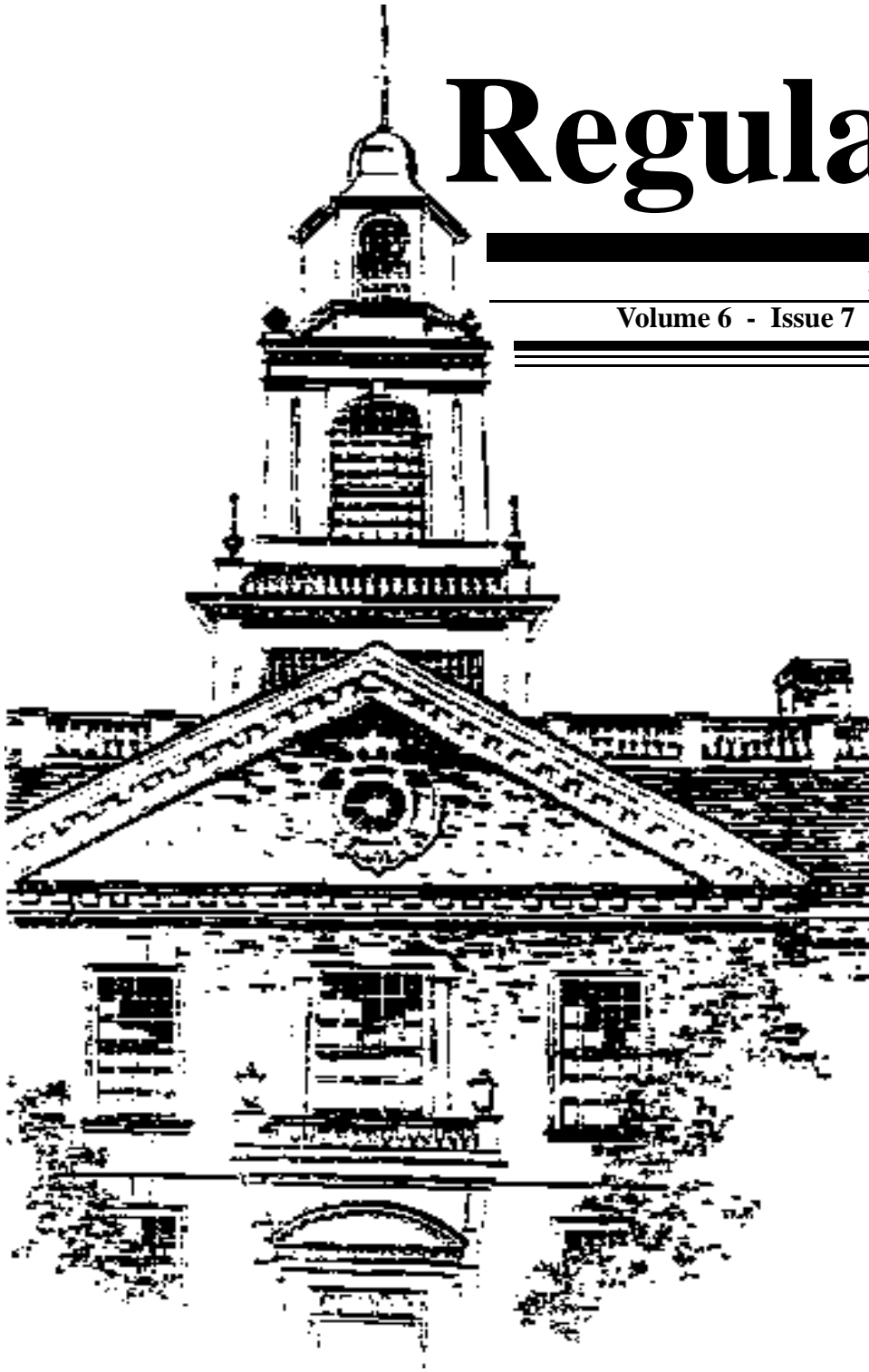


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# Delaware Register of Regulations



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Issue Date: January 1, 2003

Volume 6 - Issue 7

Pages 822 - 894

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Proposed

Final

Governor

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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 December 15, 2002.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

6 DE Reg. 279 - 280 (09/01/02)

Refers to Volume 6, pages 279 - 280 of the Delaware Register issued on September 1, 2002.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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

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

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

**Proposed Regulations**

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

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

24 DE Admin. Code 700

Statutory Authority: 24 Delaware Code,  
Section 706(a)(1)) (24 **Del.C.** 706(a)(1))

Please take notice, pursuant to 29 Del.C. Ch. 101 and 24 Del.C. Ch. 7, the Delaware Board of Chiropractic proposes to amend Rule 5.0 of the Delaware Board of Chiropractic's Rules and Regulations.

A public hearing will be held on the proposed amendment to Rule 5.0 on February 20, 2003 at 8:30 a.m. in Conference Room B of the Cannon Building, 861 Silver Lake Blvd., Dover, Delaware. The purpose of this hearing will be to receive public comments on the proposed amendment to Rule 5.0 in order that the Board of Chiropractic may vote to adopt, amend or reject said amendment at its February 20, 2003 meeting. The Board will receive and consider input in writing from any person regarding the proposed amendment to Rule 5.0. Written comments should be submitted to the Board up through and including the date and time of the hearing on February 20, 2003 at 8:30 a.m., to Judy Letterman, Administrative Specialist, at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware 19904-2467. For copies of the proposed amendment to Rule 5.0, please contact Ms. Letterman at the above address or by calling (302) 744-4500.

- 1.0 Chiropractic Defined; Limitations of Chiropractic License
- 2.0 Officers; Meetings; Quorum
- 3.0 Certification
- 4.0 Continuing Education
- 5.0 Issuance of License; Renewal; Inactive Status; Reinstatements.
- 6.0 Grounds for Discipline
- 7.0 License to Practice
- 8.0 Voluntary Treatment Option (See 4 DE Reg. 1940 (6/1/01))

**1.0 Chiropractic Defined; Limitations of Chiropractic License**

1.1 An adjunctive procedure not otherwise prohibited by Chapter 7 which aids and or assists the chiropractor in providing chiropractic care and includes by way of example and is not limited to:

- Acupuncture Procedures
- Physiological Therapeutics
- Diet and Nutritional Programs
- Rehabilitation/Exercise Programs

(See 4 DE Reg. 1940 (6/1/01))

**2.0 Officers; Meetings; Quorum**

The Board will hold elections for the offices of President and Secretary at the regularly scheduled meeting in October of each year or as soon thereafter as practical. Vacancies occurring in an office shall be filled for the remainder of the term in the month following the vacancy or as soon thereafter as is practical.

### 3.0 Certification

Certification in any nationally recognized specialty for a licensee requires a minimum of one hundred (100) or more hours of certified training beyond and in addition to any courses or training received toward a degree of Doctor of Chiropractic. Certification in any nationally recognized chiropractic specialty or technique requires that the licensee shall have completed all requirements for recognition as a practitioner of such chiropractic specialty or technique by the nationally recognized certification body.

### 4.0 Continuing Education.

#### 4.1 Continuing Education for New Licensees:

4.1.1 At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be pro-rated as follows:

#### License Granted During First Year: Credit Hours

	Required:
July 1 - December 31	24 hours
January 1 - June 30	18 hours

#### License Granted During Second Year: Credit Hours

	Required:
July 1 - December 31	12 hours
January 1 - June 30	6 hours

#### 4.2 Continuing Education for Licensees other than new licensees:

4.2.1 Unless otherwise excused by the Board for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence or inadvertence, all Chiropractors seeking renewal more than two (2) years from initial licensure or reinstatement of a lapsed license must provide to the Board adequate proof of the satisfactory completion of twenty four (24) hours of Board approved continuing education within the immediately preceding two (2) year period.

4.2.2 Proof of continuing education shall be received at the Division of Professional Regulation, Dover, Delaware, no later than April 30th of the reporting year and shall be received every 2 years after such date. Continuing education completed before April 30th of the reporting year shall not be carried over to the next renewal period. The Board has the right to conduct an audit of the proof of continuing education submitted by licensees.

(See 4 DE Reg. 1940 (6/1/01))

### 5.0 ISSUANCE OF LICENSE; RENEWAL; INACTIVE STATUS; REINSTATEMENTS; RETENTION OF PATIENT RECORDS (24 Del. C. § 709)

5.1 The Biennial licenses granted by the Board shall automatically terminate on June 30th of each even numbered year or on such other date as is specified by the Division of Professional Regulation. It is the responsibility of the licensee to file a renewal application with the Board. The failure of the Board to notify a licensee of his/her expiration date does not in any way relieve the licensee of the requirement of filing a renewal application with the Board. A licensee who fails to renew a license before the expiration date may renew on a late basis for a period not to exceed one (1) year.

5.2 Inactive Status and Termination of Practice. Any licensee who seeks to be placed on inactive status or ~~terminates his or her practice who is terminating his or her practice in this State or is leaving this State~~ and is not transferring his or her records to another chiropractor shall notify the Board in writing and notify all patients treated within the last three (3) years by publication in a newspaper of general circulation throughout the State of Delaware and offer to make the patients records available to the patient or his or her duly authorized representative. Except in an emergency situation where as much notice as is reasonably possible shall be given, the notice by publication shall be made at least ninety (90) days prior to termination of the practice or leaving the State and must be published at least 3 times over this ninety (90) day period and must explain how a patient can procure his or her patient records, except in an emergency situation where as much notice as is reasonably possible shall be given. All patients who have not requested their records thirty (30) days prior to the termination of the licensee's practice or the licensee leaving the State from such publication of notice shall, within thirty days of the closing of the business, be notified by first class mail by the licensee to permit patients to procure their records. Any patient records that have not been procured within 7 years after the licensee terminates his or her practice or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.

5.3 Retention of Patient Records. Patient records must be retained by the Chiropractor or arrangements made for the maintenance and retention of patient records for seven (7) years from the date of the last treatment.

5.4 Whenever a patient changes from the care of one Chiropractor to another Chiropractor and upon the request of either the new Chiropractor or the patient the previous Chiropractor (a) may charge for the reasonable expenses of copying the patient's records and upon receiving payment for such expenses, shall transfer the patient's records to the new Chiropractor, or (b) if there is no copying charge, shall transfer the records of the patient to the new Chiropractor.

within a reasonable time frame. Alternatively, if the patient and new Chiropractor agree, the Chiropractor may forward to the new Chiropractor a summary of the patient's records in lieu of the entire record at no charge to the patient. If a patient changes care from one Chiropractor to another Chiropractor, and fails to notify the previous Chiropractor or leaves the care of the previous Chiropractor for a period of 7 years from the date of the last treatment and fails to notify the previous Chiropractor, or fails to request the transfer of records to the new Chiropractor, then the previous Chiropractor shall maintain said records for a period of 7 years from the date of last treatment, after which time the records may be permanently disposed of in a manner that ensures confidentiality of the records.

5.5 This rule shall not apply to a Chiropractor who has seen or treated a patient on referral from a Chiropractor and who has provided a record of the diagnosis or treatment to another chiropractor, hospital or agency which has provided treatment for the patient.

5.6 A Chiropractor or the personal representative of the estate of a Chiropractor who disposes of patient records in accordance with the provisions of this rule is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

**(See 4 DE Reg. 1940 (6/1/01))**

## **6.0 Grounds for Discipline**

6.1 Unprofessional Conduct in Advertising. Any Licensee who advertises or holds out to the public that he or she is a specialist in any specific chiropractic or adjunctive procedure without having a valid current certification as having special training and/or certification in such procedure or procedures from a recognized certification body is guilty of unprofessional conduct.

6.2 Examples of Unprofessional Conduct in Advertising and Promotional Practices. The following advertising and promotional practices are deemed to be misleading, false, deceptive, dishonorable and/or unethical and shall constitute unprofessional conduct by a licensee:

6.2.1 The use of testimonials without written permission of that doctor's patient.

6.2.2 Offering free or discounted examinations unless all charges associated with such examinations, including all x-ray fees and charges, are conspicuously set out in writing at the time of and in conjunction with such offer and unless such examinations are offered regardless of the availability of insurance coverage of any recommended subsequent treatment.

6.2.3 The use of unjustified or exaggerated claims, promises or statements which guarantee or strongly imply cure or successful treatment or are otherwise false, fraudulent, deceptive, or misleading.

6.2.4 Willful failure to identify licensee as a Doctor of Chiropractic, Chiropractor or Chiropractic

Physician.

6.3 Unprofessional conduct with Patient, Employees, or Co-workers. Sexual misconduct in violation of a statute of the State of Delaware or any State or Commonwealth where such conduct takes place, involving a licensee and a patient, employee or co-worker shall be deemed to be unprofessional conduct.

**(See 4 DE Reg. 1940 (6/1/01))**

**(See 6 DE Reg. 270 (9/1/02))**

## **7.0 License to Practice**

A Chiropractor licensed elsewhere but not licensed in the State of Delaware may practice chiropractic within the State of Delaware only in consultation with a duly Delaware licensed Chiropractor for not more than ten (10) consultations in any twelve (12) month period, which consultations shall be limited to examination, recommendation or testimony in litigation.

## **8.0 Voluntary Treatment Option**

Any member of the public or a licensee may make a written report, signed by the complainant, of chemical dependency or impairment affecting any person regulated by the Board pursuant to 29 Del.C. §8807(n)

8.1 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.

8.2 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.

8.3 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).

8.4 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.

8.5 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.

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

8.6.1 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.

8.6.2 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.

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

8.6.4 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.

8.6.5 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.

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

8.7 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.

8.8 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.

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

8.10 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.

8.11 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.

8.12 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.

(See 4 DE Reg. 1940 (6/1/01)

(See 5 DE Reg. 1959 (5/1/02)

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

Statutory Authority: 16 Delaware Code  
Sections 1145(f) and §1146(f)

**Public Notice**

**Regulations for Criminal History Checks and Drug  
Testing for Home Health Agencies**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has drafted eight (8) revised proposed Regulations for Criminal History Checks and Drug Testing for Home Health Agencies pursuant to 16 Del.C. Sections 1145(f) and 1146(f). The remainder of the regulations addressing criteria for unsuitability for employment; confidentiality; and the responsibilities of employers, applicants and the Department with respect to criminal history checks and drug testing for applicants for employment by home health agencies and/or private healthcare givers in a resident's home or home of residence appear as final regulations elsewhere in this edition of the Register of Regulations. The following eight (8) draft regulations, revised after the December 2 and December 3 public hearings, will be the subject of a further public hearing: Regulations 72.0, 72.101, 72.104, 72.306, 72.307, 72.308, 72.401 and 72.404.

**Invitation For Public Comment**

A public hearing will be held as follows:

Thursday, February 6, 2003  
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 on these proposed regulations should be sent to:

John Thomas Murray  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing.

**72.0 Purpose**

The purpose of these regulations is to ensure the safety and well-being of residents in this State who use the services of home health agencies licensed pursuant to 16 Delaware Code, Section 122(3)o., and/or self-employed healthcare givers in the resident's own home or home of residence. To this end, persons selected for employment by home health agencies shall be subject to pre-employment criminal history checks and pre-employment drug testing; persons selected for employment by private individuals may be subject to pre-employment criminal history checks and pre-employment drug testing at the discretion of the private individual selecting the person for employment.

**72.1 Definitions**

72.101 "Conditional Employment" pertains to the period of time during which an applicant is working while his/her employer has not received the results of (a) the state criminal history record, (b) the federal criminal history record, and (c) the results of the testing for illegal drugs. Conditional employment must end immediately if either the state or federal criminal history record contains disqualifying crime(s) as delineated in Section 72.201 of these regulations.

72.102 "**Department or DHSS**" means Department of Health and Social Services.

72.103 "**Employer**" is any person, business entity, management company, home health agency, temporary agency, or other organization that hires persons or that places persons in a private residence for the purposes of providing licensed nursing services, home health aide services, physical therapy, speech pathology, occupational therapy or social services.

72.104 "Final Employment" means employment upon the employer's receipt of the State Bureau of Identification criminal history record containing evidence of no disqualifying convictions, a report by the Department that there are no disqualifying convictions in such person's federal criminal record, and the results of the testing for illegal drugs.

72.105 "**Hire**" means to begin employment of an applicant, or to pay wages for the services of a person who has not worked for the employer during the preceding three-month period, or to refer a caregiver to a private residence in

return for a finder or placement fee.

72.106 **“Home Health Agency”** is any business entity, public or private, which provides directly or through contract arrangements, to individuals in their home or private residence, either (a) two or more of the following services: licensed nursing, home health aide, physical therapy, speech pathology, occupational therapy, or social services where at least one of these services is licensed nursing or home health aide services or (b) home health aide services exclusively, provided under appropriate supervision.

72.107 **“Illegal drug”** for purposes of these regulations means marijuana/cannabis, cocaine, opiates including heroin, phencyclidine (PCP), amphetamines, barbiturates, benzodiazepene, methadone, methaqualone and propoxyphene.

72.108 **“Promotion”** means any change in job classification that results in additional responsibility and/or an increase in wages. It does not include a change in job status from part-time to full-time.

## 72.2 Criteria For Unsuitability For Employment

72.201 The following types of criminal convictions (or convictions in another jurisdiction which are comparable under Delaware law) automatically disqualify a person from providing home health services when such conviction occurred within the time periods specified:

- a. Conviction of any act causing death as defined in 11 Delaware Code, Chapter 5, Subchapter II, Subpart B with no time limit;
- b. Conviction of any sexual offense designated as a felony in 11 Delaware Code, Chapter 5, Subchapter II, Subpart D with no time limit;
- c. Conviction of any violent felony as specified in 11 Delaware Code, Section 4201(c) within the last ten years;
- d. Conviction of any felony involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 Delaware Code, Chapter 47 within the last ten years;
- e. Conviction of any felony other than those specified above within the last five years;
- f. Conviction of any misdemeanor involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 Delaware Code, Chapter 47 within the last five years;
- g. Conviction of any Class A misdemeanor included in 11 Delaware Code, Chapter 5, Subchapter II, Subpart A within the last five years;
- h. Conviction of any attempt to commit a crime, as defined in 11 Delaware Code, Section 531, with respect to any of the above listed offenses.

72.202 For other criminal convictions, the following criteria are to be used by the employer in determining whether a person is suitable for employment in

home health care:

- a. Type of conviction(s);
- b. Frequency of conviction(s);
- c. Length of time since conviction(s) occurred;
- d. Age at the time of the conviction(s);
- e. Record since the conviction(s);
- f. Relationship of conviction(s) to type of job assignment.

## 72.3 Employer Responsibilities

72.301 The employer shall ensure that a *Criminal History Record Request Form* has been completed and that the employer copy is maintained in the employer's files.

72.302 The employer shall maintain a signed copy of the *Receipt/Verification of Providing Fingerprints Form* from the Delaware State Police.

72.303 If an employer wishes to have a criminal history record check conducted on an applicant who has been the subject of a qualifying State and Federal background check within the previous 5 years, the costs shall be borne by the employer. Payment shall be made directly to the Delaware State Police. The Department shall, at no cost, provide the results of the Federal Bureau of Investigation information to the employer in the same manner as for any other applicant.

72.304 If a person is fingerprinted under the auspices of these regulations more than once during a five-year period, the costs shall not be borne by the State. If the State is billed for such fingerprinting costs, payment shall be obtained from the employer specified on the *Criminal History Record Request Form*. Such employer may obtain payment from the applicant.

72.305 If an applicant who has been conditionally hired is separated from employment for any reason prior to completion of the criminal history check process, the employer shall notify the Department upon such separation.

72.306 Upon receipt of the results of the criminal history record check and the results of the testing for illegal drugs, the employer shall determine the suitability of an applicant for final employment using the criteria in Section 72.202 unless the state or federal criminal history record check has identified a conviction of one or more automatically disqualifying crimes. An applicant for final employment with a conviction of an automatically disqualifying crime shall be terminated immediately.

72.307 The employer shall notify the applicant of the findings of the criminal history record check and the testing for illegal drugs.

72.308 The employer may provide to the individual in need of care a statement that the applicant has satisfactorily completed the criminal history record check and the testing for illegal drugs.

72.309 The Department reserves the right to obtain data from employers on the employment status of applicants



covered under these regulations.

#### **72.4 Applicants' Responsibilities**

72.401 Applicants are responsible for completing all information accurately and completely on the *Criminal History Record Request Form* and any form provided by the employer for use in obtaining mandatory pre-employment testing for illegal drugs. Any applicant who refuses to complete one or more of these forms shall be deemed to have voluntarily withdrawn his/her application.

72.402 The applicant is responsible for having his/her fingerprints taken and for returning a *Receipt/Verification of Providing Fingerprints to the Delaware State Police Form* to the employer.

72.403 The applicant is responsible for informing any potential employer if he/she has already been fingerprinted in accordance with these regulations. The cost of additional fingerprinting, exceeding the one fingerprinting per five-year period required by these regulations, shall not be borne by the State.

72.404 The applicant is responsible for submitting to the required testing for illegal drugs and providing verification of the testing to the employer.

#### **72.5 Department's Responsibilities**

72.501 When the Department has received all necessary documentation, it shall perform a review and ensure that the employer receives a copy of the applicant's state criminal history report and issue a written summary of the federal criminal history report. If conviction of a disqualifying crime is included on the state or federal criminal history report, the Department shall notify the employer immediately, prohibiting either the hire or continued conditional employment of the applicant.

72.502 Upon notification that an employer intends to hire a person who has previously had the criminal history check conducted by the Department, the Department shall review the criminal history on file and shall review the applicant's criminal history via the Criminal Justice Information System for any subsequent criminal information. If the review reveals a disqualifying conviction subsequent to the original review, the applicant shall be disqualified from employment with the new employer and the previously listed employers shall be notified of the recent conviction and encouraged to make personnel decisions based on the new information.

#### **72.6 Confidentiality**

72.601 In accordance with 11 Delaware Code, Section 8513(c), the Department shall receive information from the State Bureau of Identification pertaining to the identification and conviction data of any person for whom the Bureau has a record solely for the purpose of determining suitability for employment of the person whose record is received.

72.602 The Department shall store written and electronically recorded criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

72.603 The Department shall not release to employers, as defined in Section 72.103 of these regulations, copies of actual written reports of criminal history records prepared by the Federal Bureau of Investigation.

72.604 The following procedure shall be used to permit the review of criminal history record files by any applicant:

a. An applicant shall submit a request in writing to the Department for the on-site review of his/her criminal history record file.

b. An applicant shall make an appointment to review the record at the Department in the presence of a Department employee. The applicant shall present photo identification at the time of the review.

c. Written documentation of the date and time of the review and the names of those present shall be filed in the criminal history record file of the applicant.

d. Upon completion of such a review, the Department shall return criminal history records (written or electronic) to secure storage.

72.605 Criminal history record information shall not be disseminated to any person(s) other than the applicant, his/her employer or subsequent employer(s) as defined in Section 72.103 of these regulations, or the Department.

72.606 All employers shall store criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

72.607 Employers shall limit the use of criminal history record information to the sole purpose of determining suitability for employment.

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### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 2906(b) (16 Del.C. §2906(b))

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

These attached regulations, "State of Delaware Clean Indoor Air Act Regulations," replace by revision regulations previously adopted on November 27, 2002, pursuant to the State of Delaware Clean Indoor Air Act (16 Delaware Code, Chapter 29).

