice has considered the Rules and Regulations which were promulgated and approved by the Joint Practice Committee of the Board of Nursing by Order dated December 18, 2001; and,

WHEREAS, The Board has had the opportunity to submit written comments concerning the proposed Rules; the Rules and Regulations which comments were considered and approved;

NOW THEREFORE, the Rules and Regulations as attached to the December 18, 2001 Order of the Joint Practice Committee are hereby APPROVED.

By Order Of The Board:

Galicano Inguito, M.D.	Constantine Michell, D.O.
Francis Marro, M.D.	Catherine Hickey, Esq.
Bentley Hollander, M.D.	Vance Daniels
Karl McIntosh, M.D.	Michael Green
Edward McConnell, M.D.	V.R Sukumar, M.D.
Bruce Bolasny, M.D.	Stephen Fanto, M.D.
Carolyn McKown	Janet Kramer, M.D.

8.0 Rules and Regulations for Advanced Practice Nurse Prescriptive Authority/Independent Practice for the State of Delaware

8.1 Authority

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 Del.C. §§1902(d), 1906(1), 1906(7).

8.2 Purpose

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

8.3 Scope

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

8.4 Definitions

“Advanced Practice Nurse”as defined in 24 Del.C. §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

“Certified Nurse Midwife (C.N.M.)” A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

“Certified Registered Nurse Anesthetist (C.R.N.A.)” A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists’ Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists’ Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

“Clinical Nurse Specialist (C.N.S.)” A Registered Nurse with advanced nursing educational preparation who functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS

designation is received after graduation from a Master's degree program in a clinical nurse specialty or post Master's certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

"Nurse Practitioner (N.P.)" A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master's program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women's health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

"Audit" The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

"Board" The Delaware Board of Nursing

"Clinical Nursing Specialty" a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

See 3 DE Reg. 1373 (4/1/00)

"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 an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

"Guidelines/ Protocols" Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

"National Certification" That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

American Academy of Nurse Practitioners
 American Nurses Credentialing Center
 American Association of Nurse
 Anesthetists Council on Certification of Nurse Anesthetists
 American Association of Nurse

Anesthetists Council on Recertification of Nurse Anesthetists

National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
 National Certification Board of Pediatric Nurse Practitioners and Nurses.

ACNM Certification Council, Inc.

"Post Basic Program"

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

"Scope of Specialized Practice" That area of practice in which an Advanced Practice Nurse has a Master's degree or a post-basic program certificate in a clinical nursing specialty with national certification.

"Supervision" Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

8.5 Grandfathering Period

8.5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

8.6 Standards for the Advanced Practice Nurse

8.6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

8.6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy,

administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse Within the Specialized Scope of Practice include but are not limited to:

8.7.1 Eliciting detailed health history(s)

8.7.2 Defining nursing problem(s)

8.7.3 Performing physical examination(s)

8.7.4 Collecting and performing laboratory tests

8.7.5 Interpreting laboratory data

8.7.6 Initiating requests for essential laboratory procedures

8.7.7 Initiating requests for essential x-rays

8.7.8 Screening patients to identify abnormal problems

8.7.9 Initiating referrals to appropriate resources and services as necessary

8.7.10 Initiating or modifying treatment and medications within established guidelines

8.7.11 Assessing and reporting changes in the health of individuals, families and communities

8.7.12 Providing health education through teaching and counseling

8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public

8.7.14 Delegating tasks appropriately

8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 Del.C. §1906(20).

8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 Del.C. §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an Advanced Practice Nurse

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in

8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 Del.C. Ch. 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 Del.C. §1906(20) - (22).

8.10 Temporary Permit for Advanced Practice Nurse Licensure

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and

8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1.1 current employer reference,

8.10.5.1.1.2 supervision available,

8.10.5.1.1.3 job description,

8.10.5.1.1.4 letter outlining any extenuating circumstances,

8.10.5.1.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

3 DE Reg. 1373 (4/1/00)

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 Del.C. Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

8.11 Maintenance of Licensure Status: Reinstatement

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate

level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

8.12 Audit of Licensees

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

8.13 Exceptions to the Requirements to Practice

8.13.1 The requirements set forth in 8.9 shall not apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

8.14 Definitions

8.14.1 Collaborative Agreement - Includes

8.14.1.1 A true collegial agreement between two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a duly licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical privileges or a health care facility approved job description of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 National Certification - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

8.14.3 Pharmacology/Pharmacotherapeutics - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 Prescription Order - includes the prescription date, the name of the patient, the name, address, area of specialization and business telephone number of the advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 Requirements for Initial Independent Practice/prescriptive Authority

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article 7 of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or correspondence from school officials. If the applicant cannot produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education within the two years prior to application for independent practice and/or independent prescriptive authority. This may be continuing education programs or a three credit, semester long graduate level course. The thirty hours may also occur during the generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings, the applicant must have available program descriptions, and/or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 Requirements for Independent Practice/prescriptive Authority by Endorsement

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 8.15.1 and 8.15.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two

years.

8.17 Application

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 Prescriptive Authority

8.18.1 APNs may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 **Del.C.** Section 2536(C), parenteral medications, medical therapeutics, devices and diagnostics.

8.18.2 APNs will be assigned a provider identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APNs must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APNs must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 **Del.C.**, Section 4732(a).

8.18.4 APNs may request and issue professional samples of legend, including schedule II-V controlled substances, and over-the-counter medications that must be labeled in compliance with 24 **Del.C.**, Section 2536(C).

8.18.5 APNs may give verbal prescription orders.

8.19 Prescriptive Writing

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

8.20 Renewal

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/ pharmacotherapeutics content may be a separate course or integrated within other offerings.

8.21 Disciplinary Proceedings

~~8.21.1 Complaints against an APN will be forwarded to the Division of Professional Regulation. A complaint related to independent practice/prescriptive authority will be referred to the Joint Practice Committee for review and disposition and then forwarded to the Board of Medical Practice for review and final approval in an expeditious manner.~~

~~8.21.2 All other complaints regarding APNs will continue to be under the sole jurisdiction of the Board of Nursing.~~

See 4 DE Reg. 296 (8/1/00)

8.21.1 Pursuant to 24 Del. C., §1906(19)(c), the

Joint Practice Committee is statutorily empowered, with the approval of the Board of Medical Practice, to grant independent practice and/or prescriptive authority to nurses who qualify for such authority. The Joint Practice Committee is also empowered to restrict, suspend or revoke such authority also with the approval of the Board of Medical Practice.

8.21.2 Independent practice or prescriptive authority may be restricted, suspended or revoked where the nurse has been found to have committed unprofessional conduct in his or her independent practice or prescriptive authority or if his or her mental or physical faculties have changed or deteriorated in such a manner as to create an inability to practice or prescribe with reasonable skill or safety to patients.

