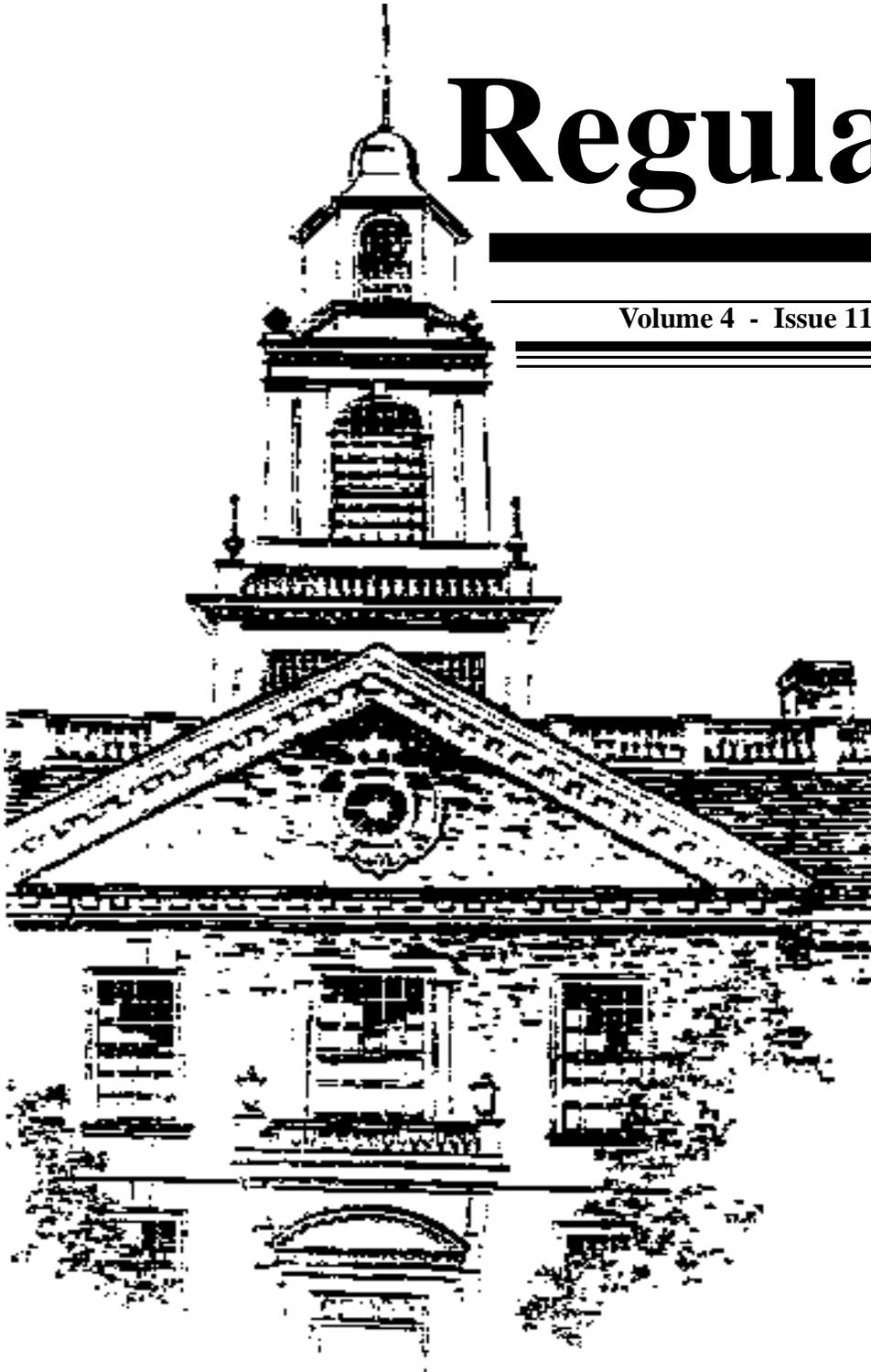


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# Delaware Register of Regulations



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Issue Date: May 1, 2001

Volume 4 - Issue 11

Pages 1671 - 1870

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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before April 15, 2001.

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

**4 DE Reg. 769 - 775 (11/1/00)**

Refers to Volume 4, pages 769 - 775 of the Delaware Register issued on November 1, 2000.

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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**Symbol Key**

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

**Emergency Regulations**

Under 29 **Del.C.** §10119, if an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by 29 **Del.C.** §10115, then the following rules shall apply: (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable; (2) The order adopting, amending or repealing a regulation shall state in writing the reasons for the agency's determination that such emergency action is necessary; (3) the order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days; (4) When such an order is issued without any of the public procedures otherwise required or authorized by Chapter 101 of Title 29, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 1902(a) (7 **Del.C.** §1902(a))

**Adoption of an Emergency Amendment to Tidal Finfish  
Regulation No. 4, without notice of hearing, to reduce  
recreational landings of summer flounder in 2001.**

**Order No. 2001-F-0015**

**AUTHORITY**

Pursuant to 29 **Del.C.** §10119, The Department of Natural Resources and Environmental Control is adopting an amendment to **Tidal Finfish Regulation No. 4, SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS** without prior notice or public hearing to further reduce the recreational summer flounder landings in 2001. 7 **Del.C.** §903 authorizes the Department to adopt regulations concerning species of finfish that spend part or all of their life cycle within the tidal waters of this State; provided, that such regulations are consistent with interstate fishery management plans developed for the protection and conservation of said finfish.

**REASON FOR EMERGENCY ORDER**

The summer flounder fisheries are managed cooperatively by the states, through the Atlantic States Marine Fisheries Commission (ASMFC), and the federal

government, through the Mid Atlantic Fishery Management Council (MAFMC), and the National Marine Fisheries Service (NMFS). The states, operating through the ASMFC's Management Board are required to develop and implement measures that can reasonably be expected to constrain their fisheries to their respective share of the coastwide total allowable landings (TAL).

According to the Summer Flounder Fisheries Management Plan (FMP), 40% of the TAL is dedicated to recreational fishing and 60% to commercial fishing. The commercial fishery is closed when it reaches its annual allotted share and consequently, the commercial fishery has not been overfished. On the other hand, the recreational fishery is regulated by size, creel and seasons to control the effort but to no avail. The recreational TAL has been greatly exceeded. The recreational summer flounder landings are determined by the Marine Recreational Fisheries Statistics Survey conducted by the NMFS. From 1996 to 1999, the recreational fishery for summer flounder significantly exceeded its target by 33%, 60%, 67% and 13%. In 1999 it decreased greatly from the previous three years but in 2000 it increased by more than 100%.

In order to comply with a Court Order (NRDC et.al.,v Daley) issued by the U.S. Court of Appeals for the District of Columbia on April 25, 2000, NMFS implemented an emergency rule on August 12, 2000, temporarily amending the summer flounder FMP and its implementing regulations and established a TAL of 17.91 million pounds for 2001. The Court Order required the 2001 TAL be set at a level that will achieve, with at least a 50 percent probability, the biomass level that would have been achieved at the end of 2001 if the fishing mortality target had been met in 2001. This biomass level is 148.8 million pounds.

The ASMFC, not bound by the Court Order, expanded

the TAL to 20.5 million pounds in January, 2001, based on the latest stock assessment information. Under the ASMFC's TAL, Delaware adopted appropriate regulations (Order No. 2001-F-0007) on March 10, 2001, that would reduce recreational landings by 40% relative to average 1998-2000 landings necessary to achieve the 2001 recreational harvest limit. The NMFS argued the EEZ would have to be closed to all summer flounder fishing to account for the 2.59 million pounds difference in TAL's to meet the requirements of the Court Order. On April 3, 2001, the ASMFC agreed to lower its TAL to 17.91 million pounds to avoid a closure in the EEZ. Consequently, Delaware's required reduction in the recreational summer flounder fishery for 2001 increased from 40% to 48%. The ASMFC also decided that any closure in the recreational fishery must be no less than seven consecutive days; in effect, ruling out Delaware's current two day a week closure.

In order to meet the required reduction in recreational landings of summer flounder, amendments to Tidal Finfish Regulation No. 4 are necessary at this time to increase the minimum size limit to 17 inches, decrease the creel limit to 5 fish per day and implement an open season for 102 consecutive days. Other options with varying size limits, creel limits and seasons to reduce landings 48% were considered. Most public opinions at previous public hearings on summer flounder expressed a preference for the smallest size limit, a creel limit no less than 4 and no closure in the summer. The 102 day season should open on May 26 (prior to Memorial Day) and end on September 4 (after Labor Day) to avoid any closure in the summer.

The summer flounder is over fished according to the definition of overfishing in the FMP. Accordingly, the Department has determined an imminent peril to the recreational summer flounder fishery if the stock of summer flounder continues to be overfished. Amendments to Tidal Finfish Regulation No.4 are necessary at this time to reduce the recreational landings of summer flounder in 2001 by 48% relative to the average 1998-2000 landings necessary to achieve the 2001 recreational harvest limit. Failure to do so immediately could result in a complete closure of the summer flounder fishery in Delaware according to the Atlantic Coastal Fishing Cooperative Management Act.

#### **EFFECTIVE DATE OF ORDER**

This order shall take effect at 12:01 AM on April 12, 2001 and shall remain in effect for 120 days.

#### **PETITIONS FOR RECOMMENDATIONS**

The Department will receive, consider and respond to petitions by any interested person for recommendations or revision of this Order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings

Highway, Dover, DE 19901.

#### **ORDER**

It is hereby ordered, the 6<sup>th</sup> day of April, 2001, that the above referenced amendment to Tidal Finfish Regulation No.4, a copy of which is hereby attached, is adopted pursuant to 29 Del. C. §10119 and supported by the evidence attached hereto.

It is further ordered, the Department shall receive public testimony and evidence at a public hearing on May 1, 2001 to consider appropriate remedies to manage the summer flounder recreational fishery consistent with the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

Nicholas A. DiPasquale, Secretary, Department of Natural Resources and Environmental Control.

#### **EMERGENCY AMENDMENT TO:**

#### **TIDAL FINFISH REGULATION 4. SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; POSSESSION LIMITS; SEASONS.**

a) It shall be unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land any summer flounder at any time ~~on each Monday and Tuesday during the period beginning at 12:01 AM on January 1 and ending at midnight on June 30 and at any time on each Monday during the period beginning at 12:01 AM on July 1 and ending at midnight on August 25 and at any time on each Monday and Tuesday during the period beginning at 12:01 AM on August 26 and ending at midnight on December 31.~~ during the period beginning at 12:01 AM on January 1 and continuing through midnight on May 25 and during the period beginning at 12:01 AM on September 5 and continuing through midnight on December 31.

b) It shall be unlawful for any recreational fisherman to have in possession more than ~~seven (7)~~ five (5) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than ~~sixteen (16)~~ seventeen (17) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~sixteen (16)~~ seventeen (17) inches between said part's two most distant points unless said

person also has in possession the head, backbone and tail intact from which said part was removed.

e) Is omitted intentionally.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Is omitted intentionally.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~seven (7)~~ five (5) summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

**Symbol Key**

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

**Proposed Regulations**

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

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**DELAWARE SOLID WASTE  
AUTHORITY**

Statutory Authority: 7 Delaware Code,  
Section 6403 (7 **Del.C.** §6403)

**I. Nature of Proceedings.**

Pursuant to 7 **Del.C.** §6403, the Delaware Solid Waste Authority (DSWA) proposes to amend the **Regulations of the Delaware Solid Waste Authority** (hereafter DSWA Regulations), adopted March, 1999; to revise its **Differential Disposal Fee Program** (hereafter DDFP); and to revise the **Statewide Solid Waste Management Plan** (hereafter Statewide Plan).

The DSWA Regulations are currently in effect and address the collection of solid waste in the State of Delaware; the licensing of persons who collect or transport solid waste; the use of DSWA facilities; recycling; transfer stations; and review, enforcement and sanctions. The revisions to the DSWA Regulations encompass, among other things, modifications to some of the definitions; clarification regarding equipment and equipment backup capability of licensees; the content of licenses; reporting requirements of licensees; disposal of solid waste under the control of state governmental entities; designation of certain waste as "special waste" that requires a particular procedure for disposal; deletion of provisions regarding certain solid waste products; and amended reporting requirements for the operators of recycling facilities. The authority for the DSWA Regulations is contained in 7 **Del.C.** Ch. 64, most notably Section 6403. The authority to regulate solid waste under the control of state governmental entities is derived in part pursuant to 7 **Del.C.** §§6406, 6420, and 6422. Currently,

regulatory control proposed in the revisions is accomplished by separate contracts with certain state governmental entities, including municipalities. The revisions contemplate that certain waste under the control of state governmental entities be disposed of at DSWA facilities. In such case, the DDFP would apply, and fee reductions or rebates would be applicable. The issues addressed in the revisions to the DSWA Regulations relate to better management and control of solid waste disposal in the State. No other regulations are impacted or affected by the proposal although there is an obvious interrelatedness to the revisions to the DSWA Regulations, the DDFP and the Statewide Plan.

The DDFP is established pursuant to 7 **Del.C.** §6403(k). The current DDFP fixes a base rate for the disposal of solid waste and establishes a rebate program for persons or entities who enter a contract with DSWA to bring all their solid waste to DSWA facilities. The revisions to the DDFP do not change the base rate, but do increase the amount of the rebate in certain respects and establish a new and lower rate for the disposal of dry waste (defined in the DSWA Regulations) delivered to designated facilities. The revisions also contemplate the adjustment of the rates, within a specified range, on 30 days notice to the public. Such adjusted rates would not affect rates established by contract with DSWA, in effect at the time of the adjustment, unless the rate adjustment would result in a lower rate than provided for by contract, in which case the lower rate would prevail. The issues addressed by the revisions to the DDFP include the implementation of a fair and equitable system for allocating the costs of DSWA operations while assuring the protection of environmental resources of the State. The revisions to the DDFP do not impact other regulations, although there is an obvious interrelatedness between it and

the DSWA Regulations and the Statewide Plan.

The authority for the adoption of the Statewide Plan, and its amendment, is contained at 7 Del.C. §64030). The current Statewide Plan explains certain background information related to the Plan; describes current DSWA facilities and programs; discusses projects of the DSWA; addresses future directions; presents an options analysis; considers facility siting and health and environmental issues; and recommends certain plan initiatives. The revisions to the Statewide Plan update the information in the current Statewide Plan, in terms of project implementation and the identification of future projects, and explains the need for flexibility to structure a program which best meets the needs of the State and protects the public health and environment. The revisions also identify management options to include the construction, acquisition and/or operation of transfer stations/recycling centers/dry waste disposal facilities to serve the resort areas of Sussex County, the greater Milford area, the greater Dover area, and the greater Newark area. Revisions also identify the establishment of a differential pricing arrangement for the disposal of dry waste. The revisions explain how the options may be implemented. The issues addressed by the revisions to the Statewide Plan relate to the short-term and long-range planning connected to disposal of solid waste in the State. The revisions do not affect other regulations, though they are related to the DSWA Regulations and the DDFP.

## II. Public Hearing/Comment.

A Public Hearing on the above proposals will be held on Thursday, May 24, 2001 at 10:00 A.M., at the Delaware Department of Natural Resources and Environmental Control (Auditorium), 89 Kings Highway, Dover, Delaware. The DSWA will receive and consider oral or written input provided at the hearing. DSWA will also accept and consider any written materials submitted to it at DSWA, attn: Thomas Houska, Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware. Such written materials must be received by DSWA no later than 4:30 P.M., June 1, 2001. The entire text of the DSWA Regulations and the DDFP are printed herein following this notice. The revision to the Statewide Plan is solely in the form of a supplement and such supplement is printed in its entirety below. The complete Statewide Plan is approximately 300 pages long, and may be reviewed at the above DSWA address.

### Proposed amendments to the Regulations of Delaware Solid Waste Authority (adopted March, 1999)

DRAFT DATE April 11, 2001

## I. PURPOSE AND AUTHORIZATION

These Regulations \* are adopted pursuant to the Act to

achieve the goals set forth therein.

## II. DEFINITIONS

"Act" means the Delaware Solid Waste Authority Act, 7 Del.C. Ch. 64.

"CEO" means Chief Executive Officer and Manager of DSWA.

"Chairman" means the Director designated by the Governor as chairman of DSWA in accordance with 7 Del.C. Section 6403(a).

"Department" means the Department of Natural Resources and Environmental Control of the State of Delaware.

"Directors" means the directors of DSWA holding office in accordance with 7 Del.C. Section 6403.

"Dry Waste" means wastes including, but not limited to construction and demolition waste not mixed with waste that is other than dry waste, plastics, rubber, lumber, trees, stumps, vegetative matter, asphalt pavement, asphaltic products incidental to construction/demolition debris, or other materials which have reduced potential for environmental degradation and leachate production.

"DSWA" means the Delaware Solid Waste Authority, an instrumentality of the State of Delaware, existing pursuant to the Act.

"Hazardous Waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, or chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible illness, or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes listed described in Sections 261.31, 261.32 and 261.33 of the Delaware Regulations Governing Hazardous Waste. ~~and those solid wastes which otherwise exhibit the characteristics of a hazardous waste as defined in Part 261 of the Delaware Regulations Governing Hazardous Waste.~~

"Industrial Process Solid Waste" means solid waste produced by or resulting from industrial applications, processes or operations and includes, by way of example and not by way of limitation, sludges of chemical processes, waste treatment plants, water supply treatment plants, and air pollution control facilities and incinerator residues, but does not include the solid waste generated at an industrial facility which is comparable to municipal solid waste, such as cafeteria waste, cardboard, paper and pallets, crates or other containers constructed of and containing non-hazardous combustible material.

\* The Department also has promulgated regulations pertaining to solid waste disposal.

"Junkyard" means an establishment or place of

business which is maintained, operated or used for storing, keeping, buying or selling junk or wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

**"Licensee"** means a person holding a license issued by DSWA pursuant to Article III of these Regulations.

**"Municipality"** means a county, city, town or other public body of the State of Delaware.

**"Permit"** means the stickers which DSWA issues under the License identifying the Licensee's account number and a vehicle number, which shall be affixed to both sides of the vehicle.

**"Person"** means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision, or other duly established legal entity.

**"Solid Waste"** means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or ~~water~~ air pollution control facility and other discarded material, including solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ~~Section 402 of the Federal Water Pollution Control Act, 7 Del. Code, Chapter 60~~ as amended, or source, special nuclear, or by-product materials defined by the Atomic Energy Act of 1954, as amended, or materials separated on-site by the generator thereof for further use, service or value.

**"DSWA Solid Waste Facility"** ~~means any landfill, recycling project, including waste to energy projects, collection station, transfer station, or other solid waste processing or disposal facility of project operated by, on behalf of, or under contract with DSWA.~~ means any solid waste disposal site, system or process and the operation thereof, including but not limited to personnel, equipment and buildings. Such facility includes any landfill, recycling project, including waste to energy projects, collection station, transfer station, or other solid waste processing or disposal facility for projects operated by, on behalf of, or under contract with DSWA.

**"Special Solid Wastes"** means those waste that require extraordinary management. They include but are not limited to abandoned automobiles, white goods, used tires, waste oil, sludges, dead animals, agricultural and industrial wastes, infectious waste, municipal ash, septic tank pumpings, and sewage residues.

**"Toxic Substance"** ~~means any chemical substance or mixture that may present an unreasonable risk of injury to health or the environment.~~

**"Transfer Station"** means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing,

recycling or disposal.

### III. COLLECTION AND LICENSING

3.01 No person shall collect, transport, and/or deliver solid waste in the State of Delaware without first having obtained a license from DSWA, provided, however, that:

a. persons transporting and delivering solid waste that they created on their premises resulting from their activities shall not be required to obtain a license therefore; and

b. persons collecting, transporting and/or delivering solid waste in the course of their employment by a person holding a license from DSWA shall not be required to obtain a license therefore; and

c. a license shall not be required for the collection, transportation, or delivery exclusively of dry waste, leaves, street and storm sewer cleaning materials, agricultural wastes or those materials identified in paragraph 4.02 (a) - (e) of these Regulations.

3.02 With respect to solid waste delivered to a DSWA Solid Waste Facility, the CEO, based upon a determination of threat to public health or welfare or other emergency, may designate a specific Solid Waste Facility for ~~use~~ disposal of such waste.

3.03

a. Each Licensee shall clearly display on both sides of the vehicle:

i. the license permit stickers provided by DSWA which is the property of DSWA and subject to cancellation, suspension and/or revocation. The license permit stickers shall be legible at all times and shall be placed in an area of high visibility to allow immediate identification by DSWA Weighmasters and Compliance Officers. License permit stickers shall be not be placed on fuel or hydraulic tanks or reservoirs, or areas where the operation of mechanical parts would impair the visibility of the permit stickers;

ii. the Licensee's business name with letters at least three (3) inches high and of a color that contrasts with the color of the vehicle. No name other than the Licensee's business name shall be displayed. A regularly used business logo may also be displayed.

b. Licensees shall maintain business offices and phone numbers as follows:

i. Licensees who collect on a yearly average 100 tons per month or more:

(a) each Licensee shall maintain a manned business office location or locations and designate a representative in responsible charge thereof;

(b) each Licensee shall provide his business office street address in addition to a Post Office Box;

(c) telephone coverage with a Delaware telephone number listed in the appropriate Delaware

Telephone Directory in the business name of the Licensee shall be maintained by a responsible and authorized person at the main office during normal business hours. Licensees with main offices located outside of the State of Delaware may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. An answering machine shall not satisfy this; and

(d) notification regarding any change of business location or telephone number shall be provided to DSWA in writing at least fifteen (15) days prior to such change.

ii. Licensees who collect on a yearly average less than 100 tons per month:

(a) each Licensee shall provide a street address in addition to a Post Office Box for the business office or dwelling that is able to receive correspondence. A Post Office Box shall not satisfy this requirement;

(b) telephone coverage with a Delaware telephone number listed in the appropriate Delaware Telephone Directory in the business name of the Licensee shall be maintained by the Licensee during normal business hours. Licensees with main offices located outside of the State of Delaware may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. An answering service may be utilized. An answering machine shall not satisfy this requirement; and

(c) notification regarding any change of business location or telephone number shall be provided to DSWA in writing at least fifteen (15) days prior to such change.

### 3.04

a. Each Licensee shall maintain insurance at the following minimum amounts:

i. Automobile liability: \$350,000 combined bodily injury and property damage per occurrence;

ii. General liability: bodily injury \$300,000 per occurrence; property damage: \$100,000 per occurrence; and

iii. Workman's Compensation as required by law.

b. Each Licensee shall provide to DSWA new certification of the coverages specified in subsection 3.04(a) including a certification within ten (10) days of renewal. Each such certification of insurance shall provide that DSWA receive at least thirty (30) days advance notice of any canceled, discontinued, or diminished coverage.

3.05 Each Licensee shall maintain collection vehicles to comply with the following minimum requirements:

a. Each collection vehicle body shall be maintained to prevent fluids from discharging onto the surface of the ground.

b. Each collection vehicle body shall be capable of being readily emptied.

c. Each collection vehicle shall be kept in as much of a

sanitary condition as to control the presence of vectors.

d. Containers, boxes, and other devices, excluding open top trailers, referred to as roll-offs, used by Licensees for collection of solid waste in excess of thirty (30) gallon capacity shall be enclosed or covered to reduce fluid leakage or collection of water.

e. Each collection vehicle shall be equipped so that it can be readily towed, and maintained in good operational condition for safe and stable operation and/or navigation in or about a Solid Waste Facility.

f. Each collection vehicle used or proposed for use by an applicant or Licensee and the contents of any collection vehicle shall be subject at all times to inspection by DSWA.

~~g. All roll off containers used for collecting, transporting and delivering of solid waste generated within the State of Delaware shall display stickers issued by DSWA near the bottom and front of both sides of each roll-off. Solid waste described in Section 4.03 shall be exempt from this requirement.~~

3.06 Each Licensee shall comply with the following requirements while collecting, transporting and/or delivering solid waste.

a. Solid waste shall not be processed, scavenged, modified, or altered unless in compliance with applicable laws and regulations.

b. Solid waste in collection vehicles and/or containers shall be suitably enclosed or covered to prevent littering or spillage of solid waste or fluids.

c. Solid waste shall not be stored in a collection vehicle for more than twenty-four (24) hours unless the solid waste is being delivered to a Solid Waste Facility and the facility is closed for the entire day when the twenty four hour period expires, in which case the collection vehicle may discharge the solid waste at the facility on the next day that the facility is open.

d. Any spillage of solid waste shall be immediately cleaned up and removed.

e. No undue disturbance shall be caused in residential areas as a result of collection operations.