These Regulations establish standards for the enforcement of the Clean Indoor Air Act (CIAA) as it relates to most indoor enclosed areas to which the general public is



invited or in which the general public is permitted. The proposed amendments to the original Clean Indoor Air Act Regulations address the issue of applicability of the CIAA to private clubs.

### Notice of Public Hearing

Health Systems Protection Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed amendments to the State of Delaware Clean Indoor Air Act Regulations.

The public hearing will be held on Thursday, January 30, 2003 at 7:00pm in the Down's Lecture Hall located on the first floor of the Terry Building, Delaware Technical and Community College, Terry Campus, 100 Campus Drive, Dover, Delaware.

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

Health Systems Protection Section  
Federal and Water Streets  
Dover, DE 19903  
Telephone: (302) 744-4722

Anyone wishing to present his or her oral comments at these hearings should contact Mr. David P. Walton at (302) 744-4700 by Tuesday, January 28, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by Friday, January 31, 2003 to:

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

### State Of Delaware Clean Indoor Air Act Regulations

#### Section 99.1 GENERAL PROVISIONS

##### 99.101 Preamble

These Regulations are adopted in accordance with authority vested in the Secretary, Department of Health and Social Services, by 16 Delaware Code Chapter 29 §2906(b). These Regulations establish standards for the enforcement of the Clean Indoor Air Act as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted. Regulations establishing standards for the enforcement of the Clean Indoor Air Act affecting employers, employees and the workplace are adopted by the Department of Labor.

##### 99.102 Purpose

These regulations shall be construed and applied to

protect the nonsmoker from involuntary exposure to environmental tobacco smoke in most enclosed indoor areas to which the public is invited or in which the general public is permitted. The purpose of the Clean Indoor Air Act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.

##### 99.103 Severability

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

##### 99.104 Date of Effect

These regulations shall be effective November 27, 2002

##### 99.105 Inspections

The Secretary, DHSS, or authorized designee shall have right of entry into any enclosed indoor area subject to 16 Delaware Code Chapter 29.

##### 99.106 Waiver

The Department of Health and Social Services may upon written request waive the provisions of these Regulations if the Department determines there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of non-consumers of tobacco products.

##### 99.107 Definitions

The following words, terms, and phrases, when used in these regulations, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

For the purposes of these Regulations:

99.107.1 **“Department”** means the Delaware Health and Social Services (DHSS) as defined in Title 29, Section 7901. of the Delaware Code.

99.107.2 **“Environmental tobacco smoke”** (ETS), or "secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as sidestream smoke) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking" or "involuntary smoking."

99.107.3 **“Enclosed Indoor Area”** means an indoor area that is neither open nor partially enclosed, except for normal means of access and egress through doors or passageways.

99.107.4 **“Fraternal Benefit Society”** means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of 18 Delaware Code 6237(a)(2) of this title, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government and which provides benefits in accordance with this chapter, is hereby

declared to be a fraternal benefit society.

99.107.5 ~~“Private social function” means a function [to which the public is neither invited or generally permitted access and which is held in separate indoor enclosed indoor area to which the public is neither invited nor permitted access.~~ **“Private Club”** means any club or organization that does not permit the general public to access its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of the Clean Indoor Air Act, the establishment must adhere to all of, but not limited to, the following criteria:

a. Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;

b. Limits access and use of facilities, services and activities of the organization to members and guests of the members;

c. Is controlled by its membership and operates solely for the benefit and pleasure of its members;

d. Advertises exclusively and only to its members, excluding membership drives.

99.107.6 **“Public transportation of children”** means transportation which involves the transportation of children by a vehicle under the control of a daycare, school or other organizations.

99.107.7 **“Secretary”** means the Administrator of the Delaware Department of Health and Social Services (DHSS) of the State of Delaware, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

99.107.8 **“Smoking”** means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

99.107.9 **“Volunteer fire company”** means a fire, ambulance, or rescue company recognized as such by the Delaware State Fire Prevention Commission.

## 99.2 SMOKING PROHIBITIONS

99.201 Except as is provided in 99.301 of these regulations, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any of the following areas:

A. Any enclosed indoor area, including, but not limited to, those listed in 16 Del Code, Section 2903, to which the general public is invited or in which the general public is permitted. This shall apply to any organization, business or establishment which caters to or offers goods or services or facilities to, or solicits patronage from the general public.

Organizations or businesses that maintain lists and/or that charge nominal “membership fees” or cover charges to the general public prior to admission are not

considered private clubs and will not be exempt from the Clean Indoor Air Act.

B. Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines.

C. Functions or activities of private clubs or organizations, as defined by Section 99.107.5 of these regulations, when access by the general public is allowed or solicited.

~~C.~~ D. Any private vehicle used for the public transportation of children or as part of health care or day care transportation.

~~D.~~ E. In private homes or private residences when such homes or residences are being used for child care or day care.

99.202 No owner of any indoor enclosed area subject to 16 Delaware Code Chapter 29 and/or person(s) responsible for the management of such area or employee thereof, shall permit or authorize smoking by any person(s) in areas not designated specifically for the smoking of tobacco products as permitted by Section 99.301.

## 99.3 SMOKING PROHIBITIONS INAPPLICABLE

99.301 Smoking prohibitions shall not apply in the following:

A. Private homes, private residences and private automobiles,

B. Any indoor area where private social functions are being held when seating arrangements are under the control of the sponsor of the function and not the owner, operator, manager or person in charge of such indoor area;

C. Limousines under private hire

D. A hotel or motel room rented to 1 or more guests provided that the total percentage of such hotel or motel rooms does not exceed twenty-five percent (25%).

E. Any fund raising activity or function sponsored by a volunteer fire company, auxiliary of a fire company, or a volunteer ambulance or volunteer rescue company; provided, however, that the fund raising activity or function takes place upon property owned or leased by the volunteer fire, rescue or ambulance company.

F. Any fund raising activity or function sponsored by a fraternal benefit society as defined by 18 Delaware Code §6201; provided, however, that the fund raising activity or function takes place upon property owned or leased by said organization.

G. Any enclosed indoor area operated or in use exclusively by a private club as defined in 99.107.5 of these regulations.

## 99.4 POSTING OF SIGNS

99.401 Failure to Properly Post and Maintain Signs

Owners, operators, managers or other person(s) having control of enclosed indoor areas subject to the regulations of

16 Delaware Code Chapter 29 shall post signs which indicate "Warning: Smoking Permitted" prominently to indicate those locations where smoking is permitted pursuant to Regulation 99.301, B and D. Failure to prominently post properly maintained signs with letters at least one (1) inch in height and in accord with the CLEAN INDOOR AIR ACT shall be a violation subject to administrative penalties as set forth in Regulation 99.501 of the Clean Indoor Air Act Regulations.

### **99.5 COMPLIANCE AND ENFORCEMENT PROCEDURES**

#### 99.501 Administrative Penalties

Whoever violates any provision of these regulations shall be subject to an administrative penalty of \$100.00 for the first violation and not less than \$250.00 for each subsequent violation.

#### 99.502 Right to Administrative Hearing

Upon due notice that the Department intends to assess an administrative penalty, as indicated in 99.501, the entity may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing.

#### 99.503 Orders of the Department

Whoever refuses, fails or neglects to perform the duties required under these regulations or violates, neglects or fails to comply with the duly adopted regulations or orders of the Dept. of Health and Social Services, shall be fined not less than \$100.00 and not more than \$1,000.00, together with cost, unless otherwise provided by law.

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### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(1), (3)(a), (f) & (j)  
(16 Del.C. §122(1), (3)(a), (f) & (j))

#### **Public Notice**

#### **Regulations Governing the Production and Sale of Milk and Milk Products**

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

These regulations, "State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products" replace by rescission the current "State of Delaware Regulations Governing the Production and Sale of Milk, Milk Products, Imitation Milk, Non-Dairy Products and Frozen Desserts" previously adopted June 9, 1975, and most recently amended June 8, 1983. They are being proposed pursuant to Title 16 Delaware Code, Chapter 1, §122 (1) and (3) a, f and j.

These Regulations establish standards for the production and sale of milk and milk products within the State of Delaware.

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

Health Systems Protection Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed "State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products".

The public hearing will be held on January 29, 2003 at 7:00 PM in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover Delaware.

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

Environmental Health  
Williams State Service Center  
805 River Road  
Dover, DE 19901  
Telephone: (302) 739-5305

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David P. Walton at (302) 744-4700 by Monday, January 27, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by Friday, January 31, 2003 to:

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

#### **EDITOR'S NOTE ON INCORPORATION BY REFERENCE**

**THE FOOD AND DRUG ADMINISTRATION (FDA) REGULATION "GRADE A PASTEURIZED MILK ORDINANCE 2001 REVISION" HAS BEEN DECLARED DOCUMENTS GENERALLY AVAILABLE TO THE PUBLIC AND APPROPRIATE FOR INCORPORATION BY REFERENCE. FOR THIS REASON, IT WILL NOT BE PRINTED IN THE DELAWARE REGISTER OF REGULATIONS OR THE DELAWARE ADMINISTRATIVE CODE. THIS DOCUMENT MAY BE INSPECTED AT THE REGISTRAR OF REGULATIONS OFFICE, LEGISLATIVE HALL, 411 LEGISLATIVE AVE, DOVER, DELAWARE OR IS AVAILABLE AT THE REGISTER WEBSITE.**

**PDF Version of Regulations Governing the Production & Sale of Milk & Milk Products  
(Acrobat Reader Required)**

**DIVISION OF SOCIAL SERVICES**

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

**Public Notice****Temporary Assistance for Needy Families  
(TANF) 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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / TANF Program is proposing to amend its policy as it relates to the assessment prior to termination of benefits and to add language allowing for two categories of eligible people.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2003.

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

**Summary Of Proposed Changes****DSSM 3002.5:**

- Shifts to the client the responsibility to request a case review prior to terminating TANF due to time limit.

**DSSM 3024:**

- Adds language allowing for two categories of people to be able to receive cash benefits:
  - 1 Persons with 40 quarters work history; and
  - 2 Victims of severe trafficking pursuant to Public Law 106-386, Trafficking Victims Protection Act of 2000.

**DSS PROPOSED REGULATION #02-54  
REVISIONS****DSSM 3002.5 Assessment Prior to Termination of Benefits**

If requested by the client, At least 90 days prior to the end of the 36 or 48 cumulative month period in which a family has received assistance (through cash assistance and participation in pay-after-performance), the Division will complete another assessment of employability. If the

Division determines that the adult caretaker is not employable, the Division will continue benefits under the Children's Program as described in Section 3003. If the Division determines that the adult caretaker is employable, DABC benefits will end to the family as of the last day of the 36 or 48 cumulative months.

(Break In Continuity of Sections)

**DSSM 3024 Citizens and Aliens**

Only U.S. citizens and qualified aliens, as defined in section 431 of PRWORA, are eligible to receive public assistance benefits.

Citizens are those persons born in the 50 states and the district of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and Northern Mariana Islands. Children born outside of the United States are citizens if both parents are citizens.

Qualified aliens who entered the United States prior to August 22, 1996 are treated as if they were United States citizens. Qualified aliens are defined as aliens who are:

1. An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under section 208 of the INA;
3. A refugee admitted to the United States under section 207 of the INA;
4. An alien paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;
5. An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under section 241(b)(3) of the INA;
6. An alien granted conditional entry under section 203(a)(7) of the INA as in effect prior to April 1, 1980;
7. An alien who is a Cuban or Haitian entrant; or
8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Qualified aliens admitted on or after August 22, 1996, are barred from receiving cash benefits for five (5) years, except for certain excepted groups described below who are not subject to the bar. The following excepted groups of aliens are exempt from the 5-year ban on benefits:

1. Qualified aliens lawfully residing in the State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfied the requirements of 38 U.S.C. § 1304;
2. Refugees, for a period of five years after the date they entered the U.S. as refugees;

3. Asylees, for a period of five years after obtaining such status;

4. Aliens whose deportation of removal has been withheld, for a period of five years after obtaining such status;

5. Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, for a period of five years after they obtain such status; and

6. Amerasian immigrants from Vietnam, admitted to the U.S. pursuant to section 84 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of five years after their admission.

7. Individuals who are eligible due to being lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work.

8. Victims of Severe Trafficking per Public Law 106-386 Trafficking Victims Protection Act of 2000:

Severe forms of trafficking is defined as,

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
- the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Adult victims of severe trafficking will be certified by the U.S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking are treated like refugees. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to cash assistance.

9. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

#### Documentation:

1. Lawful permanent resident status is verified by:
  - INS Form I-551; or
  - Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94.
2. Refugee status is verified by:
  - INS Form I-94 annotated with stamp showing admission under section 207 of the INA;
  - INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(3);
  - INS Form I-766 (Employment Authorization Document) annotated "A3"; or
  - INS Form I-571 (Refugee travel Document).

3. Asylee status is verified by:

- INS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA;
- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(5);
- INS Form I-766 (Employment Authorization Document) annotated "A5";
- Grant letter from the Asylum Office of INS; or
- Order from an immigration judge granting asylum.

4. The status of an alien whose deportation is withheld is verified by:

- INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(10);
- INS Form I-766 (Employment Authorization Document) annotated "A10"; or
- Order from an immigration judge showing deportation withheld under §243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under §241(b)(3) of the INA.

5. Cuban/Haitian entrant status is verified by:

- INS Form I-551 (Alien Registration Receipt Card) with the code CU6, CU7, or CH6;
- An unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU6 or CU7;
- INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" (Status Pending);
- INS Form I-94 showing parole into the United States on or after October 10, 1980; and
- Cuban or Haitian passport, identity card, birth certificate, or other reasonable evidence of Cuban or Haitian nationality

6. Amerasian immigrant status is verified by:

- INS Form I-551 with the code AM6, AM7, or AM8; or
- Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code AM1, AM2, or AM3.

7. The 40 qualifying quarters of work is determined under Title II of the Social Security Act. This includes the quarters of work not covered by Title II of the Social Security Act. Quarters of work not covered by Title II of the Social Security Act is based on the sum of the following:

- quarters the alien worked;
- quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and
- quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased.

NOTE: A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage

of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

8. When a victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees **except** DSS will:

- Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT SEND FOR SAVE VERIFICATION.)
- Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.
- Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.
- Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.
- Re-certification letters will used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.

9. For aliens who (or whose child or parent) is claiming that they have been battered or subjected to extreme cruelty in the United States and otherwise meets the requirements of 8 U.S.C. 1641(c) call PPDU to determine if the documentation provided is satisfactory.

Aliens admitted as temporary residents are not eligible for public assistance benefits. Included are visitors, tourists, diplomats, and students.

Citizenship and alien status are verified at the time of application.

## **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

### **Public Notice 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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to amend its policy as it relates to the restoration of food stamp benefits to certain qualified aliens. These mandatory provisions must be implemented on April 1, 2003, in accordance with Public Law 107-171 Farm Security and Rural Investment Act of 2002 and Public Law 106-386 Trafficking Victims Protection Act of 2000.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2003.

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

### **SUMMARY OF PROPOSED CHANGES**

- Restores benefits to qualified aliens who have been in the U. S. for five years; and
- Makes certain victims of a severe form of trafficking in persons eligible for food stamps just like refugees.

### **DSS PROPOSED REGULATIONS #02-52**

#### **REVISIONS:**

##### **DSSM 9007.1**

Household members meeting citizenship or alien status requirements.

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if at least one of the parents is a citizen;

2. Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U.S. non-citizen nationals;

3. Individuals who are:

(A) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;

(B) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U. S. to Indians because of their status as Indians;

(C) Lawfully residing in the U. S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U. S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(i) The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(ii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 22; an unmarried child under the age of 18 or if a full-time student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.

4. Individuals who are eligible indefinitely due to being:

(A) lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien

earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

(B) lawfully living in the U. S. for five (5) years as a qualified alien beginning on the date of entry;

Qualified aliens include lawfully admitted residents (holders of green cards), those granted asylum, refugees, victims of a severe form of trafficking, those paroled in the United States under section 212(d)(5) of the INA for at least one year, those whose deportation is being withheld, those granted conditional entry under section 501(e) of the Refugee Education Assistance Act of 1980, Cuban or Haitian entrants, and under certain circumstances, a battered spouse, battered child or parent or child or a battered person with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.

~~(B C)~~ lawfully in US on 8/22/96 and is now under 18 years of age;

~~(E D)~~ lawfully in US and is now receiving disability or blind (payments listed under DSSM 9013.1);

~~(D E)~~ lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).

~~(E F)~~ An alien with one of the following military connections:

(i) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;

(ii) A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed forces of the U. S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(iii) An individual on active duty in the Armed Forces of the U.S. other than for training; or

(iv) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.

5. The following aliens with a seven-year (7) time limit:

(A) refugees admitted under section 207 of the INA;



(B) asylees admitted and granted asylum under section 208 of the INA;

(C) aliens whose deportation or removal has been withheld under section 241(b)(3) and 243 (h) of the INA.

(D) Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and

(E) Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.

(F) Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Adults victims of severe trafficking will be certified by the U.S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to receive food stamps.

When a victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

1. Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)

2. Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.

3. Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.

4. Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.

5. Re-certification letters will used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular

recertification periods will apply to these individuals in the same manner that they apply to refugees.

The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).

6. An alien who has been battered or subjected to extreme cruelty in the U. S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered.

Only eligible if a veteran or on active duty in U.S. armed forces (or spouse or unmarried dependent child of veteran or person on active duty) or lawfully in US on 8/22/96 and under 18 years of age; lawfully in US ~~on 8/22/96~~ and disabled or blind; or lawfully in US and 65 or older on 8/22/96.

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### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 507 (31 Del.C. §507)

#### **PUBLIC NOTICE**

#### **Delaware Medicaid/Medical Assistance Programs**

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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policies in the Division of Social Services Manual (DSSM) related to Qualifying Individuals 2, the counting of Veteran Administration pension payments, and the Food Stamp Program standard utility allowance.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2003.

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



## Summary of Proposed Changes

### 1. 17500, 17520, 17550 Qualifying Individuals

First, the eligibility group Qualifying Individuals 2 (QI-2) expires on December 31, 2002. This group was authorized by Section 1933 of the Social Security Act, which provided 100% federal funding for the payment of all or part of the Medicare Part B premiums for Qualifying Individuals on an annual basis from 1998 through 2002. This provision sunsets on December 31, 2002.

### 2. 20210.7.1, 20620.1, 20995.1 Veterans' Pension Payments, Personal Needs Allowance

The second is a revision to the policy on Veterans' Administration (VA) pensions to comply with federal regulations. Certain veterans receive a VA Improved Pension that is limited to \$90. The regulation states that this pension is not counted for eligibility or post-eligibility purposes. The post-eligibility calculation determines the amount that a nursing home Medicaid recipient must contribute to the cost of care.

DSS has been correctly excluding the pension for eligibility, but incorrectly counting the pension in the post-eligibility calculation. Some veterans were required to contribute more to cost of care than the regulations allow.

### 20910.5 Excess Shelter Allowance

And, third, DSS is revising the excess shelter allowance to align with the upcoming Food Stamp Program change to a standard utility allowance. DSS has been allowing the use of either the standard utility allowance or actual utility expenses. The excess shelter allowance is part of the spousal impoverishment post eligibility calculation that is used to provide income to the community spouse of a nursing home recipient. The community spouse may keep some of the nursing home recipient's income for his or her maintenance needs in the community.

## DSS PROPOSED REGULATIONS #02-53 REVISIONS

### 17500 Qualifying Individuals

Section 4732 of the Balanced Budget Act of 1997 establishes a capped allocation for each of five years beginning January 1998, to states for payment of Medicare Part B premiums for two new mandatory eligibility groups of low-income Medicare beneficiaries, called Qualifying Individuals or QIs. This provision amends section 1902(a)(10)(E) of the Social Security Act concerning Medicare cost-sharing for Qualified Medicare Beneficiaries (QMBs) and Specified Low Income Medicare Beneficiaries (SLMBs). It also amends section 1905(b) of the Social Security Act concerning the Federal Medical Assistance Percentage (FMAP) by incorporating reference to and

establishing a new section 1933, for QIs.

A Continuing Resolution (P.L. 107-229, as amended by P.L. Nos. 107-240 and 107-244) has been enacted that extends, at current funding levels, the QI-1 benefit through January 21, 2003. The Continuing Resolution did not extend the expiration date for QI-2s.

QIs are individuals who would be QMBs but for the fact that their income exceeds the income levels established for QMBs and SLMBs. This means that QIs must meet all the technical and financial eligibility requirements of the QMB program except for the income limits.

Unlike QMBs or SLMBs, who may be determined eligible for Medicaid benefits in addition to their QMB/SLMB benefits, QIs cannot be otherwise eligible for Medicaid.

(Break In Continuity of Sections)

### 17520 Qualifying Individuals 2

This eligibility group expired on December 31, 2002.

~~Individuals in the second group of QIs, called QI-2s, must have income that exceeds 135% of the FPL, but the income must be at or below 175% of the FPL. The benefit for QI-2s consists only of the portion of the Medicare Part B premium that is attributable to the shift of some home health benefits from Part A to Part B. The amount will increase by an additional 1/7 in each of the following years.~~

(Break In Continuity of Sections)

### 17550 Capped Allocation

This provision is effective for premiums payable beginning with January 1998 and ending with December 2002. Each state will receive a specific capped allocation for QIs.

A Continuing Resolution (P.L. 107-229, as amended by P.L. Nos. 107-240 and 107-244) has been enacted that extends, at current funding levels, the QI-1 benefit through January 21, 2003. The Continuing Resolution did not extend the expiration date for QI-2s.

Because of the capped allocation, we must limit the number of QIs selected in a calendar year so that the amount of benefits provided to these individuals does not exceed our state allocation. QIs will be selected on a first-come, first-served basis. This means the QIs are selected in the order in which they apply for benefits.

Once a QI is approved, the QI is entitled to receive assistance for the remainder of the calendar year, provided the individual meets the eligibility requirements. However, the fact that an individual receives assistance at any time during the year does not necessarily entitle the individual to continued assistance for any succeeding year. We will give preference to individuals who were QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year.

(Break In Continuity of Sections)

### 20210.7.1 VA Pensions

Pension payments are unearned income based on a combination of service and a nonservice-connected disability or death. All VA pension payments (except those resulting from Aid and Attendance or Housebound Allowance, paid on the basis of a Medal of Honor or paid under a special act of Congress) are based on need and do not receive the \$20 general income exclusion.

The Veterans' Benefits Act of 1992 (Public Law 101-508) enacted October 1, 1992, limits VA Improved Pensions for a veteran and a surviving spouse (with no children) residing in Medicaid nursing facilities. The VA Improved Pension is limited to \$90 a month and is ~~excluded as income. The law prohibits any part of the \$90 pension from being applied to the cost of care. The veteran or surviving spouse will receive a personal needs allowance of \$90 not counted as income in the eligibility or post-eligibility process. There is no interaction between the reduced pension and the personal needs allowance. If the veteran has income from other sources that is considered countable for the purposes of post-eligibility, perform the post-eligibility calculations to determine the amount of the veteran's liability to his or her cost of care.~~

(Break In Continuity of Sections)

### 20620.1 Personal Needs

\$44.00 per month of available income is to be protected for the recipients direct personal needs, as defined by Form MAP-64; or

a) ~~If the recipient receives a reduced VA Improved Pension (not to exceed \$90) the personal needs amount will be \$90 or the amount of personal needs allowance in the state plan, whichever is greater; or~~

If the recipient regularly attends a rehab/educational program off the grounds of his nursing facility, including employment for the purpose of rehabilitation in a sheltered workshop off the grounds of the facility, \$50.00 per month (rather than \$44) will be protected; or

b) For nursing home residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care rate will be deducted from gross earned income:

Mandatory payroll deductions that are a condition of employment including, but not limited to:

- Federal, State and Local Taxes
- FICA
- Union Dues
- Insurance premiums
- Pension contributions
- Transportation costs as paid to & from work
- Clothing and personal needs allowance of \$75/

month.