8.21.3 Unprofessional conduct, for purposes of restriction, suspension or revocation of independent practice or prescriptive authority shall include but not be limited to:

8.21.3.1 The use or attempted use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or immoral practice in connection with any acquisition or use of independent practice or prescriptive authority;

8.21.3.2 Conviction of a felony;

8.21.3.3 Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

8.21.3.4 Use, distribution or prescription of any drugs or medical devices other than for therapeutic or diagnostic purposes;

8.21.3.5 Misconduct, incompetence, or gross negligence in connection with independent or prescriptive practice;

8.21.3.6 Unjustified failure upon request to divulge information relevant to authorization or competence to independently practice or exercise prescriptive authority to the Executive Director of the Board of Nursing or to anyone designated by him or her to request such information.

8.21.3.7 The violation of the Nurse Practice Act or of an Order or Regulation of the Board of Nursing or the Board of Medical Practice related to independent practice or prescriptive authority.

8.21.3.8 Restriction, suspension, or revocation of independent practice or prescriptive authority granted by another licensing authority in any state, territory or federal agency.

8.21.4 Complaints concerning the use or misuse of independent practice or prescriptive authority received by the Division of Professional Regulation or the Board of Nursing shall be investigated in accordance with the provisions of Title 29, Section 8807 governing investigations by the Division of Professional Regulation. As soon as convenience permits, the Board of Nursing shall assign an Investigating Board Member to assist with the

investigation of the complaint. The Investigating Board Member shall, whenever practical, be a member of the Joint Practice Committee.

8.21.5 Upon receipt of a formal complaint from the Office of the Attorney General seeking the revocation, suspension or restriction of independent practice or prescriptive authority, the Committee Chairperson shall promptly arrange for not less than a quorum of the Committee to convene for an evidentiary hearing concerning such complaint upon due notice to the licensee against whom the complaint has been filed. Such notice shall comply with the provisions of the Administrative Procedures Act (29 Del. C., Chapter 101).

8.21.6 The hearing shall be conducted in accordance with the Administrative Procedures Act (29 Del. C., §101), and after the conclusion thereof, the Joint Practice Committee will promptly issue a written Decision and Order which shall be based upon the affirmative vote of a majority of the quorum hearing the case.

8.21.7 Any written Decision and Order of the Joint Practice Committee which imposes a restriction, suspension or revocation of independent practice or prescriptive authority shall not be effective prior to the approval of the Board of Medical Practice.

12.0 Advisory Committees

12.1 Appointment of Committees

12.1.1 The Board may appoint advisory committees to assist in the performance of its duties.

12.1.2 Advisory committees will be chaired by a Board member.

12.1.3 Each advisory committee shall consist of members who have expertise in the subject assigned.

12.1.4 Any such advisory committee shall function in the public interest, and no member shall be designated as representative of any agency or organization.

12.2 Membership of Committees

12.2.1 Potential members shall submit resumes and receive Board approval prior to appointment.

12.2.2 Members may include Registered Nurses, Licensed Practical Nurses, Advanced Practice Nurses and lay persons.

12.3 Joint Practice Committee

12.3.1 [Nursing] Membership

12.3.1.1 Members are selected [24] Del. C., § 1906(19)

12.3.1.2 The Board of Nursing shall appoint the Advanced Practice Nurses (APN) under the following guidelines:

12.3.1.2.1 At least one of the APN members shall be a Clinical Specialist, one APN member a Certified Nurse Midwife, one APN member a Certified Registered Nurse Anesthetist, and two APN members Nurse Practitioners. If there is no qualified APN available in the

needed specialty, then appointments shall be made from APNs in other specialties.

12.3.1.2.2 The APNs must have independent prescriptive authority to be a member of the JPC.

12.3.1.2.3 The Board of Nursing shall appoint one public member.

12.3.1.3 One of the Board of Nursing appointees shall be a current Board of Nursing Member.

12.3.1.4 The Executive Director of the Board of Nursing shall make a call for applications for potential members to fill vacancies on the JPC. The potential members shall submit their resumes to the Executive Director. The resumes shall be reviewed by the Executive Director and the APN member of the Board of Nursing. They shall then make recommendations to the Board of Nursing for approval and appointment of the members to the JPC.

12.3.1.5 Members shall serve two-year terms.

12.3.1.6 The Executive Director shall verify members' continued interest in serving on the JPC prior to expiration of their two-year term. The Executive Director shall submit the names of the JPC members who are interested in serving another term on the JPC to the Board of Nursing for reappointment to the JPC.

12.3.1.7 Members who miss three consecutive meetings shall be reported to the appointing Board which may appoint a replacement member.

12.3.1.8 JPC shall be staffed by the Executive Director of the Board of Nursing or designee who shall assist the JPC in carrying out its duties.

12.3.2 Officers

12.3.2.1 JPC members shall elect a Chair and Vice-Chair each September.

12.3.2.2 The Chair shall preside at meetings and hearings.

12.3.2.3 The Vice-Chair shall preside at the meetings and hearings in the absence of the Chair.

12.3.2.4 In the absence of the Chair and Vice-Chair, the next senior member shall preside.

12.3.3 Meetings

12.3.3.1 Meetings will be scheduled in accordance with all Laws and Rules and Regulations that apply to Committees under the Division of Professional Regulation.

12.3.3.2 Five members of the JPC constitute a quorum.

12.3.3.3 A meeting calendar shall be approved by the JPC each September.

12.3.3.4 The JPC shall meet as necessary to carry out its responsibilities as defined in 24 Del. C., §1906(20).

12.3.3.5 The Board of Nursing Members on the JPC shall give the committee report at each Board of

Nursing meeting. The Executive Director shall give the report if the Board Member is absent.

DEPARTMENT OF EDUCATION

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

Regulatory Implementing Order

**201 School Shared Decision-making Transition
Planning Grants**

**205 District Shared Decision-making Transition
Planning Grants**

210 Approval Of School Improvement Grants

I. Summary Of The Evidence And Information Submitted

The Secretary of Education seeks the approval of the State Board of Education to reauthorize the following regulations: 201 School Shared Decision-Making Transition Planning Grants, 205 District Shared Decision-Making Transition Planning Grants and 210 Approval of School Improvement Grants. These regulations have not changed and are recommended for re-authorization because 14 **Del.C.** Chapter 8, School Shared Decision-Making requires the Department of Education to have regulations in these three areas. The implementation timetables in Chapter 8 have passed and recourses are no longer available but the statute remains in the Delaware Code and the regulations must be preserved.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on October 18, 2001, 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 re-authorize these regulations because 14 **Del.C.** Chapter 8 School Shared Decision-Making requires the Department of Education to have regulations on these issues.