3.07 All collection vehicles shall be owned in the name of the Licensee or leased in the name of the Licensee. Upon submission of an application for a first time license, each applicant shall provide a copy of a valid motor vehicle registration card for each collection vehicle. If the collection vehicle is not owned by the applicant, a copy of a written motor vehicle lease agreement shall also be submitted with the application.

~~3.08 Each Licensee shall provide and continuously maintain backup capability to allow for continued collection, transportation, and/or delivery of solid waste in the event of equipment breakdown.~~ As a minimum each Licensee, except

for municipalities with a written agreement with a licensed collector ~~another municipality~~ for such backup, shall own and/or lease, in the name of the licensee, at least two fully and continuously operational collection vehicles of like service, except for down time for routine maintenance

3.09 Only enclosed vehicles or vehicles capable of being enclosed or covered to prevent any compactor type vehicles or "roll-offs" with a cover sufficient to prevent any spillage of, loss or littering of solid waste shall be used by Licensees for collection, transportation, or delivery of solid waste, except for vehicles utilized only to collect, transport or deliver the solid wastes referenced in Section 4.02 (a-e) and Section 4.03, infra, or oversized bulky waste, such as couches and refrigerators. Such vehicles used for oversized bulky waste shall not satisfy part or all of the Section 3.08 requirement that each Licensee own and/or lease at least two fully and continuously operational vehicles. An exception to the requirements of the first sentence of this section may be authorized by the CEO or his designee in circumstances where it is physically impossible to provide solid waste collection services with such vehicles.

3.10

a. With the exception of any municipality, each applicant for a license and each Licensee shall provide to DSWA and maintain a bond under which the Licensee shall be jointly and severally bound with a corporate surety qualified to act in the Courts of Delaware to DSWA for amounts due to DSWA for fees or charges for services. A Bond or Surety is not required if the licensee pays at the time of solid waste delivery.

b. In lieu of corporate surety, the applicant or Licensee may provide security for its bond by depositing with DSWA, one of the following in an amount at least equal to the amount of the bond:

- i. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills; or
- ii. bonds or notes of the State of Delaware; or
- iii. bonds of any political subdivision of the State of Delaware; or
- iv. certificates of deposit or irrevocable letters of credit from any state or national bank located within the United States; or
- v. United States currency, or check for certified funds from any state or national bank located within the United States.

c. The amount of the bond specified in paragraph 3.10 (a) shall be based upon the total solid waste tonnage charged by the Licensee at a DSWA Solid Waste Facility during for the month of November immediately preceding the license year for which the license is issued in accordance with the following schedule:

"TONNAGE CHARGED FOR NOVEMBER" PRIOR	AMOUNT OF BOND
Less than or equal to 750 tons	(minimum) \$5,000
Greater than 750 tons but less than or equal to 1,500 tons	\$25,000
Greater than 1,500 tons	\$50,000
<u>Each additional 1000 tons over 1,500 tons</u>	<u>\$5,000</u>

If the Licensee has expanded or acquired its business since the preceding November, then the total tonnage for November and Bond amount will be adjusted to account for such increase. By reference to the accounts, business, or assets acquired, an estimate will be made of what the charges in November would have been if the Licensee had been operating the newly acquired accounts, business, or assets at that time.

3.11 Any person desiring to collect, transport, and/or deliver solid waste in the State of Delaware shall submit a completed application for license to DSWA on forms provided by DSWA substantially in the form set forth in Appendix Attachment "A" of these Regulations. DSWA shall approve or deny license applications within thirty (30) days of receipt of a completed application.

3.12 DSWA may require information to supplement that requested in Appendix Attachment "A" in reviewing license applications.

3.13 The license period shall be July 1 to June 30 annually. Applications for license renewal shall be submitted to DSWA at least thirty (30) days prior to the expiration date.

3.14 Before any additional collection vehicle or substitute collection vehicle is utilized for the collection, transportation, and/or delivery of solid waste, the Licensee shall submit to DSWA the following:

- a. The name, address and telephone number of the owner of the vehicle.
- b. The state motor vehicle registration number.
- c. A description of chassis by year and manufacturer.
- d. A description of the body by year and manufacturer.
- e. The legal weight limit of the vehicle.
- f. The volume of the body of the vehicle in cubic yards.
- g. Evidence of the insurance coverage required by this Article.

3.15 Each license shall contain the following:

- a. Owners Name and/or trading name.
- b. Physical and/or mailing addresses.
- ~~b. A listing of all collection vehicles under the license.~~
- c. License period.
- ~~e. The location or locations for delivery of solid waste for each collection vehicle.~~
- d. Authorized signature.
- ~~e.~~  Special license conditions regarding collection, transportation, and/or delivery of solid waste, as specified by DSWA.

3.16 Each license and/or collection vehicle may be transferred subject to prior approval of DSWA. Except for a municipality with a written agreement with a licensed collector ~~another municipality~~ for backup capacity, no person shall be entitled to collect, transport and/or deliver solid waste under another person's license.

3.17 Notwithstanding anything to the contrary contained in these Regulations, a Licensee may operate a replacement vehicle on a temporary basis for a period of fifteen (15) days; provided further, that the licensee shall provide DSWA an original signed letter on company letterhead providing the information listed in Section 3.14 of these Regulations. An original letter must be submitted for each day of operation until DSWA license permits stickers are properly displayed on the vehicle or the vehicle is removed from temporary service. Letters must be taken to the weighstation of the DSWA Solid Waste Facility.

3.18 No license shall be issued to any person who:

- a. has an account with DSWA that is past due in accordance with DSWA policies or
- b. is obligated to file a report in accordance with Section 8.02 of these Regulations and has not done so for the immediately preceding calendar year.

3.19 Any person who first collects, transports, and/or delivers solid waste within the State of Delaware, without leaving first obtained a license under this Article, shall not be issued a license under this Article, until the expiration of one hundred twenty (120) days after the last day on which such collection, transportation and delivery without a license occurred, as determined by the CEO, or his designee.

3.20 Any Licensee who does not maintain his principal place of business in Delaware shall designate an agent, by name and street address (box number not acceptable), for service of process within Delaware. The agent shall be either an individual resident in Delaware or a corporation authorized under Title 8 of the **Delaware Code** to transact business in Delaware.

3.21 Before a license application is approved or denied, DSWA shall determine whether the applicant is able and reasonably certain to comply with these Regulations. Such determination may take into account any relevant factors including, but not limited to, the prior conduct of the applicant or any person, as defined herein, who is employed by or is otherwise associated with the applicant and may significantly affect the applicant's performance as it is related to the licensed activities. If the application is denied, the determination shall be reduced to writing and include the rationale for denial. Any person denied a license shall be entitled to request a hearing on such determination before the Directors of DSWA in accordance with paragraph 11.01(b) hereof.

3.22 No license shall be issued to any person who:

- a. holds or has held a license from DSWA which has been revoked;
- b. holds or has held a license from DSWA which has been suspended, for such period as the license is suspended.
- c. holds or has held an interest in any Licensee whose license from DSWA has been revoked;
- d. holds or has held an interest in any Licensee whose license from DSWA has been suspended, for such period as the license is suspended.
- e. owns, in whole or in part, solid waste operating assets, including vehicles and routes, which were acquired from a Licensee whose license from DSWA was revoked or suspended and who acquired such assets from such Licensee for less than fair market value. Applicants for a license may be required to produce records and other information to demonstrate that they comply with this paragraph before a license will be issued.

3.23 A Licensee shall give written notice to DSWA at least seven (7) days in advance of any of the following:

- a. sale or conveyance of a significant portion of its assets;
- b. sale or conveyance of a significant portion of the equity interest (e.g. stock) held in it;
- c. purchase or other acquisition of a significant portion of the assets of another Licensee;
- d. purchase or other acquisition of a significant portion of the equity interest in another Licensee. For purposes of this paragraph, a significant portion shall mean one-half. Fragmentation of a transfer into smaller portions shall not be used to avoid the requirements of this paragraph.

3.24 Each Licensee shall submit a report for the preceding calendar year on February 1 of each year to DSWA stating, with respect to any waste collected in the State of Delaware and disposed of in the State of Delaware at a location other than a DSWA Solid Waste Facility, the quantities and types of waste disposed of, the names and address of the facility

where it was disposed of, and any other information required on a form to be supplied by DSWA (See Attachment C).

#### IV. USE OF DSWA SOLID WASTE FACILITIES

4.01

~~a.~~

~~i. All solid waste generated within the State of Delaware shall be delivered to and disposed of at a Solid Waste Facility or some other duly licensed or permitted facility.~~

~~ii. The owners and occupants of all lands, buildings, and premises located within the State of Delaware, and all of those acting for them or under contract with them, shall use only Solid Waste Facilities or other duly licensed or permitted facilities for the disposal of solid waste generated within the State of Delaware.~~

~~b. Subject to the provisions of Section 3.02 and 3.18 of these Regulations, solid waste generated within the State of Delaware shall be delivered to a Solid Waste Facility or other duly licensed or permitted facility.~~

~~b. Persons delivering solid waste to a Solid Waste Facility shall pay to DSWA the applicable fees and user charges.~~

~~a. Except as provided in Section 4.01.b, Section 4.02, Section 4.03, or as provided by contract, all solid waste generated within the State of Delaware shall be delivered to and disposed of at a DSWA Solid Waste Facility or some other duly licensed or permitted facility. Whoever disposes of such waste at a facility which is not a DSWA Solid Waste Facility shall submit a report for the preceding calendar year on February 1 of each year to DSWA stating the generators) of the waste, type and quantity of material disposed and the name of the facility and its address at which the waste was disposed.~~

~~b. Except as provided in Section 4.02, all solid waste and dry waste that is generated by a municipality (defined to include any county, city, town or other public body of the State of Delaware, such as State agencies, instrumentalities, school boards, and publicly supported institutions of higher learning) shall be disposed of at a DSWA Solid Waste Facility. All solid waste and dry waste that is collected or transported by a municipality or pursuant to a contract or other agreement with a municipality shall be disposed of at a DSWA Solid Waste Facility. Any such contract or other agreement between a municipality and any person shall so provide, and indicate that DSWA is an intended third party beneficiary of such contract or agreement.~~

~~c. Persons delivering solid waste to a DSWA Solid Waste Facility shall pay to DSWA the applicable fees, user fees, or contract fees. If different types of waste are commingled, the applicable fee shall be based on the type of waste in the commingled waste which has the highest fee.~~

4.02 The following solid wastes shall not be delivered to a DSWA Solid Waste Facility:

a. Hazardous wastes

b. Explosives

~~e. Toxic substances~~

d. Pathological and infectious wastes

e. Radioactive wastes

f. Solid wastes, as determined by the CEO or his designee, which will, because of their quantity, physical properties, or chemical composition, have an adverse effect on the DSWA Solid Waste Facility, or the operation of the DSWA Solid Waste Facility, or if an effective means of risk and cost allocation cannot be achieved.

g. Wastes which are prohibited by the DSWA Solid Waste Facility(s) DNREC permit.

4.03 The following solid waste may but is not required to be delivered to a DSWA Solid Waste Facility for disposal, ~~but need not be~~, upon payment of the appropriate fee or user charge, provided that delivery of such solid waste is not otherwise proscribed by Section 4.02:

a. Agricultural waste generated on a farm.

b. Dry waste, unless such delivery is required by contract in which case it must be delivered to a DSWA Solid Waste Facility.

c. Tires.

d. Non-hazardous waste resulting from emergency clean-up actions of the Department.

e. Industrial process solid waste exempted by Section 5.03 (b).

f. Asbestos.

g. White goods.

4.04 In the event that an invoice generated from the charging of fees or user charges at a DSWA Solid Waste Facility is not paid in accordance with DSWA credit policies the license may be revoked and/or the right to use DSWA Solid Waste Facilities may be denied to the user. Before the license revocation and/or denial of use, the user ~~shall~~ may have a hearing before the Directors of DSWA, and the user shall be given at least ten (10) days notice of the hearing. Otherwise, the procedure for the hearing shall be as set forth in paragraph ~~4~~ 10.01 (b) (ii)-(v) of these Regulations.

#### V. INDUSTRIAL PROCESS SPECIAL SOLID WASTE

5.01

a. Any person causing or allowing ~~industrial process special~~ solid waste to be delivered to any DSWA Solid Waste Facility for disposal shall obtain the approval of DSWA prior to commencement of such disposal; provided however, that where more than one person is involved in the generation and delivery of a particular ~~industrial process special~~ solid waste, approval of DSWA obtained by one

person shall be sufficient.

b. In the event that there are any risks or additional costs involved in accepting any ~~industrial process special~~ solid wastes, the CEO may impose an ~~industrial process special~~ solid waste disposal surcharge to compensate DSWA for such risks and additional costs, including administrative expenses and overhead. The following factors shall be considered in determining the amount of such ~~industrial process special~~ solid waste surcharge:

- i. Quantity of waste to be disposed of;
- ii. Degree of risk associated with such disposal;
- iii. Additional handling, processing and disposal costs;
- iv. Additional administrative expenses and overhead;
- v. Additional environmental protection controls including monitoring.

c. The ~~industrial process special~~ solid waste surcharge shall be set by the CEO, without notice and public hearing thereon, and may be done on a case by case basis.

5.02 Any person causing or allowing ~~industrial process special~~ solid waste to be delivered to a DSWA Solid Waste Facility operated by or on behalf of DSWA shall be deemed to have agreed to indemnify and hold harmless DSWA from any liability arising from disposal of such ~~industrial process special~~ solid waste and to have agreed to reimburse DSWA for any costs reasonably incurred to protect against or reduce any risk resulting therefrom; provided, however, such person, if such person has not caused or allowed the delivery of a hazardous substance within the meaning of the Comprehensive Environmental Response Compensation Liability Act (CERCLA), as amended, 42 USC Section 9601, et.seq., shall not be liable under this subsection to DSWA for harm or damage caused by the negligence of DSWA.

5.03 It shall be the responsibility of each generator of ~~industrial process special~~ solid waste, in addition to the person collecting, transporting and delivering it, to obtain the approval of DSWA for disposal of ~~industrial process special~~ solid waste at the DSWA Solid Waste Facility and to assure that such waste is delivered to the DSWA Solid Waste Facility ~~of DSWA~~ for disposal. Such solid waste shall be ~~exempted from the requirement of disposal~~ not be disposed in a DSWA Solid Waste Facility if:

- a. DSWA refuses to approve the disposal of such waste at a DSWA Solid Waste Facility; or
- b. the generator of such waste determines or agrees to have such waste disposed of at another properly licensed or permitted facility;
- c. the solid waste is described in Section 4.02 of Article IV.

5.04 Any person aggrieved by a determination of the CEO or his designee, under this Article or subsection 4.02(f) of Article IV, may seek review thereof by the Directors of DSWA in accordance with Section 6427 (f) of the Act, and Section 10.01 of these Regulations.

## VI. OTHER SOLID WASTE PROJECTS RESERVED

~~6.01 No person shall finance, acquire, license, construct, maintain, operate, or use a solid waste disposal, processing, or recycling project in the State of Delaware that is neither owned nor operated by, on behalf of, or at the request of DSWA.~~

~~6.02 No person shall cause or assist in the financing, acquiring, licensing, constructing, maintaining, or operating of a solid waste disposal, processing or recycling facility in the State of Delaware, that is neither owned nor operated by, on behalf of, at the request of DSWA.~~

~~6.03 This Article VI shall not apply to:~~

- ~~a. Projects dedicated exclusively to the disposal of dry waste, hazardous waste, agricultural waste, explosive, toxic substances, radioactive waste, or tires;~~
- ~~b. Projects used exclusively as transfer stations;~~
- ~~c. Recycle centers for source separated materials, such as aluminum cans;~~
- ~~d. Junkyards;~~
- ~~e. Projects dedicated exclusively to the disposal of industrial process solid waste that are lawfully permitted for the disposal of such industrial solid waste.~~
- ~~f. Projects dedicated exclusively to the disposal of solid waste generated outside the State of Delaware.~~

## VII. OPERATING IN A DSWA SOLID WASTE FACILITY

7.01 All vehicles entering a DSWA Solid Waste Facility to dispose of solid waste shall proceed to the appropriate scale. Each vehicle shall come to a full stop before driving onto the scale, for weighing in or for weighing out. Quick stopping or starting on the scales will not be permitted. All personnel must remain in the vehicle unless directed by the Weighmaster to come to the scale bouse window. After weighing, the vehicle must not leave the scales until authorized to do so by the Weighmaster and must proceed to the area designated for disposal of the quantity and type of waste that is carried in the vehicle.

7.02 After weighing and at the direction of the Weighmaster, each vehicle shall proceed to the area designated. Spotters at the landfill face or on the tipping floor shall direct the vehicles to a dumping location. At small load facilities, waste shall be disposed only in the containers

that have been provided. The contents of each vehicle shall be discharged as quickly as possible and the vehicle shall leave as directed by the operating contractor. Clean-up is allowed only at designated locations. No roll-off boxes will be dropped anywhere in a DSWA Solid Waste Facility without the express approval from a DSWA representative.

7.03 Each vehicle operator shall exercise caution, due care, and safe procedures in all operations at the DSWA Solid Waste Facility. The speed limit on the facility roads is 25 miles per hour except where a lower speed limit is indicated. Vehicle drivers who disregard the posted speed limits on a DSWA Solid Waste Facility may be denied access to any DSWA Solid Waste Facility. Vehicle operators shall follow directions from the DSWA or its representative. ~~Or the operating contractor in all cases of emergency.~~

7.04 No hand sorting, picking over, or scavenging of solid waste will be permitted at any time, without specific DSWA approval.

7.05 All vehicle operators and other personnel proceed onto the landfill at their own risk. DSWA shall not be liable for acts or omissions of its contractors, persons using a DSWA Solid Waste Facility, or other third persons in or about a DSWA Solid Waste Facility.

~~7.06 Persons under the age of 18 are not allowed to enter any Solid Waste Facility in waste collection and disposal vehicles.~~

7.07 No loitering will be permitted in any DSWA Solid Waste Facility.

7.08 DSWA reserves the right to redirect vehicles to alternate locations within the DSWA Solid Waste Facility, if for any reason in the opinion of DSWA's representative, the original location cannot handle the load or type of material.

7.09 There shall be no smoking in any DSWA Solid Waste Facility except in areas where smoking is expressly permitted.

7.10 ~~The Directors of~~ DSWA from time to time may adopt and post other rules for DSWA Solid Waste Disposal Facilities. It is the responsibility of Licensees and other persons using DSWA Solid Waste Facilities to familiarize themselves with and to obey such rules.

7.11 Any vehicle that is immobile and obstructing facility operations shall be moved to a nonconflicting area by DSWA representatives after notifying the Licensee's driver. The Licensee's driver will be given reasonable time to contact his office either through radio or telephone. If the

blocking vehicle poses a safety or fire hazard, it will be removed immediately after giving notice to the driver. Licensee shall also give written instructions to drivers on proper procedures for towing.

7.12 To prevent material from falling off vehicles and to minimize litter, all open vehicles, including but not limited to pick-up trucks, entering a DSWA Solid Waste Facility to dispose solid waste shall be sufficiently secured through the use of tarpaulins or ropes or netting or enclosures sufficient to prevent the material from falling off the vehicles.

7.13

a. DSWA shall have the right to require unloading of the contents of the vehicle hauling solid waste to any area on a DSWA Solid Waste Facility for the purpose of inspection.

b. If any prohibited wastes, hazardous wastes, explosives, toxic substance, pathological and infectious wastes, radioactive wastes are found, then the person delivering such waste to a DSWA Solid Waste Facility shall be subject to the sanctions that may be imposed under Section 10.02 ~~44-02~~ for violation of Section 4.02 and sanctions for violation of other applicable laws and regulations and that person shall be notified and given an opportunity to remove properly all of the waste emptied from the solid waste collection vehicle at his expense. If that is not accomplished within four (4) hours of such notice, which shall be either in person or by telephone, or, if the person cannot be reached immediately, either in person or by telephone, DSWA may proceed to arrange for removal and proper disposal of the entire load and the person bringing such material to the DSWA Solid Waste Facility shall be liable to DSWA for all costs incurred by DSWA in arranging for proper disposal, including, without limitation, DSWA's out-of-pocket expenses, contractor's fees, disposal costs, overhead supervisory costs, legal fees, testing costs, and transportation costs.

## VIII. RECYCLING

8.01 The following definitions shall apply to this subarticle:

**"Recycling Center"** means a facility, established pursuant to 7 **Del.C.** S6450 et seq., to receive recyclable materials. The Recycling Center includes the recycling containers marked for the specific recyclable materials which are to be deposited therein and the area immediately surrounding them necessary for the purposes of such recycling centers. Recycling Centers shall be known as 'RECYCLE DELAWARE' Centers.

**"Recyclable Materials"** mean those materials which have been source-separated by the generator thereof for recycling. Source separated materials must remain separate throughout the journey and are not to be re-combined for transport.

"Recycling" means the process by which solid waste is transformed or converted into usable material(s) or product(s).

"Recycler" means a person in the business of collecting, transporting, and delivering recyclable materials.

~~8.02 All persons operating facilities within Delaware for the purpose of recycling solid waste or recyclable materials other than 'RECYCLE DELAWARE' Recycling Centers shall file annually with DSWA, on forms prescribed by DSWA, a report on the nature of the recycling activities conducted, the quantity and type of materials recycled, and the disposition of the materials recycled. Such reports will be due on April 30 of each year and shall be for the immediately preceding calendar year.~~

All persons operating facilities within Delaware for the purpose of recycling solid waste or recyclable materials other than 'RECYCLE DELAWARE' and "Recycling Centers" shall file with DSWA copies of any reports or other written information related to the recycling facilities or recycling activities that are filed with DNREC. Such reports or written information shall be filed with DSWA when they are filed or otherwise submitted to DNREC.

8.03 At a Recycling Center, no person shall:

- a. dispose of solid waste or litter;
- b. leave materials outside of recycling containers;
- c. deposit into a recycling container any material other than the specific recyclable material for which the recycling container is marked to receive;
- d. damage, deface, or abuse a recycling container;
- e. block or obstruct vehicles using or serving the Recycling Center;
- f. loiter;
- g. scavenge any Recyclable Material; or
- h. deposit Recyclable Material that has been collected from or by a Recycler.

~~8.04 Each container used for the collection of Recyclable Material must be clearly marked to prevent normal trash from being placed into the container, i.e. "RECYCLABLE MATERIAL ONLY" - "NO TRASH".~~

## **IX. TRANSFER STATION REQUIREMENTS**

9.01 Any person operating a transfer station for solid waste within the State of Delaware shall:

- a. prepare daily and maintain (for minimum period of three years after preparation) records of the solid waste handled at the transfer station showing the source and final disposition of such waste after removal from transfer station, including address of such final disposition. The records to be maintained shall be adequate to provide all information required by the Transfer Station Monthly Solid Waste

Report, ~~annexed hereto as Exhibit shown in Attachment B;~~

- b. submit the report required by paragraph 9.01 (a) of these Regulations and verify the accuracy thereof to DSWA on or before the twentieth (20th) day of the month following the month for which the report is compiled. The report shall be in the form of the Transfer Station Monthly Solid Waste Report, ~~annexed hereto as Exhibit shown in Attachment B;~~

- c. make the records required to be maintained and preserved by paragraph 9.01 (a) of these Regulations available for inspection by representatives of DSWA during normal business hours.

9.02 DSWA through its designated representatives shall have the right to inspect the transfer station and solid waste hauling vehicles entering and leaving the transfer station.

## **X. REVIEW, ENFORCEMENT AND SANCTIONS**

10.01

- a. Any person seeking a license or to have solid waste disposed of at a DSWA Solid Waste Facility who has been aggrieved by a determination of the CEO or his designee under Section 3.19, 3.21, 4.02, 4.04, 5.01 (b) or 5.04 of these Regulations may seek review thereof by the Directors of DSWA by filing a request for review with the CEO within fifteen (15) days of receipt of notice of such determination. The hearing shall be held in accordance with the paragraph of Section 10.01 (b) of these Regulations.

- b.

- i. The person filing the request for review under paragraph 10.01 (a) of these Regulations shall be provided notice by registered mail at least fifteen (15) days before the time set for the hearing. The person filing the request for the hearing shall bear the burden of proof.