If earnings average more than \$700 a month in a calendar year, this is considered SGA and DSS can allow a personal needs allowance of up to the AFC rate. If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and DSS can allow the \$44 or \$50 personal needs allowance. If average earnings are between \$300 and \$700, DSS must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to unimpaired people in the community performing similar jobs.

(Break In Continuity of Sections)

### 20995.1 Post-Eligibility Deductions

Post-eligibility determination is revised to allow the following deductions from the income of the institutional spouse. The deductions must be taken in the following order.

a. Personal Needs Allowance for the institutional spouse

The personal needs allowance amount is \$30 per month for SSI recipients ~~up to \$90 per month for recipients of VA Improved Pensions~~; and \$44 per month for all others. If the institutionalized spouse is employed, personal needs may range from \$50 up to the Adult Foster Care rate per month. See Section 20620.1 Personal Needs.

b. Community Spouse Income Allowance

The community spouse monthly income allowance is the amount of income necessary to bring the spouse's monthly otherwise available income up to:

the applicable percent of the FPL for two, plus an additional amount for excess shelter

The total amount available to the community spouse may not exceed "Cap for Minimum Monthly Maintenance Standard". This standard usually changes each January based on the Consumer Price Index for Urban Consumers.

c. Family Allowance.

d. Items for which protection of income has been approved by the Long Term Care Coordinator and/or incurred medical expenses of the institutionalized spouse.

(Break In Continuity of Sections)

### 20910.5 Excess Shelter Allowance

The amount by which the spouse's expenses for rent or mortgage payment, property taxes, and homeowner's insurance plus the Food Stamp standard utility allowance (SUA) exceeds 30% of the applicable percent of the FPL for two. ~~Effective 10/1/92 the basic SUA is \$164; the SUA plus heat is \$239. Actual utilities may be used if the client~~

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 23 Delaware Code,  
Section 2114, (23 Del. C. 2114)

**SAN# 2002-22**

**1. TITLE OF THE REGULATIONS:**

Tidal Finfish Regulations Regulation No. #22 Tautog  
Size Limit

**2. BRIEF SYNOPSIS OF THE SUBJECT,  
SUBSTANCE AND ISSUES:**

In order to remain in compliance with the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Tautog, as amended, tidal finfish regulation #22 must be amended by adopting one of eight catch reduction scenarios, approved by the ASMFC Tautog Technical Committee. Each of these scenarios would reduce Delaware tautog catch by 25%, as mandated in the FMP. Both recreational and commercial fishers would be affected, as commercial size limits, creel limits and seasons are the same as recreational management measures.

This amendment to Tidal Finfish Regulation #22 would change the title to: Tautog Management Measures. This would more accurately reflect the use of seasons and creel limits, as well as size limits to manage tautog.

One of the following approved catch reduction scenarios will be selected to reduce the catch by 25%:

A. April 1 – June 30, 3 fish creel limit, 15”  
minimum size,

July 1 – August 31 and

September 29 – March 31, 10 fish creel limit,  
14” minimum size

September 1 – 28 – **CLOSED SEASON**

B. July 1 – August 31

and

September 24 – March 31, 10 fish creel limit, 14”  
minimum size

April 1 – June 30

and

September 1 – 23 **CLOSED SEASON**

C. September 22 – February 29, 10 fish creel limit, 14”  
minimum size

March 1 – September 21 – **CLOSED SEASON**

D. April 1 – June 30, 3 fish creel limit, 15” minimum  
size

July 1 – August 31

and

September 27 – March 31, 8 fish creel limit, 14”  
minimum size

September 1 – 26 – **CLOSED SEASON**

E. April 1 – June 30, 3 fish creel limit, 15” minimum  
size

July 1 – August 31

and

September 25 – March 31, 7 fish creel limit, 14”  
minimum size

September 1 – 24 – **CLOSED SEASON**

F. April 1 – June 30, 3 fish creel limit, 15” minimum  
size

July 1 – August 31

and

September 24 – March 31, 6 fish creel limit, 15”  
minimum size

September 1 – 23 – **CLOSED SEASON**

G. April 1 – June 30, 3 fish creel limit, 15” minimum  
size

July 1 – August 31

and

September 20 – March 31, 5 fish creel limit, 14”  
minimum size

September 1 – 19 – **CLOSED SEASON**

H. April 1 – June 30, 3 fish creel limit, 15” minimum  
size

July 1 – September 7

and

September 19 – March 31, 4 fish creel limit, 14”  
minimum size

September 8 – 18 – **CLOSED SEASON**

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

If Delaware fails to comply with the terms of this regional fishery management plan, the fishery for tautog in Delaware could be closed by the U.S. Department of Commerce.

**4. STATUTORY BASIS OR LEGAL AUTHORITY  
TO ACT:**

§ 906(e)(2)(a), 7 Del. C.

Tidal Finfish Regulation No. 22

**5. OTHER REGULATIONS THAT MAY BE  
AFFECTED BY THE PROPOSAL:**

None

**6. NOTICE OF PUBLIC COMMENT:**

Individuals may present their opinions and evidence or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 at 7:30 p.m. on Monday January 6, 2003. The record shall remain open for written

comments until 4:30 p.m. on Friday January 31, 2003.

**7. PREPARED BY:**

Jeff C. Tinsman, (302) 739-4782, December 11, 2002

**TIDAL FINFISH REGULATION NO. 22 TAUTOG;  
SIZE LIMITS, CREEL LIMITS AND SEASONS**

a) It shall be unlawful for any person to possess any tautog Tautoga onitis, less than fourteen (14) inches in total length during the period beginning at 12:01 a.m. ending at 12:00 p.m. on March 31, next ensuing.

b) It shall be unlawful for any person to possess any tautog less than fifteen (15) inches in total length during the period beginning at 12:01 a.m. on April 1 and ending at 12:00 p.m. on June 30, next ensuing.<sup>1</sup>

c) Notwithstanding the provisions of 7 Del. C §938 and §939, it shall be unlawful for any person to possess more than three (3) tautog during the period beginning at 12:01 on April 1 and ending at 12:00 p.m. on June 30, next ensuing, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging]<sup>2</sup>

d) It shall be unlawful for any person to possess more than ten (10) tautog during the period beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.<sup>3</sup>

e) Notwithstanding the provisions of subsections (a) and (d) of this regulation, it shall be unlawful for any person to possess any tautog during the period beginning at 12:01 a.m on September 8 and ending at 12:00 p.m. on September 18, next ensuing, except in said person's personal abode or temporary or transient place of lodging.<sup>3</sup>

1. This section may be stricken if management options B or C are selected after the public hearing. In each case the period April 1 – June 30 would be part of a closed season.

2. The possession limit of 10 tautog would be reduced to 8, 7, 6, 5, or 4 if management option D, E, F, G or H, respectively, is selected following the public hearing.

3. The closed season for tautog, specified in this section would be increased if management option A, B, C, D, E, F or G is selected, following the public hearing.

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**

**BOARD OF ARCHITECTS**

24 DE Admin. Code 300

Statutory Authority: 24 Delaware Code,  
Section 301 (24 Del.C. §301)

**ORDER**

**AND NOW**, this 4th day of December, 2002, in accordance with 29 Del. C. § 10118 and for the reasons stated hereinafter, the Board of Architects of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

**I. Nature of the Proceedings**

Pursuant to the Board's authority under 24 Del. C. §§ 301 and 306, the Board proposed to revise its existing Rules and Regulations in order to conform with changes in the national standards for the licensing and practice of architecture propounded by National Council of Architectural Registration Boards (NCARB). The proposed amendments, attached as Exhibit "A" essentially revise the existing Rules and Regulations in their entirety. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations, attached as Exhibit "B", was published in the Delaware Register of Regulations dated October 1, 2002, and two Delaware newspapers of general

circulation, in accordance with 29 Del. C. § 10115. The public hearing was held on November 6, 2002 at 2:00 p.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order **ADOPTING** the amendments to the Rules and Regulations as proposed.

**II. Evidence and Information Submitted**

The President opened the public hearing on the Rules and Regulations at 2:00 p.m. as provided in the Agenda. The President began by explaining that the process to revise the Rules and Regulations has taken over two years. The process was initiated as the result of recommendations made in Sunset hearings and reports. The purpose of the revisions was to conform the Delaware Rules and Regulations to changes in the standards of and practice of architecture made by the NCARB in recent years.

Initially, the Board delegated the revision of the rules to a subcommittee composed of Board Members and counsel. After the subcommittee completed its work, the Board discussed and considered the revisions, then issued the Proposed Rules and Regulations, which have been duly published and open for written public submissions. The President gave a brief overview of the proposed revisions to the Rules and Regulations during the public hearing.

Prior to the public hearing, the Board received written comments dated November 2, 2002, attached as Exhibit "C", from Harold Judefind, President Delaware Chapter of the

American Institute of Architects. The President read Exhibit "C" into the record.

The Board then received public comment. Mr. Judefind spoke on behalf of Delaware AIA. He thanked the Board for all of its work in undertaking such a major revision of the rules. He stated that the proposed rules had been circulated for comment in the Delaware AIA and that his written submission reflected the comments of that organization. Mr. Judefind addressed some minor technical issues raised in the written submission. Since "American Institute of Architects" is referred to in the rules, it should be defined. He noted that transcripts of continuing education should be accepted by the Board as evidence of course completion. He further pointed out a typographical error in section 7.1.3.

Mr. Judefind then discussed other issues of concern. First, the AIA was concerned that the definition of "Administration of Construction Contracts" was too broad requiring administration on all projects when the nature of the service is normally a matter of contract. Second, the proposed continuing education requirements of 20 hours per biennial licensing period differed from the 16 hours biennial requirement of the AIA. Third, the AIA was concerned about whether the resident architect requirement in section 7.5.1 prohibited work from home. Fourth, Mr. Judefind stated that the proposed rules did not address unlicensed practice of architecture.

The next member of the public to speak was Kenneth Freemark. Mr. Freemark recognized the Board's efforts in preparing the Proposed Rules and Regulations. He expressed his support of the letter submitted by the AIA. He further stated that the Board should adopt the AIA standard for continuing education rather than the 20 hour biennial requirement proposed by the Board. Mr. Freemark noted that enforcement was the key to the effectiveness of the regulations. He strongly suggested that a copy of the new regulations be mailed to each licensee.

At the close of the public comment, the President recognized Board Member Jennings. Mr. Jennings commented that the enforcement of unlicensed practice of architecture was a statutory matter not subject to revision by Board rule. Mr. Jennings then commented that the definition of "Administration of Construction Contracts" in the proposed rules does not prevent the provision of architectural services which do not include administration. Board Member Jackson stated that the rule does not interfere with an architect's ability to contract the scope of services.

Board Member Patrick Ryan then discussed the purpose of Section 7.5.1. The intent of that section was to ensure supervision of drafting services performed by shops away from a Delaware architectural office. The services performed by individuals in the intern development program must be conducted in the office under direct supervision. However, the section does not prohibit work performed at

home by an architect using informational technologies.

Board Member Jennings made a motion that: 1) AIA be defined as American Institute of Architects and included in Section 1.0; and, 2) in the first sentence of section 7.1.3 "her or she" be changed to "he or she". The motion was seconded and carried unanimously.

Upon passage of the motion, the Board considered continuing education requirements. Board Member Patrick Ryan explained that the Board's proposed requirement of 20 hours every two years all in the area of health, safety and welfare was based on NCARB recommendations. The President stated that there was a range of continuing education requirements in other jurisdictions and that Board's proposed requirement would be more extensive than many other jurisdictions. Board Member Wootten stated that the continuing education requirements were necessary in the public interest. Board Member Atchley commented that the obligation to complete health, safety and welfare credits during the period was particularly important. Board Member Cobb agreed that it was important to require that credits be in the health, safety and welfare area. However, no Board Member expressed a meaningful distinction between 20 hours or 16 hours over the biennial reporting period.

Whereupon, upon motion duly made, seconded and carried unanimously, it was resolved that number of continuing education hours over the biennial reporting period be reduced to 16 from 20, provided however, that the requirement that all continuing education hours be obtained in health, safety and welfare shall be maintained. The public hearing adjourned at 3:50 p.m.

### **III. Findings of Fact and Conclusions**

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.

2. The proposed amendments to the Rules and Regulations are necessary to implement requirements for the licensing and practice of architecture that are consistent with national standards as promulgated by NCARB. The proposed amendments will assist applicants and licensees in understanding the requirements for the practice of architecture in Delaware.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 Del. C. § 306(1).

4. The Board concludes that the suggested revisions to include the definition of AIA as the American Institute of Architects; correct the typographical error in Section 7.1.3; and, change the number of required continuing education hours per biennial reporting period from 20 to 16 (without changing the requirement that all continuing education hours be obtained in the area of health, safety and welfare) are

cosmetic in nature and not substantive. The Board, therefore, finds that it should adopt the proposed non-substantive changes and does so pursuant to 29 Del.C. §§ 10118(c), 10113.

5. The Board concludes that continuing education is a vital part of the practice of architecture. The AIA standard of 16 hours of continuing education per biennial reporting period is sufficient to keep Delaware architects reasonably informed of advances in the profession. The Board further concludes that the areas of health, safety and welfare are so important to the public safety that all required continuing education for the reporting period be obtained in the areas of health, safety and welfare.

6. For the foregoing reasons, the Board concludes that it is necessary to adopt the proposed amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 Del. C. Chapter 1.

#### IV. Decision and Order to Adopt Amendments

**NOW, THEREFORE**, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit D attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware Register of Regulations pursuant to 29 Del. C. § 10118(g).

#### By Order Of The Board Of Architecture (As authenticated by a quorum of the Board)

President Charles B. Ryan, RA, Professional Member  
Patrick W. Ryan, RA, Professional Member  
Peter H. Jennings, RA, Professional Member  
Steven W. Atchley, Public Member  
Susan J. Frederick, RA, Professional Member  
S. Page Nelson, Public Member  
C. Terry Jackson, II, RA, Professional Member  
Loretta Wootten, Public Member  
Goodwin K. Cobb, IV, Public Member

#### 1.0 Scope: Definitions

**Purpose:** Regulations of the Delaware Board of Architects are set forth for the purpose of ~~interpreting~~ clarifying and implementing 24 Del.C. Ch. 3 which establishes the Board and confers upon it responsibility for registration of architects and the regulation of the practice of architecture.

~~Citation: The regulations of the Board of Architects shall be known, and may be cited, as Board Regulations.~~

~~Board's Regulatory Authority: The Board's regulations are promulgated under authority of 24 Del.C. §301 and 29 Del.C. §10111.~~

**Invalidity:** Any provision found to be invalid shall not affect any other provision and the remaining provisions shall remain in full force and effect.

**Terms Defined by Statute:** Terms defined in 24 Del.C. Ch. 3 ~~(the "Act")~~ shall have the same meanings when used in these regulations, ~~unless the context or subject matter clearly requires a different interpretation~~ except where the context clearly indicates a different meaning.

**Terms Defined Herein:** As used in these regulations, the following terms shall have the following meanings ~~unless the context or subject matter clearly requires a different interpretation~~ except where the context clearly indicates a different meaning.

#### [AIA: American Institute of Architects]

**Administration of Construction Contracts:** Shall comprise at least the following services: (i) visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the building permit was issued; (ii) processing shop drawings, samples, and other submittals required of the contractor by the terms of the construction contract documents; and (iii) notifying an owner and the appropriate building official of any code violations, changes that affect code compliance, the use of any materials, assemblies, components, or equipment prohibited by a code, major or substantial changes between such technical submissions and the work in progress, or any deviation from the technical submissions that he or she identifies as constituting a hazard to the public, that he or she observes in the course of performing his or her duties.

**Applicant:** An individual who has submitted an application for registration to the Board.

**Architect:** Any person who is authorized to practice architecture as defined in Title 24, Chapter 3 and who ~~has~~ received holds a current ~~a~~ Certificate of Registration.

**A.R.E.:** The current Architect Registration Examination, prepared by NCARB.

**Board:** Delaware Board of Architects, 861 Silver Lake Blvd. Cannon Building, Suite 203, Dover, De 19903.

#### CACB: Canadian Architectural Certification Board.

**Direct Supervision:** That degree of supervision by a person overseeing the work of another, whereby the supervisor has both control over and detailed professional knowledge of the work prepared under ~~his/her~~ the person's supervision. Direct supervision shall mean that the supervisor and the individual being supervised perform their work in the same office where personal contact is routine.

**Division:** Division of Professional Regulation, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, Delaware 19904.

**EESA:** Educational Evaluation Services for Architects. A program provider of architectural education evaluation services administered by Educational Evaluators, Inc., a private organization not affiliated with NCARB or any of its member boards: NAAB.

**Examination:** The current Architect Registration



Examination (A.R.E.), as accepted by the Board.

**IDP Applicant:** An individual who has completed the IDP training requirements set forth herein 100.302 and has submitted an application for registration to the Board.

**Initial Registration:** Receiving for the first time a certificate of registration as an architect in any United States jurisdiction or Canadian province.

**Intern:** Any individual in the process of satisfying the Board's training requirements. This includes graduates from recognized architectural programs, architectural students who acquire acceptable training prior to graduation and other qualified individuals identified by the Board.

**NAAB:** The National Architectural Accrediting Board.

**NCARB:** The National Council of Architectural Registration Boards.

**Principal:** An individual who is a registered architect and in charge of an organization's architectural practice, either alone or with other registered architects.

**Safety:** Design characteristics of a building or its surrounding site relating to, but not limited to, fire protection, means of egress, occupancy requirements, structural design and other elements of construction necessary to minimize potential harm from fire, smoke, fumes, structural failure or other hazardous conditions; compliance with occupancy classification requirements; compliance with construction classification requirements; means of egress; fire-rated construction assemblies; compliance with interior finish requirements; fire detection, alarm and suppression systems; and compliance with environmental health regulations and smoke control systems, compliance with the minimum requirements for heating and cooling; natural and artificial illumination; natural and artificial ventilation; physical hygiene; and accessibility from environmental barriers.

**VTU:** Value Training unit, used to calculate the hours of training earned by IDP applicants

## 2.0 General Provisions

**2.1 Board Meeting:** ~~The Board shall hold a regularly scheduled business meeting at least once in each quarter of a calendar year and at such other times as the President may deem necessary, or at the request of a majority of Board members. A majority of members shall constitute a quorum; and no action shall be taken without the affirmative vote of at least 5 members.~~

**2.2 Board Seal:** ~~The outside circle of the seal measures 1-13/16" across the center. The center emblem is taken from the Great Seal of the State of Delaware. This seal shall be applied to all certificates of registrations issued by the Board.~~

**2.3 Public Information:** ~~The Board shall, at its offices, maintain a roster of duly registered architects, open to public inspection, which shall show each registered architect's name, registration number and last known mailing address.~~

~~2.4 Public Records: The Board shall provide reasonable access to its public records in accordance with 29 Del.C. §10001 et. seq. The Board's administrative assistant will provide copies of public records, upon written request, at a copy fee of 25 cents per page. Records in active use or in storage will be made available in a reasonably expedient manner.~~

### ~~2.5 2.1 NCARB:~~

~~2.5.1 2.1.1 The Board shall maintain membership in NCARB and pay the necessary costs thereof.~~

~~2.5.2 2.1.2 The Board shall keep up-to-date information on the recommended policies adopted from time to time by NCARB.~~

~~2.5.3 2.1.3 The Board shall cooperate with NCARB in establishing uniform standards of architectural registration throughout the United States.~~

~~2.6 Fees: Fees shall be determined by the Division of Professional Regulation ("Division") under 24 Del.C. §310. Application and examination fees shall be non-refundable, in accordance with section 6.4~~

### ~~2.7 2.2 Practice of Architecture:~~

~~2.7.1 2.2.1 Only architects shall engage in the practice of architecture as defined in Title 24, Chapter 3. The practice of architecture means the rendering or offering to render those services, hereinafter described, in connection with the design and construction, enlargement or alteration of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding structures; the services referred to include planning, preparing studies, designs, drawings, specifications and other technical submissions and furnishing administration of construction contracts.~~

~~2.7.1.1 activities associated with detached, single and two-family dwellings, or~~

~~2.7.1.2 routine maintenance and repair work which does not affect structural or other safety features of buildings, regardless of whether local authorities require a building permit for such work.~~

~~2.2.2 Services offered in connection with the "utilization of space within" such structures include space planning and programming, and interior design. Services offered in connection with the "space surrounding such structures" include site analysis and site design. These provisions shall not be construed to prevent or affect the practice of landscape architecture by a landscape architect or the practice of engineering by an engineer.~~

~~2.2.3 The seal of an architect shall not be required for~~

~~2.2.3.1 activities associated with detached, single and two-family dwellings, and any sheds, storage buildings and garages incidental to such dwellings or~~

~~2.2.3.2 farm buildings, including barns, silos, sheds or housing for farm equipment and livestock, provided~~



such structures are designed to be occupied by no more than ten (10) persons; or

~~2.2.3.3 routine maintenance and repair work alteration, renovation or remodeling of a structure which does not affect structural or other safety features of buildings the structure, regardless of whether local authorities require a building permit for such work and when the work contemplated by the design does not require the issuance of a permit under applicable building codes.~~

### 3.0 Application for Registration:

3.1 Submission of Application fee: Every individual seeking registration shall submit an application to the Board, accompanied by the filing fee established above. Such filing fee shall be determined in accordance with statutory criteria.

3.1.1 References from employers listed on an application for registration must be provided to substantiate the minimum experience required in support of education and training standards. It is the applicant's responsibility to see that fees references are submitted to the Board. Such reference information shall be submitted on forms furnished by the Board.

3.1.2 Proof of self-employment must be substantiated with the following:

3.1.2.1 a copy of business licenses license(s) for those duration's claimed as part of the application or a letter from your accountant or local building official substantiating experience, or similar objective proof of self-employment.

~~3.2 Supplemental Material: Material submitted to supplement any previously filed application must include copies of the originally submitted application and all material filed with that application.~~

#### 3.3 3.2 Applicants; General:

~~3.3.1 3.2.1~~ Applicants needing additional practical experience reference forms may use photostatic copies.

~~3.3.2 3.2.2~~ The Board will take no action to review an application until all references, transcripts and fees are received.

~~3.3.3 3.2.3~~ An applicant is not registered until so notified in writing by the Board.

~~3.3.4 3.2.4~~ Filing of an application, fees, etc., shall not be construed as completing the registration process; the board will register applicants at regular Board meetings only.

~~3.3.5 3.2.5~~ A license issued by the Division of Professional Regulation certifies that the individual named has met the qualifications of the Board to engage in practice.

~~3.3.6 Applicants shall use only residence addresses when corresponding with the Board; no correspondence will be maintained using business addresses.~~

3.4 3.3 Requirements of All Applicants. Applicants Must:

~~3.4.1 3.3.1~~ submit the required fees

~~3.4.2 3.3.2~~ answer all questions on the application form completely and legibly, using a typewriter for all items except signatures.