III. Decision To Re-adopt The Regulations

For the foregoing reasons, the Secretary concludes that it is necessary to re-authorize the regulations. Therefore, pursuant to 14 **Del.C.** Chapter 8, the regulations attached hereto as Exhibit "B" are hereby re-authorized. Pursuant to the provisions of 14 **Del.C.** §122(e), the regulation hereby

re-authorized 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 regulations re-authorized hereby shall be in the form attached hereto as Exhibit "B," and said regulations 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.** Chapter 8, in open session at the said Board's regularly scheduled meeting on December 20, 2001. 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 20th day of December 2001.

Department Of Education

Valerie A Woodruff, Secretary of Education

Approved this 20th day of December 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

201 School Shared Decision-Making Transition Planning Grants

1.0 Requests for a school shared decision-making transition planning grant shall be submitted via the local board of education to the Office of the Secretary of Education, Delaware Department of Education, P.O. Box 1402, Townsend Building, Dover, DE 19903. Grant requests shall include the following information:

2.0 A copy of the Report and Recommendations of the School Advisory Committee. The Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 Del. C. § 804. have been met.

2.1 School Advisory Committee (list names and groups represented)

2.2 Listing of the structured conversations and a

brief description of the activities

2.3 Brief description of how stakeholders made a good faith effort to communicate with their constituent groups

2.4 Recommendation to develop a school transition plan to implement shared decision-making

2.5 Process for establishing a school transition plan

2.6 Process for determining the composition and roles and responsibilities delegated to the School Transition Team

3.0 The School Transition Team (list names and groups represented).

3.1 A description of the process for the School Transition Team to reach decisions and resolve conflicts.

4.0 Assurance that the school has committed to develop a school improvement plan including comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these goals and including staff development for building the necessary capacities and skills to successfully implement shared decision-making and improve parental involvement.

5.0 A description of the plan for communicating the results of the school improvement plan to the broader school community for information and critical review.

6.0 A description of how the various stakeholder groups will formally express their opinion regarding the school transition plan prior to its adoption by the local board of education.

7.0 Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the school. Any stakeholder refusing to sign should explain why as part of the grant request.

8.0 Assurance that a copy of the Report and Recommendations is posted within the school for public review.

9.0 Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.

10.0 Procedure to be used by interested parties to obtain a copy of the school grant request.

205 District Shared Decision-Making Transition Planning Grants

1.0 Requests for a district shared decision-making transition planning grant shall be submitted to the Office of the Secretary of Education, Delaware Department of Education, P.O. Box 1402, Townsend Building, Dover, DE 19903. Grant requests shall include the following information:

1.1 The Board Resolution endorsing both the concept of shared decision-making and the Report and Recommendations of the District Advisory Committee.

1.2 A copy of the Report and Recommendations of

the District Advisory Committee. The Report must be signed by a representative of each stakeholder group that participated in the process and should include the following information, indicating that the requirements of 14 Del. C. § 802 have been met.

1.2.1 District Advisory Committee (list names and groups represented)

1.2.2 Listing of the structured conversations and a brief description of the activities

1.2.3 Brief description of how stakeholders made a good faith effort to communicate with their constituent groups

1.2.4 Recommendation to develop a district transition plan to implement shared decision-making

1.2.5 Process for establishing a district transition plan

1.2.6 Process for determining the composition and roles and responsibilities delegated to the District Transition Team

1.3 The District Transition Team (list names and groups represented).

1.4 A description of the process for the District Transition Team to reach decisions and resolve conflicts.

1.5 A description of the plan for communicating the results of the district transition plan to the broader school community for information and critical review.

1.6 Acknowledgment that within the district transition plan there must be a policy for supporting shared decision-making activities from the local budget, including the school improvement planning process set forth in 14 Del. C. § 806, and acknowledgment that funds must be specifically identified and made available for use by school committees.

1.7 A description of how the various stakeholder groups will formally express their opinion regarding the district transition plan prior to its adoption by the local board of education.

1.8 Signatures of each stakeholder group representative indicating the stakeholder's belief that the grant should be awarded to the district. Any stakeholder refusing to sign should explain why as part of the grant request.

1.9 Assurance that a copy of the Report and Recommendations is posted within the district for public review.

1.10 Assurance that each stakeholder signing the Report and Recommendations has received a copy of the signed report, as well as a copy of the grant request.

1.11 Procedure to be used by interested parties to obtain a copy of the district grant request.

210 Approval of School Improvement Grants

1.0 A school that has an approved shared decision-

making transition plan as specified in 14 Del. C. §806, may apply for a school improvement implementation grant. To apply for a grant, the principal of the eligible school should submit a letter of request to the Office of the Secretary of Education, Delaware Department of Education, P. O. Box 1402, Townsend Building, Dover, DE 19903. Requests shall include the following information:

1.1 Evidence that the local board of education has adopted the school's transition plan; and

1.2 The school improvement plan containing the following components:

1.2.1 Comprehensive school improvement goals tied to state and local academic performance standards and strategies to achieve these and other goals identified by the school, including staff development and parental involvement;

1.2.2 A description of the rationale for the proposed governance structure, stating how and why the governance process should improve decision-making and support continuous improvement in teaching and student learning;

1.2.3 Evidence of review by the broader school community with agreement that the school improvement plan is consistent with the school district plan and evidence that the local board of education has formally adopted the school's improvement plan;

1.2.4 A proposed budget that explains the use of resources allocated to the school to support strategies for achieving the school improvement goals;

1.2.5 The structural changes or procedures for providing the necessary time and skill-building to support shared decision-making and continuous improvement in teaching and student learning;

1.2.6 The assessment and evaluation process that the school will use to measure its progress toward achieving its stated goals;

1.2.7 A proposed timeline for phasing-in the school improvement plan; and

1.2.8 A proposed budget for the use of the school improvement grant.

2.0 A school with an approved application shall be eligible for a school improvement grant for the following (3) years as provided in the annual appropriations act. Subsequent applications may be made only after the review and evaluation of the school improvement plan required by 14 Del. C. §808 is completed and the results of such are included in the school's application.

See 1 DE Reg. 1400 (3/1/98)

Regulatory Implementing Order

828 Assistance With Medications On Field Trips

I. Summary Of The Evidence And Information Submitted

The Secretary of Education seeks to amend Regulation 828 Assistance with Medications on Field Trips. The amendment is necessary to delete the phrase "and a statement releasing the assistant from liability" from section 2.1. which requires a prior written request from the parent or guardian for the administration of medications on field trips. The use of that phrase raises issues relating to conditioning the receipt of services by special education students upon the granting of a release of liability.

Notice of the proposed regulation was published in the News Journal and the Delaware State News November 26, 2001, 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 because The use of the phrase "and a statement releasing the assistant from liability" raises issues relating to conditioning the receipt of services by special education students upon the granting of a release of liability.