- ii. The person requesting the hearing may appear personally and/or by counsel and may produce competent evidence in his behalf. Upon the request of the person requesting the hearing or the CEO, the Chairman of DSWA shall issue subpoenas requiring the testimony of witnesses and the production of books, records, or other documents relevant to the material involved in such hearing.

- iii. All testimony at the hearing shall be given under oath and the Chairman shall administer oaths and all Directors shall be entitled to examine witnesses.

- iv. The hearing may be held as part of a regular meeting or a special meeting of the Directors of DSWA. Deliberation shall be held in executive session.

- v. The decision of the Directors of DSWA shall be announced at a public meeting and shall be forwarded to the person requesting the hearing in written form by registered mail.

10.02 Any person who violates a provision of these Regulations shall be subject to the following sanctions:

a. If the violation has been committed, a civil penalty of not less than One Hundred (\$100) Dollars and not more than Five Thousand (\$5000) Dollars shall be assessed;

b. If a violation continues for a number of days, each day of such violation shall be considered a separate violation;

c. If the violation is continuous, or there is substantial likelihood that it will reoccur, DSWA may seek a temporary restraining order, a preliminary injunction or permanent injunction;

d. Any person holding a license issued by DSWA who violates these Regulations shall be subject to revocation of such license, or suspension of such license for such period as determined by DSWA.

e. DSWA personnel are empowered to issue written notices of violations of these Regulations, without the need to employ the sanctions set forth above.

10.03 Any person who violates a provision of these Regulations may be prevented from entering a DSWA Solid Waste Facility, as determined by the CEO or his designee, until that person is in compliance with these Regulations.

#### **DELAWARE SOLID WASTE AUTHORITY DIFFERENTIAL DISPOSAL FEE PROGRAM**

The Delaware Solid Waste Authority ("Authority"), pursuant to the provisions of 7 Del. C. Ch. 64, hereby adopts the following program applicable to the fees for disposal of solid waste at Authority facilities:

1. ~~The base rate for disposal of solid waste (excluding special and industrial process solid waste) shall be \$58.00 per ton. Except as provided in Paragraph 2 below, the rate for disposal of solid waste and dry waste shall be \$58.50 per ton; provided however, the Manager of the Authority shall be entitled upon thirty (30) days advance written notice to reduce and adjust the disposal fee for dry waste at the various Authority facilities to an amount which is no lower than \$30.00 per ton.~~

2. ~~For those persons, as hereinafter defined in Paragraph 6, entering into a contract with the Authority to bring all of their solid waste (excluding special and industrial process solid waste) or dry waste which has been collected in the State of Delaware to Authority facilities in accordance with the terms of the contract, the rebates and rates set forth shall be paid made available by the Authority subject to the following:~~

a. ~~The contract term shall be from May 1, 1999 to June 30, 2002, July 1, 2000 to June 30, 2002, or July 1, 2001 to June 30, 2002. July 1, 2001 to June 30, 2005; July 1, 2002 to June 30, 2005; July 1, 2003 to June 30, 2005; or July 1, 2004 to June 30, 2005.~~

b. ~~A rebate of \$10.00 shall be paid for each ton of solid waste (excluding special and industrial process solid~~

~~waste) delivered to Authority facilities, other than the Northern Solid Waste Facility located at Cherry Island in Delaware, and for which the base rate disposal fee of \$58.50 per ton has been paid to the Authority. A rebate of \$13.50 shall be paid for each ton of solid waste or dry waste delivered to the Northern Solid Waste Facility located at Cherry Island in Delaware and for which the base rate disposal fee of \$58.50 per ton has been paid to the Authority. The rebate shall be paid for the following periods in which the solid waste (excluding special and industrial process solid waste) has been delivered:~~

~~(i) May 1, 1999 through June 30, 1999 July 1, 2001 through June 30, 2002~~

~~(ii) July 1, 1999 through June 30, 2000 July 1, 2002 through June 30, 2003~~

~~(iii) July 1, 2000 through June 30, 2001 July 1, 2003 through June 30, 2004~~

~~(iv) July 1, 2001 through June 30, 2002 July 1, 2004 through June 30, 2005~~

c. ~~The rebate for the periods set forth in Paragraph 2(b) above shall be paid within forty-five (45) days after the end of the applicable period or after full payment has been made to the Authority by the person entitled to the rebate, whichever is later, for the solid waste (excluding special and industrial process solid waste) delivered during the applicable period.~~

~~d. An additional rebate shall also be paid in the event that the solid waste (excluding special and industrial process solid waste) delivered to the Authority facilities exceeds 800,000 tones for any of the following periods:~~

~~(i) July 1, 1999 to June 30, 2000~~

~~(ii) July 1, 2000 to June 30, 2001~~

~~(iii) July 1, 2001 to June 30, 2002~~

~~For each ton of solid waste (excluding special and industrial process solid waste) in excess of 800,000 tons paid for at the base rate and delivered to Authority facilities during each period identified immediately above, the Authority shall set aside the sum of \$8.50 per ton in a fund which shall be divided among those persons entering into contracts with the Authority. Each such person shall be entitled to a share of the fund based on the percentage of solid waste (excluding special and industrial process solid waste) which such person delivers to Authority facilities as a part of the total of all solid waste (excluding special and industrial process solid waste) delivered to Authority facilities by all persons under contract with the Authority. The additional rebate for the periods set forth in this Paragraph 2(d) shall be paid within forty-five (45) days after full payment has been made to the Authority by the persons entitled to the rebate.~~

~~d. The disposal fee for dry waste delivered to designated solid waste facilities shall be \$40.00 per ton. Such designated facilities shall include the Central Solid Waste Facility located at Sandtown in Delaware and the~~

Southern Solid Waste Facility located at Jones Crossroads in Delaware, but shall not include the Northern Solid Waste Facility located at Cherry Island in Delaware. If the Authority establishes a disposal fee for dry waste above \$40.00 per ton at any time during the term of the contract, the \$40.00 per ton disposal fee shall apply for the term of the contract to those entering contracts. If the Authority establishes a disposal fee for dry waste below \$40.00 per ton at any time during the term of the contract, those entering contracts with the Authority shall be entitled to such lower disposal fees while such disposal fees are in effect.

e. In order to enter into the program, persons delivering solid waste (excluding special and industrial process solid waste) collected in the State of Delaware shall execute contracts with the Authority (i) prior to May 1, 1999 for the contract term from the May 1, 1999 to June 30, 2002; (ii) on or before June 30, 2000 for the contract term July 1, 2000 to June 30, 2002; and (iii) on or before June 30, 2001 for the contract term July 1, 2001 to June 30, 2002.

In order to enter into contracts under this Paragraph 2, persons having active accounts with the Authority and delivering solid waste or dry waste to an Authority facility that was collected in the State of Delaware shall execute contracts with the Authority (i) on or before September 1, 2001 for the contract term from July 1, 2001 to June 30, 2005, provided however, that for contracts executed after July 1, 2001 but on or before September 1, 2001 the effective date for participating in the Program shall be the effective date of execution of the contract; (ii) on or before June 30, 2002 for the contract term July 1, 2002 to June 30, 2005; (iii) on or before June 30, 2003 for the contract term July 1, 2003 to June 30, 2005; and (iv) on or before June 30, 2004 for the contract term July 1, 2004 to June 30, 2005.

3. Those persons not under contract with the Authority shall be entitled to use the Authority facilities for disposal of solid waste and dry waste collected in the State of Delaware, subject to payment of such rate or rates established by the Authority, and subject to compliance with the regulations and requirements of the Authority and other applicable laws and regulations.

4. The contracts utilized to effectuate this Program shall be uniform and shall be consistent with the operative provisions of the program as set forth herein, and shall contain such other terms and conditions deemed desirable and acceptable to the Authority. Municipalities, political subdivisions and governmental instrumentalities and entities which are required to deliver to Authority facilities all their solid waste and dry waste collected in the State of Delaware shall be entitled to the full benefits of this Program. The contracts shall inure to the benefit of and be binding on the persons, including their successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, ~~contractors and subcontractors~~, and all other entities existing or newly formed, controlled directly or indirectly by such

persons, through change in ownership or status by transfer of assets or otherwise, and which engage in the collection and/or transportation of solid waste ~~(excluding special and industrial process solid waste)~~ and dry waste generated in the State of Delaware.

5. ~~This Program established by Paragraph 2, above, shall be available to all persons having active accounts with the Authority effective July 1, 2001, April 30, 1999 and who have delivered to Authority facilities during the preceding twelve (12) month period a total of at least fifty (50) tons of solid waste (excluding special and industrial process solid waste).~~ For new accounts with the Authority opened after May 1, 1999 July 1, 2001, persons establishing such accounts shall be entitled to enter the program contracts with the Authority provided:

(a) the uniform contract referenced in Paragraph 4 herein is executed within sixty (60) days of the date the new account is established;

(b) the term of the contract extends to June 30, ~~2002~~ 2005;

(c) the new account is with a new person, and not a person having an account with the Authority as of ~~March 1, 1999~~ July 1, 2001; and

(d) the persons agree that the Program benefits (rebate or reduced fee) do not come into effect until sixty (60) days after the new account is established.

6. For purposes of this Program the term "person" is defined to mean any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or other duly established legal entity. The term "person" shall also include successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, ~~contractors and subcontractors~~, and all other entities existing or newly formed, controlled directly or indirectly by the person, through change in ownership or status by transfer of assets or otherwise.

7. ~~This program shall become effective on May 1, 1999 and continue until June 30, 2002.~~ For purposes of this Program the term "dry waste" shall have the meaning as defined in the REGULATIONS OF THE DELAWARE SOLID WASTE AUTHORITY. For purposes of this Program the term "solid waste" shall have the meaning as defined in the REGULATIONS OF THE DELAWARE SOLID WASTE AUTHORITY but shall not include dry waste, or special or industrial process solid waste.

8. This Program shall become effective on July 1, 2001 and continue until June 30, 2005. For those persons who have (i) prior to the adoption of this Program entered Differential Disposal Fee contracts with the Authority and (ii) who do not enter the Differential Disposal Fee contract under this Program, the provisions of prior Program and prior Differential Disposal Fee contract shall continue in full force and effect.

**PROPOSED AMENDMENT TO THE  
STATEWIDE SOLID WASTE MANAGEMENT PLAN****INTRODUCTION**

On March 25, 1999, the Delaware Solid Waste Authority ("DSWA") adopted a limited Plan amendment in conjunction with regulation changes to afford the DSWA greater solid waste management program flexibility. The management flexibility supplemented the existing Plan. The DSWA is undertaking this limited Plan amendment in order to provide for additional flexibilities. To the extent that there is any inconsistency, this proposed Plan amendment supercedes.

**BACKGROUND**

The DSWA has been directed by the Delaware General Assembly to carry out specific statutory responsibilities under 7 **Delaware Code** Chapter 64 (see appendix A of the Plan as adopted May 1994). Some of those responsibilities include:

1. That a statewide comprehensive program for management, storage, collection, transportation, utilization, processing and disposal of solid waste be established.
2. That a program for the maximum recovery and reuse of materials and energy resources derived from solid wastes be established.
3. That a program for protecting the land, air, surface, and groundwater resources of the State from depletion and degradation caused by improper disposal of solid waste be established.
4. That a statewide solid waste management plan be developed and implemented by DSWA.

In order to fulfill those responsibilities, the Delaware General Assembly provided DSWA with statutory capabilities. Some of those capabilities include:

1. Plan, design, construct, finance, manage, own, operate and maintain solid waste management facilities.
2. The receipt, transfer, storage, transportation, and handling of solid waste and development of support facilities as deemed necessary by DSWA.
3. Being granted all powers necessary to fulfill these purposes and to carry out assigned responsibilities.
4. Develop, implement and supervise a program requiring all persons who haul, convey or transport any solid waste to obtain a license from DSWA.
5. Charge reasonable fees for services.
6. Control, through regulation or otherwise, the collection, transportation, storage and disposal of solid waste, and sanction any person who violates a regulation or a license condition.
7. Establishment of fees and charges for owners and occupants of real estate to support budgeting needs.
8. Utilize private industry to the maximum extent feasible to perform planning, design, management,

collection, construction, operation, manufacturing, and marketing functions related to solid waste disposal and resources recovery.

9. Assist in the development of industrial enterprises based upon resources recovery, recycling, and reuse.

10. Purchase, manage, lease or rent real and personal property.

11. Do all things necessary for the performance of its duties, the fulfillment of its obligations, the conduct of its operations and the conduct of a comprehensive program for solid waste disposal and resources recovery, and for solid waste management services.

12. Make short and long range plans for the storage, collection, transportation or processing and disposal of solid wastes and recovered resources by the DSWA-owned facilities.

13. Contract with municipal, county and regional authorities, state agencies and persons to provide waste management service in accordance with this chapter and to plan, design, construct, manage, operate and maintain solid waste disposal and processing facilities on their behalf.

14. Utilize private industry, by contract, to carry out the business, design, operating, management, marketing, planning and research and development functions of the DSWA or the DSWA may determine that it is in the public interest to adopt other courses of action.

15. Enter into a contract or contracts with any municipality providing for or relating to the collection or treatment and disposal of garbage, solid wastes and refuse originating in the municipality and the cost and expense of such collection or treatment and disposal.

The DSWA has, under its statutory provisions implemented projects to meet the legislated mandate. Such projects include:

Delaware Reclamation Project  
Cherry Island Landfill Phases I - V  
Intermediate Processing Center  
Pigeon Point Transfer Station  
Pinetree Corners Transfer Station  
Sandtown Landfill Areas A - E  
Jones Crossroads Landfill Cells 1 -3  
Recycle Delaware Centers (120 locations)  
Recyclables Marketing Program  
Collection Stations (5 locations)  
Household Hazardous Waste Collection  
Public Education Program

DSWA by contract has participated as a customer in private sector owned facilities such as Waste to Energy projects and recycling centers.

The DSWA has identified several future projects to continue to meet its legislative mandate. Such projects include:

Delaware Recycling Center / Materials Recovery Facility

Central Solid Waste Management Center: Transfer Station / Materials Recovery Facility

Southern Solid Waste Management Center: Transfer Station / Materials Recovery Facility

Cherry Island Landfill Phase VI

Pine Tree Corners Transfers Station Expansion

Sandtown Landfill Areas F - H

Jones Crossroads Landfill Cells 4 -6

Statewide Site Development

Transportation Operations and Maintenance Centers

The DSWA's enabling legislation establishes a statewide solid waste management system which is unique. The scope of the DSWA's responsibilities are broad and the DSWA has implemented a program which not only meets state needs, but which is regional in nature. To support the DSWA's program, which has involved significant out of state disposal of solid waste, the DSWA has chosen among available management options, a statutorily authorized method of directing the flow of certain solid waste generated in the state to DSWA facilities.

Faced with constantly changing solid waste disposal objectives and alternatives, the DSWA finds it necessary to have available the maximum flexibility possible to structure a program which best meets the needs of the citizens of the state and protects the public health and the environment. Accordingly the DSWA by this supplemental amendment to the Plan identifies additional alternatives available to the DSWA.

#### **SOLID WASTE MANAGEMENT OPTIONS**

In addition to the alternatives set forth in Chapter IV of the Plan and the limited amendment adopted March 25, 1999, the DSWA shall have available the following solid waste management options:

1. Construction, acquisition and/or operation of Transfer Stations/Recycling Centers/Dry Waste Facilities to serve the resort areas of Sussex County, the greater Milford area, the greater Dover area, and the greater Newark area.

2. Establishment of differential pricing for the separate management of dry waste, in accordance with § 6403 (k) of Title 7 **Delaware Code**.

The DSWA in implementing management options may utilize DSWA staff or contract for services. The DSWA may enter into short or long-term agreements under such terms and conditions considered desirable by the DSWA. The DSWA may set and modify the fees it charges in implementing any of the management options. In selecting and implementing options, alternatives and ancillary program features, including the establishment and modification of fees, the DSWA shall act through Resolution of its Board of Directors.

**\* PLEASE NOTE: THREE FORMS: ATTACHMENT A, SOLID WASTE COLLECTORS LICENSE; ATTACHMENT B, TRANSFER STATION MONTHLY SOLID WASTE REPORT; AND ATTACHMENT C, SOLID WASTE HAULER REPORT FOR WASTE GENERATED IN DELAWARE AND DELIVERED AND/OR DISPOSED AT OTHER THAN DSWA FACILITY ARE NOT BEING PRINTED. COPIES ARE AVAILABLE ONLINE IN PDF FORMAT OR BY CONTACTING THE REGISTRAR OF REGULATIONS.**

### **DEPARTMENT OF ADMINISTRATIVE SERVICES DIVISION OF PROFESSIONAL REGULATION BOARD OF LANDSCAPE ARCHITECTURE**

24 DE Admin. Code 200

Statutory Authority: 24 Delaware Code,  
Section 205(a)(1) (24 **Del. C.** § 205(a)(1))

PLEASE TAKE NOTICE, pursuant to 29 **Del. C.** Chapter 101 and 24 **Del. C.** Section 205(a)(1), the Delaware Board of Landscape Architecture proposes to revise its Rules and Regulations. The proposed amendments implement and clarify the requirement that applicants seeking licensure pursuant to 24 **Del. C.** Section 206(a)(1) graduate from an approved or accredited college or university. Similarly, the proposed revisions clarify that applicants seeking licensure pursuant to 24 **Del. C.** Section 206(a)(3) take their courses in landscape architecture from an approved or accredited college or university.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, June 26, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Melvin at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Melvin at the above address by calling (302) 739-4522, extension 218.

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

- 1.0 Filing of Applications for Written Examination
- 2.0 Filing of Applications for Reciprocity
- 3.0 Filing of Applications for Certificate of Authorization

- 4.0 Licenses
- 5.0 Seal
- 6.0 Renewal of Licenses
- 7.0 Continuing Education as a Condition of Biennial Renewal
- 8.0 Inactive Status
- 9.0 Disciplinary Proceedings and Hearings
- 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Filing of Applications for Written Examination**

1.1 Persons seeking licensure pursuant to 24 *Del.C.* § 206 shall submit an application for written examination on a form prescribed by the Board to the Board's office at the Division of Professional Regulation (the "Division") along with the application fee established by the Division. Applicants for written examination shall be filed in such office of the Board no later than twelve (12) weeks prior to the opening date of the examination.

1.2 Applicants seeking licensure pursuant to 24 *Del. C.* § 206(a)(1) shall have graduated from a school or college of landscape architecture approved or accredited by the national Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.

1.3 For purposes of 24 *Del. C.* § 206(a)(3), courses in landscape architecture shall have been taken at a school or college of landscape architecture approved or accredited by the national Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.

~~1.2~~ 1.4 Each applicant must submit documentary evidence, as more fully described on the application form, to show the Board that the applicant is clearly eligible to sit for the examination under 24 *Del.C.* § 206.

~~1.3~~ 1.5 The Board shall not consider an application for written examination until all items described in paragraphs 1.1 and 1.2 of this Rule have been submitted to the Board's office.

~~1.4~~ 1.6 The Board reserves the right to retain as a permanent part of the application any or all documents submitted.

~~1.5~~ 1.7 The examination shall be the Council of Landscape Architectural Registration Board's ("CLARB") current uniform national examination. CLARB establishes a passing score for each uniform national examination.

Statutory Authority: 24 *Del.C.* §§206, 207

**2.0 Filing of Applications for Reciprocity**

2.1 Persons seeking licensure pursuant to 24 *Del.C.* § 208, shall submit payment of the fee established by the Division and an application on a form prescribed by the

Board which shall include proof of licensure and good standing in each state or territory of current licensure, and on what basis the license was obtained therein, including the date licensure was granted. Letters of good standing must also be provided for each state or jurisdiction in which the applicant was ever previously licensed.

2.2 The Board shall not consider an application for licensure by reciprocity until all items described in 24 *Del.C.* § 208 and paragraph 2.1 of this Rule have been submitted to the Board's office.

2.3 A passing exam score for purposes of reciprocity shall be the passing score set by CLARB, or the passing score accepted by the Delaware Board, for the year in which the exam was taken.

Statutory Authority: 24 *Del.C.* §208.

**3.0 Filing of Applications for Certificate of Authorization**

Corporations or partnerships seeking a certificate of authorization pursuant to 24 *Del. C.* § 212 shall submit an application on a form prescribed by the Board. Such application shall include the (a) names and addresses of all officers and members of the corporation, or officers and partners of the partnership, and (b) the name of a corporate officer in the case of a corporation, or the name of a partner in the case of a partnership, who is licensed to practice landscape architecture in this State and who shall be responsible for services in the practice of landscape architecture on behalf of the corporation or partnership.

Statutory Authority: 24 *Del.C.* §212.

**4.0 Licenses**

Only one license shall be issued to a licensed landscape architect, except for a duplicate issued to replace a lost or destroyed license.

**5.0 Seal****5.1 Technical Requirements**

5.1.1 For the purpose of signing and sealing drawings, specifications, contract documents, plans, reports and other documents (hereinafter collectively referred to as "drawings"), each landscape architect shall provide him or herself with an individual seal of design and size as approved by the Board to be used as hereinafter directed on documents prepared by him or her or under his/her direct supervision for use in the State of Delaware.

5.1.2 The application of the seal impression or rubber stamp to the first sheet of the bound sheets of the drawings (with index of drawings included), title page of specifications, and other drawings and contract documents shall constitute the licensed landscape architect's stamp.

5.1.3 The seal to be used by a licensee of the Board shall be of the embossing type or a rubber stamp, and have two (2) concentric circles. The outside circle measures

across the center 1 13/16 inches. The inner circle shall contain only the words "NO." and "State of Delaware." At the bottom the words "Registered Landscape Architect" reading counterclockwise, and at the top the name of the licensee.

5.1.4 An impression of the seal is to be submitted to the Board to be included in the licensee's records.

#### 5.2 Use of the Seal

5.2.1 A landscape architect shall not sign or seal drawings unless they were prepared by him/her or under his/her direct supervision.

5.2.2 "Supervision" for purposes of signing and/or sealing drawings shall mean direct supervision, involving responsible control over and detailed professional knowledge of the contents of the drawings throughout their preparation. Reviewing, or reviewing and correcting, drawings after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over, nor detailed professional knowledge of, the content of such drawings throughout their preparation.

5.2.3 The seal appearing on any drawings shall be prima facie evidence that said drawings were prepared by or under the direct supervision of the individual who signed and/or sealed the drawings. Signing or sealing of drawings prepared by another shall be a representation by the registered landscape architect that he/she has detailed professional knowledge of and vouches for the contents of the drawings.

Statutory Authority: 24 Del.C. §205(a)(1); 212(a).

### 6.0 Renewal of Licenses

6.1 Each application for license renewal or request for inactive status shall be submitted on or before the expiration date of the current licensing period. However, a practitioner may still renew his or her license within 60 days following the license renewal date upon payment of a late fee set by the Division. Upon the expiration of 60 days following the license renewal date an unrenewed license shall be deemed lapsed and the practitioner must reapply pursuant to the terms of 24 Del.C. §210(b).

6.2 It shall be the responsibility of all licensees to keep the Board and the Division informed of any change in name, home or business address.

Statutory Authority: 24 Del.C. §210.

### 7.0 Continuing Education as a Condition of Biennial Renewal

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new

and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 To be acceptable for credit toward this requirement, all courses, seminars, sessions, programs or self-directed activities shall be submitted to the Board. The Board shall recommend any course, seminar, session or program for continuing education credit that meets the criteria in sub-paragraph 7.1.2.1 below.

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the Delaware Code and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

7.1.2.2 The Board shall meet at least once during each calendar quarter of the year and act on each course, seminar, session or program properly submitted for its review. Each program, or portion thereof, shall be either recommended for approval, recommended for disapproval or deferred for lack of information. If deferred or disapproved, the licensee will be notified and may be granted a period of time in which to correct deficiencies. The Board may also seek verification of information submitted by the licensee.

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:

7.1.3.1 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.2 Council of Landscape Architectural Registration

7.1.4 Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.

7.2 Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).

7.3 For licensing periods beginning February 1, 1999 and thereafter, requests for approval of continuing education

activity, along with the required supporting documentation, shall be submitted to the Board on or before November 1 of the year preceding the biennial renewal date of the licenses. A license shall not be renewed until the Board has approved twenty (20) hours of continuing education classes as provided in Rule 7.1 or has granted an extension of time for reasons of hardship.