~~3.4.3 3.3.3~~ obtain the notarization of the application in the space provided. Applications shall contain a current affidavit that has been signed and notarized within the twelve (12) months immediately preceding presentation of the application to the Board.

~~3.5 3.4~~ Applicants for Registration by Examination (A.R.E.)

3.4.1 Must have filed a completed application with the Board, including the NCARB record showing completion of IDP training requirements.

~~3.5.1 must meet the education and training requirements adopted by the Board on January 14, 1993.~~

~~3.5.2 must have filed a completed application, including the IDP record, at least 60 days prior to the A.R.E. for which the applicant wishes to sit.~~

~~3.5.3 must have completed the three years of training credits and five years of education credits at least 90 days prior to the date of the A.R.E.~~

~~3.5.4 must have submitted required fees and all transcripts, completed reference forms, etc., at least 45 days prior to the examination for which the applicant wishes to sit.~~

### 4.0 Registration Standards:

4.1 Registration Standards: To be granted registration an applicant must:

~~4.1.1 Prior to July 9, 1997, hold a professional degree in architecture from a degree program that has been accredited by NAAB not later than two years after termination or have satisfied the education requirements as specified in the attached table A. Education requirements shall be those mandated by 24 Del.C. §307(a)(1) of the Act which requires an NAAB-accredited professional degree or other education which the Board deems to be equivalent as set forth in Table A. Petitions for equivalency determinations shall be filed with the board for a ruling. The Board shall evaluate the candidate's educational equivalency in accordance with the attached table A. Applicants filing for initial registration prior to July 9, 1997 may petition the Board to waive the requirements of 24 Del.C. §307(a)(1), but only if the applicant satisfies the Board's Education and Training Requirements, adopted January 14, 1993.~~

~~4.1.2 4.1.1~~ After July 9, 1997, Hold a professional degree in architecture from a degree program that ~~has been~~ is accredited by NAAB at the time of graduation or not later than two years after termination of enrollment. Receipt of a professional degree in architecture from a degree program accredited by CACB will be accepted as equivalent to a NAAB accredited professional degree in architecture.

4.1.3-4.1.2 Prior to March 15, 1994, have at least three years of training credits in accordance with 5.1 or have satisfied the IDP training requirement in accordance with 5.1. Applicants who received their education outside of the United States shall obtain and provide to the Board an educational evaluation by EESA as directed through NAAB, and must provide evidence of training and degree equivalent to accredited programs. For purposes of 24 Del. C. § 307(a)(1), an evaluation by EESA of training and degree equivalent to accredited programs constitutes such other education as the Board deems equivalent.

4.1.3 Applicants for admittance to the A.R.E. after March 15, 1994 and all subsequent applicants for initial registration must submit proof of completion of an IDP record requirements through NCARB.

4.1.4 Have passed the examination. The examinee is permitted unlimited retakes of each part of the A.R.E. All parts of the exam must be successfully completed within a six year (6) duration from the date of his/her first sitting. If all sections are not passed in the six (6) year period, the entire examination must be taken and passed again.

4.1.5 Have complied with all regulations of the Board and 24 Del.C. Ch. 3 of the Delaware Code.

4.1.6 Prior to July 9, 1997 an applicant meeting the above registration requirements except for 4.1.1 above may nonetheless be granted a registration if the applicant holds a high school diploma or equivalent and had accumulated at least five years of education credits as of June 30, 1984. The Board adopts the attached Table A as the education requirements for Delaware licensure.

4.1.7 In evaluation records, the Board shall apply the then current education and training standards, provided that an applicant who qualified under the standards current at the time of his/her application shall be evaluated by those standards.

4.1.8 In evaluating records, the Board may, prior to granting a registration, require substantiation of the quality and nature of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical registration requirements set forth above.

**5.0 Training Standard (Effective until March 15, 1994)**

5.1 To satisfy the training standard, an applicant must have at least three years of training credits, or have satisfied the IDP training requirements in accordance with 5.1. The Board expects that an applicant who has satisfied these training standards will have been exposed to the comprehensive process of the practice of architecture. Accordingly, each applicant must demonstrate that his/her training has been sufficiently diverse as to include exposure to each of the training areas set forth in 5.1. An applicant with three years of training credits may nonetheless be denied registration if that training is not diversified. The

following table sets forth the ways in which training credits can be acquired:

Credit Allowed	Description of Training	Percent Maximum
5.1.1	Experience in architecture as an employee in the office of a registered architect.	100% No Limit
5.1.2	Experience in architecture as an employee of an organization (other than offices of a registered architect) when the experience is under the direct supervision of registered architect.	100% 2 years
5.1.3	Experience directly related to architecture when under the direct supervision of a professional engineer, landscape architect, planner or interior designer.	50% 1 year
5.1.4	Experience, other than 5.1.1 and 5.1.2 and 5.1.3 experience, directly related to on-site building construction operations or experience involving physical analyses of existing buildings.	50% 6 months
5.1.5	A post-professional degree in architecture or teaching or research in an NAAB-accredited architectural program.	100% 1 year

**5.2 Explanation of Training Requirements**

5.2.1 No training credits may be earned prior to satisfactory completion of one of the following:

- 5.2.1.1 three years in an NAAB-accredited professional degree program;
- 5.2.1.2 the third year of a four year pre-professional degree program in architecture accepted for direct entry to an NAAB-accredited professional Master's Degree Program;
- 5.2.1.3 one year in an NAAB-accredited professional Master's Degree Program;
- 5.2.1.4 96 semester credit hours as evaluated by EESA in accordance with NCARB Circular of Information No. 3, (1992-93 edition) of which no more than 60 hours can be in the general education category; or
- 5.2.1.5 5 education credits in the circumstances described in 100.301 (B).

Note: 32 semester credit hours or 48 quarter credit hours equal one year in an academic setting.

5.2.2 No experience used to meet education requirements may be used to earn training credits.

5.2.3 Every applicant must earn at least one year of training credits under 4.1.1 and must earn them after satisfying 4.1.2.

5.2.4 To earn credits under 5.1.1, 5.1.2, 5.1.3 and 5.1.4, an applicant must work at least 35 hours per week for a minimum period of 10 consecutive weeks under 5.1.1 or six consecutive months under 5.1.2, 5.1.3 or 5.1.4. An applicant may earn one-half of the credits specified under 5.1.1 for work of at least 20 hours per week in periods of six

or more consecutive months. No credits will be given for part-time work in any category other than 5.1.1.

5.2.5 To earn credits under 5.1.5, an applicant's credit hours must be in subjects directly related to architecture. Twenty semester credit hours or 30 quarter credit hours of teaching or equivalent time in research will equal one year.

5.2.6 An organization will be considered to be an "office of an architect" if:

5.2.6.1 the architectural practice of the organization in which the applicant works is in the charge of a person practicing as a Principal and the applicant works under the direct supervision of a registered architect;

5.2.6.2 the organization is not engaged in construction;

5.2.6.3 the organization has no affiliate engaged in construction which has a substantial economic impact upon the person or persons in the organization practicing as a principal; and-

5.2.6.4 the architectural practice of the organization encompasses the comprehensive process of the practice of architecture including each of the categories composing such practice set forth in 5.3.

5.2.7 An organization (or an affiliate) is engaged in construction if it customarily engaged in construction or if it customarily engages in either of the following activities:

5.2.7.1 undertakes to provide labor and/or material for all or any construction project, whether on lump-sum, cost plus or other basis of compensation; or

5.2.7.2 agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

5.2.8 In deciding if training represents "diversified experience in architecture," the Board will compare the training with the training requirements set forth in the IDP. See 5.3.

5.2.9 Applicants employed in settings described in 5.1.1 and 5.1.2, whose experience is not diversified, may obtain credit only under 5.1.3.

5.2.10 The maximum credit for training as an employee of a person practicing architecture who is not an architect registered in a United States or Canadian jurisdiction shall be one year. No credit will be granted for foreign training other than as an employee of a person practicing architecture.

### 5.3 5.0 IDP Training Requirements

5.3.1 5.1 After March 15, 1994, the The IDP will be considered is a requirement for the all applicants for initial registration in the State of Delaware. This regulation shall be in effect for those applicants seeking admittance to the A.R.E. after March 15, 1994 and all subsequent applicants for initial registration. Applicants holding a current registration in good standing in another United States

jurisdiction or Canadian province and documenting five (5) or more years of practicing architecture immediately preceding the date of the application that is acceptable to the Board may obtain a waiver of the IDP requirement. A request for waiver shall be made on a form prescribed by the Board.

5.3.2 5.2 The IDP, which is administered by the National Council of Architectural Registration Boards (NCARB), will be initiated by completing an application for NCARB/IDP Council Record and submitting required application fees. This application may be obtained from NCARB, 1801 K Street NW, Suite 1100, Washington, D.C. 20006-1310 or [www.ncarb.org](http://www.ncarb.org). the National IDP Coordinating Committee, 1735 New York Avenue N.W., Suite 700, Washington D.C. 20006. Preparation of all components of the IDP record for references, transcripts, training, etc., will be done in accordance with current NCARB standards. The NCARB Council Record will be accepted as verification of education and training requirements for initial registration.

5.3.3 The initiation of IDP participation and accrual of value units may begin after satisfactory completion of:

5.3.3.1 three years in a NAAB-accredited professional degree program;

5.3.3.2 the third year of a four-year pre-professional degree program in architecture accepted for direct entry to a NAAB-accredited professional degree program;

5.3.3.3 one year in a NAAB-accredited Master of Architecture degree program for interns with non-professional undergraduate degrees;

5.3.3.4 96 semester credit hours as evaluated by Education Evaluation Services for Architects (EESA) of which no more than 60 hours can be in the general education subject area; or

5.3.3.5 "five years of equivalent education" in accordance with the Board's Regulations Table A. This option shall expire effective July 9, 1997.

5.3.4 The intern is responsible for initiating an NCARB Council Record within a time frame which will permit conformance with the Board's application deadline for examination.

5.3.5 The intern is responsible for obtaining applicable training credits which conform to the Board's rules and regulations.

5.3.6 The Intern is responsible for providing NCARB with written notification of his/her intent to take the examination 90 days prior to the Board's application deadline for examination in order to insure timely notification of the Board.

5.3.7 The Board will review the NCARB recommendation for admission to the examination and notify the candidate according to the schedule established by

NCARB and the Board for the administration of the A.R.E.

5.3.8 Preparation of all components of the IDP record for references, transcripts, training, etc. will be done in accordance with NCARB standards. The NCARB Council Record will be accepted as verification of education and training requirements for initial registration.

5.4 5.3 Reciprocity

5.4.1 Registration through reciprocity applications shall be governed by 24 Del.C. §309.

6.0 ~~Examination~~

6.1 ~~Conditions of Examination~~

6.1.1 A proctor assigned by the Board will be present during each division of the examination.

6.1.2 Grading of the examination shall be in accordance with the national grading procedure administered by NCARB.

6.1.3 The Board shall adopt the scoring procedures recommended by NCARB.

6.1.4 No information pertaining to the subject matter of the Examination will be given to applicants in advance, except as specifically authorized by the Board.

6.1.5 The Board, in its discretion, may approve transfer credits for parts of examinations passed prior to the 1983 A.R.E. in accordance with the transfer table on page 10A. Information as to transfer credits will be provided, when appropriate, to applicants requesting application forms. After 5 years of additional training credits in 100.302 (A) (1) or (2), the applicant will not be required to pass additional divisions of the A.R.E.

6.1.6 Effective in 1993, candidates for initial registration may be permitted to take those parts of the A.R.E. offered at times other than June, prior to sitting for the complete exam (offering the A.R.E. or portion thereof at times other than June, is subject to the discretion of the Board).

6.1.7 The examinee is permitted unlimited retakes of each part of the A.R.E. All parts of the exam must be successfully completed within a six-year duration from the date of his/her first sitting. If all sections are not passed in the 6-year period, the entire examination must be taken and passed again.

6.2 ~~Application Deadline~~

6.2.1 Each applicant deemed eligible to take the Examination shall be notified of the dates set for each division of the Examination, the location at which the Examination shall be held, the instruments and materials he/she shall supply and/or be permitted to bring to the Examination, the deadline for applying to take the Examination, and other necessary information.

6.3 ~~Examination Fee~~ The fee for the examination shall be determined by the Division of Professional Regulation.

6.4 ~~Refund of Fee~~ No refund of the application and/or examination fee shall be returned to any applicant.

6.5 ~~Transfer of Scores from Other Boards~~ The Board in its discretion and upon proper application, may accept passing scores achieved on divisions of the A.R.E. administered and attested to by another NCARB member board.

6.6 ~~Transfer of Scores to Other Boards~~ The Board, in its discretion and upon proper application, may forward the grades achieved by an applicant in the various divisions of the Examination given under the Board's jurisdiction to any other duly constituted architectural registration board and to NCARB for use in evaluating such applicant's eligibility for licensure.

~~7.0~~ **6.0** ~~Registration~~

7.1 ~~Issuance~~ When the Board has determined that an applicant for registration has satisfied the registration standards set forth herein, the Board shall issue a Certificate of Registration containing the registered applicant's name and registration number.

7.2 6.1 ~~Duration~~ Each certificate of registration issued by the Board shall be valid for two years, or the expiration of the current licensing period.

6.2 ~~Continuing Education Requirement For Renewal~~ For license or registration periods beginning August 1, 2003, and thereafter, each holder of a Certificate of Registration shall complete ~~twenty (20)~~ [sixteen (16)] hours of continuing education (Professional Development Units or PDUs) acceptable to the Board during each biennial licensing period. Completion of required continuing education is a condition for renewal of a Certificate of Registration. Each Registered Architect shall be exempt from the continuing education requirement in his or her initial biennial licensing period, or any portion thereof, in which he or she is licensed or registered to practice. Each Registered Architect shall be required to complete and submit forms prescribed by the Board certifying compliance with the continuing education requirement for renewal of registration. Required documentation may include a syllabus, agenda, itinerary or brochure published by the sponsor of the activity, as well as proof of attendance. The Board reserves the right to require additional information or documentation regarding continuing education compliance from a Registered Architect.

6.3 ~~Content~~: All continuing education shall be obtained in the areas of Health, Safety and Welfare. The following are deemed acceptable continuing education: a) NCARB monograph programs; b) health safety and welfare programs approved by AIA.

6.4 ~~Hardship Extension~~: The Board may, in its discretion, grant an extension of time within which the continuing education requirement must be completed for reasons, including, but not limited to, illness, disability, military service, and exceptional family responsibilities. The period of hardship extension granted shall be

determined by the Board. Requests for a hardship extension must be in writing and submitted to the Board prior to the expiration of the licensing period.

6.5 Late Renewal - A licensee that has failed to renew on or before the renewal date may apply to renew their expired certificate of registration within twelve (12) months following the renewal date. Such late renewal application must be accompanied by payment of the renewal fee, payment of a late fee, and documentation of compliance with the continuing education requirement.

7.3 6.6 Not Transferable - A certificate of registration shall not be transferable.

7.4 6.7 Revocation, Suspension, Cancellation or Non-renewal of Registration - In the event of revocation, cancellation, suspension or non renewal of any registration, the registered architect shall be required immediately to return his/her Certificate of Registration, seal and license to the Board.

### **8.0 7.0 Rules of Professional Conduct - All architects shall abide by these Rules of Professional Conduct.**

#### 8.1 7.1 Competence

8.1.1 7.1.1 ~~In engaging in the practice~~ When practicing of architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which are ordinarily applied by architects of good standing, practicing in the same locality.

8.1.2 7.1.2 In designing a project, an architect shall take into account applicable building laws and regulations. While a registered architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of such laws and regulation.

8.1.3 7.1.3 An architect shall undertake to perform professional services only when ~~her~~ **he or she**, together with those whom the architect may engage as consultants, is qualified by education, training and experience in the specific technical areas involved.

8.1.4 7.1.4 No individual shall be permitted to engage in the practice of architecture if, in the Board's judgment, such individual's professional competence is substantially impaired by physical or mental disabilities.

#### 8.2 7.2 Conflict of Interest

8.2.1 7.2.1 An architect shall not accept compensation for his/her services from more than one party on a project unless the circumstances are fully disclosed to and agreed to by (such disclosure and agreement to be in writing) all interested parties.

8.2.2 7.2.2 If an architect has any business association or direct or indirect financial interest which is substantial enough to influence his/her judgment in

connection with the performance of professional services, the architect shall fully disclose in writing to his/her client or employee the nature of the business association or financial interest. If the client or employee objects to such association or financial interest, the architect will either terminate such association or interest or offer to give up the commission or employment.

8.2.3 7.2.3 An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing their products.

8.2.4 7.2.4 When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

#### 8.3 7.3 Full Disclosure

8.3.1 7.3.1 An architect, making public statements on architectural questions, shall disclose when he/she is being compensated for making such statements.

8.3.2 7.3.2 An architect shall accurately represent to prospective or existing client or employee his/her responsibility in connection with work for which he/she is claiming credit.

8.3.3 7.3.3 If, in the course of his/her work on a project, an architect becomes aware of a decision taken by his/her employer or client, against such registered architect's advice, which violates applicable state or municipal building laws and regulations which will, in the registered architect's judgment, materially and adversely affect the safety to the public of the finished project, the architect shall:

8.3.3.1 7.3.3.1 report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations; and

8.3.3.2 7.3.3.2 refuse to consent to the decision; and

8.3.3.3 7.3.3.3 in circumstances where the architect reasonably believes that other such decisions will be taken, notwithstanding his/her objection, terminate his/her services with respect to the project. In the case of a termination in accordance with clause 3, the architect shall have no liability to his/her client or employer on account of such termination.

8.3.4 7.3.4 An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with his/her application for a registration or renewal thereof.

8.3.5 7.3.5 An architect possessing knowledge of a violation of the provisions set forth in ~~100-806 7.0~~ by another architect shall report such knowledge to the Board.

#### 8.4 7.4 Compliance with Laws

8.4.1 7.4.1 An architect shall not, in the conduct of his or her practice, knowingly violate any state, federal or local law, rule or regulation.

8.4.2 7.4.2 An architect shall neither offer nor

make any payment or gift to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

~~8.4.3~~ 7.4.3 An architect shall comply with the registration laws and regulations governing his/her professional practice in any United States jurisdiction.

~~8.5~~ 7.5 Professional Conduct

~~8.5.1~~ 7.5.1 Each office in Delaware ~~maintained for the preparation of drawing, specifications, reports or other professional work offering architectural services~~ shall have an architect resident and regularly employed in that office having direct supervision of such work.

~~8.5.2~~ 7.5.2 ~~An architect shall not sign or seal technical submissions unless they were prepared under his/her direct supervision; provided, however, that in the case of the portions of such technical submission prepared under the direct supervision of another architect employed by the first registered (or by his/her firm), he or she may sign or seal those portions of the professional work if the architect has reviewed such portions and has coordinated their preparation. An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect's responsible control; or (iii) prepared by another architect registered in this State if the signing and sealing architect has reviewed the other architect's work and either has coordinated the preparation of the work or has integrated the work into his or her own technical submissions. "Responsible control" shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed knowledge of the content of such submissions throughout their preparation. Any registered architect signing or sealing technical submissions not prepared by that architect but prepared under the architect's responsible control by persons not regularly employed in the office where the architect is resident, shall maintain and make available to the Board upon request for at least five (5) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the architect's control over and detailed knowledge of such technical submissions throughout their preparation. "Technical submissions" are designs, drawings, specifications, studies, and other technical reports prepared in the course of practicing architecture.~~

~~8.5.3~~ 7.5.3 An architect shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with

the intent of influencing the judgment of an existing or prospective client in connection with a project in which the architect is interested.

~~8.5.4~~ ~~An architect shall no engage in conduct involving fraud or wanton disregard of the rights of others.~~

~~8.6~~ 7.6 Design and Use of Architect's Seal

~~8.6.1~~ 7.6.1 Pursuant to 24 Del.C. §313, and subject to 6.7 and 7.5, each architect shall procure a seal, which shall contain the name of the architect; his/her registration number and the phrase REGISTERED ARCHITECT--STATE OF DELAWARE. This seal shall comply in all respects, including size and format, with the specimen shown below. The architect shall use his/her legal name on the Certificate of Registration, the seal and the license.

~~8.6.2~~ 7.6.2 As required by 24 Del.C. §313, the seal shall be imprinted on all technical submissions, as follows: On each design and each drawing; on the cover or each set of specifications and on the cover page of all other technical submissions. The original signature of the individual named on the seal shall appear across the face of each original seal imprint.

~~8.6.3~~ 7.6.3 The seal appearing on any technical submission shall be prima facie evidence that said technical submission was prepared by or under the direct supervision of the individual named on said submission.

~~8.6.4~~ 7.6.4 All technical submissions prepared by an architect shall contain the following legend wherever the architect's seal appears: "The professional services of the architect are undertaken for and are performed in the interest of [name of person employing architect]. No contractual obligation is assumed by the architect for the benefit of any other person involved in the project."

## **9.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

9.1 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.

9.2 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.

9.3 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).

9.4 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.

9.5 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.

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

9.6.1 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.

9.6.2 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.

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

9.6.4 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.

9.6.5 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.

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

9.7 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.

9.8 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.

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

9.10 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.

9.11 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 non disciplinary matter.

9.12 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.

~~Delaware Board of Architects Examination Transition Rule Adopted January 14, 1993~~

~~Any Delaware applicant who has taken any section of the NCARB examination prior to 1983, but who has not passed one or more of the NCARB exams listed in Column A below, must take the ARE Division listed in Column B to complete the Delaware examination requirements.~~

<p><del>Column A Qualifying Test + Professional Exam Exam</del></p>	<p><del>Column B Architect Registration Exam</del></p>
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<p><del>Sections Prior to 1983 Qualif. Test Section A OR Prof Exam Section B-I OR Prof Exam Sect B-II</del></p>	<p><del>Divisions Arch. Theory &amp; History* A - PRE DESIGN A - ENV. ANALYSIS B - PROGRAMMING</del></p>
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<p><del>Prof Exam Section A C - BLDG. DESIGN</del></p>	<p><del>Site Plan/Design B - SITE DESIGN</del></p>
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<p><del>Prof Exam Section B-III D - STRUCT GEN'L</del></p>	<p><del>Design Tech #BUILDING SYSTEMS</del></p>
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<p><del>Qualif Test, Section B E - STRUCTURAL</del></p>	<p><del>Structural Tech LAT. FORCES F - STRUCTURAL LONG SPAN</del></p>
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<p><del>Qualif Test Section D PLBG, etc.</del></p>	<p><del>Env Control Systems G - MECH/</del></p>
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<p><del>Qualif Test Section C METHODS</del></p>	<p><del>M of Construction H - MTRLS/</del></p>
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~~Prof. Exam Sect B-IV  
I - CNSTR-DOC/SVCS~~

~~\*Candidates who have not passed either Part I or Part II of the Professional Exam, Section B or Section A of the Qualifying Exam must pass Division A - Pre Design of the A.R.E. \*Candidates who have not passed part III of the Professional Exam, Section B Design Technology, must pass Division H - Materials & Methods of the A.R.E.~~

## DIVISION OF PROFESSIONAL REGULATION BOARD OF PLUMBING EXAMINERS

18 DE Admin. Code 1800  
Statutory Authority: 24 Delaware Code  
Section 1805(2) (24 Del.C. §1805(2))

### ORDER

A Public Hearing was held to receive comments on December 3, 2002 at the regularly scheduled meeting of the Board of Plumbing Examiners. At the meeting that followed, the Board adopted the changes to its rules and regulations that were published in the Register of Regulations, Vol. 6, Issue 5, November 1, 2002.