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.** §122, 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 SectionV. 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.** §122 on January 7, 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 7th day of January 2002.

Department Of Education

Valerie A Woodruff, Secretary of Education

828 Assistance With Medications on Field Trips

1.0 Definitions

“Assist a student with medication” means assisting a student in the self-administration of a medication, provided that the medication is in a properly labeled container as hereinafter provided. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

“Field trip” means any off-campus, school-sponsored activity.

“Medication” means a drug taken orally, by inhalation, or applied topically, and which is either prescribed for a student by a physician or is an over-the-counter drug which a parent or guardian has authorized a student to use.

“Paraprofessionals” mean teaching assistants or aides.

2.0 Teachers, administrators and paraprofessionals employed by a student’s local school district are authorized to assist a student with medication on a field trip subject to the following provisions:

2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent or guardian. Said written request or consent shall contain clear instructions including: the student’s name; the name of the medication; the dose; the time of administration; and the method of administration; ~~and a statement releasing the assistant from liability.~~ At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

2.2 The medication shall be in a container which is clearly labeled with the student’s name, the name of the medication, the dose, the time of administration, and the method of administration. If the medication has been prescribed by a physician, it shall be in a container which meets United States Pharmacopoeia/National Formulary standards and, in addition to the information otherwise required by this section, shall bear the name of the prescribing physician, and the name and telephone number of the dispensing pharmacy.

2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraprofessionals are qualified to safely assist a student with medication. Each such person shall complete a Board of Nursing approved training course

developed by the Delaware Department of Education, pursuant to 24 Del.C. 1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without written acknowledgement that he/she has completed the course and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

2.4 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student’s name, the name of the medication, the dose, the time of administration, the method of administration, and the name of the person assisting.

2.5 Except for a school nurse, no employee of a school district shall be compelled to assist a student with medication. Nothing contained herein shall be interpreted to otherwise relieve a school district of its obligation to staff schools with certified school nurses.

See 5 DE Reg. 873 (10/1/01)

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

Statutory Authority: 7 Delaware Code,
Chapter 91 (7 Del.C. Ch. 91)

Secretary's Order No.: 2002-A-0002

Proposed Amended Regulations Governing Hazardous Substance Cleanup Section 14.5: Brownfields Determination Criteria

Date of Issuance: January 14, 2002

Effective Date of the Amendment: February 11, 2002

I. Background

On Tuesday, January 8, 2002, the Department of Natural Resources and Environmental Control-Site Investigation and Restoration Branch ("DNREC-SIRB") held a public hearing at the DNREC Lukens Drive facility, 391 Lukens Drive, New Castle, Delaware, in order to receive comments on the Proposed Amended Regulations Governing Hazardous Substance Cleanup (September 1996) ("HSCA Regulations"). This hearing was held pursuant to 7

Del.C. Chapter 91 following the procedural guidelines found in 7 Del. C. Chapter 60.

This amendment to the HSCA Regulations is being proposed pursuant to Senate Bill 183, which authorizes the Secretary of the Department of Natural Resources and Environmental Control (DNREC or the Department) to certify all or part of a real property as a Brownfield. SB 183 also defines a Brownfield as, "...any vacant, abandoned or underutilized real property, the development or redevelopment of which may be hindered by the reasonably held belief that the real property may be environmentally contaminated". The proposed regulation is a new provision in Section 14: Funding and Response Costs. The amended regulation is referenced as 14.5: Brownfields Determination Criteria.

II. Findings and Conclusions

1. Proper notice of the hearing was provided as required by law.

2. Based on the record developed in the course of this hearing, it appears that DNREC-SIRB has provided a sound basis for the proposed amendment to the Regulations Governing Hazardous Substance Cleanup, Section 14, including reasoned responses to the various comments made in this matter. The Response Document is attached hereto and made a part of this Order. Thus, the proposed regulations should be adopted with the minor, non-substantive revision regarding the term "use" in 1.A as indicated.

3. This rulemaking represents the first step in an evolving effort to develop sound and comprehensive requirements which will implement the legislative intent of Senate Bill 183.

III. Order

It is hereby ordered that the proposed amendment to the Regulations Governing Hazardous Substance Cleanup, Section 14, be promulgated in final form, with one minor revision as indicated, in accordance with the customary statutory procedure.

IV. Reasons

The amendment to the Regulations Governing Hazardous Substance Cleanup, Section 14, will aid the State of Delaware in remediating and redeveloping properties contaminated with the release(s) of hazardous substances, also referred to as Brownfields, and will assist the Department in furtherance of the policy and purposes of 7 **Del. C.** Chapter 91, the Hazardous Substance Cleanup Act.

Nicholas A DiPasquale, Secretary

Regulation Governing the Delaware Hazardous Substance Cleanup Act

Subsection 14.5: Brownfields Determination Criteria

(1) Criteria for Certification. The Department may certify all or part of a parcel of real property as a Brownfield based on the following criteria:

(a) The property must meet the following ~~use~~ criteria:

(i) All or that part of the property must be abandoned, vacant or underutilized; and

(ii) All or that part of the property must be subject to either a current or prospective development or redevelopment plan; and

(iii) The property must satisfy one of the following conditions:

(A) The party seeking the Brownfield certification must have sufficient information or environmental data to show that the development or redevelopment may be hindered by the reasonably held belief that the property may be contaminated;

(B) The property is one of the following classes of uses, which are deemed to fulfill the requirement for information or environmental data concerning contamination, which may hinder development or redevelopment:

(I) Salvage yards;

(II) Permitted or non-permitted

landfills;

(III) Lands that have been subject to historical filling with material other than clean soil;

(IV) Known hazardous substance release sites that have not been remediated, including those previously identified by DNREC-SIRB and which are within its inventory of hazardous substance release sites;

(V) Gas stations; and

(VI) Dry cleaners.

The activities listed in (3)(B) (I) – (VI) apply to current or former sites that have not been remediated under HSCA; if the parcel has undergone a previous remediation under HSCA, the applicant must not have caused or contributed to the new release of hazardous substance(s).

(b) The property must not be subject to any enforcement action from any State or Federal environmental agency unless such enforcement action is, in the opinion of the Secretary, adequately resolved with the applicable agency.

(c) The applicant, including the employees or agents thereof, must not, in the opinion of the Secretary, have intentionally caused the contamination of the property in violation of applicable laws, or be a chronic violator of state or federal environmental laws.

(d) Any Brownfield certification decision is at the

sole discretion of the Secretary, or his designee

(2) Application for Certification.