7.4 Reporting: The licensee shall submit the following documentation to the Board for each continuing education activity completed:

A completed Continuing Education Reporting Form

A syllabus, agenda, itinerary or brochure published by the sponsor of the activity

A document showing proof of attendance (i.e. certificate, a signed letter from the sponsor attesting to attendance, report of passing test score).

7.4.1 Each licensee must retain copies of Board approved continuing education reporting forms and all supporting materials documenting proof of continuing education compliance. Licensees will be required to complete a continuing education log form prior to license renewal and to submit supporting materials upon request.

7.5 Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

7.6 Self-directed Activities: For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

7.6.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a

written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.

Statutory Authority: 24 Del.C. §205(12).

## **8.0 Inactive Status**

8.1 A licensee may, upon written request to the Board, place his/her license on inactive status.

8.2 A licensee who has been granted inactive status and who wishes to re-enter the practice of landscape architecture, shall submit a written request to the Board along with a prorated renewal fee and proof of completion of twenty (20) hours of continuing education during the period of inactive status.

8.3 Licensees on inactive status shall renew their inactive status by notification to the Division of Professional Regulation at the time of biennial license renewal.

Statutory Authority: 24 Del.C. §210(c).

## **9.0 Disciplinary Proceedings and Hearings**

9.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 Del.C. §8807(h)(1)-(3).

9.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

9.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

9.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

9.1.4 If a hearing before the Board has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent

upon request. The notice of hearing shall fully comply with 29 **Del.C.** Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

9.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 **Del.C.** §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 **Del.C.** §§213 and 215; 29 **Del.C.** §§10111, 10122 and 10131

## 9.2 Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 **Del.C.** §213.

Statutory authority: 24 **Del.C.** §§205(7)(8); 213, 214, 215.

## 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

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

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

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

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public

records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

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

10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

10.11 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.

10.12 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.

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**DIVISION OF PROFESSIONAL REGULATION****BOARD OF DENTAL EXAMINERS**

24 DE Admin. Code 1100

Statutory Authority: 24 Delaware Code,  
Section 1105 (1) and (9) (24 **Del.C.** §§1105 (1)  
and (9))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 1105(1) and (9), the Delaware Board of Dental Examiners proposes to revise certain portions of its rules and regulations. The proposed revisions amend and clarify the continuing education standards required for license renewal for dentists and dental hygienists.

A public hearing will be held on the proposed Rules and Regulations on Thursday, June 21, 2001 at 6:00 p.m. in the

Second Floor Conference Room A, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider oral and written input on the proposed revisions to the Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed revisions to the Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling (302) 739-4522.

- 1.0 Supervision
- 2.0 Auxiliary Personnel
- 3.0 Prescriptions to Dental Technicians
- 4.0 Acupuncture
- 5.0 Supervision
- 6.0 Continuing Professional Education - Dentists/Dental Hygienists
- 7.0 Anesthesia Regulations
- 8.0 National Board Examination Score
- 9.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Supervision: Definitions** - There are 3 recognized levels of supervision:

1.1 Direct Supervision - The dentist is present in the office, personally examines the patient and specifically authorized the work to be performed. The dentist checks the work before the patient leaves the office.

1.2 Indirect Supervision - A dentist is present in the office and generally authorizes the work to be performed. The dentist may examine the patient, either before or after work is performed. The dentist is available for consultation during the patient visit.

1.3 General Supervision - A dentist may or may not be present in the office while the work is performed. The dentist authorizes the work to be performed. Emergency care and consultant services are provided by an "on-call" dentist not present in the treatment facility, if the primary dentist is not present.

1.4 Dental Technician - Any person not licensed to practice dentistry in this State, engaged in the business of constructing, altering, repairing or duplicating full dentures ("plates"), partial dentures, splints, orthodontic appliances, fixed bridges or any other prosthetic appliances.

## 2.0 Auxiliary Personnel

2.1 Expanded Duties: A legally licensed and registered dentist may delegate to competent dental auxiliary personnel, those procedures for which the dentist exercises direct supervision and full responsibility except as follows:

2.1.1 Those procedures which require professional judgement and skill, such as diagnosis and treatment

planning, and the cutting of hard and/or soft tissues, or any intra-oral procedure which would lead to the fabrication of an appliance and/or restoration which, when received by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury.

2.1.2 Those procedures allocated by the Dental Code to registered dental hygienists.

2.2 Interpretation of Regulation - Competency of the dental auxiliary personnel must be determined by the individual dentist in assigning specific duties. The dentist is given full responsibility in deciding the scope of work to be allocated to the auxiliary personnel.

2.3 Training of Auxiliary Personnel - Adequate training of dental auxiliary personnel will be the responsibility of the dentist.

2.4 Assignment of Duties - Following are some of the procedures that may be assigned to auxiliary personnel under the conditions and provisions stated above:

Take and develop x-rays. This involves placing an x-ray film in the patient's mouth and exposing that film.

Give and demonstrate home-care procedures to the patient, including those procedures the patient is expected to carry out in preventive care.

Placing a rubber dam.

Placing cotton rolls.

Taking impressions for study models.

Removal of excess cements from dental restorations and appliances with hand instruments only.

Removal of temporary medicinal fillings or packs under direct orders of the dentist.

2.5 Responsibilities - In summary, the Dental Board places full responsibility for the work done by auxiliary personnel directly upon the dentist. Violations of the regulations will be subject to penalties as spelled out in 24 Del.C. §1131(5).

## 3.0 Prescriptions to Dental Technicians

3.1 Written Prescriptions - Any dentist who uses the services of a dental technician in this State shall furnish him/her with a written prescription, which shall contain:

3.1.1 the name and address of the technician,

3.1.2 the patient's name and/or identification number,

3.1.3 the date on which the prescription was written,

3.1.4 a prescription of the work to be done,

3.1.5 specification of the type and quality of materials to be used and

3.1.6 signature of the dentist and his/her license number.

3.2 Record of Prescriptions - The dentist shall retain a duplicate copy thereof for inspection by the Board or its agent for a period of two years of the original.

3.3 The Dental Technician as an Auxiliary - Dentists employing a dental technician as an auxiliary within the confines of his/her office, may elect to maintain the required date of the prescription as an entry on the patient's record, in lieu of duplicating the prescription form to the technician.

#### 4.0 Acupuncture

- is considered to be an experimental procedure to be researched by qualified investigators, only in institutions having a committee on human research, and only on patients who have given written informed consent.

#### 5.0 Supervision

5.1 Conditions Applicable to General Supervision - A licensed dental hygienist, by virtue of having passed a licensure examination and being duly licensed by the State, is capable of performing those services allowed by law under supervision, the following conditions shall exist:

5.2 Advance Notice to Patient - The patient is notified, as soon as it is known, that the dentist will not be present, and is given the option to reschedule to a time when the dentist will be present in the office.

5.3 Dentist Review of Records - The dentist shall review the treatment records of each patient prior to and following the patient treatment.

5.4 Patient Contraindications - Patients for whom it is medically or dentally contraindicated, will not be scheduled when the dentist is not present.

5.5 Office Requirements - A second office employee shall be present in the treatment facility at all times when patient care is performed. This is both for safety and security reasons.

5.6 Practice in a Public Health Institution - A licensed dental hygienist, per 24 **Del.C.** §1157(c), may operate under the general direction of a dentist in an institution, provided that all of the conditions of general supervision are met.

#### 6.0 Continuing Professional Education - Dentists

All persons licensed to practice dentistry in the State of Delaware shall be required to acquire 50 hours of continuing professional education (CPE) credit and to successfully complete a current course in cardiopulmonary resuscitation (CPR) every two (2) years. All dentists, upon initial licensure in Delaware and prior to registration renewal in Delaware in 1990, shall be given a written notice of these CPE requirements.

6.1 Proof of successful completion of the requisite CPE credits is required for registration renewal every two years.

6.2 Said CPE requirements shall become effective May 1, 1988. Proof of CPE credits must be submitted by March 1<sup>st</sup> of every two (2) even years.

6.3 It shall be the responsibility of the candidate for re-licensure to submit to the ~~appropriate State of Delaware agency~~ Board of Dental Examiners, evidence of his/her

compliance with these requirements. The Division of Professional Regulation shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the CPE requirements stated herein, along with other fees and documents required. However, failure to be notified by such agency shall not relieve the licensee of this obligation.

~~6.4 Of the 50-hour biennial requirement, a maximum of ten (10) hours may be fulfilled by self study with or without testing such as:~~

Not more than ten (10) hours of the fifty (50) hour biennial CPE requirement may be satisfied by self-study without testing from sources approved by the Board which shall include but not be limited to:

~~6.4.1 reading of dental journals with or without testing~~

~~6.4.21 Reading dental textbooks~~

~~6.4.32 Reading dental tape journals~~

~~6.4.43 Viewing and listening to dental audio-visual materials.~~

~~6.4.5 mail-in testing scores.~~

~~6.5 The following is a suggested list of acceptable categories from which these non-self study CPE requirements can be obtained:~~

~~6.5.1 Meetings of (Scientific Portions Only):~~

~~6.5.1.1 American Dental Association~~

~~6.5.1.2 Delaware State Dental Society~~

~~6.5.1.3 Delaware Society of Dentistry for~~

~~Children~~

~~6.5.1.4 Academy of General Dentistry~~

~~6.5.1.5 Kent/Sussex Dental Society~~

~~6.5.1.6 American Dental Hygienists~~

~~Association its constituents and components~~

~~6.5.1.7 Other recognized dental specialty~~

~~societies~~

~~6.5.1.8 Other recognized state dental societies~~

~~6.5.1.9 Recognized regional or national dental~~

~~societies~~

~~6.5.1.10 Federal dental service meetings and~~

~~programs~~

~~6.5.1.11 Recognized study clubs~~

~~6.5.1.12 Meeting of other organizations as~~

~~may be approved by the Board~~

6.5 CPE credits may be granted upon proof of successful completion of:

6.5.1 Scientific CPE programs or courses and/or the scientific sessions of meetings sponsored or approved by:

6.5.1.1 American Dental Association, its constituents and components

6.5.1.2 American Dental Hygienists' Association, its constituents and components

6.5.1.3 American Dental Assisting Association, its constituents and components

6.5.1.4 Recognized national, regional, state and local dental and dental hygiene specialty organizations

6.5.1.5 Recognized dental and dental hygiene study clubs

6.5.1.6 Accredited dental and dental hygiene CPE programs offered by dental and dental hygiene schools.

6.5.1.7 Approved hospital programs.

6.5.1.8 Such other organizations and associations as may be approved by the Board.

6.5.2 Scientific CPE programs sponsored by:

6.5.2.1 American Dental Association

6.5.2.2 Delaware State Dental Society

6.5.2.3 Recognized dental associations

6.5.2.4 American Dental Hygienists Association its constituents and components

6.5.2.5 Recognized special associations

6.5.2.6 Accredited dental college or university

6.5.2.7 Hospital

6.5.2.8 Federal dental services

6.5.2.9 Recognized study clubs

6.5.2.10 Recognized dentally-related organizations

6.5.2.11 Other organizations as may be approved by the Board

6.5.2 In addition to the maximum of ten (10) hours of the CPE requirement which may be satisfied by self-study without testing and certification, a maximum of twenty (20) hours of the total CPE requirements may be fulfilled by self-study with test and certificate of completion from bona fide dental educational sources including but not limited to:

6.5.2.1 Dental journals

6.5.2.2 Dental textbooks

6.5.2.3 Dental video and audio tape presentations

6.5.2.4 Dental mail-in courses

6.5.2.5 Dental courses presented on the Internet

6.5.2.6 Dental lectures and courses presented via electronic media including computer disks

Where CPE credits are not specified, one (1) hour of credit will be given for each hour of scientific session attended.

#### 6.6 Special Provisions

6.6.1 A dentist, employed as a faculty member in a recognized school of dentistry, dental hygiene, dental assisting or any dentally-related field will be allowed not more than ten (10) hours credit for teaching per year.

6.6.2 A dentist presenting a CPE course shall be allowed the hours involved in preparation and presentation on a one-time-per-course basis for a maximum of ten (10) hours for the two-year period.

6.6.3 Table Clinics will be allowed, one (1) hour of credit per hour of presentation for a maximum of two (2) hours.

6.6.4 Twelve (12) hours of credit shall be allowed for a scientific article published in a component or state society journal. 25 hours of credit shall be allowed for a scientific article published in a national journal or for a published scientific textbook or a chapter therein.

6.6.5 Any public health dentally-related presentation will be allowed one (1) hour of credit per hour of participation for a maximum of two (2) hours for the two year period.

6.6.6 Practice management, or personal self-improvement and computer courses shall be limited to ~~five (5) hours a year~~ for a total of ten (10) hours for the two (2) year period.

6.6.7 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.

6.6.8 All dentists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

#### 6.7 Exceptions

6.7.1 An exception will be granted to any dentist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, or the like.

6.7.2 An individual initially licensed by the Board within the last 2 years shall meet the following schedule of reporting CPE credits for license renewal:

6.7.2.1 If, as of March 1st of the year for license renewal, the licensee has been licensed for less than 1 year, zero hours of CPE is required for license renewal; for licensees who are 1 or more but less than 2 years from their initial licensure, one-half of the required CPE must be presented; for individuals 2 years or more from their initial licensure, the full CPE requirement must be presented for renewal.

#### 6.8 Failure to Comply

When the Board deems someone to be deficient in CPE requirements, the following procedure shall be followed:

6.8.1 The licensee for renewal shall be notified by the Division of Professional Regulation ("Division") by certified mail that a deficiency exists. The deficiency shall be specifically described by the Division.

6.8.2 The licensee's registration will not be renewed until he/she submits proof that the described deficiency has been corrected. Upon submission of

satisfactory proof of correction of said deficiency, the licensee shall be eligible for registration renewal.

6.9 Continuing Professional Education (CPE) - Dental Hygienists

All persons licensed to practice dental hygiene in the State of Delaware shall be required to acquire twenty-four (24) hours of CPE credit and successfully complete a current course in cardiopulmonary resuscitation (CPR) every two (2) years. All dental hygienists, upon initial licensure and prior to registration renewal in 1990, shall be given written notice of these CPE requirements.

6.9.1 Proof of successful completion of the requisite CPE credits is required for registration renewal every two (2) years.

6.9.2 Said CPE requirements shall become effective May 1, 1988. Proof of CPE credits must be submitted by March 1st of every two (2) even years.

~~6.9.3 Each hygienist shall be responsible for submitting proof to the Division or its successor agency of his/her compliance with these requirements. The Division shall notify each licensee at least 30 days in advance of the license renewal deadline, and shall request that the licensee submit evidence of compliance with the requirements stated herein, along with other fees and documents required. However, failure to be notified by such agency shall not relieve the licensee from this obligation.~~

It shall be the responsibility of the candidate for re-licensure to submit to the Board of Dental Examiners, evidence of his/her compliance with these requirements. The Division of Professional Regulation shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the CPE requirements state herein, along with other fees and documents required. However, failure to be notified by such agency shall not relieve the licensee of this obligation.

6.9.4 CPE credits may be granted upon proof of successful completion of programs including, but not limited to, the following categories:

6.9.4.1 Scientific CPE programs or courses and/or scientific sessions of meetings sponsored or approved by:

6.9.4.1.1 American Dental Hygienists' Association, its constituents and components.

6.9.4.1.2 American Dental Association, its constituents and components

~~6.9.4.1.3 Accredited dental college, university, community college or technical college~~

~~6.9.4.1.4 Delaware State Dental Society~~

~~6.9.4.1.5 Kent/Sussex Dental Society~~

~~6.9.4.1.6 Other organizations as may be approved by the Board~~

6.9.4.1.3 American Dental Assisting Association, its constituents, and components

6.9.4.1.4 Recognized national, regional, state, and local dental and dental hygiene specialty societies

6.9.4.1.5 Recognized dental and dental hygiene study clubs

6.9.4.1.6 Accredited dental and dental hygiene schools

6.9.4.1.7 Approved hospital programs

6.9.4.1.8 Such other organizations and associations as may be approved by the Board

~~6.9.4.2 Meeting of: (Scientific session portions only)~~

~~6.9.4.2.1 American Dental Hygienists Association, its constituents and components~~

~~6.9.4.2.2 American Dental Association, its constituents and components~~

~~6.9.4.2.3 Delaware Dental Assisting Association~~

~~6.9.4.2.4 Delaware State Dental Society~~

~~6.9.4.2.5 Kent/Sussex Dental Society~~

~~6.9.4.2.6 Other organizations as may be approved by the Board~~

6.9.4.2 A maximum of five (5) hours of the total twenty-four (24) hour requirement may be satisfied by self-study without testing from sources approved by the Board which shall include but not be limited to:

6.9.4.2.1 Reading of dental or dental hygiene journals

6.9.4.2.2 Reading dental or dental hygiene textbooks

6.9.4.2.3 Viewing and listening to dental or dental hygiene audio-visual materials

6.9.4.3 In addition to the maximum of five (5) hours which may be satisfied by self-study without testing, a maximum of ten (10) hours of the total twenty-four (24) hour requirement may be fulfilled by self-study with test and certificate of completion from bona fide dental hygiene educational sources including but not limited to:

6.9.4.3.1 Dental or dental hygiene journals

6.9.4.3.2 Dental or dental hygiene textbooks

6.9.4.3.3 Dental or dental hygiene video and audio tape presentations

6.9.4.3.4 Dental or dental hygiene mail-in courses

6.9.4.3.5 Dental or dental hygiene courses presented on the Internet

6.9.4.3.6 Dental or dental hygiene lectures and courses presented via electronic media including computer disks

Where CPE credits are not specified, one (1) hour of CPE credit will be given for each hour of scientific session attended.

The final approval of acceptable dental hygiene CPE

credits shall be made by the Board of Dental Examiners in consultation with the Dental Hygiene Advisory Committee.

## 6.10 Special Provisions

6.10.1 A dental hygienist, employed as a faculty member in a recognized school of dentistry, dental hygiene or dental assisting, will be allowed not more than five (5) hours credit for teaching per year.

6.10.2 A dental hygienist presenting a CPE course shall be allowed the hours involved in preparation and presentation on a one-time-per-course basis for a maximum of five (5) credits for the two-year period.

6.10.3 Table clinics will be allowed one (1) hour of credit per hour of presentation for a maximum of two (2) hours.

6.10.4 Twelve (12) hours of credit shall be granted for a scientific article published in a component or state society journal. Twelve (12) hours of credit shall be allowed for a scientific article published in a national journal or for a published scientific textbook or a chapter therein.

6.10.5 A dental hygienist giving public education instruction in a school will receive credit up to one (1) hour per year.

6.10.6 ~~Approved home study courses will be accepted for CPE credit, not to exceed five (5) hours of the total 24 hour requirement.~~

Practice management or personal self-improvement courses shall be limited to five (5) hours for the two (2) year period.

6.10.6.1 Practice management, personal self-improvement and computer courses shall be limited to 2.5 hours a year for a total of five(5) hours for the two year period.

6.10.7 The Board reserves the right to approve any and all activities deemed appropriate for CPE credit. The Board also reserves the right and is the final word to disapprove any activities submitted for credit which it deems inappropriate.

6.10.8 All dental hygienists licensed to practice in Delaware shall be given written notice of these CPE requirements when receiving their initial license.

## 6.11 Exceptions

6.11.1 An exception will be granted to any dental hygienist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness, extended absence from the country, or the like.

6.11.2 An individual initially licensed by the Board within the last 2 years shall meet the following schedule of reporting CPE credits for license renewal:

6.11.2.1 If, as of March 1st of the year for license renewal, the licensee has been licensed for less than 1 year, zero hours of CPE is required for license renewal; for licensees who are 1 or more but less than 2 years from their initial licensure, one-half of the required CPE must be presented; for individuals 2 years or more from their initial licensure, the full CPE requirement must be presented for renewal.

## 6.12 Failure to Comply

When the Board deems someone to be deficient in CPE requirements, the following procedure shall be followed:

6.12.1 The licensee for registration renewal shall be notified by the Division by certified mail that a deficiency exists. The deficiency shall be specifically described by the Division.

6.12.2 The licensee's registration will not be renewed until he/she submits proof that the described deficiency has been corrected. Upon submission of satisfactory proof of correcting said deficiency, a licensee shall be eligible for registration renewal.

Rule 6 revisions are/will be effective February and April of 1997.

## 7.0 Anesthesia Regulations:

### 7.1 Definitions:

The following definitions are taken from the **Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry**, American Dental Association, Council on Dental Education (July 1993). These terms refer to the extent of a drug's depressant effect upon the central nervous system and should not be confused with the route by which the drug is administered.

7.1.1 Analgesia -- the diminution or elimination of pain in the conscious patient.

7.1.2 Local Anesthesia -- the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

7.1.3 Conscious Sedation -- a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command and that is produced by a pharmacologic or non-pharmacologic method or a combination thereof.

In accord with this definition, the conscious patient is also defined as "one who has intact protective reflexes, including the ability to maintain an airway, and who is capable of rational response to question or command." The drugs and techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

For purposes of these regulations, Conscious Sedation Permits shall be divided into two classifications:

Restricted Permit I -- Conscious Sedation

induced by parenteral or enteral or rectal routes. This is not to include the usual and customary pre-operative oral sedation.

Restricted Permit II -- Conscious Sedation induced by nitrous oxide inhalation.

7.1.4 Deep Sedation -- is a controlled state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to verbal command, and is produced by a pharmacologic or non-pharmacologic method or combination thereof.

7.1.5 General Anesthesia -- is a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacologic or non-pharmacologic method or a combination thereof.

The same level of advanced training is necessary for the administration of both Deep Sedation and General Anesthesia.

7.1.6 Adverse Occurrences -- any mortality or other incident occurring in the out-patient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, the conscious sedation, or deep sedation, or general anesthesia related thereto.

#### 7.2 Conscious Sedation:

7.2.1 No dentist shall employ or use Conscious Sedation, Restricted Permit I or Restricted Permit II, for dental patients unless such dentist possesses a permit of authorization issued by the Delaware State Board of Dental Examiners. The dentist holding such a permit shall be subject to review and such permit must be renewed biennially.

7.2.2 In order to receive such a permit, the dentist shall produce evidence showing that he or she:

7.2.2.1 For Restricted Permit I Conscious Sedation:

7.2.2.1.1 Has completed a minimum of 60 hours of instruction, including management of at least 20 patients per participant (to achieve competency in this technique).

7.2.2.1.2 Must be certified in CPR as documented by the American Heart Association or the American Red Cross. Advanced Cardiac Life Support Certification is encouraged.

7.2.2.1.3 Must also have a properly equipped facility for the administration of Restricted Permit I Conscious Sedation, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the team is to be

determined by the Anesthesia Advisory Consultants appointed by the Board. A certified registered nurse anesthetist may be utilized for Restricted Permit I Conscious Sedation only if the dentist also possesses such a permit.

7.2.3 A list of emergency drugs and equipment that should be on hand would consist of the following:

7.2.3.1 Agents capable of treating:

7.2.3.1.1 hypotension and bradycardia

7.2.3.1.2 allergy/bronchospasm

7.2.3.1.3 seizures

7.2.3.1.4 narcotic-induced respiratory depression (e.g., narcotic antagonists)

7.2.3.1.5 angina pectoris

7.2.3.1.6 adrenal insufficiency (e.g., steroids)

7.2.3.1.7 nausea

7.2.3.2 Equipment necessary to provide artificial respiration and assist in airway maintenance.

7.2.3.3 Equipment necessary to establish an intravenous infusion and to inject medications.

7.2.4 For Restricted Permit II Conscious Sedation:

7.2.4.1 Has completed a minimum of 14 instructional hours including supervised clinical experience in managing patients (in a course required to achieve competency in nitrous oxide inhalation sedation).

7.2.4.2 Must also show certification in cardiopulmonary resuscitation as certified by the American Heart Association or the American Red Cross.

7.3 Deep Sedation and General Anesthesia (Unrestricted Permit):

7.3.1 No dentist shall employ or use deep sedation or general anesthesia for his/her dental patients unless such dentist possesses a permit of authorization issued from the Delaware State Board of Dental Examiners. This permit also includes all Conscious Sedation techniques. The dentist holding such a permit shall be subject to review and such permit must be renewed biennially.