### Summary Of The Evidence And Information Submitted

No written comments were received. The verbal comments are summarized below.

1. Marvin Newton is the Chief Plumbing and Mechanical Supervisor for the City of Wilmington. He indicated that it was important for the city and county to work hand in hand with the Board so that all jurisdictions could be on the same page. It was important to contractors to have a level playing field throughout the State.

He also believes Delaware should license plumbers by reciprocity only if the other state provides the same courtesy to Delaware plumbers.

### Findings Of Fact With Respect To The Evidence And Information

1. The Board of Plumbing Examiners has proposed the changes to its rules as recommended by the Joint Sunset Committee in its Final Report dated May 30, 2001 so that the Board is in compliance with its enabling legislation.

2. Requiring reciprocal licensing to be contingent of the similar courtesy by another state as recommended in public comment would require a statutory change.

3. Having the same plumbing code as the standard in all jurisdictions is a mutual goal consistent with the recommendation of the Joint Sunset Committee.



**Decision And Effective Date**

The Board of Plumbing Examiners hereby adopts changes to the Rules and Regulations as proposed to be effective 10 days following final publication in the Register of Regulations.

**Text And Citation**

The text of the Rules and Regulations appears in the Register of Regulations, Vol. 6, Issue 5, November 1, 2002.

**Board Of Plumbing Examiners**

Bruce Collins, Chair  
Lawrence Carson, Secretary  
Richard Millar  
Alex Filippone, III  
Wayne Reed  
Dean Sherman

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2002 issue of the Register at page 571 (6 DE Reg. 571). Therefore, the final regulation is not being republished. Please refer to the November 2002 issue of the Register or contact the Division of Professional Regulation.**

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**DEPARTMENT OF AGRICULTURE  
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10027 (3 Del.C. §10027)

**ORDER**

Pursuant to 29 Del.C. §10113(b) and 3 Del.C. §10027, the Delaware Harness Racing Commission (“the Commission”) hereby issues this Order adopting amendments to Commission Rules 6.2.9, 8.3.6, and 10.2.7.4, and a new Rule 8.7. Following notice and a public hearing held on October 21, 2002, the Commission makes the following findings and conclusions:

**SUMMARY OF EVIDENCE AND INFORMATION  
SUBMITTED**

1. The Commission posted public notice of the proposed rule amendments in the October 1, 2002 Register of Regulations and in the Delaware Capital Review and the Delaware State News. The Commission proposed to amend its Rules as follows: i)amend Rule 6.2.9 to prohibit trailing

horses on a half-mile track; ii)amend Rule 8.3.6 to clarify that the use of phenylbutazone in two-year old horses is prohibited and the penalty for violations; iii)enact a new Rule 8.7 to prohibit the possession or use of drugs or substances for which there is no analytical method to detect, including erythropoietin, darbepoietin, and perfluorocarbon, and prohibit the possession or use of any drug or substances not approved by the FDA; and iv)amend Rule 10.2.7.4 to require written notice to licensees of license and disciplinary decisions.

2. The Commission conducted a public hearing on the proposed rules on October 21, 2002 at Harrington Raceway. The Commission received comments from the following persons:

a. Rebecca Batson-Kidner, Esquire, counsel for the D.S.O.A. spoke in support of the proposed amendment to Rule 6.2.9. She stated that the proposed change would only affect Harrington Raceway. The Harrington track is asymmetrical and has a “pinched” first turn. The first turn presents a safety issue for the drivers in the nine horse fields. The safety issues present with nine horse fields outweigh any minimal increase in handle from superfecta betting.

b. Jim King stated that he has driven in thousands of races, and drives on a regular basis at Harrington Raceway. King stated that the first turn at Harrington comes up on the drivers in a matter of feet after coming off of the gate. The nine horse field creates a traffic jam going into the first turn and creates safety problems in the field. There were two instances in the last meet where a horse in a nine horse field ran up on him. Three weeks ago in a race, King was in the nine hole and got into the turn and had to pass the starting gate and cause a recall. Horses are trained to come to the gate and this is difficult when you are in the nine hole.

c. Eddie Dennis stated that had has been a driver and trainer for some fifteen years. The nine horse field is unfair to the #9 horse. That horse is completely at the mercy of the race and has to follow the other horses. The nine horse field does not really create additional race opportunities. The extra money from nine horse fields is an extra 3% for the sixth place finisher. The safety problems with a nine horse field have forced him to take up on a horse in a race. Dennis reviewed a tape from a ten horse field on State Fair Race Day on July 25, 2002. The tape shows the driver leaving too soon because of the trailers in the race.

d. Salvatore DiMario, executive director of the D.S.O.A., stated that he conducted an analysis of all of the superfecta wagering in nine horse fields at Harrington through October 21, 2002. A recent survey of eleven tracks found that six tracks use nine horse fields and five do not. On the Superfecta bets, DiMario stated that there was about an extra \$180 bet for Superfecta wagering per night that goes to the horsemen.

e. Jack Walls of Harrington Raceway stated that the track opposes the proposed amendment to Rule 6.2.9.

Harrington has set aside money to make structural changes to the track with the assistance of consultant Cave Associates. The track will be safer and faster and will become the premier ½ mile track in the nation. The track will also have a winner's circle. The starting line will remain the same because the U.S.T.A. requires 200 feet before the first turn. Harrington tries to provide superfecta betting for the betting public with the nine horse fields.

f. Tony Domino, a licensed driver, stated that the nine horse field puts the 6, 7, and 8 horses at a disadvantage because they are further behind at the start of the race. The nine horse field is also not fair to the betting public.

g. Jim Boese, General Manager of Harrington Raceway, stated that the figures provided by the D.S.O.A. are misleading. The nine horse field is the type of race which is bet most often. There is \$150,000 wagered on nine horse fields which results in a \$415 purse increase.

h. Bobby Clark stated that he owns one horse that can not race at Harrington because of the nine horse fields and the dangerous fields and turns on the track.

i. Eddie Davis stated that the nine horse fields are dangerous. He has had two recalls in nine horse fields. If the track wants to use a nine horse field, all nine horses should be up on the gate.

j. Charlie Lockhart of Dover Downs stated that the nine horse fields appeal to the fans who like to bet the superfecta. Dover Downs favors nine horse fields and views them as a marketing tool. Bettors like the chance to make a big hit on the bet. There are seven of nine nearby tracks that permit nine horse fields. He is very concerned that nine horse fields be maintained to provide a product for the public.

3. After the public hearing, the Commission received a number of written submissions.

a. On October 25, 2002, Constantine F. Malmberg, III, Esquire submitted a letter in favor of the proposed change to Rule 6.2.2.9. Mr. Malmberg, an owner of harness race horses, stated that a trailing horse in a nine (9) horse field presents a danger for drivers and increases the risk of injury for participating horses.

b. On October 27, 2002, Valerie Warnick submitted a letter in favor of an amended Rule 6.2.2.9. As an owner, trainer, and driver, Ms. Warnick submitted that nine horse fields are dangerous for drivers and racehorses. In a nine horse race, Ms. Warnick's horse in the number 1 position broke stride before the gate and the trailing horse ran up on and struck Warnick's cart. The incident almost resulted in serious injury to the drivers and horses in the race.

c. Brett Brittingham submitted an October 27, 2002 letter urging the Commission to eliminate nine horse fields due to increased dangers associated with those races. Brittingham, a regular driver at Harrington, noted that the drivers in nine horse fields have to rush their horses to the

front of the field in a nine horse race in order to have any chance of a competitive position. The rush of horses in the first turn at Harrington creates danger for the participants.

d. Daniel Camac, a director of the D.S.O.A., submitted a letter on October 28, 2002 detailing personal experiences when his safety was placed in jeopardy due to incidents in nine horse races. Camac is an owner, trainer, and driver who has had a few occasions to be concerned about the safety of himself and the other participants in nine horse races.

e. Andrew Markano, a full-time trainer and driver, submitted an October 29, 2002 letter urging the Commission to do away with nine horse fields at Harrington Raceway unless all nine starters are aligned up on the gate.

f. Linda McDonald submitted a letter on October 30, 2002 describing a race at Harrington where she had a horse choke and fall at the start because it was in the nine hole trailing position.

g. Rebecca Batson-Kidner, Esquire submitted an October 30, 2002 letter stating that trainers and drivers presented undisputed evidence that trailing horses in nine horse fields present a significant danger to horse and driver and the benefits of superfecta wagering are minimal, at best, and do not outweigh the danger posed by nine (9) horse fields.

h. James T. Perry, Esquire submitted an October 30, 2002 letter asking the Commission to seriously consider the horsemen's arguments against the nine horse field. Mr. Perry, an owner, stated that risk associated with nine horse fields can be averted and that risk outweighs the very small revenue gain from nine horse fields.

#### **FINDINGS OF FACT AND CONCLUSIONS**

4. The public was given notice and an opportunity to provide the Commission with comments in writing and at a public hearing.

5. The Commission received comments from the public responding to the proposed amendment to Rule 6.2.9. The comments were submitted by individuals having various roles in harness racing including drivers, trainers, owners, track management, and representatives of the horsemen's association. The evidence indicates that there is some advantage for the track and possibly the horsemen resulting from increased betting on the nine horse field. The evidence also convinces the Commission that there is a safety concern raised by the use of nine horse fields on a half mile track. The comments from the drivers indicate that the nine horse fields at Harrington Raceway are dangerous because of the shape of the track, the short distance into the first turn after leaving the gate, and the increased potential for collisions and serious accidents. The Commission's primary purpose under 3 **Del.C.** §10005 is to regulate and oversee harness racing in the public interest. The Commission finds

substantial credible evidence from the participants in harness racing that it is in the public interest to prohibit nine horse fields on a half mile track. As stated in the letter from Mr. Perry, the risk associated with nine horse fields can be averted and that risk outweighs the small wagering gain from nine horse fields. The Commission concludes on the evidence in this record that the amendment to Rule 6.2.2.9 should be adopted. Finally, the Harrington Raceway officials did offer evidence about proposed changes to the track. However, the Commission can not find that those potential changes will alleviate or address the current safety issues associated with the nine horse fields on this record.

6. The Commission received no public comments concerning the other proposed rule changes. The Commission notes that the proposed rule amendment to Rule 8.3.6.1.1 simply spells out exactly what the rule has always provided—that phenylbutazone or oxyphenbutazone is illegal at any level for two year old horses and those horses must be disqualified. Rule 8.7 is based on a rule already adopted by the Thoroughbred Racing Commission. The Rule 8.7 does contain the term “rider” which should be deleted and replaced with the appropriate term “driver” for harness racing. The Commission deems this to be a change that does not affect the substance of the proposed rule. The proposed amendment to Rule 10.2.7.4 simply provides for written notice to licensees of disciplinary decisions in order to comply with basic notions of due process. The Commission concludes that adoption of these proposed rules is in the best interests of the public and necessary for the proper regulation of harness racing.

7. The Commission concludes that the proposed rules published in the October 1, 2002 Register of Regulations should be adopted as proposed, with one minor nonsubstantive change to Rule 8.7.1.1. This Order will be published in the January 1, 2003 Register of Regulations. The effective date of the Order will be January 11, 2003. A copy of the enacted Rules is attached as Exhibit #1 to this Order.

**IT IS SO ORDERED** this 18th day of December, 2002.

Mary Ann Lambertson, Commissioner  
 Thomas Conaty, IV, Esquire, Commissioner  
 Robert Everett, Commissioner  
 Kenneth Williamson, Commissioner

## 6.2 Overnight Events

### 6.2.1 General Provisions

6.2.1.1 For the purpose of this rule, overnight events shall include conditioned, claiming, preferred, invitational, handicap, open, free-for-all, schooling or matinee races or a combination thereof.

6.2.1.2 At extended meetings, condition sheets must be available to participants at least 18 hours prior to closing declarations to any race program contained

therein. At other meetings, conditions must be posted and available to participants at least 18 hours prior to closing declarations.

6.2.1.3 A fair and reasonable racing opportunity shall be afforded both trotters and pacers in reasonable proportion from those available and qualified to race.

6.2.1.4 Substitute races may be provided for each race program and shall be so designated in condition books sheets. A substitute race may be used when a regularly scheduled race fails to fill.

6.2.1.5 Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to a subsequent racing program, subject to the following:

6.2.1.5.1 No such divisions shall be used in the place of regularly scheduled races which fill.

6.2.1.5.2 Where races are divided in order to fill a program, starters for each division must be determined by lot after preference has been applied, unless the conditions provide for divisions based upon age, performance, earnings or sex may be determined by the racing secretary.

6.2.1.5.3 However, where necessary to fill a card, not more than three races per day may be divided into not more than three divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.

### 6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

6.2.2.1.1 horses' money winnings in a specified number of previous races or during a specified previous time;

6.2.2.1.2 horses' finishing positions in a specified number of previous races or during a specified period of time;

6.2.2.1.3 age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;

6.2.2.1.4 sex;

6.2.2.1.5 number of starts during a specified period of time;

6.2.2.1.6 special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;

6.2.2.1.7 the exclusion of schooling races; or

6.2.2.1.8 Delaware-owned or bred races as specified in 3 Del. C. §10032; or

6.2.2.1.9 any one or more combinations of the qualifications herein listed.

6.2.2.2 Conditions shall not be written in such

a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not supersede date preference as provided in the rules. Not more than three also eligible conditions shall be used in writing the conditions for overnight events.

6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions other than those listed above for special events.

6.2.2.4 In the event there are conflicting published conditions and neither one nor the other is withdrawn by the association, the one more favorable to the declarer shall govern.

6.2.2.5 For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of \$100 plus \$1 or Winners over a multiple of \$100. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded. In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to the United States Trotting Association in a timely manner.

6.2.2.6 Records, time bars shall not be used as a condition of eligibility.

6.2.2.7 Horses must be eligible when declarations close subject to the provision that:

6.2.2.7.1 Wins and winnings on or after the closing date of declarations shall not be considered;

6.2.2.7.2 Age allowances shall be given according to the age of the horse on the date the race is contested.

6.2.2.7.3 In mixed races, trotting and pacing, a horse must be eligible under the conditions for the gait at which it is stated in the declaration the horse will perform.

6.2.2.8 When conditions refer to previous performances, those performances shall only include those in a purse race. Each dash or heat shall be considered as a separate performance for the purpose of condition races.

6.2.2.9 In overnight events, ~~not more than one trailer shall be permitted, regardless of the size of the track except with the approval of the Commission on a half mile racetrack there shall be no trailing horses. On a bigger racetrack there shall be no more than one trailing horse.~~ At least eight feet per horse must be provided the starters in the front tier.

6.2.2.10 The racing secretary may reject the declaration to an overnight event of any horse whose past performance indicates that it would be below the competitive level of other horses declared to that particular event.

**8.0 Veterinary Practices, Equine Health Medication**

**8.1 General Provisions**

The purpose of this Rule is to protect the integrity of horse racing, to ensure the health and welfare of race horses and to safeguard the interests of the public and the participants in racing.

**8.2 Veterinary Practices**

**8.2.1 Veterinarians Under Authority of Commission Veterinarian**

Veterinarians licensed by the Commission and practicing at any location under the jurisdiction of the Commission are subject to these Rules, which shall be enforced under the authority of the Commission Veterinarian and the State Steward. Without limiting the authority of the State Steward to enforce these Rules, the Commission Veterinarian may recommend to the State Steward or the Commission the discipline which may be imposed upon a veterinarian who violates the rules.

**8.2.2 Treatment Restrictions**

8.2.2.1 Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the Commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the Commission.

8.2.2.2 This subsection does not apply to the administration of the following substances except in approved quantitative levels, if any, present in post-race samples or as they may interfere with post-race testing:

8.2.2.2.1 a recognized non-injectable nutritional supplement or other substance approved by the official veterinarian;

8.2.2.2.2 a non-injectable substance on the direction or by prescription of a licensed veterinarian; or

8.2.2.2.3 a non-injectable non-prescription medication or substance.

8.2.2.3 No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the Commission. At any location under the jurisdiction of the Commission, veterinarians may use only one-time disposable needles, and shall dispose of them in a manner approved by the Commission. If a person has a medical condition which makes it necessary to have a syringe at any location under the jurisdiction of the Commission, that person may request permission of the State Steward, judges and/or the Commission in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a syringe, and must comply with any conditions and restrictions set by the State Steward, judges and/or the Commission.

**8.3 Medications and Foreign Substances**

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

#### 8.3.1 Uniform Classification Guidelines

The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the Commission Veterinarian and the racing secretary.

##### 8.3.1.1 Class 1

Opiates, opium derivatives, synthetic opiates, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the race horse and their pharmacological potential for altering the performance of a race is very high.

##### 8.3.1.2 Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as therapeutic agents in the race horse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a race horse. The following groups of drugs are in this class:

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

##### 8.3.1.3 Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a race horse. The following groups of drugs are in this class:

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

##### 8.3.1.4 Class 4

This category is comprised primarily of therapeutic medications routinely used in race horses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as

topical vasoconstrictors or decongestants  
 8.3.1.4.2.2 Drugs used as  
 gastrointestinal antispasmodics  
 8.3.1.4.2.3 Drugs used to void the  
 urinary bladder  
 8.3.1.4.2.4 Drugs with a major  
 effect on CNS vasculature or smooth muscle of visceral  
 organs.  
 8.3.1.4.3 Antihistamines which do not  
 have a significant CNS depressant effect (This does not  
 include H1 blocking agents, which are listed in Class 5);  
 8.3.1.4.4 Mineralocorticoid drugs;  
 8.3.1.4.5 Skeletal muscle relaxants;  
 8.3.1.4.6 Anti-inflammatory  
 drugs--those that may reduce pain as a consequence of their  
 anti-inflammatory actions, which include:  
 8.3.1.4.6.1 Non-Steroidal  
 Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;  
 8.3.1.4.6.2 Corticosteroids  
 (glucocorticoids); and  
 8.3.1.4.6.3 Miscellaneous  
 anti-inflammatory agents.  
 8.3.1.4.7 Anabolic and/or androgenic  
 steroids and other drugs;  
 8.3.1.4.8 Less potent diuretics;  
 8.3.1.4.9 Cardiac glycosides and  
 antiarrhythmics including:  
 8.3.1.4.9.1 Cardiac glycosides;  
 8.3.1.4.9.2 Antiarrhythmic agents  
 (exclusive of lidocaine, bretylium and propranolol); and  
 8.3.1.4.9.3 Miscellaneous  
 cardiotonic drugs.  
 8.3.1.4.10 Topical Anesthetics--agents  
 not available in injectable formulations;  
 8.3.1.4.11 Antidiarrheal agents; and  
 8.3.1.4.12 Miscellaneous drugs  
 including:  
 8.3.1.4.12.1 Expectorants with little  
 or no other pharmacologic action;  
 8.3.1.4.12.2 Stomachics; and  
 8.3.1.4.12.3 Mucolytic agents.

**8.3.1.5 Class 5**

Drugs in this category are therapeutic  
 medications for which concentration limits have been  
 established as well as certain miscellaneous agents.  
 Included specifically are agents which have very localized  
 action only, such as anti-ulcer drugs and certain antiallergic  
 drugs. The anticoagulant drugs are also included.

**8.3.2 Penalty Recommendations**

The following penalties and disciplinary  
 measures may be imposed for violations of these medication  
 and prohibited substances rules:

8.3.2.1 Class 1- in the absence of  
 extraordinary circumstances, a minimum license revocation

of eighteen months and a minimum fine of \$5,000, and a  
 maximum fine up to the amount of the purse money for the  
 race in which the infraction occurred, forfeiture of the purse  
 money, and assessment for cost of the drug testing.

8.3.2.2 Class 2- in the absence of  
 extraordinary circumstances, a minimum license revocation  
 of nine months and a minimum fine of \$3,000, and a  
 maximum fine of up to the amount of the purse money for  
 the race in which the violation occurred, forfeiture of the  
 purse money, and assessment for cost of the drug testing.

8.3.2.3 Class 3- in the absence of  
 extraordinary circumstances, a minimum license revocation  
 of ninety days, and a minimum fine of \$3,000, and a  
 maximum fine of up to the amount of the purse money for  
 the race in which the violation occurred, forfeiture of the  
 purse money, and assessment for cost of the drug testing.

8.3.2.4 Class 4 - in the absence of  
 extraordinary circumstances, a minimum license revocation  
 of thirty days, and a minimum fine of \$2,000, and a  
 maximum fine of up to the amount of the purse money for  
 the race in which the violation occurred, forfeiture of the  
 purse money, and assessment for the cost of the drug testing.

8.3.2.5 Class 5 - Zero to 15 days suspension  
 with a possible loss of purse and/or fine and assessment for  
 the cost of the drug testing.

8.3.2.6 In determining the appropriate penalty  
 with respect to a medication rule violation, the State Steward  
 or other designee of the Commission may use his discretion  
 in the application of the foregoing penalty recommendations,  
 and shall consult with the State Veterinarian, the  
 Commission veterinarian and/or the Commission chemist to  
 determine the seriousness of the laboratory finding or the  
 medication violation. Aggravating or mitigating  
 circumstances in any case should be considered and greater  
 or lesser penalties and/or disciplinary measures may be  
 imposed than those set forth above. Specifically, if the State  
 Steward or other designee of the Commission determine that  
 mitigating circumstances warrant imposition of a lesser  
 penalty than the recommendations suggest, he may impose a  
 lesser penalty. If the State Steward or other designee of the  
 Commission determines that aggravating circumstances  
 require imposition of a greater penalty, however, he may  
 only impose up to the maximum recommended penalty, and  
 must refer the case to the Commission for its review, with a  
 recommendation for specific action. Without limitation, the  
 presence of the following aggravating circumstances may  
 warrant imposition of greater penalties than those  
 recommended, up to and including a lifetime suspension:

8.3.2.6.1 Repeated violations of these  
 medication and prohibited substances rules by the same  
 trainer or with respect to the same horse;

8.3.2.6.2 Prior violations of similar  
 rules in other racing jurisdictions by the same trainer or with  
 respect to the same horse; or

8.3.2.6.3 Violations which endanger the life or health of the horse.

8.3.2.6.4 Violations that mislead the wagering public and those desiring to claim a horse as to the condition and ability of the horse;

8.3.2.6.5 Violations that undermine or corrupt the integrity of the sport of harness racing.

8.3.2.7 Any person whose license is reinstated after a prior violation involving class 1 or class 2 drugs and who commits a subsequent violation within five years of the prior violation, shall absent extraordinary circumstances, be subject to a minimum revocation of license for five years, and a minimum fine in the amount of the purse money of the race in which the infraction occurred, along with any other penalty just and reasonable under the circumstances.

8.3.2.7.1 With respect to Class 1, 2 and 3 drugs detect in a urine sample but not in a blood sample, and in addition to the foregoing factors, in determining the length of a suspension and/or the amount of a fine, or both, the State Steward or judges may take in consideration, without limitation, whether the drug has any equine therapeutic use, the time and method of administration, if determined, whether more than one foreign substance was detected in the sample, and any other appropriate aggravating or mitigating factors.