(a) Brownfield certification shall be provided only to those persons who apply for a certification from the DNREC-SIRB. Such application shall contain the following information:

(i) Name and address of the person seeking the certification, and their relationship to the property;

(ii) Address of the property including tax parcel designation;

(iii) Current use of the property and its zoning classification;

(iv) Intended or proposed development or redevelopment plan; and

(v) Reason(s) to believe that the property may be contaminated, and why such contamination may hinder development or redevelopment.

(vi) Upon request by the Secretary, or his designee, the applicant shall provide any and all documentation regarding all environmental investigations of the property, or chronic violator status of the applicant pursuant to 7 Del. C. Section 7904.

(b) Brownfield certification shall be provided only to those persons who are willing to enter into the Voluntary Cleanup Program (VCP), or who agree to any other settlement agreement approved by the Department pursuant to HSCA.

(3) Effect of Brownfield Certification.

(a) Certification of all or part of a parcel of real property as a Brownfield places it in the inventory of hazardous substance release sites.

(b) Properties certified as being a Brownfield may be considered in the preparation of funding recommendations under Section 14.1 through 14.4.

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES AND THE

DIVISION OF HIGHWAY SAFETY

Statutory Authority: 21 Delaware Code,
Section 4177F(e) (21 Del.C. §4177F(e))

Summary Of The Evidence

A properly noticed hearing was scheduled on November 29, 2001 pursuant to 21 Del.C. § 4177F(e) and 29 Del.C. Ch. 101 in the second floor conference room, Public Safety Building, Dover, Delaware to receive public comment on the proposed Policy Regulation Number 91 concerning Ignition Interlock Device Installation, Removal and Fees. The attendance sheet and recording of public comments are attached to this order.

No public comment was received.

Findings Of Fact

Based on the evidence received, the Division of Motor Vehicles finds the following facts:

1. The implementation of the fee schedule in this Regulation will assist participation in the Ignition Interlock program.

The Law

The Director of the Division of Motor Vehicles' authority to promulgate a fee schedule for Ignition Interlock usage is provided by 21 Del. C. § 4177F(e) that states:

- (e) Installment payment of costs; indigent program. The Division of Motor Vehicles shall establish a payment plan for participants. The plans shall be administered by the service provider and the participant shall make all payments under the plan to the service provider. The initial payment shall include the installation cost and 2 months' lease for a minimum charge and a minimum down payment of \$180. The participant shall thereafter make payments every 2 months for the lease of the equipment in the amount of \$110 until the balance is paid. The Division may increase the minimum amount by regulation. Any taxes due shall be payable in addition to minimum amounts at the time of each payment. The Division shall further develop and implement an indigent plan for impoverished persons, which shall be available on a lottery basis. For every 20 devices installed at regular prices, at least 1 device shall be provided at approximately half price under this program.

Decision

The Director hereby adopts Policy Regulation Number 91 as proposed and a copy of this Regulation as adopted is attached to this Order.

IT IS SO ORDERED this 3rd, day of January, 2002.

James L. Ford, Secretary, Department of Public Safety
Michael D. Shahan, Director, Division of Motor Vehicles

Policy Regulation Number 91

Concerning: Ignition Interlock Device Installation, Removal, and Monthly Monitoring and Calibration Fees.

I. Authority

The authority to promulgate this regulation is 21 Del.C. §4177F(e).

II. Purpose

Title 21 Del.C. §4177F established a program utilizing the Ignition Interlock device for those individuals with an alcohol-related violation or offense. After surveying the fees charged by surrounding jurisdictions for similar services, this policy regulation will establish a fee schedule for all expenses related to installation and lease of the device.

III. Applicability

This policy regulation concerns Title 21 Del.C. §4177F.

IV. Substance of Policy

1. Installation of Device

All persons who voluntarily or as a result of a court order, install an Ignition Interlock device in a motor vehicle monitored in conjunction with the Division of Motor Vehicles, will be charged a fee by the provider for that service, and this fee will include the cost of removing the device at the termination of the program.

The service providers shall charge a fee not to exceed \$100.00 for installation of the Interlock device, but this amount includes a rebate of \$30.00 which will be returned to the client at the time of removal. This fee shall be the responsibility of the clients.

2. Monthly Monitoring & Calibration

All persons with an Ignition Interlock device installed in a vehicle monitored in conjunction with the Division of Motor Vehicles, shall be charged a fee for the monthly electronic monitoring and regular calibration of the device.

The service providers shall charge a fee not to exceed \$75.00 for monthly monitoring and calibration. This fee shall be the responsibility of the clients.

3. Initial down Payment

The initial payment will include the installation fee and the first month's monitoring and calibration. The initial payment, therefore, shall not exceed \$175.00 and the bi-monthly payment shall not exceed \$150.00

4. Other Fees

The Division of Motor Vehicles recognizes that Service providers may charge fees for other services outside the scope of this policy regulation, including but not limited to fees for missed appointments, device resets, and optional insurance programs relating to damage or loss of the device.

5. **Definition of Alcohol Related Violations and Offenses**

For purposes of this policy regulation, alcohol-related violations and offenses shall mean violations of Sections 2740, 2742, 4177, 4177B, 4175 of Title 21, conforming statutes of other states or the District of Columbia, or local ordinances in conformity therewith.

VI. Severability

If any part of this Regulation is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portion shall be severed and the remaining portions of this Regulation shall remain in full force and effect under Delaware law.

VII. Effective Date

The following regulation shall be effective 10 days from the date the order is signed and it is published in its final form in the Register of Regulations in accordance with 29 Del. C. §10118(e).

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER TWENTY-THREE**

**RE: ESTABLISHING THE GOVERNOR'S
PUBLIC WORKS AND PROCUREMENT
OPPORTUNITY COUNCIL AND SETTING
STANDARDS FOR CONTRACTING BY
STATE AGENCIES**

WHEREAS, by Executive Order No. 71, dated December 7, 1999, former Governor Carper established the Governor's Building and Trades Council;

WHEREAS, by Executive Order No. 78, dated March 17, 2000, former Governor Carper established certain goals for state agencies with respect to awarding public works contracts and changed the membership of the Governor's Building and Trades Council;

WHEREAS, since its formation, the Governor's Building and Trades Council has advised the Governor on a variety of public works and procurement issues, including but not limited to public works contracts in the building and construction industry;

WHEREAS, since the entry of Executive Order No. 78, the State has commissioned and received a disparity study prepared by MGT of America, Inc., dated June 26, 2001 (the "Disparity Study");

WHEREAS, the Disparity Study was limited in scope to assess only potential disparity in the utilization of minority-owned and women-owned firms with respect to certain large public works contracts in the areas of bridge and road construction, and building construction;

WHEREAS, the Disparity Study provides evidence that there are perceived barriers for minority-owned and women-owned businesses to avail themselves of opportunities to contract with the State with respect to the public works projects and the types of contracts reviewed, and that there may be under-utilization of minority-owned and women-owned firms for certain public works contracts with the State;