7.3.2 In order to receive such a permit, the dentist must produce evidence showing that he/she:

7.3.2.1 Has completed a minimum of two years of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program as described in Part II of the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry or, is a Diplomate of the American Board of Oral and Maxillofacial Surgeons, or has satisfactorily completed a residency in Oral and Maxillofacial Surgery at an institution approved by the Council of Dental Education, American Dental Association, or is a fellow of the American Dental Society of Anesthesiology, or employs or works in conjunction with a trained M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital, provided that such anesthesiologist must remain on the premises of the

dental facility until any patient given a general anesthetic or deep sedation regains consciousness. A certified registered nurse anesthetist may be utilized for deep sedation or general anesthesia only if the dentist also possesses an Unrestricted Permit.

7.3.2.2 Has a properly equipped facility for the administration of deep sedation and general anesthesia, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team is determined by the Anesthesia Advisory Committee Consultants appointed by Delaware State Board of Dental Examiners.

7.3.2.3 And is certified in Advanced Cardiac Life Support by the American Heart Association.

#### 7.4 Facility and Staff Requirements:

7.4.1 Inspections: Prior to the issuance of a permit for Restricted Permit I (parenteral, enteral, or rectal Conscious Sedation) or an Unrestricted Permit (Deep Sedation or General Anesthesia), the Board shall require an on site inspection of the facility, equipment and personnel to determine if, in fact, the aforementioned requirements have been met. The evaluation shall be carried out in a manner described by the Board. The evaluation shall be carried out by the Anesthesia Advisory Consultants appointed by the Board. Each office that the dentist utilizes for Restricted Permit I Conscious Sedation or Deep Sedation or General Anesthesia requires individual inspection and must meet the requirements of that permit for which the dentist is applying.

#### 7.4.2 Anesthesia Advisory Consultants:

7.4.2.1 The Board of Dental Examiners shall appoint a team of Advisory Consultants and alternates who will visit the facility concurrently to conduct the on-site inspection and evaluation of the facilities, equipment and personnel of a licensed dentist applying for written authorization to administer or to employ another to administer Restricted Permit I Conscious Sedation, or Deep Sedation or General Anesthesia (Unrestricted Permit). The Advisory Consultants shall also aid the Board in the adoption of criteria and standards relative to the regulation and control of Conscious Sedation, Deep Sedation and General Anesthesia. The Anesthesia Advisory Consultants shall utilize the "Guidelines for the use of conscious sedation, deep sedation and general anesthesia for Dentist", as approved by the American Dental Association in October 1996, or any current update thereof. If the applicant has been satisfactorily evaluated by another similar organization (e.g., the Delaware Society of Oral and Maxillofacial Surgeons which uses the AAOMS Office Anesthesia Evaluation Manual Standards), then the Board may accept this evaluation and not require additional on-site evaluation.

7.4.2.2 If the results of the initial evaluation of an applicant are deemed unsatisfactory, upon written request of the applicant, a second evaluation shall be conducted by a

different team of consultants.

7.4.3 Re-evaluation: The Board may at any time re-evaluate credentials, facilities, equipment, personnel and procedures of a licensed dentist who has previously received a written authorization or permit from the Board to determine if he/she is still qualified to have such written authorization. If the Board determines that the licensed dentist is no longer qualified to have such written authorization, it may revoke or refuse to renew such authorization, after an opportunity for a hearing is given to the licensed dentist.

#### 7.5 Report of Adverse Occurrences:

7.5.1 All licensed dentists engaged in the practice of dentistry in the State of Delaware must submit a complete report within a period of thirty (30) days to the Delaware State Board of Dental Examiners of any mortality or other incident occurring in the out-patient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, the Conscious Sedation or Deep Sedation or General Anesthesia related thereto.

7.5.2 Failure to comply with this rule when said occurrence is related to the use of Conscious Sedation or Deep Sedation or General Anesthesia may result in the loss of such permit described above, and will be considered unprofessional conduct.

#### 7.6 Applications and Reapplications:

7.6.1 A dentist who desires to obtain a permit to administer Conscious Sedation, Deep Sedation, or General Anesthesia shall submit an application on the form provided by the Board, pay the permit fee, and meet the requirements for the permit described herein.

7.6.2 A dentist who desires to renew a permit shall submit a renewal application on the form provided by the Board and pay the permit renewal fee. Re-inspection of the facility, equipment, and staff shall not be necessary unless new techniques or criteria arise, as determined by the Board with the aid of the Anesthesia Advisory Committee.

7.6.3 A permit issued by the Board under these regulations will expire at the same time as the permit holder's dental license and may be renewed biennially at the same time as the dental license is renewed.

Rule 7 was revised on December 2, 1997, and went into effect as of January 11, 1998. (1 DE Reg. 852)

## 8.0 Certificate Requirement

An applicant for a license to practice dentistry shall submit to the Board a Certificate issued by the National Board of Dental Examiners showing he/she has completed the National Board Examination with a score of at least 80 on each of Part I and Part 2 of the Examination. (2/13/97).

**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 nondisciplinary 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.

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**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF EXAMINERS OF PSYCHOLOGISTS**

24 DE Admin. Code 3500

Statutory Authority: 24 Delaware Code,  
Section 3506(a)(1) (24 Del. C. § 3506(a)(1))

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 3506(a)(1), the Delaware Board of Examiners of Psychologists proposes to revise its Rules and Regulations. The proposed revisions establish a regulation governing requests for postponement of a matter that is scheduled to be heard by the Board. Substantive changes include a requirement that a request for postponement be in writing and submitted no less than three business days prior to the date scheduled for the hearing. In addition, the proposed regulation establishes a maximum of

one postponement per party absent a showing of exceptional circumstances.

A public hearing will be held on the proposed Rules and Regulations on Monday, June 4, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address by calling (302) 739-4522, extension 220.

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

**Board of Examiners of Psychologists**

- 1.0 General Rules and Regulations
- 2.0 Official Board Office
- 3.0 Meetings of the Board
- 4.0 Officers of the Board
- 5.0 Procedures for Licensure
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- 14.0 Procedures for Licensure Applicable to Full-Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals
- 16.0 Hearings- Requests for Postponement

**1.0 General Rules and Regulations**

The Board of Examiners of Psychologists has been established under the 24 Del.C. Ch. 35, and current amendments to that Law. Within the framework of the Law, the Board has the responsibility for interpreting and implementing the legal provisions and requirements of the Law through the establishment of operating Rules and Regulations. The Board and the public may propose changes in the Rules and Regulations in accordance with the Administrative Procedures Act, 29 Del.C. Ch. 101.

## 2.0 Official Board Office

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all correspondence must be addressed to this office in written form before official action can be taken. In addition, the Division of Professional Regulation will provide an Administrative Assistant who will take notes at Board meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

## 3.0 Meetings of the Board

The Board will hold such meetings during the year as it may deem necessary to review licensure applications and psychological assistant applications, evaluate continuing education, hold disciplinary hearings, or conduct other Board business. Either the President, or the majority of the Board may call a Board meeting. The Division of Professional Regulation, Board members, and the public shall be notified of the meeting agenda, time and location in accordance with the Freedom of Information Act.

## 4.0 Officers of the Board

The Board elects its own officers at the first meeting of each calendar year. The President of the Board sets the agendas of the meetings, chairs meetings, and represents the Board at state regulatory meetings, the American Association of State and Provincial Psychology Boards, and other organizations that may interface with the Board unless someone else is designated to attend in place of the President. The Vice President or Secretary acts for the President in the President's absence. The Secretary of the Board, in conjunction with the Administrative Assistant from the Division of Professional Regulation, is responsible for taking care of Board correspondence.

## 5.0 Procedures for Licensure

### 5.1 Application - Initial Licensure

An applicant who is applying for licensure as a psychologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3508. The applicant must submit the following:

5.1.1 An application for licensure, which shall include:

5.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3508(a)(1).

5.1.1.2 Supervised experience documented by having each supervisor complete a Supervisory Reference Form.

5.1.1.3 Evidence that the applicant passed the written "Examination for Professional Practice in Psychology", developed by the Association of State and

Provincial Psychology Boards (ASPPB), by achieving the passing score recommended by the ASPPB at the time of the application for licensure. Candidates who are not licensed in any other state must have passed the written examination within five (5) years of application for licensure in Delaware. Applicants who have not taken the examination must submit all other required documents to the Board for review prior to sitting for the examination. Only those applicants the Board determines are otherwise eligible for Delaware licensure shall be approved to sit for the examination, subject to the administration policies and procedures of the ASPPB. After sitting for the examination, applicants must supplement their application materials by submitting evidence of their passing score as recommended by the ASPPB.

### See 3 DE Reg 1067 (2/1/00)

5.1.1.4 Verification that the applicant has no past or pending disciplinary proceedings. [24 **Del.C.** §3508(a)(4)]

5.1.1.5 The application shall not be considered complete until all materials are received by the Board for review at an officially scheduled meeting. The applicant will have twelve (12) months from the date of initial submission of the application and fee to complete the application process.

5.1.2 Completed certification form. The applicant will be notified, once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

### 5.2 Application - By Reciprocity

An applicant who is applying for licensure as a psychologist by reciprocity, as defined in 24 **Del.C.** §3511, shall submit evidence that he/she meets the following requirements:

5.2.1 An application for licensure, which shall include:

5.2.1.1 Evidence that the applicant is licensed or certified in another state and that the applicant has practiced continuously, as a doctoral-level psychologist, in good standing in that jurisdiction for two (2) years.

5.2.1.2 Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP). The Board shall accept a score of 70% or better, or, for examinations taken prior to 1992, the minimum passing score accepted by the Delaware Board in the year the examination was taken.

### See 4 DE Reg. 979 (12/1/00)

5.2.2 Completed certification form. The applicant will be notified once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

## 6.0 Evaluation of Credentials

6.1 Candidates for licensure as psychologists in the

State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 Del.C. §3508(a)(1) having a graduate program which states its purpose to be the training and preparation of psychologists. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service approved by the National Association of Credential Evaluation Services, to determine equivalency to the accreditation requirements of §3508(a)(1) and equivalency of psychological content and training. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service Providers in Psychology, as follows:

**See 2 DE Reg. 776 (11/1/98)**

**See 4 DE Reg. 980 (12/1/00)**

6.1.1.1 Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

6.1.1.2 Or, all of the following criteria, (1) through (9):

6.1.1.2.1 Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

6.1.1.2.2 The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

6.1.1.2.3 The psychology program must stand as a recognizable, coherent organizational entity within the institution.

6.1.1.2.4 There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

6.1.1.2.5 The program must be an integrated, organized sequence of study.

6.1.1.2.6 There must be an identifiable psychology faculty and a psychologist responsible for the program.

6.1.1.2.7 The program must include a body of students who are matriculated in that program for a degree.

6.1.1.2.8 The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

6.1.1.2.9 The curriculum shall encompass

a minimum of three (3) academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards research design and methodology, statistics, and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas:

6.1.1.2.9.1 Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

6.1.1.2.9.2 Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

6.1.1.2.9.3 Social bases of behavior: Social psychology, group processes, organizational and systems theory.

6.1.1.2.9.4 Individual differences: Personality theory, human development, abnormal psychology.

6.1.1.3 In addition, all professional education programs in psychology will include course requirements in specialty areas.

6.2 Have had, after receiving the doctoral degree, at least 2 years of supervised experience in psychological work satisfactory to the Board; and

6.3 Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor; or

6.4 The Board will qualify for licensing without examination any person who applies for licensure and who is a Diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

**See 2 DE Reg. 776 (11/1/98)**

## 7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

7.2 Postdoctoral supervision is required for initial

licensure as a psychologist. Postdoctoral experience must consist of 3,000 hours of actual work experience. This experience is to be completed in not less than two years 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 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.

7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.

7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

**See 2 DE Reg. 776 (11/1/98)**

## **8.0 Failure to Pass Examination**

Applicants may take the Examination for the Professional Practice in Psychology as many times as they choose. Intervals between testing will be determined by the testing agency and the ASPPB.

## **9.0 Psychological Assistants**

9.1 A psychological assistant is an individual who meets the requirements of 24 **Del.C.** Section 3509(2a-2e).

This individual may be registered as a psychological assistant in order to receive supervision to be eligible for later licensure to practice independently as a psychologist and/or for any other reason as recognized by law.

9.2 Psychological assistants are supervised, directed, and evaluated by a Delaware licensed psychologist who assumes professional and legal responsibility for the services provided.

9.2.1 Any Delaware licensed psychologist who has had a least two (2) years of experience following the granting of licensure in this or in any other state may supervise a maximum of seven (7) psychological assistants.

9.2.2 It is the responsibility of the supervising psychologist in conjunction with the psychological assistant to diagnose and form treatment plans for patients seen by the psychological assistant and to file such plan in the patient/client's chart.

9.2.3 The patient/client must be informed that services are being delivered by a psychological assistant and that the licensed psychologist is responsible for the treatment.

9.2.4 The patient/client shall sign a statement of informed consent attesting that he/she understands that the services are being delivered by a psychological assistant and that the licensed psychologist is ultimately responsible for his/her treatment. This document shall include the supervising psychologist's name and the telephone number where he/she can be reached. One copy shall be filed with the patient/client's record and another given to the patient.

9.3 The Delaware licensed psychologist is identified as the legally and ethically responsible party in all advertising, public announcements, and billings. In addition, billings and advertisements will clearly indicate that the service is being provided by a psychological assistant. All treatment and evaluation reports prepared by the psychological assistant must be signed by the psychologist and the psychological assistant.

9.4 The Delaware licensed psychologist who accepts the responsibility of using a psychological assistant shall develop and maintain a current, written job description delineating the range and type of duties, educational practicum and clinical experience to be assigned to the psychological assistant, limits of independent action, emergency procedures for contacting the supervising psychologist, and the amount and type of supervision to be provided. This job description must be signed by the psychologist and the psychological assistant and will be filed in the Division of Professional Regulation, along with an official copy of the psychological assistant's college transcript, and proof of a 450-hour clinical practicum supervised by a licensed psychologist or by a faculty member in a nationally accredited doctoral level clinical training program in the State of Delaware who is actively pursuing licensure. The psychological assistant will also

provide a statement under oath as outlined in 24 Del.C. §3509(b1 - b3).

9.5 The Board will then review credentials, job description and supervisory arrangements, and if the arrangements are acceptable, will inform the psychologist in writing that the psychological assistant can begin work. No psychological assistant shall begin work until the Board has approved the application. Registration for psychological assistants expires biennially and continued performance of the duties of a psychological assistant requires proof of twenty (20) hours of continuing education and payment of the renewal fee.

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist should be familiar with each patient/client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning. The Board will consider requests to substitute group supervision for some portion of the one-to-one, face-to-face supervision requirement. A supervising psychologist must petition the Board and show good cause for this substitution. If the supervising psychologist's request is granted, no more than five (5) psychological assistants may meet with the supervising psychologist at one time and there must be two (2) hours of group supervision in place of every one (1) hour of individual supervision. All psychological assistants must have at least one (1) hour of individual supervision per week. The Board reserves the right to withdraw their permission for the substitution at any time.

9.7 Psychological Assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she is expected to provide clear contingency plans for consultation for the psychological assistant. It is

assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision and contingency coverage of the psychological assistant. Supervising psychologists will be expected to describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

9.8 Psychological assistants who work for agencies must be supervised by a psychologist employed by or under contract to the agency. Supervision must occur on site, and the agency must have clearly spelled out plans for providing consultation and backup when the supervising psychologist is not on site. A psychological assistant, who provides services that are under the direction of different psychologists, must be registered as a psychological assistant by all of the psychologists who are directly supervising the clinical work.

9.9 When there is a complaint of incompetent, improper, or unethical behavior on the part of the psychological assistant, in addition to the disciplinary action against the psychological assistant, disciplinary action may be taken against the supervising psychologist for failing to provide adequate supervision of the psychological assistant. The Board reserves the right to suspend or revoke the Delaware licensed psychologist's privilege of hiring a psychological assistant when just cause has been established through a formal hearing. Violation of this regulation may constitute cause for suspending or revoking the future privilege of hiring a psychological assistant.

9.10 Patients/clients are always the responsibility of the supervising psychologist. Termination or transfer plans must be worked out with the approval of the supervising psychologist. A psychological assistant will be considered to be working for the supervising psychologist until the Board of Examiners is notified in writing of the change in arrangements. The letter terminating a psychological assistant arrangement must also specify when the supervising psychologist is terminating the arrangement because of concerns about the ethical or professional behavior of the psychological assistant.

**See 2 DE Reg. 776 (11/1/98)**

#### **10.0 Continuing Education**

10.1 Psychologists must obtain 40 hours of continuing education every two years in order to be eligible for renewal of license. Psychologists will be notified in January that they may submit their documentation beginning March 1st. Continuing education credit must be submitted for the period of August 1st of the year of renewal to July 31st of the second year. Individuals licensed within the two year period will be notified by the Board of the prorated amount to

submit.

10.2 Psychological assistants must obtain 20 hours of continuing education every two years for re-registration. Psychological assistants may submit their documentation beginning March 1st. The appropriate period for credits to be accrued is from August 1st of the year of renewal to July 31st of the second year. Psychological assistants registered within the two year period will be notified by the Board of the prorated amount to submit.

10.3 Psychologists or psychological assistants who have not submitted their material by July 31st will be allowed to reapply for licensure or registration until August 31st. In the situation where the appropriate amount of documentation has been submitted in a timely fashion and in good faith and with reasonable expectation of renewal, but has been found to be inadequate, the practitioner has 30 days from the notification of inadequacy to submit valid continuing education credit in the amount specified, or until August 31st of that year, whichever is later.

**Hardship.** An applicant for license renewal or registered psychological assistant may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not complete the requisite continuing education pursuant to the terms of the extension.

**See 4 DE Reg. 983 (12/1/00)**

10.4 It is the responsibility of the psychologist or psychological assistant to file a record of his/her continuing education. Documentation of continuing education will consist of letters/certificates of attendance from the sponsoring entity.

10.5 The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

10.6.1 Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or

other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives. To document attendance and completion, a certificate of attendance is required. In these circumstances, hours will be accrued on the basis of clock hours involved in the training.

10.6.2 Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each credit hour of a course is equivalent to 5 CE hours.

10.6.3 Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credits. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a letter from the academic institution stating that the course was taught.

10.6.4 Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

10.6.5 Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

10.6.5.1 Author of a book (maximum of 40 CE hours)

10.6.5.2 Author of a book chapter or journal article (maximum of 15 CE hours)

10.6.5.3 Editor of a book (maximum of 25 CE hours)

10.6.5.4 Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

10.6.5.5 Proof of the above (10.6.5.1 - 10.6.5.4) must include the submission of the work or documentation of authorship by copy of title pages.

10.6.6 Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

**See 2 DE Reg. 776 (11/1/98)**

10.7 The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

10.8 The following will not be considered for credit: service to organizations; attending business meetings of professional organizations; business management or office administration courses; group supervision; or case conferences.

### **11.0 Professional Conduct**

Psychologists and psychological assistants may be disciplined for violations of provisions of 24 **Del.C.** §3514.

### **12.0 Complaint Procedures**

12.1 Complaints against psychologists and psychological assistants will be investigated as provided by 29 **Del.C.** §8807 and all hearings shall be conducted in accordance with the Administrative Procedures Act, 29 **Del.C.** Chapter 101.

12.2 Complaints must be filed, in writing, with the Division of Professional Regulation.

### **13.0 License Renewal**

13.1 Renewal notices will be mailed to the current address on file in the Board's records in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. It shall be the responsibility of each psychologist and psychological assistant to advise the Board, in writing, of a change of name or address.

13.2 Continuing education requirements must be fulfilled as detailed in Section 10.0 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. The Board may, in its discretion, grant a license renewal under the terms of a continuing education hardship extension pursuant to rule 10.3. Should any psychologist fail to renew or obtain a hardship extension and continue to make representation as a licensed psychologist beyond July 31st, that individual is practicing without a license. Should any psychological assistant fail to renew or obtain a hardship extension and continue to make representation as a registered psychological assistant beyond July 31st, that individual is considered no longer to be registered, and his/her supervising psychologist is in violation of the law.

**See 4 DE Reg. 984 (12/1/00)**

### **14.0 Procedures for Licensure Applicable to Full Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware**

14.1 University faculty employed full time in a nationally accredited doctoral level clinical training program in the State of Delaware, as specified in 24 **Del.C.** §3519(e), who are not licensed, are subject to the following rules and regulations:

14.1.1 Notification. Such individuals must notify the Board of Examiners of Psychologists no later than 30 days after the commencement of employment, indicating employer, position and date employment began. At that time they will receive a copy of the statute and Rules and Regulations which detail the exemption under which they operate.

14.1.2 Professional Activities. These individuals may participate in activities defined by statute as the practice of psychology (including the supervision of matriculated graduate students) only within the context of a clinical training program. They may conduct any research and teaching activities related to the activities of such a program.

14.1.3 Education. Such individuals must have completed the doctoral degree at the time employment commences consistent with 24 **Del.C.** §3508(a).

14.1.4 Active Pursuit of Licensure. Such individuals are required to be in active pursuit of licensure for a period not to exceed six (6) years. The six year time frame for the completion of licensure requirements commences with the initial date of employment. The six-year time frame for individuals employed as of June 12, 1995 commenced on that date.

14.1.5 Supervision. The supervised experience required for licensure of such individuals is described in Section 7.0 of the Rules and Regulations.

**See 2 DE Reg. 776 (11/1/98)**

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

15.1 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.

15.2 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.

15.3 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).

15.4 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.

15.5 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.

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

15.6.1 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.

15.6.2 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.

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

15.6.4 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.

15.6.5 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.

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

15.7 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.

15.8 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.

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

15.10 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.

15.11 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.

15.12 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.

#### **16.0 Hearings-Requests for Postponement**

Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) business days before the date scheduled for the hearing. Absent a showing of exceptional circumstances, there shall be a maximum of one postponement allowed to each party to any hearing.

#### **APPENDIX A**

"Professional psychology" refers to psychology as a profession. The term is not intended in the more restrictive sense of applied or practice areas of psychology since the intent is for a generic designation system.

"Professional psychology" refers to psychology as a profession. The term is not intended in the more restrictive sense of applied or practice areas of psychology since the intent is for a generic designation system.

6.1.1.2.1 refers to an institution with regional accreditation in the United States, an institution with provincial authorization in Canada, or in other countries, or an institution that is accredited by a body which was deemed by the ASPPB/National Register Joint Designation Committee to be performing a function equivalent to U.S. regional accrediting bodies.

In reference to "instruction in scientific and professional ethics and standards" rule 6.1.1.2.9, it is understood that a course of three or more graduate semester hours (five or more graduate quarter hours) or its equivalent is highly desirable; substantial instruction in these issues is required.

It is understood that rule 6.1.1.2.9 includes the requirement of a minimum of one year's residency at the educational institution granting the doctoral degree.

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

### **DIVISION OF LONG TERM CARE**

Statutory Authority: 16 Delaware Code,  
Sections 3001A-3006A (16 Del.C. §§3001A-  
3006A)

### **Training and Qualifications for Nursing Assistants and Certified Nursing Assistants**

#### **PUBLIC NOTICE**

Delaware Health & Social Services (DHSS), in compliance with Senate Bill 20 passed in the 140<sup>th</sup> General Assembly, has prepared draft regulations governing training and qualifications for nursing assistants and certified nursing assistants as required in Title 16 Del.C., Chapter 30A.

These regulations address certified nursing assistant training, the composition of the certified nursing assistant training course and curriculum, the mandatory orientation period and senior certified nursing assistant certification.

*Public hearings* will be held as follows:

Thursday, May 24, 2001, 10 am – noon  
Springer Building Training Room  
Herman Holloway Campus  
Delaware Health & Social Services  
1901 N. DuPont Highway  
New Castle, DE

Thursday, May 31, 2001, 10 am - noon  
Department of Natural Resources & Environmental  
Control\*  
89 Kings Highway  
Dover

[\*Traveling on Rt. 1/Rt. 13 to Smyrna, stay on Rt. 1 to Exit #104 for North Dover. Take this exit south on Rt. 13, passing the Rt. 8 intersection, to Lockerman Street. Turn right onto Lockerman (at the Burger King). Go to the second traffic light and turn right onto State Street, then make an immediate right onto Kings Highway. Go about 1 block and it is the big, two-story, brick building on the right just after the Merrill Lynch Building. Enter through the double doors at the front of the building.]

For clarifications or additional directions to either location, please call Gina Loughery or Joan Reynolds at 577-6661.

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

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

Such comments must be received by June 1, 2001.

The Regulations shown below, currently in place, are being replaced in their entirety by the new ones being submitted for publication on May 1, 2001.