8.3.2.8 Whenever a trainer is suspended more than once within a two-year period for a violation of this chapter regarding medication rules, any suspension imposed on the trainer for any such subsequent violation also shall apply to the horse involved in such violation. The State Steward or judges may impose a shorter suspension on the horse than on the trainer.

8.3.2.9 At the discretion of the State Steward or other designee of the Commission, a horse as to which an initial finding of a prohibited substance has been made by the Commission chemist may be prohibited from racing pending a timely hearing; provided, however, that other horses registered under the care of the trainer of such a horse may, with the consent of the State Steward or other designee of the Commission be released to the care of another trainer, and may race.

### 8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

8.3.3.1.1 the drug or medication is listed by the Association of Racing Commissioners International's Drug Testing and Quality Assurance Program; and

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in these Rules or otherwise approved and published by the Commission.

8.3.3.2 Except as otherwise provided by this

chapter, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this chapter during the 24-hour period before post time for the race in which the horse is entered. Such administration shall result in the horse being scratched from the race and may result in disciplinary actions being taken.

8.3.3.3 A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

8.3.3.3.1 drugs or medications for which no acceptable levels have been established in these Rules or otherwise approved and published by the Commission.

8.3.3.3.2 therapeutic medications in excess of acceptable limits established in these rules or otherwise approved and published by the Commission.

8.3.3.3.3 Substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to such procedures as may be established from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to a Class 2 substance.

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

8.3.3.4 The tubing, dosing or jugging of any horse for any reason within 24 hours prior to its scheduled race is prohibited unless administered for medical emergency purposes by a licensed veterinarian, in which case the horse shall be scratched. The practice of administration of any substance via a naso-gastric tube or dose syringe into a horse's stomach within 24 hours prior to its scheduled race is considered a violation of these rules and subject to disciplinary action, which may include fine, suspension and revocation or license.

### 8.3.4 Medical Labeling

8.3.4.1 No person on association grounds

where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

8.3.4.2 Any drug or medication which is used or kept on association grounds and which, by federal or Delaware law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with the applicable federal and state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

### 8.3.5 Furosemide (Lasix)

#### 8.3.5.1 General

Furosemide (Lasix) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Except under the instructions of the Commission Veterinarian for the purpose of removing a horse from the Steward's List or to facilitate the collection of a post-race urine sample, furosemide (Lasix) shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List.

#### 8.3.5.2 Method of Administration

Lasix shall be administered intravenously by a licensed practicing veterinarian, unless the Commission Veterinarian determines that a horse cannot receive an intravenous administration of Lasix and gives permission for an intramuscular administration; provided, however, that once Lasix is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

#### 8.3.5.3 Dosage

Lasix shall be administered to horses on the Bleeder List only by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 If less than 500 milligrams is administered, and subsequent laboratory findings are inconsistent with such dosage or with the time of

administration, then the trainer shall be subject to a fine or other disciplinary action;

8.3.5.3.2 Not more than 750 milligrams may be administered if (1) the State veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.3 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

#### 8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

#### 8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed practicing veterinarian at the rate approved by the Commission. No credit shall be given.

#### 8.3.5.6 Restrictions

No one except a licensed practicing veterinarian shall possess equipment or any substance for injectable administration on the race track complex, and no horse is to receive furosemide (Lasix) in oral form.

#### 8.3.5.7 Post-Race Quantification

8.3.5.7.1 As indicated by post-race quantification, a horse may not carry in its body at the time of the running of the race more than 100 nanograms of Lasix per milliliter of plasma in conjunction with a urine that has a specific gravity of less than 1.01, unless the dosage of Lasix:

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.3.2 or exceeded 500 milligrams as provided in 8.3.5.3.2, then a penalty shall be imposed as follows:

8.3.5.7.2.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.5.7.2.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.5.7.2.3 If such overage is the



third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.5.7.2.4 If in the opinion of the official chemist any such overage caused interference with testing procedures, then for each such overage a penalty of up to a \$1,000 fine and a suspension of from 15 to 50 days may be imposed.

#### 8.3.5.8 Reports

8.3.5.8.1 The licensed practicing veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the State Steward at least one (1) hour before the horse is scheduled to race.

8.3.5.8.3 The State Steward or judges shall order a horse scratched if the written certification is not received in a timely manner.

#### 8.3.5.9 Bleeder List

8.3.5.9.1 The Commission Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.5.9.1.1 visual examination wherein blood is noted in one or both nostrils either:

8.3.5.9.1.1.1 during a race;

8.3.5.9.1.1.2 immediately post-race or post-exercise on track; or

8.3.5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian or Lasix veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.5.9.1.3 presentation to the Commission Veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the Commission Veterinarian.

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by the Commission Veterinarian or the Lasix veterinarian and entered on the

Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and Lasix must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.5.9.4 A horse which bleeds based on the criteria set forth in 8.3.5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.5.9.4.1 1st time - 10 days;

8.3.5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the Commission Veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.5.9.4.4 4th time - barred for life.

8.3.5.9.5 An owner or trainer must notify the Commission Veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

8.3.5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Lasix symbol in the program shall appropriately reflect that the horse did not receive Lasix its last time out. Such an election by the owner or trainer shall not preclude the Commission Veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does

demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.6.4 above.

8.3.5.9.9 The State Steward or Presiding Judge, in consultation with the State veterinarian, will rule on any questions relating to the Bleeder List.

8.3.5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the Commission Veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per milliliter of blood plasma. Phenylbutazone or oxyphenbutazone is not permissible at any level in horses two years of age and if phenylbutazone or oxyphenbutazone is present in any post-race sample from a two year old horse, said horse shall be disqualified, shall forfeit any purse money, and the trainer shall be subject to penalties including up to a \$1,000 fine and up to a fifty day suspension.

8.3.6.1.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.0 but not more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then warnings shall be issued to the trainer.

8.3.6.1.3 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 2.6 micrograms per milliliter of blood plasma of phenylbutazone or oxyphenbutazone, then a penalty shall be imposed as follows:

8.3.6.1.3.1 For an average between 2.6 and less than 5.0 micrograms per milliliter:

8.3.6.1.3.1.1 If such overage is the first violation of this rule within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.6.1.3.1.2 If such overage is the second violation of this rule within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.6.1.3.1.3 If such overage is the third violation of this rule within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

8.3.6.1.3.1.4 For an overage of 5.0 micrograms or more per milliliter: Up to a \$1,000 fine and up to a 5-day suspension and loss of purse.

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the

running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and meclufenamic acid, then such presence of phenylbutazone or oxyphenbutazone, shall constitute a violation of this rule and shall be subject to a penalty of up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

8.4 Testing

8.4.1 Reporting to the Test Barn

8.4.1.1 Horses shall be selected for post-racing testing according to the following protocol:

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

8.4.1.1.2 Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or extra testing, including pre-race testing, may be required by the State Steward or judges, or by the Commission, at any time on any horse on association grounds.

8.4.1.3 Unless otherwise directed by the State Steward, judges or the Commission Veterinarian, a horse that is selected for testing must be taken directly to the Test Barn.

8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the Commission Veterinarian.

8.4.2.2 The Commission veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission Veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission Veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission Veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of

the Commission Veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission Veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission Veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission Veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission Veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all

testing.

8.4.3.5.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission Veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission Veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited substance or in violation of these Rules and Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the "secondary sample" unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a "secondary sample" shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.

8.4.3.5.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the

testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission Veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

#### 8.5 Trainer Responsibility

The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his or her inability to be in attendance with the horse on the day of the race, or for any other reason, both trainers shall be responsible for the condition of the horse should the horse test positive; provided further that, except as otherwise provided herein, the trainer of record (programmed trainer) shall be any individual who receives any compensation for training the horse.

8.5.2 A trainer shall prevent the administration of any drug or medication or other foreign substance that may cause a violation of these rules.

8.5.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

8.5.4 The trainer is responsible for:

8.5.4.1 maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

8.5.4.2 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5 Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

8.5.5.1 the proper identity, custody, care, health, condition and safety of horses;

8.5.5.2 ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate accompany each horse and which, where applicable, shall be filed with the racing secretary;

8.5.5.3 having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) in accordance with state law and for filing evidence of such negative test results with the racing secretary;

8.5.5.4 using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds;

8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States Trotting Association and the racing secretary;

8.5.5.6 promptly reporting to the racing secretary and the Commission Veterinarian when a posterior digital neurectomy (heel nerving) has been performed and ensuring that such fact is designated on its certificate of registration;

8.5.5.7 promptly notifying the Commission Veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

8.5.5.8 promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the State Stewards and judges, the Commission Veterinarian, and the United States Trotting Association;

8.5.5.9 maintaining a knowledge of the medication record and status;

8.5.5.10 immediately reporting to the State Steward, judges and the Commission Veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

8.5.5.11 ensuring the fitness to perform creditably at the distance entered;

8.5.5.12 ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this chapter;

8.5.5.13 ensuring proper bandages, equipment and shoes;

8.5.5.14 presence in the paddock at least one hour before post time or at a time otherwise appointed before the race in which the horse is entered;

8.5.5.15 personally attending in the paddock and supervising the harnessing thereof, unless excused by the Paddock Judge;

8.5.5.16 attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

8.5.5.17 immediately reporting to the State Steward or other Commission designee, or to the State Veterinarian or Commission Veterinarian if the State Steward or other Commission designee is unavailable, the death of any horse drawn in to start in a race in this jurisdiction provided that the death occurred within 60 days of the date of the draw.

## 8.6 Physical Inspection of Horses

### 8.6.1 Veterinarian's List

8.6.1.1 The Commission Veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

8.6.1.2 A horse may be removed from the Veterinarian's List when, in the opinion of the Commission Veterinarian, the horse has satisfactorily recovered the capability of competing in a race.

### 8.6.2 Postmortem Examination

8.6.2.1 The Commission may conduct a postmortem examination of any horse that is injured in this jurisdiction while in training or in competition and that subsequently expires or is destroyed. In proceeding with a postmortem examination the Commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires while housed on association grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

8.6.2.3 The Commission may take possession of the horse upon death for postmortem examination. The Commission may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for testing by the Commission-selected laboratory or its designee. Upon completion of the postmortem examination, the carcass may

be returned to the owner or disposed of at the owner's option.

8.6.2.4 The presence of a prohibited substance in a horse, found by the official laboratory or its designee in a bodily fluid specimen collected during the postmortem examination of a horse, which breaks down during a race constitutes a violation of these rules.

8.6.2.5 The cost of Commission-ordered postmortem examinations, testing and disposal shall be borne by the Commission.

**See 1 DE Reg. 505 (11/01/97)**

**See 1 DE Reg. 923 (1/1/98)**

**See 3 DE Reg 1520 (5/1/00)**

**See 4 DE Reg. 6 (7/1/00)**

**See 4 DE Reg 336 (8/1/00)**

**See 5 DE Reg. 832 (10/1/01)**

**See 5 DE Reg. 1691 (3/1/02)**

## 8.7 Prohibited Practices

8.7.1 The following conduct shall be prohibited for all licensees:

8.7.1.1 The possession and/or use of a drug, substance, or medication, specified below for which a recognized analytical method has not been developed to detect and confirm the administration of such substance including but not limited to erythropoietin, darbepoietin, and perfluorcarbon emulsions; or the use of which may endanger the health and welfare of the horse or endanger the safety of the [rider driver]; or the use of which may adversely affect the integrity of racing.

8.7.1.2 The possession and/or use of a drug, substance, or medication that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States

## 10. Due Process and Disciplinary Action

### 10.2 Proceedings by State Steward or Judges

#### 10.2.1 Rights of the Licensee

A person who is the subject of the disciplinary hearing conducted by the State Steward or judges is entitled to:

10.2.1.1 Proper notice of all charges;

10.2.1.2 Confront the evidence presented, including:

10.2.1.2.1 the right to counsel at the person's expense;

10.2.1.2.2 the right to examine all evidence to be presented against him/her;

10.2.1.2.3 the right to present a defense;

10.2.1.2.4 the right to call witnesses;

and

10.2.1.2.5 the right to cross examine witnesses.

10.2.1.3 Waive any of the above rights.

#### 10.2.2 Complaints

10.2.2.1 A complaint must be in writing and

filed with the State Steward or judges within 30 days after the action that is the subject of the complaint.

10.2.2.2 On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the State Steward or judges may conduct an inquiry and disciplinary hearing regarding a licensee's actions.

#### 10.2.3 Summary Suspension

10.2.3.1 If the State Steward or judges determine that a licensee's actions, other than those of a licensed association, constitute an immediate danger to the public health, safety or welfare, the State Steward or judges the Commission Investigator, may summarily suspend the license pending a hearing.

10.2.3.2 A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third racing day after the license was summarily suspended. The licensee may waive his/her right to a hearing on the summary suspension within the three-day limit.

10.2.3.3 The State Steward or judges shall conduct a hearing on a summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

#### 10.2.4 Notice

10.2.4.1 Except as provided by these rules regarding summary suspensions, the State Steward or judges shall provide written notice at least 24 hours before the hearing to a person who is the subject of a disciplinary hearing. The person may waive his/her right to 24-hour notice by executing a written waiver.

10.2.4.2 Notice given under this section must include:

10.2.4.2.1 a statement of the time, place and nature of the hearing;

10.2.4.2.2 a reference to the particular sections of the statutes or rules involved; and

10.2.4.2.3 a short, plain description of the alleged conduct that has given rise to the disciplinary hearing.

10.2.4.3 If possible, the State Steward or his designee, or the judges or their designee, shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the State Steward or judges shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the State Steward shall provide written or oral notice of the hearing to the owner, managing owner or lessee of the horse. Oral notice of

any hearing shall suffice upon attestation by the State Steward that such notice was given the person who is the subject of the hearing.

10.2.4.4 Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the State Steward or judges. The State Steward or judges may suspend the license of a person who fails to appear at a disciplinary hearing after written or oral notice of the hearing has been sent or delivered in compliance with this subsection.

#### 10.2.5 Continuances

10.2.5.1 Upon receipt of a notice, a person may request a continuance of the hearing.

10.2.5.2 The State Steward or judges may grant a continuance of any hearing for good cause shown.

10.2.5.3 The State Steward or judges may at any time order a continuance on their own motion.

#### 10.2.6 Evidence

10.2.6.1 Each witness at a disciplinary hearing conducted by the State Steward or judges must be sworn by the State Steward or presiding judge.

10.2.6.2 The State Steward or judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the State Steward or judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The State Steward or judges shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The State Steward or judges may admit hearsay evidence if the State Steward or judges determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by Delaware law apply in hearings before the State Steward or judges.

10.2.6.3 The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule.

10.2.6.4 The State Steward or judges shall make a tape recording of a disciplinary hearing. A copy or a transcript of the recording may be made available at the expense of the requesting person.

#### 10.2.7 Ruling

10.2.7.1 The issues at a disciplinary hearing shall be decided by the State Steward or by a majority vote of the judges.

10.2.7.2 A ruling by the State Steward or judges must be on a form prescribed by the Commission and include:

10.2.7.2.1 the full name, social security number, date of birth, last record address, license type and license number of the person who is the subject of the hearing;

10.2.7.2.2 a statement of the charges against the person, including a reference to the specific

section of the Act or rules of the Commission that the licensee is found to have violated;

10.2.7.2.3 the date of the hearing and the date the ruling was issued;

10.2.7.2.4 the penalty imposed;

10.2.7.2.5 any changes in the order of finish or purse distribution;

10.2.7.2.6 other information required by the Commission; and

10.2.7.2.7 the right to appeal to the Commission.

10.2.7.3 A ruling must be signed by the State Steward or by a majority of the judges, as the case may be.

10.2.7.4 ~~Upon request~~, The State Steward or his designee, or the judges or their designee, shall hand deliver or mail a copy of the ruling to the person who is the subject of the ruling. If hand delivery is not possible, the State Steward or judges shall mail the ruling to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. A copy of the ruling shall be sent to the Association of Racing Commissioners International, and if the ruling includes the disqualification of a horse, the State Steward or judges shall provide a copy of the ruling to the horsemen's bookkeeper, breed registry(ies) and other regulatory agencies, and shall notify the United States Trotting Association, in the manner provided by this subsection.

10.2.7.5 At the time the State Steward or judges inform a person who is the subject of the proceeding of the ruling, the State Steward or judges shall inform the person of the person's right to appeal the ruling to the Commission.

10.2.7.6 All fines imposed by the State Steward or judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.

#### 10.2.8 Effect of Rulings

10.2.8.1 Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee.

10.2.8.2 The transfer of a horse to avoid application of a Commission rule or ruling is prohibited.

#### 10.2.9 Appeals

10.2.9.1 A person aggrieved by a ruling of the State Steward, judges, or the Administrator of the Breeder's Program may appeal to the Commission except as provided in subdivision 10.2.9.6 of this subsection. A person who fails to file an appeal by the deadline in the form required by this section waives the right to appeal. Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware

Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals under these Rules. For purposes of appeals from decisions of the Administrator of the Breeder's Program, the Commission will take official notice of the rules and regulations enacted by the Delaware Standardbred Breeders' Fund.

10.2.9.2 An appeal under this section must be filed with the State Steward not later than 48 hours after the ruling. The appeal must be accompanied by a deposit in the amount of \$250, plus an amount to be determined from time to time by the Commission for the cost of the court reporter's attendance. Unless the Commission determines the appeal to be meritorious, either by reversing the decision of the State Steward or judges or by reducing the penalty imposed, the appeal deposit shall not be repaid to the appellant. In no event shall the advance payment of the court reporters fee be refunded.

10.2.9.3 An appeal must be in writing on a form prescribed by the Commission. The appeal must include:

10.2.9.3.1 the name, address, telephone number and signature of the person making the appeal; and

10.2.9.3.2 a statement of the basis for the appeal.

10.2.9.4 On notification by the Commission that an appeal has been filed, the State Steward or judges shall forward to the Commission the record of the proceeding on which the appeal is based.

10.2.9.5 If a person against whom a fine has been assessed timely files an appeal of the ruling that assesses the fine, the person need not immediately pay the fine in accordance with these rules.

10.2.9.6 A notice of appeal filed with the Commission pursuant to these rules may be accompanied by a request for a stay pending a final decision by the Commission. In his discretion the State Steward may approve such stay requests unless he determines that granting the stay would be adverse to the best interests of racing or inimical to the integrity of the sport. If the State Steward denies a stay request, the appellant may submit a written request to the Commission, in which case the Chairman of the Commission in his discretion may grant or deny the request.

#### 10.3 Proceedings by the Commission

##### 10.3.1 Party Designations

10.3.1.1 A person who is the subject of a disciplinary hearing, who filed an appeal from a State Steward's or judges' ruling, or who otherwise seeks relief from the Commission, is a party to that proceeding.

10.3.1.2 A party to a proceeding has the right to present a direct case, cross-examine each witness, submit legal arguments and otherwise participate fully in the proceeding.

10.3.1.3 A party summoned to appear at a hearing must appear unless he/she is excused by the Commission presiding officer. Parties may appear with counsel licensed to practice law in Delaware, or, with the Commission's approval, counsel licensed to practice law in another jurisdiction provided that such out-of-state counsel associates with a Delaware attorney.

10.3.1.4 A non-party to a proceeding who wishes to appear in a contested case pending before the Commission must prove that he/she has an effected interest sufficient to create standing in the case. The burden of proof is on the party asserting standing in such a contested case.

#### 10.3.2 Notice

10.3.2.1 Not less than seven (7) days before the date set for a hearing, the Commission shall serve written or oral notice on each party of record to the proceeding. The person may waive his/her right to said notice by executing a written waiver. Oral notice shall suffice upon attestation by the State Steward that he personally gave such notice to the person who is the subject of the hearing.

10.3.2.2 If hand delivery or oral notice by the State Steward is not possible, the Commission shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by personal service or certified mail, return receipt requested.

10.3.2.3 A notice of the hearing must include:

10.3.2.3.1 a statement of time, place and nature of the hearing;

10.3.2.3.2 a reference to the particular sections of the statutes and rules involved; and

10.3.2.3.3 a short, plain statement of the matters asserted.

10.3.2.4 If the Commission determines that a material error has been made in a notice of hearing, or that a material change has been made in the nature of a proceeding after notice has been issued, the Commission shall issue a revised notice.

10.3.2.5 A party to a proceeding may move to postpone the proceeding. Unless waived by the Commission, the motion must be in writing, set forth the specific grounds on which it is sought and be filed with the Commission before the date set for hearing. If the person presiding over the proceeding grants the motion for postponement, the Commission shall cause new notice to be issued.

10.3.2.6 After a hearing has begun, the presiding officer may grant a continuance on oral or written motion, without issuing new notice, by announcing the date, time and place for reconvening the hearing before recessing the hearing.

#### 10.3.3 Subpoenas

10.3.3.1 A member of the Commission, the Director of Poultry and Animal Health, the State Steward or judges, the Commission Investigator the presiding officer of a Commission proceeding or other person authorized to

perform duties under the Act may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents.

10.3.3.2 The presiding officer of a Commission proceeding or other person authorized by the Commission may administer an oath or affirmation to a witness appearing before the Commission or a person authorized by the Commission.

10.3.3.3 Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by Delaware law.

10.3.3.4 On written request by a party, the presiding officer may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers or other objects as may be necessary and proper for the purposes of a proceeding. A motion for a subpoena to compel the production of books, records, papers or other objects shall be addressed to the appropriate person, shall be verified and shall specify the books, records, papers or other objects desired and the relevant and material facts to be proved by them.

#### 10.3.4 Conferences

10.3.4.1 On written notice, the presiding officer may, on the officer's own motion or on the motion of a party, direct each party to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following:

10.3.4.1.1 simplifying issues;

10.3.4.1.2 amending the pleadings;

10.3.4.1.3 making admissions of fact or stipulations to avoid the unnecessary introduction of proof;

10.3.4.1.4 designating parties;

10.3.4.1.5 setting the order of procedure at a hearing;

10.3.4.1.6 identifying and limiting the number of witnesses;

10.3.4.1.7 resolving other matters that may expedite or simplify the disposition of the controversy, including settling issues in dispute; and

10.3.4.1.8 identifying provisions and mandates of statute or rules relating to the issues.

10.3.4.2 The presiding officer shall record the action taken at the prehearing conference unless the parties enter into a written agreement as to the action. The presiding officer may enter appropriate orders concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence and scope of inquiry.

10.3.4.3 During a hearing, on written notice or notice stated into the record, the presiding officer may direct each party or the representative of each party to appear for a conference to consider any matter that may expedite the hearing and serve the interests of justice. The presiding officer shall prepare a written statement regarding the action



taken at the conference and the statement must be signed by each party and made a part of the record.

#### 10.3.5 Reporters and Transcripts

10.3.5.1 If necessary, the Commission shall engage a court reporter to make a stenographic record of a hearing. The Commission may allocate the cost of the reporter and transcript among the parties.

10.3.5.2 If a person requests a transcript of the stenographic record, the Commission may assess the cost of preparing the transcript to the person.

10.3.5.3 A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the Commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed corrections are not objected to before the tenth day after the date the corrections were filed with the Commission, the presiding officer may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.

#### 10.3.6 Nature of Hearings

10.3.6.1 An appeal from a decision of the State Steward or judges shall be de novo.

10.3.6.2 A hearing in a Commission proceeding is open to the public, provided, however, that witnesses may be sequestered.