WHEREAS, the State remains committed to providing equal employment opportunities to all Delawareans, and to fostering the creation, growth and success of women and minority construction firms and professional service firms related to the construction industry;

WHEREAS, the State is also committed to eliminating all discrimination in all areas of State procurement, in accordance with applicable federal and State law, and is further committed to ensuring that qualified, available minority-owned and women-owned businesses have a full and fair opportunity to contract with the State, both directly

and as subcontractors, for public works contracts, supply contracts, and professional and other services contracts;

WHEREAS, the coordinated efforts of the public and private sectors are necessary to significantly increase the participation of women and minorities in all aspects of State contracting and procurement; and

WHEREAS, the State must maintain a practical and efficient outreach program that promotes sound recruitment, education and business support practices;

NOW, THEREFORE, I, Ruth Ann Minner, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby order and declare the following:

1. The Governor's Building and Trades Council is abolished, and is hereby replaced with the Governor's Public Works and Procurement Opportunity Council (the "Council").

2. The charge of the Council shall be (a) to work in conjunction with the State of Delaware to maximize participation by qualified minority-owned and women-owned businesses in public works projects and other areas of procurement funded wholly or partially by the State, and (b) to develop a statewide recruitment and business support strategy to ensure that public and private initiatives are coordinated and focused so as to provide the support and assistance required to significantly increase the participation of women and minorities in all areas of State contracting and procurement. For purposes of this Order, "public works projects" shall include contracts for construction, reconstruction, demolition, alteration and repair work and maintenance work paid for, in whole or in part, with public funds.

3. The Council shall be composed of the following:

- (i) A Chairperson, to be selected by the Governor;
- (ii) Director of the Delaware Economic Development Office;
- (iii) Secretary of the Department of Labor;
- (iv) Secretary of the Department of Administrative Services;
- (v) Secretary of the Department of Transportation;
- (vi) A representative of the Office of the Mayor of the City of Wilmington;
- (vii) A representative of the Latin American Community Center;
- (viii) A representative of the Delaware Commission for Women;
- (ix) A representative of the State of Delaware branch of the National Association for the Advancement of Colored People ("NAACP");
- (x) A representative of the Metropolitan Wilmington Urban League;
- (xi) A representative of the Interdenominational Ministries Action Council of Delaware, Inc.;
- (xii) A representative of the Delaware Contractors'

Association;

(xiii) A representative of the Associated Builders and Contractors;

(xiv) A representative of the Delaware Building and Trades Council;

(xv) A representative of the Delaware Construction Council;

(xvi) A representative of the YWCA Department for Economic Advancement;

(xvii) A representative of the Minority Business Association;

(xviii) A representative of the Korean American Merchants' Association;

(xix) A representative of the National Association of Women in Construction;

(xx) A representative of the African American Chamber of Commerce of Pennsylvania, New Jersey and Delaware, who is also a resident of the State of Delaware;

(xxi) A representative of the Delaware Small Business Development Center; and

(xxii) One At-Large member to be selected by the Governor.

4. The Department of Administrative Services shall:

(i) Supply staff support to the Council;

(ii) Communicate and coordinate the implementation of the Council's recommendations across State agencies; and,

(iii) Coordinate the activities of State agencies with the private sector.

5. Every State agency having authority over contracting on behalf of the State shall strive, through its outreach efforts and coordination with the Council, the Department of Administrative Services, and the private sector, to maximize the number of minorities and women as a component of the total workforce during the course of a public works project.

6. Every State agency having authority over contracting on behalf of the State shall actively pursue contracting opportunities among qualified minority owned and women-owned businesses.

7. Every State agency with authority over State contracting shall provide information to the Department of Administrative Services concerning bids and/or inquiries by minority-owned and/or women-owned firms interested in contracting with the State to engage in public works activities, or to provide goods, or professional or non-professional services to the State, so that the Department of Administrative Services can maintain an active data-base of such information.

8. Documented efforts should be made to increase the participation of qualified minority-owned and women-owned businesses in public works contracting with the State, and to increase the number of qualified minority-owned and women-owned firms that supply goods, professional

services, and non-professional services to the State.

9. The Department of Administrative Services shall collect data concerning the compliance with this Order by affected State agencies, and shall submit reports to the Council and the Governor's Office documenting the efforts of State agencies to meet the goals of this order during the prior six months, on January 31 and July 31 of each year.

10. Executive Order No. 71 and Executive Order No. 78 are rescinded in their entirety.

Approved this 10th day of December, 2001.

Ruth Ann Minner, Governor

Attest:

Harriet Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER TWENTY-FOUR**

RE: DECEMBER 24, 2001 HOLIDAY

WHEREAS, December 24, 2001 is the day before the statutory Christmas Day holiday; and

WHEREAS, I wish to allow State of Delaware employees an additional day this year to be with their families during the holiday season.

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER ON THIS 19TH DAY OF DECEMBER, 2001:

1. December 24, 2001 is declared a holiday pursuant to Rule 6.0100 of the Merit Rules of the State of Delaware.

2. Public offices of the state subject to my authority will be closed on December 24, 2001.

Ruth Ann Minner, Governor

Attest:

Harriet Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER TWENTY-FIVE**

**RE: REALLOCATION OF STATE PRIVATE
ACTIVITY BOND VOLUME CAP FOR
CALENDAR YEAR 2001 AND INITIAL
SUBALLOCATION OF STATE PRIVATE
ACTIVITY BOND VOLUME CAP FOR
CALENDAR YEAR 2002**

WHEREAS, pursuant to 29 **Del.C.** §5091, the State's private activity bond volume cap ("Volume Cap") for 2001 under § 103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

WHEREAS, pursuant to Executive Order Number Eighty-Four, \$75,000,000 of the Volume Cap for 2001 which had been allocated to the State of Delaware was further suballocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, the allocation of Volume Cap in Executive Order Number Eighty-Four is subject to modification by further Executive Order; and

WHEREAS, the State's Volume Cap for 2001 and 2002 is allocated among the various State and local government issuers by 29 **Del. C.** §5091(a); and

WHEREAS, Kent County has reassigned \$15,000,000 of its unallocated Volume Cap for 2001 to the State of Delaware; and

WHEREAS, Sussex County has reassigned \$10,500,000 of its unallocated Volume Cap for 2001 to the State of Delaware; and

WHEREAS, the Delaware Economic Development Authority has reassigned \$37,500,000 of its unallocated Volume Cap for 2001 to the Delaware State Housing Authority; and

WHEREAS, pursuant to 29 **Del.C.** §5091(b), the State's \$75,000,000 Volume Cap for 2002 is to be suballocated by the Governor among the Delaware State Housing Authority, the Delaware Economic Development Authority and other governmental issuers within the State; and

WHEREAS, the Secretary of Finance recommends (i) that the \$25,500,000 unallocated Volume Cap for 2001 reassigned to the State of Delaware by other issuers be suballocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the \$37,500,000 of unallocated Volume Cap reassigned by the Delaware Economic Development Authority be suballocated to the Delaware State Housing Authority for carry forward

for use in future years; and (iii) that the State's \$75,000,000 Volume Cap for 2002 be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendations of the Secretary of Finance.