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**57.606 NURSE AIDE/NURSE ASSISTANT REQUIREMENTS:**

Each nurse aide/nurse assistant employed by any nursing home either as contract/agency or facility staff as of October 1, 1990 shall be required to meet the following:

**A. Training/Testing**

1. Nurse aide/nurse assistant shall complete a nurse aide training course approved by the Delaware State Board of Nursing and by the State Board of Health.

2. Nurse aide/nurse assistant is required to pass competency evaluation test approved by the State of Delaware.

3. Employees of Delaware nursing homes shall be duly certified within 4 months of employment.

4. Contract aides must be certified prior to placement in any nursing home.

B. A nurse aide/nurse assistant who has not performed nursing related services for pay for a continuous 24 month period after completion of a training and testing program, must complete and pass a new training and competency evaluation (testing) program.

C. A nurse aide/nurse assistant who has not been employed in health care setting for three years will be required to meet the requirements in Section (A) above.

D. A nurse aide/nurse assistant trained and certified outside the State of Delaware may be deemed qualified to meet the Board of Health requirements based on a case by case review and approval.

E. Employees hired as nurse aide/nurse assistant who are currently, enrolled in a nursing program and have satisfactorily completed the fundamentals of nursing course with a clinical component will be deemed to meet the training and testing requirements. These individuals will be approved with submittal of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

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**57.607 NURSE AIDE TRAINING PROGRAM CURRICULUM**

The following material identifies the minimum curriculum content for nurse aides/nursing assistants being prepared to work in nursing home facilities either as direct or contract staff.

The curriculum content for the nurse aide training program must include material which will provide a basic level of both knowledge and demonstratable skills for each

individual completing the program. The program must be a minimum of 75 hours in length, divided equally between skills training and classroom instruction. Additional hours may be in either of these areas or both.

Programs may expand the curriculum content to provide opportunities for nurse aides to be placed in settings where nurse aides/nursing assistants are employed to perform basic skills as delegated by a licensed nurse in support of a professional plan of care.

**A. THE NURSE AIDE ROLE AND FUNCTION****Key Concepts:**

Introduces the characteristics of an effective nurse aide: personal attributes, onthejob conduct, appearance, grooming, health and ethical behavior. Also presented are the responsibilities of the nurse aide as a member of the patient care team. Legal aspects of patient care and patient rights are presented. Relevant Federal and State statutes are referenced.

**Competencies:**

A.1 Function as a nurse aide within the legal and ethical standards setforth by the profession of nursing.

A.1.1 Define the role and functions of the nurse aide and provide awareness of the legal limitations of being a nurse aide.

A.1.2 Recognize the responsibilities of the nurse aide as a member of the health care team.

A.1.3 Identify the "chain of command" in the organizational structure of the health care agency.

A.1.4 Maintain acceptable personal hygiene and exhibit appropriate dress practices.

A.1.5 Recognize the importance of punctuality and commitment on the job.

A.1.6 Differentiate between ethical and unethical behavior on the job.

A.2 Demonstrate behavior which maintains resident's and/or client's rights.

A.2.1 Provide privacy and maintenance of confidentiality.

A.2.2 Promote the resident's right to make personal choices to accommodate individual needs.

A.2.3 Give assistance in resolving grievances.

A.2.4 Provide needed assistance in giving to and participating in resident and family groups and other activities.

A.2.5 Maintain care and security of resident's personal possessions.

A.2.6 Provide care which maintains the residents free from abuse, mistreatment or neglect and report any instances

of such poor care to appropriate facility staff.

A.2.7 Maintain the resident's environment and care through appropriate nurse aide behavior so as to minimize the need for physical and chemical restraints.

## B. Environmental Needs of the Patient

Key Concepts: Introduces the nurse aide to the need to keep patients safe from injury and infection in the long-term care setting. The nurse aide is taught why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

Competencies:

B.1 Apply the basic principles of infection control.

B.1.1 Identify how diseases are transmitted.

B.1.2 Demonstrate handwashing technique.

B.1.3 Perform basic cleaning, disinfecting, and sterilizing tasks.

B.1.4 Demonstrate proper isolation and safety techniques in care of infectious resident.

B.2 Assist with basic emergency procedures.

B.2.1 Follow safety and emergency procedures.

B.2.2 Identify safety measures that prevent accidents to residents.

B.2.3 Recognize signs, when a resident is choking or may have an obstructed airway.

B.2.4 Assist with clearing obstructed airway.

B.2.5 Call for help when encountering convulsive disorders, loss of consciousness, shock, hemorrhage, and assist the resident until professional help arrives.

B.2.6 Follow disaster procedures.

B.2.7 Report emergencies accurately and immediately.

B.2.8 Identify potential fire hazards.

B.3 Provide a safe, clean environment.

B.3.1 Identify the resident's need for a clean and comfortable environment.

B.3.2 Report unsafe conditions.

B.3.3 Report pests.

B.3.4 Report nonfunctioning equipment.

B.3.5 Prepare soiled linen for laundry.

B.3.6 Clean and disinfect unit for admission or following discharge.

B.3.7 Arrange furniture and equipment for the resident's convenience.

## C. PSYCHOSOCIAL NEEDS OF THE PATIENT

Key Concepts: Focus is placed on the social, emotional, recreational and religious needs of patients in a long term care setting. It describes some of the physical, mental, and

emotional changes associated with aging and institutionalization, and presents ways in which the nurse aide may effectively communicate with patients and their families.

Competencies:

C.1 Demonstrates appropriate and effective communication skills.

C.1.1 Demonstrate effective verbal and nonverbal communications in keeping with the nurse aide's role with residents and their families.

C.1.2 Observe by using the senses of sight, hearing, touch and smell to report resident behavior to the licensed nurse.

C.1.3 Document observations using appropriate terms.

C.1.4 Recognize the importance of maintaining the patient's record.

C.1.5 Communicate with residents according to their state of development.

C.2 Demonstrate basic skills by identifying the psychosocial characteristics of the populations being served in the nursing facility including persons with mental retardation, mental illness and persons with dementia, Alzheimer's disease and related disorders.

C.2.1 Indicate the ways to meet the resident's basic human needs for life and mental well-being.

C.2.2 Modify his/her own behavior in response to resident's behavior.

C.2.3 Identify developmental tasks associated with the aging process.

C.2.4 Provide training in, and the opportunity for, self care according to resident's capabilities.

C.2.5 Demonstrate principles of behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior.

C.2.6 Demonstrate skills supporting age appropriate behavior by allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity.

C.2.7 Utilize resident's family as a source of emotional support.

C.2.8 Recognize how age, illness and disability affect sexuality.

## D. PHYSICAL NEEDS OF THE PATIENT

Key Concepts: Presents the basic skills which nurse use in the physical care of patients. nurse aide will learn basic facts about systems and what is needed to promote functioning. The nurse aide will learn provide physical care to patients safe to keep the patient clean, dry comfortable. The nurse aide will also learn to make observations regarding patients and to record and/or report observations. The nurse aide will

learn to maintain range of motion while providing physical care to patient. Introduction of the basics of range of motion and its integration into routine personal care activities.

Competencies:

D.1 Apply the principles of basic nutrition in the preparation and serving of meals.

- D.1.1 List general principles of basic nutrition.
- D.1.2 Read the instructions for special diets.
- D.1.3 Serve prepared foods as instructed.
- D.1.4 Identify cultural variations in diet.

D.2 Recognize abnormal signs and symptoms of common diseases and conditions. Examples are:

D.2.1 Upper respiratory infection — Report coughing, sneezing, elevated temperatures, etc.

D.2.2 Diabetes — Report excessive thirst, frequent urination, change in urine output and drowsiness, excessive perspiration and headache.

D.2.3 Urinary tract infection — Report frequent urination, burning or pain on urination, change in color of urine, blood or sediment in urine and strong odors.

D.2.4 Cardiovascular conditions — Report shortness of breath, chest pain, blue color to lips, indigestion, sweating, change in pulse, etc

D.2.5 Cerebral vascular conditions — Report dizziness, changes in vision such as seeing double, etc., change in blood pressure, numbness in any part of the body, or inability to move arm or leg, etc.

D. 2.6 Skin conditions — Report break in skin, discoloration such as redness, black and blue areas, rash, itching, etc.

D.2.7 Gastrointestinal conditions — Report nausea, vomiting, pain, inability to swallow, bowel movement changes such as color, diarrhea, constipation. (Continue to list common diseases and conditions based on the population being served.)

D.3 Provide personal care and basic nursing skills as directed by the licensed nurse.

D.3.1 Provide for resident's privacy when providing personal care.

D.3.2 Assist the resident to dress and undress.

D.3.3 Assist the resident with bathing and personal grooming.

D.3.4 Observe and report condition of the skin.

D.3.5 Assist the resident with oral hygiene.

D.3.6 Administer oral hygiene for the unconscious resident.

D.3.7 Demonstrate measures to prevent decubitus, ulcers, i.e., positioning, turning, and applying heel and elbow protectors.

D.3.8 Assist the resident in using the bathroom.

D.3.9 Assist the resident in using a bedside commode,

urinal and bedpan.

D.3.10 Demonstrate proper bed making procedures.

D.3.11 Feed residents oral table foods in an appropriate manner.

D.3.12 Distribute nourishment and water.

D.3.13 Accurately measure and record:

- a. intake and output
- b. height and weight
- e. T,P,R

D.3.14 Assist the resident with shaving.

D.3.15 Shampoo and groom hair.

D.3.16 Provide basic care of toenails and fingernails if appropriate.

D.3.17 Assist with catheter care.

D.3.18 Assist the professional nurse with a physical examination.

D.3.19 Apply a nonsterile dressing.

D.3.20 Apply nonsterile compresses and soaks.

D.3.21 Apply cold and/or heat applications.

D.4 Demonstrate skills which incorporate principles of restorative care under the direction of a licensed nurse.

D.4.1 Assist the resident in bowel and bladder training.

D.4.2 Assist the resident in activities of daily living and encourage self help activities.

D.4.3 Assist the resident with ambulation aids, i.e., cane, quad cane, walker, crutches, wheelchair and transfer aids, i.e. <sup>†</sup>hydraulic lifts.

D.4.4 Perform range of motion exercise as instructed by the physical therapist or the professional nurse.

D.4.5 Assist in care and use of prosthetic devices.

D.4.6 Assist the resident in proper use of body mechanics.

D.4.7 Assist the resident with dangling, standing and walking.

D.4.8 Demonstrate proper turning and/or positioning both in bed and in a chair.

D.4.9 Demonstrate proper technique of transferring resident from bed to chair.

D.5 One man cardiopulmonary resuscitation (CPR) skills in the checking of conscious and unconscious victims.

D.6 Provide care to resident when death is imminent.

D.6.1 Discuss own feelings and attitude about death.

D.6.2 Explain how culture and religion influence a person's attitude toward death.

D.6.3 Discuss the stages of dying.

D.6.4 Recognize and report the common signs of approaching death.

D.6.5 Provide care (if appropriate) to the resident's body after death.

**57.608 INSTRUCTORS**

A. Primary instructor As an individual responsible for overall coordination and implementation of nurse aide training program.

**QUALIFICATIONS:**

1. RN licensure in the State of Delaware.
2. Two (2) years nursing experience in caring for the elderly and/or chronically ill of any age.
3. For instructors without prior teaching experience:
  - a. Successful completion of a "Train the Trainer" program which provides preparation in teaching adult learners principles of effective teaching and teaching methodologies.
4. Waiver of the Train the Trainer requirement is made for those nurses who demonstrate at least one (1) year of continuous teaching experience at the nursing assistant or LPN or RN program level.

B. Program Trainer (s) is the individual (s) who provide assistance to primary instructors as resource personnel from the health field.

**QUALIFICATIONS:**

1. Trainers may include: registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, physical or occupational therapists, environmental health specialists, etc.
2. One (1) year of current experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.
3. Trainers are to be licensed, registered and/or certified in their field, where applicable.

**57.609 TRAINING FOR PRIMARY INSTRUCTORS**

The approved instructors will develop into competent trainers, possessing the necessary skills to train nursing assistants to meet the established certification criteria. The trainers will understand the roles and responsibilities associated with training. They will be able to design and implement a training program, assess its value, and modify it as needed. They will recognize the characteristics of adult learners and create a training environment conducive to effective learning.

A. Training course outline shall include:

- I. Role of trainer.
- II. Communication techniques.
- III. Demonstration skills.
- IV. Teaching a process.
- V. Teaching techniques.
- VI. Training techniques.

VII. Developing a formal training plan.

B. Course Management Information

- I. Training time will consist of sixteen minimum hours.
- II. The instructor must have formal educational preparation or experience with skills of adult learning.

**SECTION 57.7 PERSONNEL/ADMINISTRATIVE**

57.701 The administrator (s) shall be responsible for complying with the regulations herein contained. In the absence of the administrator, an employee shall be authorized, in writing, to be in charge.

57.702 All administrators of nursing homes must be licensed by the Board of Examiners of Nursing Home Administrators. Such administrators must be full time (40 hours per week) employees.

57.703 A staff of persons sufficient in number and adequately trained to meet requirements for care shall be employed. In addition to the staff engaged in the direct care and treatment of patients, there must be sufficient personnel to provide basic services; such as: food service, laundry, housekeeping and plant maintenance.

57.704 No employee shall be less than sixteen (16) years of age, unless they have been issued proper working papers.

57.705 The institution shall have written personnel policies and procedures that adequately support sound patient care. Personnel records are to be kept current and available for each employee, and contain sufficient information to support placement in the positions to which assigned.

57.706 Minimum requirements for employee physical examination:

A. Each person, including volunteers, who is involved in the care of patients shall have a screening test for tuberculosis as a prerequisite to employment. Either a negative intradermal skin test or a chest xray showing no evidence of active tuberculosis shall satisfy this requirement.

B. A report of this test shall be on file at the facility of employment.

57.707 No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the County Health Officer.

**SECTION 57.8 SERVICES TO PATIENTS**

57.801 General Services:

A. The skilled care nursing facility shall provide to all patients the care deemed necessary for their comfort, safety,

nutritional requirements and general wellbeing.

B. The skilled care nursing facility shall have in effect a written transfer agreement with one (1) or more hospitals which provides the basis for effective working arrangements under which inpatient hospital care, or other hospital services, are available promptly to the facility's patients, when needed.

C. The skilled care nursing facility shall have a written provision for promptly obtaining required laboratory, xray and other diagnostic services. These services may be obtained from other facilities that are approved by the State Board of Health.

#### 57.802 Medical Services:

A. All persons admitted to an institution (skilled care nursing home) shall be under the care of a licensed physician.

B. All nursing homes shall arrange for one (1) or more licensed physicians to be called in an emergency. Names and phone numbers of these physicians must be posted at all nurse's stations.

C. All orders for medications, treatments, diets, diagnostic services, etc. shall be in writing and signed by the attending physician.

D. All orders shall be renewed and signed by the physician at least every thirty (30) days.

E. A progress note shall be written and signed by the physician on each visit.

## PROPOSED REGULATIONS

### CERTIFIED NURSING ASSISTANTS

#### SECTION 1

#### A. DEFINITIONS

**Advanced Practice Nurse**- shall mean an individual whose education and licensure meet the criteria outlined in 24 Del., C. Chapter 19 and who is certified in at least one of the following specialty areas: (1) Adult nurse practitioner; (2) Gerontological clinical nurse specialist; (3) Gerontological nurse practitioner; (4) Psychiatric/mental health clinical nurse specialist; (5) Family nurse practitioner.

**Assisted Living Facility** – Assisted living facility is a residential arrangement for fee licensed pursuant to 16 Del. C., Chapter 11.

**Certified Nursing Assistant (CNA)** – a duly certified individual under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the person(s) to whom they are providing care.

**Department** – the Department of Health and Social Services.

**Division**- the Division of Long Term Care Residents Protection.

**Intermediate Care Facility** - Facility licensed pursuant to 16 Del. C., Chapter 11 with a license designated for intermediate care beds.

**Licensed Nurse** - shall mean a licensed practical nurse, registered nurse and/or advanced practice nurse whose education and licensure meet the criteria in 24 Del. C., Chapter 19.

**Licensed Practical Nurse (LPN)** – a nurse who is licensed as a practical nurse in the State of Delaware and who may supervise LPNs, CNAs, NAs and other unlicensed personnel.

**Nursing Assistant (NA)** – an individual who has completed the requisite training to become a Certified Nursing Assistant but is awaiting certification.

**Nursing Services Direct Caregivers**- those individuals, as defined in 16 Del. C., Section 1161(e), assigned to the direct care of nursing facility residents.

**Nursing Supervisor**- shall mean an advanced practice nurse, registered nurse or licensed practical nurse (LPN) with 5 years long-term care experience assigned to supervise and evaluate nursing services direct caregivers. If an LPN acts as the supervisor, this must be in accordance with the nurse practice act, under which an LPN cannot supervise a RN.

**Personal Care Services** – those health-related services that include general supervision of, and direct assistance to, individuals in their activities of daily living.

**Physician** – a physician licensed to practice in the State of Delaware.

**Registered Nurse (RN)** – a nurse who is a graduate of an approved school of professional nursing and who is licensed to practice in the State of Delaware.

**Rehabilitation** – the restoration or maintenance of an ill or injured person to self-sufficiency at his or her highest attainable level.

**Resident** – a person admitted to a nursing facility or similar facility licensed pursuant to 16 Del. C., Chapter 11.

**Restraint** – “physical restraints” are defined as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. “Chemical restraints” are defined as a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

**Senior Certified Nursing Assistant** – a Certified Nursing Assistant who has met the requirements and training specified in Section 4 of these regulations.

**Skilled Care Facility** – Facility licensed pursuant to 16 Del. C., Chapter 11 with a license designated for skilled care beds.

**Student** – a person enrolled in a course offering certification as a CNA.

**Supervision** – direct oversight and inspection of the act of accomplishing a function or activity.

## **SECTION 2**

### **NURSING ASSISTANT/CERTIFIED NURSING ASSISTANT CERTIFICATION**

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either, as contract/agency or facility staff shall be required to meet the following:

#### **A. GENERAL TRAINING REQUIREMENTS AND COMPETENCY TEST**

1. An individual shall complete a nursing assistant training course approved by the Delaware State Board of Nursing and by the Department.

2. Nursing Assistant is required to pass a competency test provided by the Department or by a contractor approved by the Department.

3. Nursing Assistants may attempt to take the competency test a maximum of three (3) times in the two year period following the completion of an approved training program. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test.

4. Nursing Assistants shall take the competency test within 30 days of completion of an approved training program. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion.

5. A Certified Nursing Assistant who has not performed nursing related services in a health care setting for a continuous 24 month period after completion of a training and testing program, must complete and pass a new training course and competency test.

6. A Certified Nursing Assistant trained and certified outside the State of Delaware may be deemed qualified to meet the Department's requirements based on a current certificate from the jurisdiction where he/she presently practices and verification that he/she is in good standing on that state's Registry.

7. Employees hired as Nursing Assistants/Certified Nursing Assistants who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a clinical component will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

8. For the purpose of calculating minimum staffing levels as specified by the Department, any individual who

has completed all of the classroom training and half of the clinical training in a facility sponsored training program may be considered as a member of such facility's staff, while undergoing the last 37.5 hours of clinical training at such facility.

9. Certified Nursing Assistants must work a minimum of 8 hours per quarter or 64 hours within two years of their certification period in order to qualify for recertification.

#### **B. CNA TRAINING PROGRAM REQUIREMENTS**

1. General. To obtain approval, the curriculum content for the certified nursing assistant training programs shall meet each of the following requirements:

a. The curriculum shall include material that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program.

b. The program shall be a minimum of 150 hours in length, divided equally between clinical skills training and classroom instruction, and including CPR certification. Additional hours may be in either of these areas or both.

c. All classroom instruction shall be completed prior to students' performing direct resident care. Programs shall maintain documentation of required skills that each student has successfully demonstrated to the RN instructor.

d. All programs shall develop policies and procedures to support the effective operation of a nursing assistant training program. Programs shall develop and implement systems to evaluate and monitor the quality and achievement of goals and objectives for the program as well as the trainees.

e. Classroom ratios of student to instructor shall not exceed 24:1. Clinical and laboratory ratios of student to instructor shall not exceed 8:1.

f. The RN instructor shall directly supervise students at all times during clinical instruction. Students shall remain in visual contact with the RN instructor in the clinical setting while performing any skills for which they have not yet demonstrated and the program has documented proficiency.

g. The RN instructor shall maintain a physical presence on the same unit at all times where the students are engaged in clinical skills instruction. If more than one unit is utilized for clinical instruction, the program must have additional RN's to coincide with the number of units used.

h. Programs must notify the Department in writing when changes to the program or the program's personnel are made. Programs must notify the Department when major substantive changes are made to the curriculum.

2. Equipment. All programs shall have available at a minimum the following equipment:

a. Audio/Visual

b. Computers

c. Calculators

- d. Teaching Mannequin, Adult
- e. Hospital Bed
- f. Bedpan/Urinal
- g. Bedside commode
- h. Wheelchair
- i. Scale
- j. Overbed Table
- k. Sphygmomanometer
- l. Stethoscope
- m. Resident Gowns
- n. Thermometers, Glass and Electronic
- o. Crutches
- p. Canes (Variety)
- q. Walker
- r. Miscellaneous Supplies: i.e., Bandages, Compresses, Heating Pad, Special Dressings, Hearing Aid, Dentures, Toothbrushes, Razors, etc
- s. Foley Catheter Drainage Bag
- t. Hydraulic Lift
- u. Adaptive eating utensils/equipment
- v. Nasogastric and gastrostomy tubes

3. Curriculum content. The following material identifies the minimum competencies that the curriculum content shall develop. Nursing assistants being prepared to work in skilled, intermediate, or assisted living facilities either as direct or contract staff shall master each competency. All demonstrable competencies for each student must be documented as mastered by the RN instructor in order for a student to qualify as successfully having completed that section of programming.

#### **A. THE NURSING ASSISTANT ROLE AND FUNCTION**

Key Concepts: Introduces the characteristics of an effective nursing assistant: personal attributes, on-the-job conduct, appearance, grooming, health and ethical behavior. Also presented are the responsibilities of the nursing assistant as a member of the resident care team. Legal aspects of resident care and resident rights are presented. Relevant Federal and State statutes are also reviewed.

##### Competencies:

A.1. Function as a nursing assistant within the standards described below:

A.1.1 Define the role and functions of the nursing assistant and provide awareness of the legal limitations of being a nursing assistant.

A.1.2 Recognize the responsibilities of the nursing assistant as a member of the health care team. Understand the relevant State and Federal regulations for long term care and legalities of reporting and documenting incidents and accidents.

A.1.3 Understand the role of Long Term Care

advocates, investigators and surveyors.

A.1.4 Identify the "chain of command" in the organizational structure of the health care agency.

A.1.5 Maintain acceptable personal hygiene and exhibit professional/ dress practices.

A.1.6 Recognize the importance of punctuality and commitment to the job.

A.1.7 Differentiate between ethical and unethical behavior on the job.

A.1.8 Understand the role, responsibility and functional limitations of the nursing assistant.

A.2 Demonstrate behavior that maintains resident's rights.

A.2.1 Provide privacy and maintenance of confidentiality.

A.2.2 Promote the resident's right to make personal choices to accommodate individual needs.

A.2.3 Give assistance in resolving grievances.

A.2.4 Provide needed assistance in going to and participating in resident and family groups and other activities.

A.2.5 Maintain care and security of resident's personal possessions as per the resident's desires, with particular attention to dental, hearing and visual aids.

A.2.6 Provide care which ensures that the residents are free from abuse, mistreatment or neglect and report any instances of such poor care to appropriate facility staff. Discuss the psychological impact of abuse, neglect, mistreatment, misappropriation of property of residents and/or financial exploitation.

A.2.7 Maintain the resident's environment and care through appropriate nursing assistant behavior so as to keep the residents free from physical and chemical restraints.

A.2.8 Discuss the potential negative outcomes of physical restraints, including side rails.

A.2.9 Be familiar with the forms, processes and laws that relate to advanced health care directives.

#### **B. ENVIRONMENTAL NEEDS OF THE RESIDENT**

Key Concepts: Introduces the nursing assistant to the need to keep residents safe from injury and infection in the long-term care setting. The nursing assistant is taught why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

##### Competencies:

B.1 Apply the basic principles of infection control.

B.1.1 Identify how diseases are transmitted and understand concepts of infection prevention.

B.1.2 Demonstrate proper hand washing technique.