10.3.6.3 Unless precluded by law or objected to by a party, the Commission may allow informal disposition of a proceeding without a hearing. Informal disposition includes disposition by stipulation, agreed settlement, consent order and default.

#### 10.3.7 Presiding Officers

10.3.7.1 A member of the Commission, the Director of Poultry and Animal Health or a Commission appointee may serve as the presiding officer for a Commission proceeding.

10.3.7.2 The presiding officer may:

10.3.7.2.1 issue subpoenas to compel the attendance of witnesses and the production of papers and documents;

10.3.7.2.2 administer oaths;

10.3.7.2.3 receive evidence;

10.3.7.2.4 rule on the admissibility of evidence;

10.3.7.2.5 examine witnesses;

10.3.7.2.6 set reasonable times within which a party may present evidence and within which a witness may testify;

10.3.7.2.7 permit and limit oral argument;

10.3.7.2.8 issue interim orders;

10.3.7.2.9 recess a hearing from day to day and place to place;

10.3.7.2.10 request briefs before or after the presiding officer files a report or proposal for decision;

10.3.7.2.11 propose findings of fact and conclusions of law;

10.3.7.2.12 propose orders and decisions; and

10.3.7.2.13 perform other duties necessary to a fair and proper hearing.

10.3.7.3 A person serving as the presiding officer of a proceeding must be a disinterested party to the proceeding.

#### 10.3.8 Order of Hearing

10.3.8.1 The presiding officer shall open the hearing, make a concise statement of its scope and purposes and announce that a record of the hearing is being made.

10.3.8.2 When a hearing has begun, a party or a party's representative may make statements off the record only as permitted by the presiding officer. If a discussion off the record is pertinent, the presiding officer shall summarize the discussion for the record.

10.3.8.3 Each appearance by a party, a party's representative or a person who may testify must be entered on the record.

10.3.8.4 The presiding officer shall receive motions and afford each party of record an opportunity to make an opening statement.

10.3.8.5 Except as otherwise provided by this subsection, the party with the burden of proof is entitled to open and close. The presiding officer shall designate who may open and close in a hearing on a proceeding if the proceeding was initiated by the Commission or if several proceedings are heard on a consolidated record.

10.3.8.6 After opening statements, the party with the burden of proof may proceed with the party's direct case. Each party may cross examine each witness.

10.3.8.7 After the conclusion of the direct case of the party having the burden of proof, each other party may present their direct case and their witnesses will be subject to cross examination.

10.3.8.8 The members of the Commission and/or the presiding officer may examine any witnesses.

10.3.8.9 At the conclusion of all evidence and cross examination, the presiding officer shall allow closing statements.

10.3.8.10 Before issuing a decision, the Commission or the presiding officer may call on a party for further relevant and material evidence on a issue. The Commission or the presiding officer may not consider the evidence or allow it into the record without giving each party an opportunity to inspect and rebut the evidence.

#### 10.3.9 Behavior

10.3.9.1 Each party, witness, attorney or other

representative shall behave in all Commission proceedings with dignity, courtesy and respect for the Commission, the presiding officer and all other parties and participants.

10.3.9.2 An individual who violates this section may be excluded from a hearing by the presiding officer.

#### 10.3.10 Evidence

10.3.10.1 All testimony must be given under oath administered by the presiding officer. The presiding officer may limit the number of witnesses and shall exclude all irrelevant, immaterial or unduly repetitious evidence.

10.3.10.2 The presiding officer is not bound by the Rules of Evidence, but the rules of privilege recognized by law in Delaware apply in Commission proceedings.

10.3.10.3 A party may object to offered evidence and the objection shall be noted in the record. A party, at the time an objection is made or sought, shall make known to the presiding officer the action the party desires. Formal exceptions to rulings by the presiding officer during a hearing are unnecessary.

10.3.10.4 When the presiding officer rules to exclude evidence, the party offering the evidence may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. The offer of proof preserves the point for review. The presiding officer may ask a witness or offered witness questions necessary to indicate that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross examination is preserved without making an offer of proof.

10.3.10.5 The presiding officer may take official notice of judicially cognizable facts and of facts generally recognized within the area of the Commission's specialized knowledge. The Commission shall notify each party of record before the final decision in a proceeding of each specific fact officially noticed, including any facts or other data in staff memoranda. A party must be given an opportunity to rebut the facts to be noticed.

10.3.10.6 The special skills and knowledge of the Commission, the Commission staff, and the officials of the Commission may be used in evaluating the evidence.

10.3.10.7 The presiding officer may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, the presiding officer shall allow a party to compare the copy with the original. If many similar documents are offered in evidence, the presiding officer may limit the documents admitted to a number which are representative of the total number, or may require that the relevant data be abstracted from the documents and presented as an exhibit. If the presiding officer requires an abstract, the presiding officer shall allow each party or the party's representative to

examine the documents from which the abstracts are made.

10.3.10.8 The presiding officer may require prepared testimony in a hearing if the presiding officer determines that it will expedite the hearing without substantially prejudicing the interests of a party. Prepared testimony consists of any document that is intended to be offered as evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation. A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the Commission on the date set by the presiding officer and shall serve a copy of the prepared testimony on each party of record. The presiding officer may authorize the late filing of prepared testimony on a showing of extenuating circumstances. The prepared testimony of a witness may be incorporated into the record as if read or received as an exhibit, on the witness being sworn and identifying the writing as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness is subject to clarifying questions and to cross examination and the prepared testimony is subject to a motion to strike either in whole or in part.

10.3.10.9 The party offering an exhibit shall tender the original of the exhibit to the presiding officer for identification. The party shall furnish one copy to the presiding officer and one copy to each party of record. A document received in evidence may not be withdrawn except with the permission of the presiding officer. If an exhibit has been offered, objected to and excluded and the party offering the exhibit withdraws the offer, the presiding officer shall return the exhibit to the party. If the party does not withdraw the offered exhibit, the exhibit shall be numbered for identification, endorsed by the presiding officer with the ruling on the exhibit and included in the record to preserve the exception.

10.3.10.10 The presiding officer may allow a party to offer an exhibit in evidence after the close of the hearing only on a showing of extenuating circumstances and a certificate of service on each party of record.

#### 10.3.11 Findings of Fact and Conclusions of Law

10.3.11.1 The presiding officer may direct any party to draft and submit proposed findings of fact and conclusions of law or a proposal for decision. The presiding officer may limit the request for proposed findings to a particular issue of fact.

10.3.11.2 Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.

10.3.11.3 Only if the presiding officer requires the filing of proposed findings of fact or a proposal for decision is the Commission required to rule on the proposed findings of fact. If a party is permitted but not

required to submit proposed findings or a proposal for decision, the Commission is not required to rule on the party's proposed findings.

#### 10.3.12 Dismissal

On its own motion or a motion by a party, the presiding officer may dismiss a proceeding, with or without prejudice, under conditions and for reasons that are just and reasonable, including:

- 10.3.12.1 failure to timely pay all required fees to the Commission;
- 10.3.12.2 unnecessary duplication of proceedings;
- 10.3.12.3 withdrawal;
- 10.3.12.4 moot questions or obsolete petitions; and
- 10.3.12.5 lack of jurisdiction.

#### 10.3.13 Orders

10.3.13.1 Except as otherwise provided by these rules, the Commission shall issue a final order not later than thirty days after the conclusion of the hearing. A final order of the Commission must be in writing and be signed by a majority of the members of the Commission who voted in favor of the action taken by the Commission. A final order must comply with the requirements of §10128 of the Administrative Procedures Act, and include a brief summary of the evidence, findings of fact based upon the evidence, conclusions of law, and other conclusions required by the Act or by these Rules, and a concise statement of the Commission's determination or action on the matter.

10.3.13.2 The Commission staff shall mail or deliver a copy of the order to each party or the party's representative.

10.3.13.3 A final order of the Commission takes effect on the date the order is issued, unless otherwise stated in the order.

10.3.13.4 If the Commission finds that an imminent peril to the public health, safety or welfare requires an immediate final order in a proceeding, the Commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a prerequisite to appeal.

#### 10.3.14 Ex Parte Communications

10.3.14.1 No Commission member may discuss the merits of a matter which is pending before the Commission prior to a formal hearing, or between the hearing and announcement of the Commission's final decision.

10.3.14.2 The Administrative Procedure Act, Title 29 of the Delaware Code, Section 10129, pertaining to ex parte communications, is hereby incorporated by reference.

#### 10.3.15 Appeals

Within fifteen (15) days after service of a final adjudication or order of the Commission, or the imposing of a monetary fine, or of an order of the Commission refusing a petition for rehearing or reconsideration, or of an order following a rehearing or reconsideration, any party shall have the right to appeal therefrom to the Superior Court of the State of Delaware, in the manner provided by law and the Rules of that Court.

#### 10.4 Rulings in Other Jurisdictions

##### 10.4.1 Reciprocity

The State Steward and judges shall honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of horses.

##### 10.4.2 Appeals of Reciprocal Rulings

10.4.2.1 Persons subject to rulings in other jurisdictions shall have the right to request a hearing before the Commission to show cause why such ruling should not be enforced in Delaware.

10.4.2.2 Any request for such hearing must clearly set forth in writing the reasons for the appeal.

**See 1 DE Reg. 507 (11/01/97)**

**See 2 DE Reg. 1243 (01/01/99)**

**See 5 DE Reg. 1903 (4/1/02)**

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

Statutory Authority: 16 Delaware Code,  
Sections 1145(f) and 1146(f) (16 Del.C.  
§§1145,1146)

### ORDER

#### Regulations for Criminal History Checks and Drug Testing for Home Health Agencies

##### Nature of the Proceedings:

The Department of Health and Social Services, Division of Long Term Care Residents Protection (DLTCRP) initiated proceedings in accordance with 29 Delaware Code, Chapter 101 to adopt Regulations for Criminal History Checks and Drug Testing for Home Health Agencies. On November 1, 2002, DLTCRP published proposed regulations in the Register of Regulations and received written and verbal comments at public hearings on December 2 and December 3, 2002.

Upon review of the comments received, the Division of Long Term Care Residents Protection has revised eight

regulations which will be the subject of a further public hearing. The eight regulations withheld from publication as final regulations are Regulations 72.0, 72.101, 72.104, 72.306, 72.307, 72.308, 72.401 and 72.404. Those eight revised regulations appear as proposed regulations elsewhere in this edition of the Register of Regulations.

The remaining regulations are attached and are being promulgated as final regulations. A discussion of the comments received regarding the attached final regulations is in the accompanying Summary of Evidence.

#### **Findings of Fact:**

The Department of Health and Social Services finds that the proposed regulations, as set forth in the attached copy, should be adopted as final regulations. Therefore, it is ordered that the proposed Regulations for Criminal History Checks and Drug Testing for Home Health Agencies are adopted effective January 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 12.13.2002

#### **Summary of Evidence:**

Comments on the proposed regulations have been received and evaluated as follows:

One comment questioned whether Regulation 72.303 meant that DLTCRP would give the employer the results of the criminal history record check if the employer had paid for it. To clarify, that regulation encompasses both the state and federal criminal history record checks only in circumstances in which the applicant has had a criminal history record check completed within the last five years. If the employer wishes to have another state criminal history check completed, the employer would pay the Delaware State Police to perform that service. However, for the federal criminal history record check, the information on file with DLTCRP would be provided to the employer at no cost.

Another similar comment noted that under Regulation 72.603, actual written reports of criminal history records prepared by the FBI are not released by DLTCRP. The commenter questioned whether that provision applies to state criminal history records; and it does not. Regulation 72.501 states that the employer does receive a copy of the applicant's state criminal history report.

A comment questioned whether the regulations would prevent a failed applicant from going to a new home health agency and whether the second application would be flagged before DLTCRP paid for a second criminal history record check. While a failed applicant may attempt a second application with a different home health agency, the database check performed by the State Bureau of Identification should prevent duplications.

A commenter stated that the definition of "illegal drug"

in the regulations is narrow and makes reference to the drugs referenced in 16 Del.C. §4753A. However, these regulations track the drugs specified in the statute to which these regulations apply with the addition of drugs which are frequently available in health care settings. The drugs defined in these regulations are all tested with a standard ten-panel drug screen.

Also with regard to drug testing, a commenter pointed out that the effect of a positive drug screen is not listed in the criteria for unsuitability for employment. The commenter is correct: the statute is silent on the effects of a positive drug screen. However, an employer is at liberty to determine that a positive drug screen is a bar to employment.

A comment called attention to some inconsistencies between these regulations and previously promulgated regulations for criminal history record checks and mandatory drug testing for persons working in nursing homes. To the extent that inconsistencies exist, DLTCRP will consider amending the regulations promulgated earlier to bring them into accord with these regulations. In particular, the exclusion of sanctions for non-compliance is deliberate since those sanctions are specified in the statute and need not be repeated in regulations and should not be paraphrased in regulations. Similarly, DLTCRP will consider adding "Conviction of any attempt to commit a crime" to the disqualifying convictions in the regulations pertaining to nursing homes and replacing the term "offense" with the term "conviction."

A comment construed the definition of "Final Employment" in the regulations as intended to encompass every reason that an employer might determine to refuse to accept an applicant for employment. No such implication is intended; rather, "Final Employment" is defined to distinguish it from "Conditional Employment" which is also defined in the regulations.

A comment proposed that the regulation defining "Illegal drug" should be modified to include "any other illegal drug subsequently specified by the Department..." The statute directs that illegal drugs aside from those set out in the statute be specified in regulations. Not only does DLTCRP not have the authority to include a category of unspecified drugs in the regulations, but under such a proposal, those to whom these regulations apply would have no way of knowing when or whether other drugs had been specified as illegal. If further drugs are determined by DLTCRP to be appropriate to add to the list of illegal drugs, that must be done through the regulatory process.

With regard to criteria for unsuitability for employment, a comment suggested that "severity of conviction" be added to the criteria. The severity of a conviction would be included under the category "Type of conviction" in Regulation 72.202a. A comment also stated that the criteria did not include the disposition of an offense. Each item enumerated in Regulation 72.202 specifies a conviction; a

conviction is a disposition, and the only disposition of an offense which renders an individual unsuitable for employment.

A comment also proposed that an individual be designated in the regulations to receive information in writing regarding conditionally hired individuals who leave employment prior to the completion of the criminal history record check. Such information may be forwarded to DLTCRP in any form, including by telephone, and it will be appropriately directed.

A commenter stated that the reference in Regulation 72.309 to "data from employers" should be limited to criminal background checks and drug testing information. DLTCRP regards the employment status of an applicant as relevant, and the regulation stands as written.

A comment indicated that the reference to 11 Del.C., §8513 in Regulation 72.601 is incorrect. The regulation is correct as written.

## **72.0 Purpose**

~~[The purpose of these regulations is to ensure the safety and well-being of residents in this State who use the services of home health agencies licensed pursuant to 16 Delaware Code, Section 122(3)0., and/or private healthcare givers in the resident's own home or home of residence. To this end, persons selected for employment in these agencies or private homes, effective July 1, 2001, shall be subject to pre-employment criminal history checks and pre-employment drug testing.]~~

## **72.1 Definitions**

~~[72.101 "Conditional Employment" pertains to the period of time during which an applicant is working while his/her employer has not received the results of (a) the State criminal history record, (b) the Federal criminal history record, and (c) the drug test. Conditional employment must end immediately if either the State or Federal criminal history record contains disqualifying crime(s) as delineated in Section 72.201 of these regulations.]~~

72.102 "Department or DHSS" means Department of Health and Social Services.

72.103 "Employer" is any person, business entity, management company, home health agency, temporary agency, or other organization that hires persons or that places persons in a private residence for the purposes of providing licensed nursing services, home health aide services, physical therapy, speech pathology, occupational therapy or social services.

~~[72.104 "Final Employment" means employment upon the employer's receipt of the State Bureau of Identification criminal history record containing evidence of no disqualifying convictions, a report by the Department that there are no disqualifying convictions in~~

~~such person's federal criminal record, and the results of the drug testing.]~~

72.105 "Hire" means to begin employment of an applicant, or to pay wages for the services of a person who has not worked for the employer during the preceding three-month period, or to refer a caregiver to a private residence in return for a finder or placement fee.

72.106 "Home Health Agency" is any business entity, public or private, which provides directly or through contract arrangements, to individuals in their home or private residence, either (a) two or more of the following services: licensed nursing, home health aide, physical therapy, speech pathology, occupational therapy, or social services where at least one of these services is licensed nursing or home health aide services or (b) home health aide services exclusively, provided under appropriate supervision.

72.107 "Illegal drug" for purposes of these regulations means marijuana/cannabis, cocaine, opiates including heroin, phencyclidine (PCP), amphetamines, barbiturates, benzodiazepene, methadone, methaqualone and propoxyphene.

72.108 "Promotion" means any change in job classification that results in additional responsibility and/or an increase in wages. It does not include a change in job status from part-time to full-time.

## **72.2 Criteria For Unsuitability For Employment**

72.201 The following types of criminal convictions (or convictions in another jurisdiction which are comparable under Delaware law) automatically disqualify a person from providing home health services when such conviction occurred within the time periods specified:

a. Conviction of any act causing death as defined in 11 Delaware Code, Chapter 5, Subchapter II, Subpart B with no time limit;

b. Conviction of any sexual offense designated as a felony in 11 Delaware Code, Chapter 5, Subchapter II, Subpart D with no time limit;

c. Conviction of any violent felony as specified in 11 Delaware Code, Section 4201(c) within the last ten years;

d. Conviction of any felony involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 Delaware Code, Chapter 47 within the last ten years;

e. Conviction of any felony other than those specified above within the last five years;

f. Conviction of any misdemeanor involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in 16 Delaware Code, Chapter 47 within the last five years;

g. Conviction of any Class A misdemeanor included in 11 Delaware Code, Chapter 5, Subchapter II, Subpart A within the last five years;

h. Conviction of any attempt to commit a crime, as defined in 11 Delaware Code, Section 531, with respect to any of the above listed offenses.

72.202 For other criminal convictions, the following criteria are to be used by the employer in determining whether a person is suitable for employment in home health care:

- a. Type of conviction(s);
- b. Frequency of conviction(s);
- c. Length of time since conviction(s) occurred;
- d. Age at the time of the conviction(s);
- e. Record since the conviction(s);
- f. Relationship of conviction(s) to type of job assignment.

**72.3 Employer Responsibilities**

72.301 The employer shall ensure that a *Criminal History Record Request Form* has been completed and that the employer copy is maintained in the employer's files.

72.302 The employer shall maintain a signed copy of the *Receipt/Verification of Providing Fingerprints Form* from the Delaware State Police.

72.303 If an employer wishes to have a criminal history record check conducted on an applicant who has been the subject of a qualifying State and Federal background check within the previous 5 years, the costs shall be borne by the employer. Payment shall be made directly to the Delaware State Police. The Department shall, at no cost, provide the results of the Federal Bureau of Investigation information to the employer in the same manner as for any other applicant.

72.304 If a person is fingerprinted under the auspices of these regulations more than once during a five-year period, the costs shall not be borne by the State. If the State is billed for such fingerprinting costs, payment shall be obtained from the employer specified on the *Criminal History Record Request Form*. Such employer may obtain payment from the applicant.

72.305 If an applicant who has been conditionally hired is separated from employment for any reason prior to completion of the criminal history check process, the employer shall notify the Department upon such separation.

~~72.306 Upon receipt of the results of the criminal history record check and the drug testing, the employer shall determine the suitability of an applicant for final employment using the criteria in Section 72.202 unless the state and/or federal criminal history record check has identified a conviction of one or more automatically disqualifying crimes. An applicant for final employment with a conviction of an automatically disqualifying crime shall be terminated immediately.~~

~~72.307 The employer shall notify the applicant of the findings of the criminal history record check and drug testing.~~

~~72.308 The employer is required to provide complete copies of all information received from the Department pertaining to an applicant to the individual in need of care or his/her guardian upon placement of the applicant.~~

72.309 The Department reserves the right to obtain data from employers on the employment status of applicants covered under these regulations.

**72.4 Applicants' Responsibilities**

~~72.401 Applicants are responsible for completing all information accurately and completely on the Criminal History Record Request Form and any form provided by the employer for use in obtaining mandatory pre-employment drug testing. Any applicant who refuses to complete one or more of these forms shall be deemed to have voluntarily withdrawn his/her application.~~

72.402 The applicant is responsible for having his/her fingerprints taken and for returning a *Receipt/Verification of Providing Fingerprints to the Delaware State Police Form* to the employer.

72.403 The applicant is responsible for informing any potential employer if he/she has already been fingerprinted in accordance with these regulations. The cost of additional fingerprinting, exceeding the one fingerprinting per five-year period required by these regulations, shall not be borne by the State.

~~72.404 The applicant is responsible for submitting to the required drug testing and providing verification to the employer.~~

**72.5 Department's Responsibilities**

72.501 When the Department has received all necessary documentation, it shall perform a review and ensure that the employer receives a copy of the applicant's state criminal history report and issue a written summary of the federal criminal history report. If conviction of a disqualifying crime is included on the state or federal criminal history report, the Department shall notify the employer immediately, prohibiting either the hire or continued conditional employment of the applicant.

72.502 Upon notification that an employer intends to hire a person who has previously had the criminal history check conducted by the Department, the Department shall review the criminal history on file and shall review the applicant's criminal history via the Criminal Justice Information System for any subsequent criminal information. If the review reveals a disqualifying conviction subsequent to the original review, the applicant shall be disqualified from employment with the new employer and the previously listed employers shall be notified of the recent conviction and encouraged to make personnel decisions based on the new information.

**72.6 Confidentiality**

72.601 In accordance with 11 Delaware Code, Section 8513(c), the Department shall receive information from the State Bureau of Identification pertaining to the identification and conviction data of any person for whom the Bureau has a record solely for the purpose of determining suitability for employment of the person whose record is received.

72.602 The Department shall store written and electronically recorded criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

72.603 The Department shall not release to employers, as defined in Section 72.103 of these regulations, copies of actual written reports of criminal history records prepared by the Federal Bureau of Investigation.

72.604 The following procedure shall be used to permit the review of criminal history record files by any applicant:

a. An applicant shall submit a request in writing to the Department for the on-site review of his/her criminal history record file.

b. An applicant shall make an appointment to review the record at the Department in the presence of a Department employee. The applicant shall present photo identification at the time of the review.

c. Written documentation of the date and time of the review and the names of those present shall be filed in the criminal history record file of the applicant.

d. Upon completion of such a review, the Department shall return criminal history records (written or electronic) to secure storage.

72.605 Criminal history record information shall not be disseminated to any person(s) other than the applicant, his/her employer or subsequent employer(s) as defined in Section 72.103 of these regulations, or the Department.

72.606 All employers shall store criminal history record information in a secure manner to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

72.607 Employers shall limit the use of criminal history record information to the sole purpose of determining suitability for employment.

**DIVISION OF SOCIAL SERVICES**

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

**ORDER****Nature Of The Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services / Cash Assistance Program initiated proceedings to amend the following section of the Division of Social Services Manual (DSSM): DSSM 6103, the Relative Caregivers' (Non-Parent) Transitional Resource Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C. 10114 and its authority as prescribed by 31 Del.C. Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Del.C. 10115 in the November 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**Summary of Proposed Change - DSSM 6103 Relative Caregivers' (Non-Parent) Transitional Resource Program**

Based on the Kinship Care law, Title 31, Delaware Code, Chapter 3, §356 (b)(4), DSSM 6103 is being amended to reflect the income of the caregiver is counted and cannot exceed 200% of the Federal Poverty Level (FPL) based on the household size. Also, the income of the child moving in with the caregiver and any siblings (or half-siblings) who also reside in the home, is not counted.