NOW, THEREFORE, I, RUTH ANN MINNER, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The \$25,500,000 of unallocated Volume Cap for 2001 that has been reassigned by other issuers to the State of Delaware is hereby reassigned to the Delaware State Housing Authority for carry forward use, in addition to the \$37,500,000 previously suballocated to the Delaware State Housing Authority for 2001 under Executive Order Eighty-Four and the \$37,500,000 of unallocated Volume Cap for 2001 that has been reassigned by the Delaware Economic Development Authority, for a total carry forward amount of \$100,500,000.

2. The \$75,000,000 allocation to the State of Delaware of the 2002 Volume Cap is hereby suballocated: \$37,500,000 to the Delaware State Housing Authority and \$37,500,000 to the Delaware Economic Development Authority.

3. The aforesaid suballocations have been made with due regard to actions taken by other persons in reliance upon previous suballocations to bond issuers.

Approved this 21st day of December, 2001
Ruth Ann Minner, Governor

Attest:
Harriet Smith Windsor, Secretary of State

GOVERNOR'S APPOINTMENTS

1625

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Architects	Mr. Goodwin K. Cobb, IV	12/06/04
Board of Audiologists, Speech Pathologists & Hearing Aid Dispensers	Mr. Leslie J. Moore	1/07/05
Board of Landscape Architects	Ms. Barbara A. Hanson Mr. Eric J. Sturm Ms. Denise E. Weller	1/07/05 1/07/05 1/07/05
Board of Occupational Therapy	Mr. David C. Mangler Ms. Dana Maurer Ms. Mara Beth Schmittinger	1/07/05 1/07/05 1/07/05
Board of Registration of Geologists	Mr. Jerome Cooper Mr. R. Peder Hansen	1/07/05 1/07/05
Child Placement Review Board Executive Committee	Ms. Shirley Ann Cupery, Chair	Pleasure of the Governor
Health Facilities Authority	Mr. William G. Neaton Mr. Leonard W. Quill	1/07/07 1/07/07
Magistrate Screening Committee	Ms. Michele Price-McCoy	Pleasure of the Governor
Real Estate Commission of Delaware	Mr. James David Weldin	11/27/04
Selective Service Board	Ms. Cynthia M. Christiansen Mr. Edward M. Rush, Jr.	Forwarded to the President of the United States Forwarded to the President of the United States
State Examining Board of Physical Therapists	Ms. Ruth Ann Messick	12/06/04

**DEPARTMENT OF
ADMINISTRATIVE SERVICES**

**DIVISION OF PROFESSIONAL REGULATION
EXAMINING BOARD OF PHYSICAL THERAPISTS**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2604(1), the Delaware State Examining Board of Physical Therapists proposes to revise its rules and regulations. The proposed changes reflect the statutory change that allows a physical therapist to now accept a referral from any licensed health practitioner who has been granted prescriptive authority. The proposed changes also reflect the statutory changes that delineate the requirements for practicing with a temporary license. The proposed changes define the direct supervision of an athletic trainer in a non-clinical setting. The proposed changes also specify the number of continuing education hours required for licensees whose licenses have lapsed and who have reapplied for licensure under the conditions which govern reciprocity. The proposed regulations serve to implement or clarify specific sections of 24 **Del.C.** Chapter 26.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, March 19, 2002 at 6:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio 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 Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 744-4506.

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

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF VETERINARY MEDICINE**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3306 (a) (1), the Delaware State Board of Veterinary Medicine proposes to revise its rules and regulations. The proposed change concerns the retention of veterinary medical records. The proposed revision seeks to define unprofessional conduct for a veterinarian as the destruction of veterinary medical records before a period of three (3) years have elapsed from the last entry into the medical record. The proposed

regulation serves to implement or clarify specific sections of 24 **Del. C.** Chapter 33.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, 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, 19904. The Board will receive and consider input in writing from any person on the proposed regulation. Any written comments should be submitted to the Board in care of Susan Miccio 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 regulation or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 744-4506.

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

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, February 15, 2002 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES
DIVISION OF LONG TERM CARE
RESIDENTS PROTECTION**

63 Regulations for Assisted Living Facilities

Public Notice

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared draft regulations pertaining to assisted living facilities. These proposed regulations are intended to replace in their entirety assisted living regulations adopted in December, 1997. The proposed regulations specify required services in assisted living facilities including licensing requirements, specialized care for memory impairment, medication management, resident assessments, resident contracts and service agreements, staffing and physical plant requirements as well as provisions for resident waivers and conditions which preclude admission. The proposed

regulations also include a Uniform Assessment Instrument to be used for initial and all subsequent assessments of applicants and residents of assisted living facilities.

Invitation for Public Comment

Public hearings will be held as follows:

Monday, March 11, 2002, 10:00 AM

Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover

Friday, March 15, 2002, 9:00 AM

Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

Katie McMillan
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing March 15, 2002.

**DIVISION OF LONG TERM CARE
RESIDENTS PROTECTION****79 Regulations for Nursing Homes Admitting Pediatric Residents****Public Notice**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared draft regulations pertaining to nursing homes admitting pediatric residents. These regulations are intended to supplement, and not supplant, general nursing home regulations and other applicable laws. The regulations specify required services for pediatric residents including facility, medical, therapy, nutritional, nursing, educational and family services.

Invitation for Public Comment

Public hearings will be held as follows:

Monday, March 4, 2002, 10:00 AM

Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover

Wednesday, March 6, 2002, 9:00 AM

Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

For clarification or directions, please call Gina Loughery at 302-577-6661.

Written comments are also invited on these proposed regulations and should be sent to the following address:

Robert Smith
Division of Long Term Care Residents Protection
3 Mill Road, Suite 308
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing March 6, 2002.

DIVISION OF SOCIAL SERVICES**Public Notice****Division of Social Services
Food Stamp 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 / Food Stamp Program is proposing to implement policy changes to the following sections of the Division of Social Services Manual, Section 7004.3 and 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.

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 February 28, 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.