B.1.3 Demonstrate appropriate aseptic techniques in the performance of normal duties and understand the role of

basic cleaning, disinfecting, and sterilization tasks.

B.1.4 Demonstrate proper isolation and safety techniques in the care of the infectious resident and proper handling and disposal of contaminated materials.

B.2 Assist with basic emergency procedures.

B.2.1 Follow safety and emergency procedures.

B.2.2 Identify safety measures that prevent accidents and injuries to residents and staff.

B.2.3 Recognize signs when a resident is choking or may have an obstructed airway.

B.2.4 Assist with clearing obstructed airway.

B.2.5 Call for help when encountering convulsive disorders, loss of consciousness, shock, hemorrhage, and assist the resident until professional help arrives.

B.2.6 Follow disaster procedures.

B.2.7 Report emergencies accurately and immediately.

B.2.8 Identify potential fire hazards.

B.3 Provide a safe, clean environment.

B.3.1 Identify the resident's need for a clean and comfortable environment. Describe types of common accidents in the nursing home and their preventative measures. Be aware of the impact of environmental factors on the resident in all areas including but not limited to light and noise levels.

B.3.2 Report unsafe conditions to appropriate supervisor. Use the nurse call system effectively.

B.3.3 Report evidence of pests to appropriate supervisory personnel.

B.3.4 Report nonfunctioning equipment to appropriate supervisory/charge personnel.

B.3.5 Prepare soiled linen for laundry.

B.3.6 Insure that resident room has been cleaned and disinfected for admission or following discharge.

B.3.7 Make arrangement of furniture and equipment for the resident's convenience and to keep environment safe.

### **C. PSYCHOSOCIAL NEEDS OF THE RESIDENT**

Key Concepts:Focus is placed on the diverse social, emotional, recreational and spiritual needs of residents in a long term care setting. The curriculum shall describe some of the physical, mental, and emotional changes associated with aging and institutionalization, and present ways in which the nursing assistant may effectively communicate with residents and their families.

Competencies:

C.1 Demonstrate basic skills by identifying the psychosocial characteristics of the populations being served in the nursing facility including persons with mental retardation, mental illness and persons with dementia, Alzheimer's disease, developmental disabilities and other related disorders.

C.1.1 Indicate the ways to meet the resident's basic human needs for life and mental well being.

C.1.2 Modify his/her own behavior in response to resident's behavior. Respect the resident's beliefs recognizing cultural differences in holidays, spirituality, clothing, foods and medical treatments.

C.1.3 Identify methods to ensure that the resident may fulfill his/her maximum potential within the normal aging process.

C.1.4 Provide training in, and the opportunity for, self-care according to the resident's capabilities.

C.1.5 Demonstrate principles of behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior.

C.1.6 Demonstrate skills supporting age-appropriate behavior by allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity.

C.1.7 Utilize resident's family as a source of emotional support and recognize the family's need for emotional support.

C.1.8 Recognize how age, illness and disability affect memory, sexuality, mood and behavior, including wandering.

C.1.9 Describe aggressive and wandering behavior; recognize responsibility of staff related to wanderers and aggressive residents.

C.1.10 Discuss how appropriate activities are beneficial to residents with cognitive impairments.

C.1.11 Recognize and utilize augmentative communication devices and methods of nonverbal communication.

C.2 Demonstrate appropriate and effective communication skills.

C.2.1 Demonstrate effective verbal and nonverbal communications in keeping with the nursing assistant's role with residents, their families and staff.

C.2.2 Observe by using the senses of sight, hearing, touch and smell to report resident behavior to the licensed nurse.

C.2.3 Document observations using appropriate terms and participate in the care planning process.

C.2.4 Recognize the importance of maintaining the resident's record accurately and completely.

C.2.5 Communicate with residents according to their state of development. Identify barriers to effective communication. Recognize the importance of listening to residents.

C.2.6 Participate in sensitivity training in order to understand needs of residents with physical or cognitive impairments.

### **D. PHYSICAL NEEDS OF THE RESIDENT**

Key Concepts:Presents the basic skills which nursing

assistants use in the physical care of residents. The nursing assistant will learn basic facts about body systems and what is needed to promote good functioning. The nursing assistant will learn to provide physical care to residents safely and to keep the resident nourished, hydrated, clean, dry and comfortable. The nursing assistant will also learn to make observations regarding residents and to record and/or report observations. The nursing assistant will learn to appropriately provide range of motion while providing physical care to the resident.

Introduction of the basics of range of motion and its integration into routine personal care activities.

Competencies:

D.1 Apply the principles of basic nutrition in the preparation and serving of meals.

D.1.1 Incorporate principles of nutrition and hydration in assisting residents at meals.

D.1.2 Understand basic physiology of nutrition and hydration.

D.1.3 Understand basic physiology of malnutrition and dehydration.

D.1.4 Identify risk factors for poor nutritional status in the elderly including but not limited to:

- a) compromised skin integrity
- b) underweight or overweight
- c) therapeutic or mechanically altered diet
- d) poor dental status
- e) drug-nutrient interactions
- f) acute/chronic disease
- g) depression or confusion
- h) decreased appetite

D.1.5 Recognize how the aging process affects digestion.

D.1.6 Accurately calculate and document meal intake and report inadequate intake or changes in normal intake.

D.1.7 Accurately calculate and document fluid intake and report inadequate intake or changes in normal intake.

D.1.8 Recognize and report signs and symptoms of malnutrition and dehydration.

D.1.9 Understand concepts of therapeutic diets including dysphagia diets and the related risks associated with dysphagia including aspiration and aspiration pneumonia.

D.1.10 Incorporate food service principles into meal delivery including:

- a) distributing meals as quickly as possible when they arrive from the kitchen to maintain food temperature.
- b) assisting residents with meal set-up if needed (i.e., opening packets or cartons, buttering bread if desired).
- c) serving meals to all residents seated together at the same time.
- d) Offering appropriate substitutions if the residents don't like what they have received.

D.1.11 Utilize tray card or other mechanism to ensure the resident is served his/her prescribed diet and identify who to notify if a resident receives the wrong diet.

D.1.12 Demonstrate understanding of how to read menus.

D.1.13 Assist residents who are unable to feed themselves.

D.1.14 Demonstrate techniques for feeding someone who:

- a) bites down on utensils
- b) can't or won't chew
- c) holds food in mouth
- d) pockets food in cheek
- e) has poor lip closure
- f) has missing or no teeth
- g) has ill fitting dentures
- h) has a protruding tongue or tongue thrust
- i) will not open mouth

D.1.15 Demonstrate proper positioning of residents at mealtime.

D.1.16 Demonstrate skills for feeding residents who:

- a) are cognitively impaired
- b) have swallowing difficulty
- c) have sensory problems
- d) have physical deformities

D.1.17 Demonstrate positioning techniques for residents who:

- a) have poor sitting balance
- b) must take meals in bed
- c) fall forward when seated
- d) lean to one side
- e) have poor neck control
- f) have physical deformities

D.1.18 Demonstrate use of assistive devices.

D.1.19 Identify signs and symptoms that require alerting a nurse, including:

- a) difficulty swallowing or chewing
- b) coughing when swallowing liquids
- c) refusal of meal
- d) choking on food or fluids
- e) excessive drooling
- f) vomiting while eating
- g) significant change in vital signs
- h) manifestations of pain

D.1.20 Incorporate principles of a pleasant dining environment when assisting residents at mealtime including ensuring adequate lighting and eliminating background noise

D.1.21 Demonstrate positive interaction with residents recognizing individual resident needs.

D.1.22 Ensure residents are dressed appropriately.

D.1.23 Allow residents to eat at their own pace.

D.1.24 Encourage independence and assist as needed.

D.1.25 Recognize and report as appropriate the risk factors and signs and symptoms of malnutrition, dehydration

and fluid overload.

D.1.26 Accurately calculate and document intake and output including meal percentages and fluids.

D.2 Demonstrate understanding of basic anatomy and physiology in the following areas:

D.2.1 Respiratory system

D.2.2 Circulatory system

D.2.3 Digestive system

D.2.4 Urinary system

D.2.5 Musculoskeletal system

D.2.6 Endocrine system

D.2.7 Nervous system

D.2.8 Integumentary system

D.2.9 Sensory system

D.2.10 Reproductive system

D.3 Recognize abnormal signs and symptoms of common illness and conditions.

Examples are:

D.3.1 Respiratory infection – Report coughing, sneezing, elevated temperatures, etc.

D.3.2 Diabetes – Report excessive thirst, frequent urination, change in urine output and drowsiness, excessive perspiration and headache. Understand the healing process as it relates to diabetes.

D.3.3 Urinary tract infection – Report frequent urination, burning or pain on urination, elevated temperature, change in amount and color of urine, blood or sediment in urine and strong odors.

D.3.4 Cardiovascular conditions – report shortness of breath, chest pain, blue color to lips, indigestion, sweating, change in pulse, edema of the feet or legs.

D.3.5 Cerebral vascular conditions – Report dizziness, changes in vision such as seeing double, etc., change in blood pressure, numbness in any part of the body, or inability to move arm or leg, etc.

D.3.6 Skin conditions – Report break in skin, discoloration such as redness, black and blue areas, rash, itching, etc.

D.3.7 Gastrointestinal conditions – Report nausea, vomiting, pain, inability to swallow, bowel movement changes such as color, diarrhea, and constipation.

D.3.8 Infectious Diseases.

D.4 Provide personal care and basic nursing skills as directed by the licensed nurse in the appropriate licensed entity.

D.4.1 Provide for resident's privacy and dignity when providing personal care.

D.4.2 Assist the resident to dress and undress.

D.4.3 Assist the resident with bathing and personal grooming.

D.4.4 Observe and report condition of the skin.

D.4.5 Assist the resident with oral hygiene, including

prosthetic devices.

D.4.6 Administer oral hygiene for the unconscious resident.

D.4.7 Demonstrate measures to prevent decubitus ulcers, i.e., positioning, turning, and applying heel and elbow protectors.

D.4.8 Assist the resident in using the bathroom. Understand consequences of not assisting resident to the bathroom.

D.4.9 Assist the resident in using a bedside commode, urinal and bedpan.

D.4.10 Demonstrate proper bed making procedures for occupied and unoccupied beds.

D.4.11 Feed residents oral table foods in an appropriate manner. Demonstrate proper positioning of residents who receive tube feeding.

D.4.12 Distribute nourishment and water.

D.4.13 Accurately measure and record with a variety of commonly used devices:

a. Blood pressure

b. Height and weight

c. Temperature, pulse, respiration

D.4.14 Prioritize resident care appropriately.

D.4.15 Assist the resident with shaving.

D.4.16 Shampoo and groom hair.

D.4.17 Provide basic care of toenails unless medically contraindicated.

D.4.18 Provide basic care of fingernails unless medically contraindicated.

D.4.19 Demonstrate proper catheter care.

D.4.20 Demonstrate proper perineal care.

D.4.21 Assist the professional nurse with a physical examination.

D.4.22 Apply a non-sterile dressing properly.

D.4.23 Apply non-sterile compresses and soaks properly and safely.

D.4.24 Apply cold and/or heat applications properly and safely.

D.4.25 Demonstrate how to properly apply elastic stockings.

D.4.26 Demonstrate proper application of physical restraints including side rails.

D.4.27 Discuss the limitations and scope of duties of the CNA.

D.5 Demonstrate skills which incorporate principles of restorative care under the direction of a licensed nurse.

D.5.1 Assist the resident in bowel and bladder training.

D.5.2 Provide enemas within the scope of duties of the nurse assistant.

D.5.3 Assist the resident in activities of daily living and encourage self-help activities.

D.5.4 Assist the resident with ambulation aids, i.e., cane, quadcane, walker, crutches, wheelchair and transfer

aids, i.e., hydraulic lifts.

D.5.5 Perform range of motion exercise as instructed by the physical therapist or the professional nurse.

D.5.6 Assist in care and use of prosthetic devices.

D.5.7 Assist the resident while utilizing proper body mechanics.

D.5.8 Assist the resident with dangling, standing and walking.

D.5.9 Demonstrate proper turning and/or positioning both in bed and in a chair, wheelchair, or other seating device.

D.5.10 Demonstrate proper technique of transferring resident from low and high bed to chair, wheelchair, or other seating device.

D.6 Be certified in one-man cardiopulmonary resuscitation (CPR), including knowledge of the Heimlich maneuver.

D.7 Provide care to resident when death is imminent.

D.7.1 Discuss own feelings and attitude about death.

D.7.2 Explain how culture and religion influence a person's attitude toward death.

D.7.3 Discuss the role of the CNA, the resident's family and significant others involved in the dying process.

D.7.4 Discuss the stages of death and dying and the role of the nurse assistant.

D.7.5 Recognize and report the common signs of approaching death. Identify the provisions of the State regulations pertaining to death with dignity.

D.7.6 Provide care, if appropriate, to the resident's body after death.

### **SECTION 3**

#### **MANDATORY ORIENTATION PERIOD FOR NURSING ASSISTANTS AND CERTIFIED NURSING ASSISTANTS EMPLOYED BY**

##### **I. SKILLED AND INTERMEDIATE CARE FACILITIES**

###### **(1) GENERAL REQUIREMENTS**

A. All Nursing Assistants hired to work in a skilled or intermediate care facility, after completing 150 hours of training, shall undergo a minimum of 80 hours of orientation at least 40 of which shall be clinical.

B. Any Nursing Assistant who has undergone 150 hours of training in a training program sponsored by the facility where the assistant will be employed immediately thereafter shall be required to complete additional facility specific orientation of 40 hours in the same facility.

C. All Certified Nursing Assistants hired to work in a skilled or intermediate care facility shall undergo a minimum of 80 hours of orientation; at least 40 of which shall be clinical.

D. While undergoing orientation, Nursing Assistants shall have direct physical contact with residents only while under the visual observation of a Certified Nursing Assistant or licensed nurse employed by the facility.

E. Any Certified Nursing Assistant or Nursing Assistant undergoing orientation may be considered a facility employee for purposes of satisfying the minimum facility staffing requirements.

###### **(2) ORIENTATION PROGRAM REQUIREMENTS**

A. The mandatory orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

1. Tour of the facility and assigned residents' rooms

2. Fire and disaster plans

3. Emergency equipment and supplies

4. Communication (including the facility chain of command) and documentation requirements

5. Process for reporting emergencies, change of condition and shift report

6. Operation of facility equipment and supplies, including but not limited to scales, lifts, special beds and tubs.

7. Review of the plan of care for each assigned resident including:

a. ADL/personal care needs

b. Nutrition, hydration and feeding techniques and time schedules

c. Bowel and bladder training programs

d. Infection control procedures

e. Safety needs

8. Role and function of the CNA/NA

9. Resident rights/abuse reporting

10. Safety and body mechanics: transfer techniques

11. Vital signs

12. Psychosocial needs

13. Facility policies and procedures

B. The CNAs and NAs will satisfactorily demonstrate competency in clinical skills including but not limited to:

1. Taking and recording vital signs

2. Measuring and recording height and weight

3. Handwashing and infection control techniques

4. Caring for the residents' environment

5. Bathing and skin care

6. Grooming and mouth care, including denture

care

7. Dressing

8. Toileting, perineal and catheter care

9. Assisting with eating and hydration

10. Proper feeding techniques

11. Positioning, turning and transfers

12. Range of motion

13. Bowel and bladder training

14. Care and use of prosthetic and orthotic devices
15. Assisting with ambulation
16. Measuring intake and output
17. Use of elastic stockings, heel and ankle protectors
18. Bedmaking skills

**II. ASSISTED LIVING FACILITIES****(1) GENERAL REQUIREMENTS**

A. Nursing Assistants hired to work in an assisted living facility, after completing 150 hours of instruction, shall undergo a minimum 64 hours of orientation, at least 24 of which shall be clinical.

B. A Nursing Assistant who has undergone 150 hours of training in a training program sponsored by the facility where the assistant will be employed immediately thereafter, shall be required to complete an additional 32 hours of facility specific orientation in the same facility.

C. Certified Nursing Assistants hired to work in an assisted living facility shall undergo a minimum of 64 hours of orientation at least 24 of which shall be clinical.

D. While undergoing orientation, Nursing Assistants shall have direct physical contact with residents only while under the visual observation of a Certified Nursing Assistant or licensed nurse employed by the facility.

E. Any Certified Nursing Assistant or Nursing Assistant undergoing orientation may be considered a facility employee for purposes of satisfying the minimum facility staffing requirements as set forth by the Department.

**(2) ORIENTATION PROGRAM REQUIREMENTS**

A. The mandatory orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

1. Tour of the facility and assigned residents' rooms
2. Fire and disaster plans
3. Emergency equipment and supplies
4. Communication and documentation requirements
5. Process for reporting emergencies, change of condition and shift report
6. Operation of facility equipment and supplies, including but not limited to scales, lifts, and wheelchairs.
7. Review of the plan of care for each assigned resident including:
  - a. ADL/personal care needs
  - b. Nutrition, hydration and feeding techniques and time schedules
  - c. Bowel and bladder training programs
  - d. Infection control procedures
  - e. Safety needs
8. Role and function of the CNA/NA
9. Resident rights/abuse reporting

10. Safety and body mechanics: transfer techniques
11. Vital signs
12. Psychosocial needs
13. Facility policies and procedures

B. The CNAs and NAs will satisfactorily demonstrate competency in clinical skills including but not limited to:

1. Taking and recording vital signs
2. Measuring and recording height and weight
3. Handwashing and infection control techniques
4. Caring for the residents' environment
5. Bathing and skin care
6. Grooming and mouth care, including denture care
7. Dressing
8. Toileting, perineal and catheter care
9. Assisting with eating and hydration
10. Proper feeding techniques
11. Positioning, turning and transfers
12. Range of motion
13. Bowel and bladder training
14. Care and use of prosthetic and orthotic devices
15. Assisting with ambulation
16. Measuring intake and output
17. Use of elastic stockings, heel and ankle protectors
18. Bedmaking skills

**III. TEMPORARY AGENCIES****(1) GENERAL REQUIREMENTS**

A. All Certified Nursing Assistants employed by temporary agencies and placed in a facility in which they have not worked within the previous six (6) months shall undergo a minimum of two (2) hours of orientation prior to beginning their first shift at the facility.

B. Any Certified Nursing Assistant employed by a temporary agency and undergoing orientation shall **not** be considered a facility employee for purposes of satisfying the minimum facility staffing requirements.

C. Nursing Assistants employed by a temporary agency must be certified prior to placement in any nursing home.

**(2) ORIENTATION PROGRAM REQUIREMENTS**

A. The mandatory orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

1. Tour of the facility and assigned residents' rooms
2. Fire and disaster plans
3. Emergency equipment and supplies
4. Communication and documentation requirements
5. Process for reporting emergencies, change of condition and shift report
6. Operation of facility equipment and supplies,

including but not limited to scales, lifts, and wheelchairs.

7. Review of the plan of care for each assigned resident including:

- a. ADL/personal care needs
- b. Nutrition, hydration and feeding techniques and time schedules
- c. Bowel and bladder training programs
- d. Infection control procedures
- e. Safety needs

8. Role and function of the CNA

9. Resident rights/abuse reporting

10. Safety and body mechanics: transfer techniques

11. Vital signs

12. Psychosocial needs

13. Facility policies and procedures

#### **SECTION 4**

#### **VOLUNTARY SENIOR CERTIFIED NURSING ASSISTANT CERTIFICATION**

##### **1. TRAINING REQUIREMENTS AND COMPETENCY TEST**

Any Certified Nursing Assistant may pursue designation as a Senior Certified Nursing Assistant and shall be so designated if such individual meets the following minimum requirements:

A. Has been a Certified Nursing Assistant for a minimum of three years;

B. Has no negative findings on the nurse aide registry, adult abuse and child abuse registries for the past three years;

C. Has successfully completed an additional 50 hours of advanced training in a program approved by the Department and the Board of Nursing;

D. Has passed a competency test provided by the Department or by a contractor approved by the Department.

##### **2. VOLUNTARY SENIOR CNA CURRICULUM**

The Senior CNA program must meet the same requirements as those specified in Section 2 of these regulations in terms of classroom ratios of students to instructors.

The Senior CNA curriculum must meet the following minimum course content, which will provide an advanced level of knowledge and demonstrable skills. All demonstrable competencies shall be documented by the RN instructor.

##### **A. LEADERSHIP TRAINING AND MENTORING SKILLS**

Key Concepts: Senior Certified Nursing Assistants will learn how to teach new Nursing Assistants standards of care. Senior CNAs will learn how to be a role model and preceptor for new Nursing Assistants and CNAs. Senior CNAs will

learn how to prepare assignments, conduct team meetings and resolve conflicts.

##### **Competencies:**

A.1. Function effectively as a team leader and mentor/preceptor within the facility.

A.1.1. Define the role and functions of an effective team leader and mentor.

A.1.2. Identify principles of adult learning.

A.1.3. Recognize various learning styles and communication barriers.

A.1.4. Assess learner knowledge.

A.1.5. Supervise, evaluate and act as a preceptor for the Nursing Assistant and Certified Nursing Assistant during orientation.

A.1.6. Demonstrate effective communication techniques.

A.1.7. Recognize the importance of teamwork.

A.1.8. Actively participate in resident care plan and team meetings.

A.1.9. Identify strategies for conflict management.

A.1.10. Learn how to prepare assignments, assist with scheduling and other administrative duties.

##### **B. DEMENTIA TRAINING**

Key Concepts: The senior CNA will gain greater knowledge of Alzheimer's Disease and related Dementias. The senior CNA will gain the skills necessary to effectively care for residents exhibiting signs and symptoms of dementia. The senior CNA will act as a role model and resource person for other CNAs.

##### **Competencies:**

B.1. Demonstrate appropriate skills and techniques necessary to provide care to residents exhibiting signs and symptoms of dementia.

B.1.1. Recognize signs and symptoms of Alzheimer's Disease and related disorders.

B.1.2. Identify types of Dementias.

B.1.3. Discuss methods for managing difficult behavior.

B.1.4. Demonstrate effective communication techniques.

B.1.5. Recognize specific issues that arise in providing care to persons with Alzheimer's Disease and other memory loss conditions and appropriate interventions for dealing with these problems including but not limited to agitation, combativeness, sundown syndrome, wandering.

##### **C. ADVANCED GERIATRIC NURSING ASSISTANT TRAINING**

Key Concepts: (1) The senior CNA will gain greater knowledge of anatomy and physiology with emphasis on the effects of aging. (2) The senior CNA will effectively carry

out restorative nursing skills as specified in the resident's plan of care.

Competencies:

C.1. Verbalize understanding of anatomy, physiology and pathophysiology of common disorders of the elderly.

C.1.1. Describe the effects of aging on the various organs and systems within the body.

C.1.2 Describe signs and symptoms of common disorders

C.1.3. Describe the pathophysiology of common disorders.

C.1.4. Identify measures to assist residents with common medical problems, (e.g. promoting oxygenation in residents with breathing problems.)

C.1.5. Observe, report and document condition changes using appropriate medical terminology.

C.1.6. Recognize basic medical emergencies and how to respond appropriately.

Competencies:

C.2. Maintain or improve resident mobility and the resident's ability to perform activities of daily living. Understand the reasons for rehabilitation (physiologically), reasons for, and benefits of Restorative Nursing and be able to demonstrate the same.

C.2.1. Assist the resident with exercise routine as specified in their care plan.

C.2.2. Carry out special rehabilitation procedures as ordered including but not limited to working with the visually impaired, special feeding skills/devices, splints, ambulatory devices and prostheses.

C.2.3. Identify ways to prevent contractures.

C.2.4. Effectively communicate with the Rehabilitation Department.

## **SECTION 5**

### **SENIOR CNA TRAINING PROGRAM INSTRUCTORS**

A. The Primary Instructor is an individual responsible for the overall coordination and implementation of the senior certified nursing assistant training program. The primary instructor is present and available during clinical training. The primary instructor and all those who serve as instructors in the program must meet the following qualifications.

**QUALIFICATIONS:**

1. RN licensure in the State of Delaware.

2. Five (5) years nursing experience in caring for the elderly or chronically ill of any age.

3. Instructors shall demonstrate:

a. Successful completion of "Train-the-Trainer" program which provides preparation in teaching

adult learners principles of effective teaching and teaching methodologies and;

b. Successful completion of a college level course of at least one semester in length, that was related to education and the principles of adult learning.

c. Biennial update for Train-the-Trainer.