**Summary Of Information Submitted/with Agency Response**

The Governor's Advisory Council For Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendation:

First, as background, the proposed regulations amend financial eligibility to conform with guidelines for the Kinship Care Program established by S.B. 239 (signed by the Governor May 29, 2002). The Council previously commented on the underlying regulations in April of 2002. The statute [Title 31 Del.C. §356] recites as follows: (4) The caregiver must have income of no more than 200% of the federal poverty level.

The existing regulation was at odds with the statute



since it recited that the income of the caregiver(s) was always excluded. See Par. 5.b. which is being deleted. The proposed regulation counts the income of the caregiver and the caregiver's children while excluding the income of the incoming child and siblings.

Second, under the statute, DHSS is only authorized to count the income of the caregiver. It is not authorized to count the income of household children as proposed in the regulations. This scenario is reminiscent of DSS proposed regulations on the "Pill Bill". In 2000, DSS proposed to count household, rather than individual income, for "Pill Bill" financial eligibility. The Pill Bill [Title 16 **Del.C.** §3004B] applied a 200% poverty level test only to the "person" applying for the program. After the Council brought this to the attention of DSS, it deleted the reference to household. Please refer to 4 DE Reg.834 (November 1, 2000); 4 DE Reg.1180 (January 1, 2001); and 4 **DE Reg.** 1373 (3/1/01). GACEC and SCPD recommend that, to conform to S.B. 239, the proposed caregiver regulations should similarly be amended to only count the income of the caregiver.

**Response:** "Pill Bill" is part of the Medicaid/Medical Assistance package of services. Medicaid rules look at individual eligibility. Kinship Care is transitional financial assistance. Cash Assistance programs are based on families, not individuals. Therefore, when the regulation addresses caretaker relative, DSS looks at the income of the caretakers' family not to exceed 200% of the Federal Poverty Level.

**Findings Of Fact:**

The Department finds that the proposed changes as set forth in the November 2002 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation of the Cash Assistance Program regarding the Relative Caregivers' (Non-Parent) Transitional Resource Program is adopted and shall be final effective January 10, 2003.

Vincent P. Meconi, Secretary, DHSS , 12.13.2002

**6103 Eligibility**

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

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

regardless of the length of time they have been here, meet the residency requirement.

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

5. Income-The income of the caregiver cannot exceed 200% of the Federal Poverty Level based on the household size. The caregiver's household includes the caregiver and his/her children. The household size used in the income determination is the child and the child's siblings or half siblings who moved within 90 days into the caregiver(s) home. Children who are not a sibling or half sibling will be considered a separate household. The income of the child moving in with the caregiver and any siblings (or half-siblings) who also reside in the home, is not counted.

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

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

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

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

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**DIVISION OF SOCIAL SERVICES**

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

**Nature Of The Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Title XIX Medicaid State Plan to provide an inpatient hospital care reimbursement methodology for interim payments. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** Section 10114 and its authority as prescribed by 31 **Del.C.** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del.C.** 10115 in the November 2002 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2002 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.



### Summary Of Information Submitted/with Agency Response

The Governor's Advisory Council For Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have the following observations:

First, the proposed amendments appear to narrow cost recovery in one context. The former regulation recited that "high cost Medicaid cases will be identified and reimbursed". This is a fairly simple and direct standard. The revision narrowly defines "high cost" cases and reimburses them at less than actual cost.

Second, the proposed regulations also expand recovery options by deleting a prohibition on interim payments for long-term patients. This option is only available for patients with lengths of stay in excess of 1 year and costs in excess of \$1 million.

Third, in principle, GACEC and SCPD support adequate compensation rates for Medicaid providers. Without further information, it is unclear whether the high cost outlier compensation standard fairly reimburses hospital providers. In addition, GACEC and SCPD support the concept of allowing interim payments for long-term patients.

**Response:** The State has maintained its current reimbursement methodology for acute care inpatient hospitals since 1994. The State now recognizes that, in very high cost cases, holding claims until discharge could have a significant impact on a provider and proposes to allow for interim payments. For these cases, the provider would have access to funds sooner than normally allowed under the Delaware Medical Assistance Program's current policy. The State wishes to maintain fair compensation to the provider and maximize cost-effective care.

### Findings Of Fact:

The Department finds that the proposed changes as set forth in the November 2002 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan regarding inpatient hospital interim payment is adopted and shall be final effective January 10, 2003.

Vincent P. Meconi, Secretary, DHSS, 12.13.2002

### ATTACHMENT 4.19-A PAGE 3

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - INPATIENT HOSPITAL CARE (Continued)

Rate Setting Methods - Development of Implementation Year Operating Rates, Updates and Rebasing (Continued)

The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97, and every three years thereafter.

### Other Related Inpatient Reimbursement Policies

~~Outliers - High cost Medicaid cases will be identified and reimbursed.~~ High cost outliers will be identified when the cost of the discharge exceeds the threshold of three times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus 79 percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

~~Cases with long length of stay (LOS) - There will be no interim payment for cases with an exceptionally long LOS. The hospital will submit a single claim for the discharge.~~

For certain high cost cases, providers may request an interim payment, that is, a payment prior to the discharge of the patient when the discharge is not likely to occur in the near future. Cases that are approved by the State for reimbursement on an interim payment basis must meet all of the following conditions: (1) length of stay over one year, and (2) over one million dollars in costs as determined in the paragraph above, and (3) attempts to find non-acute care placements have proven unsuccessful and are documented to the State's satisfaction. Interim payment cases will be subject to the same outlier payment calculations as described in the paragraph above and reimbursed at the outlier amount less a 5% discount. Interim payments that are renewed must meet all of the following conditions: (1) an additional length of stay over one year (2) an additional one million dollars in costs as determined in the paragraph above and (3) continued attempts to find non-acute care placements have proven unsuccessful and are documented to the State's satisfaction. Any interim payment cases that are renewed will also be subject to the same outlier payment calculations as described in the paragraph above and reimbursed at the outlier amount less a 5% discount.

Transplants - Transplant cases will be treated as outliers and, when appropriate, will be subject to the outlier payment policy. Organ acquisition costs will not be reimbursed separately, but will be included in the per discharge rate.

Transfers/readmissions - There will be no distinct payment policy for transfers/ readmissions between hospitals. These cases will be paid on a discharge basis. The PRO will conduct a periodic review to monitor these types of cases and determine that discharges are appropriate.

Split bills - For in-State cases and Out-of-State hospitals receiving per diem payment that span FY94 and FY95, the cost associated with the days in FY94 will be reimbursed using the current methodology. The full per-discharge rate

will be paid for the days of care in FY95. Out of State hospitals who already use DRGs or a per discharge methodology will be paid the per discharge rate for all discharges on or after July 1, 1994.

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## **DEPARTMENT OF LABOR**

### **UNEMPLOYMENT INSURANCE APPEAL BOARD**

Statutory Authority: 19 Delaware Code,  
Section 3321(a) (19 **Del.C.** §3321(a))

#### **ORDER**

**AND NOW**, this 4th day of December 2002, in accordance with 29 **Del.C.** §10118 and for the reasons stated hereinafter, the Unemployment Insurance Appeal Board of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

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

Pursuant to its authority under 24 **Del.C.** §3321(a) the Board proposed to adopt new Rules and Regulations to revise and replace its existing Rules and Regulations, which were enacted in 1979. The proposed rules clarify procedural requirements concerning Board hearings, including the initiation of appeals; conduct of hearings, consideration of requests for continuances and postponements, evidence and subpoenas, Board decisions and rehearings.

Notice of the public hearing on the Board's proposed rule adoption was published in the *Delaware Register of Regulations* on November 1, 2002. The public hearing was held as noticed on Wednesday, December 4, 2002. The Board deliberated and voted on the proposed rule amendments immediately following the public hearing, voting unanimously to adopt the revised rules and regulations. This is the Board's Decision and Order **ADOPTING** the rule revisions as proposed.

#### **Evidence and Information Submitted at Public Hearing**

The Board received no written comments in response to the notice of intention to adopt the proposed rule revisions. No public comment was received at the December 4, 2002 public hearing.

#### **Findings of Fact and Conclusions of Law**

As outlined in the preceding section, the public was given the required notice of the Board's intention to comprehensively revise its regulations and was offered an adequate opportunity to provide the Board with comments

on the proposed changes. The Board concludes that its consideration of the proposed revisions to its Rules and Regulations is within its general authority to promulgate regulations under 19 **Del.C.** §3321(a). The Board finds that adoption of the proposed rules and regulations is necessary to comply with and enforce 19 **Del.C.** Chapter 33, and for the full and effective performance of the Board's duties under that chapter. The Board finds that the revised rules clarify the conduct of hearings and appeals and will better assist claimants and employees to understand their rights and responsibilities in bringing matters before the Board. The Board therefore unanimously votes to adopt the revised rules and regulations as published.

#### **ORDER**

**NOW, THEREFORE**, by unanimous vote of a quorum of the Unemployment Insurance Appeal Board, **IT IS HEREBY ORDERED THAT:**

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

#### **By Order Of The Unemployment Insurance Appeal Board**

**(As authenticated by a quorum of the Board):**

Elmer L. Newlin, Chairman  
Patricia Bailey  
Robert Samuel  
Richard Engle  
Vance Daniels, Sr.

**\*Please note that no changes were made to the regulation as originally proposed and published in the November 2002 issue of the Register at page 605 (6 DE Reg. 605). Therefore, the final regulation is not being republished. Please refer to the November 2002 issue of the Register or contact the Unemployment Insurance Appeals Board.**

# GOVERNOR'S APPOINTMENTS

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Advisory Council of Substance Abuse and Mental Health	Ms. Penny D. Chelucci	8/26/05
Board of Accountancy	Ms. Norma L. Rohleder	8/26/05
Board of Dental Examiners	Dr. Wanda Gardiner Smith, D.D.S.	8/29/05
Board of Directors of the Riverfront Development Corporation	Mr. Philip G. Heasley	Pleasure of the Governor
Board of Geologists	Mr. Theodore W. Ressler Mr. Eric J. Trinkle	7/29/05 7/29/05
Board of Landscape Architects	Mr. Paul DeVilbiss	7/29/05
Board of Podiatry Examiners	Edwin M. Mow, DPM	7/29/05
Child Death Review Commission	Ms. Kathy A. Janvier Ms. Lani L. Nelson-Zlupko Mr. Michael J. Szczerba	9/5/05 9/5/05 9/5/05
Child Placement Review Board-Kent	Ms. Gail L. Allen Ms. Mary Austria Ms. Evelyn Figueroa Ms. Dana S. Stonesifer	7/29/05 7/29/05 7/29/05 7/29/05
Child Placement Review Board-New Castle	Ms. Constance P. Cecil Ms. Mary R. Morgan Mr. Charles E. Brogdon Ms. Natalie M. Crawford Ms. Michele C. Gott Ms. Kay D. Haubois Ms. Mary Jane Johnson Ms Ann Southmayd Ms. Helen Willauer	7/29/05 7/29/05 7/29/05 7/29/05 7/29/05 7/29/05 7/29/05 7/29/05 7/29/05
Council on Housing	Ms. Constance C. McCarthy	9/4/05
Council on Transportation	Mr. Harry H. Isaacs, Jr.	7/17/05
Delaware Board of Examiners for Nursing Home Administrators	Ms. Patricia McLaughlin	4/22/05
Delaware College Investment Plan Board for Sussex County	Mr. A. Glenn Barlow, Jr.	8/19/05
Delaware State University Board of Trustees	Mr. Norman M. Oliver	8/19/08
Dental Hygiene Advisory Committee	Ms. Elizabeth Garey Ms. Fay S. Rust	7/29/05 7/29/05

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Greater Wilmington Convention and Visitors Bureau	Mr. Stephen T. Bruni	9/4/05
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Sussex County Vocational-Technical School Board of Education	Mr. John E. Oliver	8/20/09
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	Mr. Justin A. Kershaw, III	Pleasure of the Governor
	The Honorable Jack A. Markell	Pleasure of the Governor
	Mr. Kristofer A. Younger	Pleasure of the Governor
Tourism Advisory Board	Ms. Norma Lee Derrickson	8/20/05

**DEPARTMENT OF INSURANCE****DOMESTIC/FOREIGN INSURERS  
BULLETIN NO. 14****ACCIDENT AND HEALTH INSURANCE SALES  
PRACTICES IN THE SMALL GROUP MARKET**

Issued: December 4, 2002

**TO:** All Companies Authorized to Transact Accident and Health Insurance In the Small Group Market in Delaware

It has come to the attention of the Delaware Insurance Department that some insurance companies selling small group health insurance are attempting to discourage some small groups from obtaining coverage, or continuing coverage with the carriers. These practices include creating disincentives to sell insurance to some small groups, indirectly attempting to deny coverage and services, using delaying tactics with regard to renewals in order to benefit from increased premium payments, or indirectly pressuring the groups to terminate coverage. These practices avoid the requirements of the guarantee issue provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and, as such, are violations of the Unfair Trade Practices Act.

Specific examples reported to the Department include:

- The reduction or discontinuance of commissions to producers who sell to small groups creating a disincentive to sell small group health insurance.
- Delaying action on a "poor risk" group for a rate quote. The carrier delays providing a rate quote in order to cause the applicant to seek coverage with another company.
- The carrier may provide a quote but delay issuing the policy to the group, or the carrier may ask for additional individual health information and then increase the initial price quote at final approval, giving the appearance of a bait and switch tactic.
- The carrier does not provide at least 30 days advance notice of renewal to the group and/or the authorized producer, thereby allowing time for the group to look for other avenues of coverage before the renewal date. This results in the group being forced to pay the higher renewal rate until alternative arrangements can be made if they so desire.
- Delaying the processing of claims, untimely and incorrect billing procedures and delays in respond-

ing to inquiries from the group, such as requests for information about the status of an employee. This practice is designed to discourage the client and their agent from seeking renewal coverage from the carrier.

The above list illustrates some of the ways health insurance companies may try to discourage small groups with perceived high risk of claims from obtaining coverage, or from continuing coverage with the carrier. Carriers or producers found in violation of such practices will be subject to administrative penalties, monetary fines, or other action as appropriate.

Donna Lee H. Williams  
Insurance Commissioner

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

Please take notice, pursuant to 29 **Del.C.** Ch. 101 and 24 **Del.C.** Ch. 7, the Delaware Board of Chiropractic proposes to amend Rule 5.0 of the Delaware Board of Chiropractic's Rules and Regulations.

A public hearing will be held on the proposed amendment to Rule 5.0 on February 20, 2003 at 8:30 a.m. in Conference Room B of the Cannon Building, 861 Silver Lake Blvd., Dover, Delaware. The purpose of this hearing will be to receive public comments on the proposed amendment to Rule 5.0 in order that the Board of Chiropractic may vote to adopt, amend or reject said amendment at its February 20, 2003 meeting. The Board will receive and consider input in writing from any person regarding the proposed amendment to Rule 5.0. Written comments should be submitted to the Board up through and including the date and time of the hearing on February 20, 2003 at 8:30 a.m., to Judy Letterman, Administrative Specialist, at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware 19904-2467. For copies of the proposed amendment to Rule 5.0, please contact Ms. Letterman at the above address or by calling (302) 744-4500.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Please take notice, pursuant to 29 **Del.C.** Ch. 101 and 24 **Del.C.** Ch. 35, the Delaware Board of Examiners of Psychologists proposes the following amendment to Rule 7.2 of the Delaware Board of Examiners of Psychologists' Rules and Regulations.

7.2 Postdoctoral supervision is required for initial licensure as a psychologist. Postdoctoral experience must consist of ~~3,000~~ 1,500 hours of actual work experience. This experience is to be completed in not less than ~~two years~~ one year and not more than three calendar years, save for those covered under 24 **Del.C.** §3519(e). For those individuals the accrual of ~~3,000~~ 1,500 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. There is to be one hour of face-to-face supervision for every 1-10 hours of clinical work. This experience shall consist of at least twenty-five

percent and not more than sixty percent of the time devoted to direct service per week in the area of the applicant's academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

The purpose of the postdoctoral supervision is to train psychologists to practice at an independent level. This experience should be an organized educational and training program with explicit goals and a clear plan to meet those goals. There should be regular written evaluations based on this program.

A public hearing will be held on the proposed amendment to Rule 7.2 on Monday, February 3, 2003 at 9:00 a.m. in Conference Room A of the Cannon Building, 861 Silver Lake Blvd., Dover, Delaware. The purpose of this hearing will be to receive public comments on the proposed amendment to Rule 7.2 in order that the Board of Examiners of Psychologists may vote to adopt, amend or reject said amendment at its February, 2003 meeting.

The Board will receive and consider input in writing from any person regarding the proposed amendment to Rule 7.2. Written comments should be submitted to the Board up through and including the date and time of the hearing on February 6, 2003 at 9:00 a.m., to Vicki Gingrich, Administrative Assistant, at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Suite 203, Dover, Delaware 19904-2467. For copies of the proposed amendment to Rule 7.2, please contact Ms. Gingrich at the above address or by calling (302) 744-4500.

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**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, January 16, 2003 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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

**Public Notice**

**Regulations for Criminal History Checks and Drug  
Testing for Home Health Agencies**

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has drafted eight (8) revised proposed Regulations for Criminal History Checks and Drug Testing for Home Health Agencies pursuant to 16 Del.C. Sections 1145(f) and 1146(f). The remainder of the regulations addressing criteria for unsuitability for employment; confidentiality; and the responsibilities of employers, applicants and the Department with respect to criminal history checks and drug testing for applicants for employment by home health agencies and/or private healthcare givers in a resident's home or home of residence appear as final regulations elsewhere in this edition of the Register of Regulations. The following eight (8) draft regulations, revised after the December 2 and December 3 public hearings, will be the subject of a further public hearing: Regulations 72.0, 72.101, 72.104, 72.306, 72.307, 72.308, 72.401 and 72.404.

**Invitation For Public Comment**

A public hearing will be held as follows:

Thursday, February 6, 2003  
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 on these proposed regulations should be sent to:

John Thomas Murray  
Division of Long Term Care Residents Protection  
3 Mill Road, Suite 308  
Wilmington, DE 19806

Written comments will be accepted until the conclusion of the public hearing.

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**DIVISION OF PUBLIC HEALTH  
PUBLIC NOTICE**

These attached regulations, "State of Delaware Clean Indoor Air Act Regulations," replace by revision regulations previously adopted on November 27, 2002, pursuant to the State of Delaware Clean Indoor Air Act (16 Delaware Code, Chapter 29).

These Regulations establish standards for the enforcement of the Clean Indoor Air Act (CIAA) as it relates to most indoor enclosed areas to which the general public is invited or in which the general public is permitted. The proposed amendments to the original Clean Indoor Air Act Regulations address the issue of applicability of the CIAA to private clubs.

**Notice of Public Hearing**

Health Systems Protection Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed amendments to the State of Delaware Clean Indoor Air Act Regulations.

The public hearing will be held on Thursday, January 30, 2003 at 7:00pm in the Down's Lecture Hall located on the first floor of the Terry Building, Delaware Technical and Community College, Terry Campus, 100 Campus Drive, Dover, Delaware.

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

Health Systems Protection Section  
Federal and Water Streets  
Dover, DE 19903  
Telephone: (302) 744-4722

Anyone wishing to present his or her oral comments at these hearings should contact Mr. David P. Walton at (302) 744-4700 by Tuesday, January 28, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by Friday, January 31, 2003 to:

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

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**DIVISION OF PUBLIC HEALTH****Public Notice****Regulations Governing the Production and Sale of Milk and Milk Products**

These regulations, "State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products" replace by rescision the current "State of Delaware Regulations Governing the Production and Sale of Milk, Milk Products, Imitation Milk, Non-Dairy Products and Frozen Desserts" previously adopted June 9, 1975, and most recently amended June 8, 1983. They are being proposed pursuant to Title 16 Delaware Code, Chapter 1, §122 (1) and (3) a, f and j.

These Regulations establish standards for the production and sale of milk and milk products within the State of Delaware.

**Notice of Public Hearing**

Health Systems Protection Section, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed "State of Delaware Regulations Governing the Production and Sale of Milk and Milk Products".

The public hearing will be held on January 29, 2003 at 7:00 PM in the Department of Natural Resources and Environmental Control auditorium, 89 Kings Highway, Dover Delaware.

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

Environmental Health  
Williams State Service Center  
805 River Road  
Dover, DE 19901  
Telephone: (302) 739-5305

Anyone wishing to present his or her oral comments at this hearing should contact Mr. David P. Walton at (302) 744-4700 by Monday, January 27, 2003. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by Friday, January 31, 2003 to:

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

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**DIVISION OF SOCIAL SERVICES****Public Notice****Temporary Assistance for Needy Families (TANF) 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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / TANF Program is proposing to amend its policy as it relates to the assessment prior to termination of benefits and to add language allowing for two categories of eligible people.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2003.

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

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**DIVISION OF SOCIAL SERVICES****Public Notice****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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to amend its policy as it relates to the restoration of food stamp benefits to certain qualified aliens. These mandatory provisions must be implemented on April 1, 2003, in accordance with Public Law 107-171 Farm Security and Rural Investment Act of 2002 and Public Law 106-386 Trafficking Victims Protection Act of 2000.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2003.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the



consideration of the comments and written materials filed by other interested persons.

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**DIVISION OF SOCIAL SERVICES**

**Public Notice**

**Delaware Medicaid/Medical Assistance Programs**

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 107, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the policies in the Division of Social Services Manual (DSSM) related to Qualifying Individuals 2, the counting of Veteran Administration pension payments, and the Food Stamp Program standard utility allowance.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by January 31, 2003.

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.

Committee. Each of these scenarios would reduce Delaware tautog catch by 25%, as mandated in the FMP. Both recreational and commercial fishers would be affected, as commercial size limits, creel limits and seasons are the same as recreational management measures.

This amendment to Tidal Finfish Regulation #22 would change the title to: Tautog Management Measures. This would more accurately reflect the use of seasons and creel limits, as well as size limits to manage tautog.

**NOTICE OF PUBLIC COMMENT:**

Individuals may present their opinions and evidence or request additional information by writing, calling or visiting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 at 7:30 p.m. on Monday January 6, 2003. The record shall remain open for written comments until 4:30 p.m. on Friday January 31, 2003.

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**DELAWARE RIVER BASIN  
COMMISSION**

**25 STATE POLICE DRIVE**

**P.O. BOX 7360**

**WEST TRENTON, NJ 08628-0360**

The **Delaware River Basin Commission** will meet on Wednesday, January 29, 2003 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary and Assistant General Council, at (609) 883-9500 ext. 203.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF FISH AND WILDLIFE**

**SAN# 2002-22**

**TITLE OF THE REGULATIONS:**

Tidal Finfish Regulations Regulation No. #22 Tautog Size Limit

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

In order to remain in compliance with the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Tautog, as amended, tidal finfish regulation #22 must be amended by adopting one of eight catch reduction scenarios, approved by the ASMFC Tautog Technical

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*Delaware's lawmaking body, is comprised of a State House of Representatives, whose 41 members are elected for two-year terms, and a State Senate, whose 21 members are elected for four-year terms. Half of the Senate seats are contested in each general election.*

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