DIVISION OF SOCIAL SERVICES

Public Notice

Division of Social Services Food Stamp 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 / Food Stamp Program is proposing to implement policy changes to the following sections of the Division of Social Services Manual: 9028, 9030, 9040, 9081, and 9085. These changes are based on the Federal Final Rules of Food Stamp Program: Noncitizen Eligibility and Certification Provisions of Public Law 104-193, as Amended by Public Laws 104-208, 105-33, 105-185.

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.

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 February 28, 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.

DIVISION OF SOCIAL SERVICES

Public Notice

Division of Social Services 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 14950. The proposed change eliminates Medicaid Guaranteed Eligibility for Medicaid recipients enrolled in the Diamond State Health Plan.

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 February 28, 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.

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

Title of the Regulations:

Delaware Regulations Governing Hazardous Waste (DRGHW).

Brief Synopsis of the Subject, Substance and Issues:

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing miscellaneous changes to the DRGHW that correct existing errors, adds clarification or enhances the current program.

Notice of Public Comment:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday March 12, 2002 beginning at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. In addition, those affected by the proposed amendments are invited to attend a workshop to be conducted on March 27, 2002 at the Smyrna Rest Area, Smyrna, DE. Pre-registration for the workshop is required.

**DIVISION OF AIR AND WASTE MANAGEMENT
WASTE MANAGEMENT SECTION**

Title of the Regulations:

Delaware Regulations Governing Hazardous Waste (DRGHW).

Brief Synopsis of the Subject, Substance and Issues:

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the

DRGHW by adopting amendments previously promulgated by EPA.

Notice of Public Comment:

The public hearing on the proposed amendments to DRGHW will be held on Tuesday March 12, 2002 beginning at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

Prepared by:

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

**DELAWARE RIVER BASIN
COMMISSION**

P.O. Box 7360

25 STATE POLICE DRIVE

WEST TRENTON, NEW JERSEY 08628-0360

The Delaware River Basin Commission will meet on Wednesday, February 6, 2002 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, at (609) 883-9500 ext. 203.

SUBSCRIBE TO THE OFFICIAL SOURCE OF COMPLETE INFORMATION ON DELAWARE STATE REGULATIONS

THE DELAWARE REGISTER OF REGULATIONS



A single-source document for regulatory information, including proposed and adopted text of state regulations, all emergency regulations, Governors Executive Orders and Appointments, Attorney General Opinions, General Notices and notices of public

hearings and open meetings of state agencies.

PUBLISHED MONTHLY - \$120.00 PER YEAR

YES, PLEASE ENTER MY SUBSCRIPTION FOR THE DELAWARE REGISTER AT \$120/YEAR

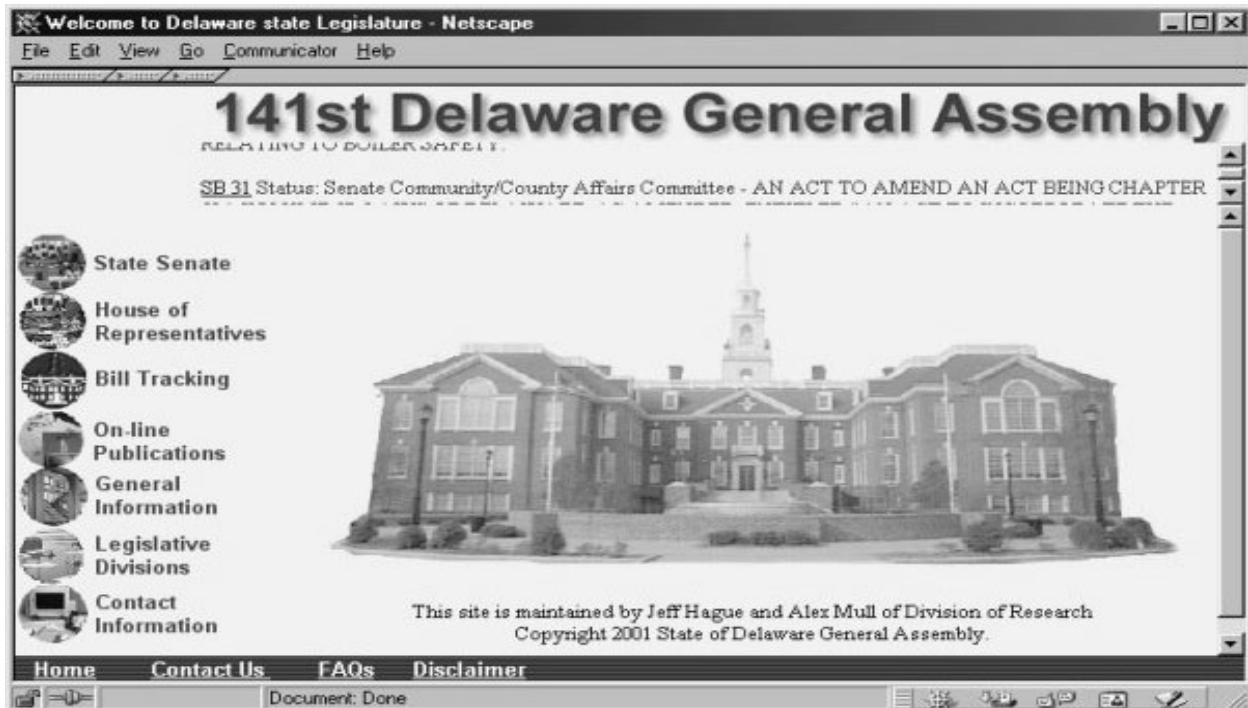
You will be billed upon receipt of your order. Subscription period runs from January to December. Mid-year subscriptions will be prorated at \$10 per issue. Back issues are available at \$12 per issue. Subscription fees are non-refundable.

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Visit The Delaware General Assembly On The Web!



The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

<http://www.legis.state.de.us>



LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____ FAX _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Please check the specific service(s) to which you wish to subscribe :

<u>SERVICES</u>	<u>ANNUAL COST</u>
One copy of all legislation introduced:	
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$100.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$775.00
One copy of all legislation signed by the Governor:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$195.00
One copy of House and Senate calendars:	
<input type="checkbox"/> 1st Session set - - - - -	\$75.00
<input type="checkbox"/> Picked up by subscriber *- - - - -	\$100.00
<input type="checkbox"/> Mailed daily via First Class postage - - - - -	\$775.00
One copy of all Governor's Advisories:	
<input type="checkbox"/> Mailed via First Class postage - - - - -	\$25.00
Daily Legislative Agendas and weekly Standing Committee Notices:	
<input type="checkbox"/> Via Fax - - - - -	\$150.00

* Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.

If you have any questions about our subscription services, please contact the Division of Research by dialing, toll-free, (800) 282-8545 (in state) or via E-Mail at jhague@state.de.us. Please dial (302) 744-4114 if you are calling from outside Delaware.

Please return this order form to the Division of Research at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to (302) 739-3895 as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.