4. Waiver of the Train the Trainer and the college level education course requirement is made for those nurses who demonstrate at least one (1) year of continuous teaching experience at the nursing assistant or LPN or RN program level prior to date of implementation of these regulations.

B. Program Trainer(s) shall provide assistance to instructors as resource personnel from the health field. They may provide limited assistance and instruction in the senior certified nursing assistant program. Senior CNAs are excluded from conducting training.

### **QUALIFICATIONS:**

Program trainers shall meet the following qualifications:

1. Trainers shall be: registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, physical, speech or occupational therapists, environmental/fire safety specialists, activity directors, or other licensed health care professionals.

2. One (1) year of current experience in caring for the elderly or have equivalent experience.

3. Trainers shall be licensed or certified in their field, where applicable.

## **SECTION 6**

### **TRAIN- THE- TRAINER PROGRAM REQUIREMENTS**

Each train-the-trainer program shall include the following minimum requirements:

#### **A. TRAINING COURSE CONTENT:**

I. Role of Trainer

II. Communication techniques

III. Demonstration skills

IV. Teaching a process

V. Teaching techniques

VI. Training techniques

VII. Developing a formal training plan

#### **B. COURSE MANAGEMENT INFORMATION**

I. Training time shall consist of sixteen minimum hours

II. The train-the-trainer instructor must have formal educational preparation or experience with skills of adult learning.

**DIVISION OF SOCIAL SERVICES**  
Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. §505)

**PUBLIC NOTICE**  
**Delaware's Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement a Medicaid State Plan change related to the reimbursement methodology for Federally Qualified Health Centers (FQHCs). This change is made as a result of the Benefits Improvement and Protection Act (BIPA) of 2000 that repeals the reasonable cost-based reimbursement requirements for FQHC services and instead requires payment for FQHCs consistent with a new Prospective Payment System (PPS) described in section 1902(aa) of the Social Security Act. Under BIPA, the new Medicaid Prospective Payment System takes effect on January 1, 2001.

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 the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, Delaware by May 31, 2001.

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

**Revision**

**Methods and Standards for Establishing Payment Rates**  
**Other Types of Care**  
**Federally Qualified Health Centers**  
**State Plan Amendment 4.19-b**

~~Federally Qualified Health Centers are reimbursed 100% of their reasonable costs of providing health services to Medicaid beneficiaries. The Health Care Financing Administration (HCFA) requires that Federally Qualified Health Centers (FQHCs) be reimbursed in compliance with the Benefits Improvement and Protection Act (BIPA) of 2000. Effective January 1, 2001, Delaware will pay 100% of reasonable cost based on an average of the Fiscal Year 1999 and 2000 audited cost report.~~

FQHCs are assigned a prospectively determined rate per

clinic visit based on actual costs reported on their audited cost report from their ~~most recent~~ last fiscal year. Since the rates are calculated off of their cost reports, and they do not correspond with the Federal Fiscal Year, they would span more than one fiscal year. Starting July 1, 2001, the Medicare Economic Index will be used to inflate their rates.

Primary Care costs are separated from Administrative and General costs for purposes of rate calculation. The Administrative and General component is capped at 40% of the total cost. Each cost component is inflated by the current ~~U.S. Consumer Price~~ HCFA Medicare Economic Index. ~~The total inflated cost of the components is divided by the number of patient visits to determine the prospective reimbursement rate. Costs reports submitted by FQHCs are subject to audit by the State.~~

Medicaid will ensure 100% cost payment regardless of the payment mechanism.

The rate year for FQHC services is July 1 through June 30.

The payment methodology for FQHCs will conform to section 702 of the BIPA 2000 legislation.

The payment methodology for FQHCs will conform to the BIPA 2000 requirements Prospective Payment System.

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**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 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement a policy change to the Division of Social Services Manual, Sections 7002.2, 7002.3, 7002.4, 7004.3, 7004.5, 7005. These changes are from the Final Rule entitled, Recipient Claim Establishment and Collections Standards, and published in the Federal Register on July 6, 2000. The regulations aim to improve claims management in the Food Stamp Program and provide flexibility in efforts to increase claims collections. Some changes were mandated by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must

submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by May 31, 2001.

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

## REVISION

### 7002.2 Food Stamp Claims

A recipient food stamp claim is an amount owed because benefits were overpaid or benefits were trafficked. Trafficking is the buying or selling of coupons or benefit cards for cash, or the exchange of firearms, ammunition, explosives, or controlled substances for coupons.

The following are responsible for paying a claim:

- Each individual who was an adult member of the household when the overpayment or trafficking occurred;
- A sponsor of an alien household member is the sponsor is at fault;
- A person connected to the household, such as an authorized representative, who actually trafficks or causes an overpayment or trafficking.

All adult household members are jointly and severally liable for the value of any overissuance of benefits to the household. Establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

There are three types of claims:

↳ Inadvertent Household Error (IHE) Claims – any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household. Handle a claim as an inadvertent household error claim if the overissuance was caused by:

- A misunderstanding or unintended error on the part of the household;
- misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated, based on a change in net income and/or household size, or
- SSA action or failure to take action which resulted in the household's categorical eligibility, provided a claim can be calculated based on a change in net income and/or household size.

~~2) Agency Administrative Error (AE) Claims – Any claim for an overpayment caused by an action or failure to take action by DSS. Handle a claim as an administrative error claim if the overissuance was caused by agency action or failure to take action, or in the case of categorical eligibility, an action by the Division which resulted in the household's improper eligibility for cash assistance, provided a claim can be calculated based on a change in net income and/or household size.~~

~~3) Intentional Program Violation (IPV) Claims – Any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in DSSM 2023. Handle a claim as an intentional Program violation claim only if an administrative disqualification hearing official or a Court of appropriate jurisdiction has determined that a household member committed an intentional Program violation as defined in DSSM 2023. Prior to the determination of intentional Program violation, handle the claim against the household as an inadvertent household error claim.~~

### ~~7002.3 Criteria for Establishing Inadvertent Household and Administrative Error Claims~~

#### Time frames

For IHE and AE claims, calculate a claim back to at least twelve (12) months prior to when you became aware of the overpayment.

For IPV claims, calculate the claim back to the month the act of IPV first occurred.

For all claims, do not include any amounts that occurred more than six years before you became aware of the overpayment.

The agency must establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.

90% of all claim referrals must be established or disposed of according to the above time frame.

~~Establish a claim against any household that received an overissuance due to an inadvertent household or administrative error if the criteria established in this section have been met.~~

~~Take action on those claims for which twelve (12) months or less have elapsed between the month an overissuance occurred and the month the overissuance was discovered.~~

#### **Circumstances that may result in a claim may include the following:**

A) Inadvertent Household Errors

~~Instances of inadvertent household error which may result in~~

~~a claim include, but are not limited to, the following:~~

- 1) The household unintentionally failed to provide DSS with the correct complete information;
- 2) The household unintentionally failed to report to DSS changes in its household circumstances;
- 3) The household unintentionally received more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits;
- 4) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA and/or SSI at the time they received it; or
- 5) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI;

B) Agency Administrative Errors

~~Instances of administrative error which may result in a claim include, but are not limited to, the following:~~

- 1) DSS failed to take prompt action on a change reported by the household;
- 2) DSS incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;
- 3) DSS incorrectly issued to a household duplicate benefits;
- 4) DSS continued to provide a household a food stamp allotment after its certification period had expired without benefit of a reapplication determination;
- 5) DSS failed to provide a household a reduced level of food stamp benefits because its Cash Assistance grant changed; or
- 6) DSS took an action or failed to take an appropriate action, which resulted in the household improperly receiving Cash Assistance.

~~Do not establish either an agency administrative error claim or an inadvertent household error claim if an overissuance occurred as a result of the following due to DSS failing to ensure that a household fulfilled the following procedural requirements:~~

- ~~• DSS failed to ensure that a household fulfilled the following procedural requirements:~~
  - a) Signed the application form,
  - b) Completed the current work registration form, or
  - c) Was certified in the correct project area.

C) Intentional Program Violation Errors

A claim will be handled as a intentional Program and violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional

program violation as defined in Section 2023. Prior to the determination of intentional Program violation, the claim against the household will be handled as an inadvertent household error claim.

**7002.4 Calculating Food Stamp Claims**

For each month that a household received an overissuance due to an inadvertent household or administrative error, determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or administrative error claim is based on the amount of overissuance which occurred during the twelve (12) months preceding the date the overissuance was discovered. In cases involving reported changes, determine the month the overissuance initially occurred as follows:

A. Claims not related to trafficking.

Inadvertent Household and Agency Error Claims

1) If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report is the first month in which the change would have been effective had it been timely reported. However, in no event will DSS determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred.

2) If the household timely reported a change, but DSS did not act within the required timeframes, the first month affected by the Division's failure is the first month DSS would have made the change effective had it timely acted. However, in no event will the Division determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred. If a notice of adverse action was required, but was not provided, assume for the purpose of calculating the claim, that the maximum advance notice period as provided in DSSM 9006 would have expired without the household requesting a fair hearing.

3) If the household received a larger allotment than it was entitled to receive, establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. For categorically eligible households, determine a claim only when it can be computed on the basis of changed household net income and/or household size. Do not establish a claim if there was not a change in net income and/or household size.

4) When determining the amount of benefits the household should have received, do not apply the 20%

earned income disregard for any income not reported in a timely manner after August 22, 1996. For agency error claims, apply the earned income deduction.

5) With Electronic Benefit Transfer (EBT) systems, reduce the overpayment amount by any EBT benefits expunged from the household's benefit account. The difference is the amount of the claim.

## B. Intentional Program Violation Claims

1) For each month that a household received an overissuance due to an act of intentional Program violation, determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of intentional Program violation claim is calculated back to the month the act of intentional Program violation occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. However, do not include in the calculation any amount of overissuance which occurred in a month more than six (6) years from the date the overissuance was discovered.

2) If the household member is determined to have committed Program violation by intentionally failing to report a change in its household circumstances, the first month affected by the household's failure to report is the month in which the change would have been effective had it been reported. However, in no event will the Division determine as the first month in which the change would have been effective, any month later than two (2) months from the month in which the changes in household circumstances occurred.

3) If the household received a larger allotment than it was entitled to receive, establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

4) When determining the amount of benefits the household should have received, do not apply the 20% earned income disregard for any income not reported in a timely manner after August 22, 1996.

5) With Electronic Benefit Transfer (EBT) systems, reduce the overpayment amount by any EBT benefits expunged from the household's benefit account. The difference is the amount of the claim.

### Offsetting

~~After calculating the amount of the inadvertent household or administrative error claim, ARMS will offset the amount of the claim against any amount which has not yet been restored to the household in accordance with DSSM 9011 and DSSM 7002.1. ARMS will then initiate collection action for the remaining balance, if any.~~

~~Once the amount of the intentional Program violation claim is established, ARMS will offset the claim against any~~

~~amount of lost benefits that have not yet been restored to the household per DSSM 9011.~~

## B. Claims related to trafficking.

Claims due to trafficking-related offenses will be the amount of the trafficked benefits. The amount of the trafficked benefit is determined by:

- 1) The individual's own admission;
- 2) Adjudication; or
- 3) The documentation that forms the basis for the trafficking determination.

### **7004.3 Collection and Management of Collecting Food Stamp Claims**

DSS shall collect any overissuances of food stamps issued to a household by:

- a) reducing the allotment of the household;
- b) withholding amounts from unemployment compensation from a member of the household;
- c) recovering from Federal pay or a Federal income tax refund;
- d) any other means;

unless DSS/ARMS determines can demonstrate that all of the means listed above are not cost effective.

### Cost effective determination:

DSS/ARMS can opt to not establish any claim if the claim referral is \$125 or less; unless the household is currently participating or the claim has already been established or discovered in a Quality Control review.

Criteria for initiating collection action on inadvertent household and ~~agency administrative~~ error claims

1) ARMS will initiate collection action (proper notice should have been sent prior to submittal to ARMS, except for food stamps) against the household on all inadvertent household or ~~agency administrative~~ error claims unless the claim is collected through offset or one of the following conditions apply:

- The total amount of the claim is less than \$125, and the claim cannot be recovered by reducing the household's allotment;
- Documentation can be provided which shows that the household cannot be located.

2) ARMS will postpone collection action on inadvertent household error claims where an overissuance is being referred for possible prosecution in Superior Court (or an administrative disqualification hearing), and it is determined collection action will prejudice the case.

Criteria for Initiating Collection Action of Intentional

### Program Violation Claims

If a household member is found to have committed intentional Program violation (by an administrative disqualification hearing officer or a Court of appropriate jurisdiction), ARMS will initiate collection action against the individual's household. In addition, a personal contact will be made, if possible.

A claim will be handled as intentional Program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional Program violation as defined in DSSM 2023. Prior to the determination of intentional Program violation, the claim against the household will be handled as an inadvertent household error claim.

ARMS will initiate such collection action unless:

- The household has repaid the overissuance already;
- DSS or ARMS has documentation that the household cannot be located; or
- It has been determined that collection action will prejudice the case against a household member referred for prosecution.

ARMS will initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. ARMS will issue any benefit restorations when the amount of the claim is lower than the amount repaid.

In cases where a household member was found guilty of misrepresentation or fraud by a Court, the Deputy Attorney General handling the case will request that the matter of restitution and length of disqualification be brought before the Court.

### Initiating Collection on Claims

The Accounting Section of ARMS will initiate collection action by providing the household a written demand letter. The demand letters, including the demand letter sent following a fair hearing decision which upheld the claim, must include the following shall inform households that:

- 1) The amount of the claim;
- 2) The intent to collect from all adults in the household when the overpayment occurred;
- 3) The type (IPV, IHE, or AE) and reason for the claim;
- 4) The time period of the claim;
- 5) How the claim was calculated;
- 6) The phone number to call for more information about the claim;

7) That, if the claim is not paid, it will be sent to other collection agencies, who will various collection methods to collect the claim;

8) The opportunity to inspect and copy records related to the claim;

9) Unless the amount of the claim was established at a fair hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing;

10) That if not paid, the claim will be referred to the Federal government for federal collection action;

11) That the household can make a written agreement to repay the amount of the prior to it being referred for Federal collection action; that is the claim becomes delinquent, the household may be subject to additional processing charges;

12) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim;

13) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction;

14) If allotment reduction is to be imposed, the percentages to be used and the effective date; and

15) The due date or time frame for repayment must not be later than 30 days after the date of the initial written notification or demand letter.

~~1) Unless the household responds to the demand letter and elects a method of repayment or timely requests a fair hearing and continued benefits, its allotment will be reduced;~~

~~2) How the allotment reduction will affect the household benefits;~~

~~3) That if the household elects allotment reduction, the reduction will begin with the first allotment issued after the election, and;~~

~~4) That if the household fails to make a election, or to timely request a fair hearing and continued benefits, the reduction will begin with the first allotment issued after the demand letter and notice of adverse action is sent.~~

### Action Against Households Which Fail to Respond

~~Participating households which have collection actions initiated against them for repayment of an overissuance will have their allotment reduced subsequent to the demand letter and notice of adverse action being sent to the household.~~

### Repayment Agreements

Any repayment agreement for any claim must contain due dates or time frames for the periodic submission of payments.

The agreement must specify that the household will be

subject to involuntary collection action(s) if the payment is not received by the due date and the claim becomes delinquent.

#### Determining delinquency

A claim must be considered delinquent if:

A. The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

B. A payment arrangement has been established and a scheduled payment has not been made by the due date. The date of the delinquency for a claim is the due date of the missed installment payment. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or the agency determines to either resume or re-negotiate the repayment schedule.

A claim will not be considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction, and the agency expects to begin collection on the claim once the prior claim is settled.

A claim is not subject to the requirements for delinquent debts if the agency is unable to determine delinquency status because collection is coordinated through the court system.

#### Fair hearings and claims

A claim awaiting a fair hearing must not be considered delinquent.

If the fair hearing official determines a claim does exist, the agency will re-notify the client of the claim and establish a new due date.

If the fair hearing official determines a claim does not exist, the claim is terminated and written-off.

#### Methods of Collecting Food Stamp Payments

ARMS will collect payments for claims against households as follows:

1) Lump Sum - If the household is financially able to repay the claim at one time, ARMS will collect a lump sum cash payment. However, the household will not be required to liquidate all of its resources to make this one lump sum payment. If the household is financially unable to repay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, ARMS will accept this method of repayment. If the household chooses to make a lump sum payment of food stamp coupons as full or partial repayment of the claim, ARMS will accept this method of repayment.

2) Installments - ARMS ~~may will~~ negotiate a repayment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. Payments will be accepted by ARMS in regular installments. The household may use food stamp coupons as full or partial repayment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in three (3) years, ARMS may compromise the claim by reducing it to an amount that will allow the household to repay the claim in three (3) years. ARMS may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with DSSM 9011.

If the household fails to make a payment in accordance with the established repayment schedule (either in a lesser amount or no payment), ARMS will send the household a notice explaining that no payment or an insufficient payment was received. The notice will inform the household that it may contact ARMS to discuss renegotiations of the repayment schedule. The notice will also inform the household unless the overdue payments are made, or ARMS is contacted to discuss renegotiations of the repayment reschedule, the allotment of a currently participating household against which an ~~agency administrative~~ error, inadvertent household error, or intentional Program violation claim has been established may be reduced without a notice of adverse action.

If the household responds to the notice, ARMS will take one of the following actions as appropriate:

a) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

b) If the household requests renegotiations, and if ARMS concurs with the request, negotiate a new repayment schedule;

c) If the household requests renegotiations of the amount of its repayment schedule, but ARMS believes that the household's economic circumstances have not changed enough to warrant the requested settlement, ARMS may continue renegotiations until a settlement can be reached. ARMS may invoke allotment reduction against a currently participating household for repayment of an administrative error, inadvertent household error, or intentional Program violation claim if a settlement cannot be reached.

ARMS may also invoke allotment reduction if such a household responds by requesting renegotiations of the amount of its repayment schedule but ARMS believes that the household's economic circumstances have not changed enough to warrant the requested settlement. If the allotment reduction is invoked, no notice of adverse action is required.

In cases where the household is currently participating in the

Program and a repayment schedule is negotiated for repayment of an agency administrative error, inadvertent household error, or intentional Program violation claim, ARMS will ensure that the negotiated amount to be repaid each month through installment payments is not less than the amount which could be recovered through allotment reduction. Once negotiated, the amount to be repaid each month through installment payments will remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both ARMS and the household have the option to initiate renegotiations of the repayment schedule if they believe that the household's economic circumstances have changed enough to warrant such action.

3) Allotment Reduction - DMS will collect payments for agency administrative error claims, inadvertent household error claims and intentional Program violation claims from households currently participating in the Program by reducing the household's food stamp allotment, unless the claim is being regularly collected at a higher amount or another household is already having it's allotment reduced for the same claim. The amount of Food stamps to be recovered each month through allotment reduction will be determined as follows:

a) Agency Administrative Error and Inadvertent Household Error Claims - The amount of food stamps will be the greater of ten (10) percent of the household's monthly allotment, or \$10 per month, unless the household agrees to a higher amount. Round all figures with amounts to the next highest dollar.

b) Intentional Program Violation Claims - The amount of food stamps will be the greater of twenty (20) percent of the household's monthly entitlement, or ~~\$10~~ \$20 per month, unless the household agrees to a higher amount. Round all figures with the next highest dollar.

c) The provision for a \$10 minimum benefit level for households with one and two members only as described in DSSM 9066 applies to the allotment prior to reduction.

d) Do not reduce the initial allotment when the household is first certified unless the household agrees to this reduction.

e) Do not use additional involuntary collection methods against individuals in a household that is already having it's allotment reduced unless the additional payment is irregular and unexpected such as a State tax refund or lottery winnings offset.

f) ARMS may collect using allotment reduction from two separate household for the same claim. ARMS must make sure that the recouped amounts do not exceed the total amount of the claim.

g) ARMS may continue to use any other collection method against any individual who is not a current member of the household that is undergoing allotment reduction as long as the amounts collected to not exceed the total amount of the claim.

The procedure for effecting an allotment reduction is as follows:

1) ARMS Accounting Section will enter the necessary information into the DCIS system and call the grant calculator to compute the monthly withholding amount. DCIS will generate two (2) copies of the TD, a grant calculator worksheet, and a client notice.

2) ARMS will reinstate the DSS Pool code the following day and post-audit the documents produced in Step 1, making any corrections. Unresolved discrepancies in grant amount or case status that result when the allotment reduction information is entered by ARMS will be forwarded to the Pool for handling. It is imperative that the Pools review such cases promptly and respond to ARMS prior to the next authorization date.

3) Following the resolution of any problems, ARMS will send the worker a copy of the client notice and a copy of the TD.

4) As a result of the data entry performed by ARMS, allotment reduction information will appear on the DCIS file even through periods of inactivity until the claim is satisfied. Any cash payments made by the household will be entered by ARMS, using the DCIS collections screen.

This action will be reflected in the balance figure shown in Section 12. A claims activity report generated by DCIS will alert ARMS when an inactive case returns to active status.

During the time that a household's allotment is reduced to recover an overissuance, DSS will be required to handle any case maintenance required. Changes to financial data performed by the DCIS Grant Calculator will be governed by the allotment reduction indicator. The system will apply the appropriate percentage reduction to the calculated allotment whenever a change is made. When the recoupment balance falls below the monthly withholding amount, the DCIS system will withhold the remaining balance. When the balance is reduced to zero, the system will automatically cancel the recoupment feature.

4) Benefits from EBT accounts.

ARMS must allow a household to pay its claim using benefits from its EBT benefit account as follows:

a) Collecting from active (or reactivated) EBT benefits – the agency needs written permission or oral permission for one-time reductions with the agency sending the household a receipt of the transaction within ten (10) days.

The written permission must include:

1. A statement that this collection activity is strictly voluntary;
2. The amount of the payment;
3. The frequency of the payments;

4. The length (if any) of the agreement;

5. A statement that the household may revoke this agreement at any time.

b) Collecting from stale EBT benefits – the agency must mail or otherwise deliver to the household written notification that the agency intends to apply the benefits to the outstanding claim and give the household at least ten (10) days to notify the agency that it doesn't want to use these benefits to pay the claim.

c) Making an adjustment with expunged EBT benefits – the agency must adjust the amount of any claim by subtracting any expunged amount from the EBT benefit account and this can be done anytime.

#### 5) Offsetting

After calculating the amount of the inadvertent household or administrative error claim, ARMS will offset the amount of the claim against any amount which has not yet been restored to the household in accordance with DSSM 9011 and DSSM 7002.1. ARMS will then initiate collection action for the remaining balance, if any.

Once the amount of the intentional Program violation claim is established, ARMS will offset the claim against any amount of lost benefits that have not yet been restored to the household per DSSM 9011.

#### 6) Intercept of unemployment compensation benefits

The agency may intercept unemployment compensation benefits for the collection of any claim as part as a repayment agreement or by obtaining a court order.

#### 7) Public Service

The value of a claim may be paid by the household performing public service when authorized by a court.

#### 8) Other collection actions

The agency may employ any other collection actions to collect claims. These actions include, but are not limited to, referrals to collection agencies, state tax refund, lottery offsets, wage garnishments, property liens, and small claims court.

#### 9) Unspecified joint collections

When an unspecified joint collection is received for a combined public assistance/food stamp recipient claim, each program must receive its pro rata share of the amount collected. An unspecified joint collection is when funds are received by a household where there is both a public assistance overpayment and a food stamp claim and the

household does not specify to which claim to apply the funds.

#### **7004.5 Acceptable forms of payment**

ARMS may collect a claim by:

A. Reducing benefits prior to issuance. This includes allotment reductions and offsets to restored benefits.

B. Reducing benefits after issuance. These are benefits from electronic benefit transfer accounts.

C. Accepting cash or any of its generally accepts equivalents. These equivalents include check, money order, and credit or debit cards.

D. Accepting paper food coupons.

E. Conducting other offsets and intercepts like wage garnishments and intercepts of various State payments.

F. Requiring the household to perform public service when ordered by a court

G. Participating in the Treasury Offset Program.

#### **7005 Suspending and Terminating and writing-off Collection of claims**

~~1) Suspending collection of inadvertent household and administrative error claims – Such a claim may be suspended if no collection action was initiated because of conditions specified in DSSM 7004.3. If collection action was initiated and at least one demand letter has been sent, further collection action of an inadvertent household error claim against a non-participating household or of any administrative error claim may be suspended when:~~

~~a) The household cannot be located; or~~

~~b) The cost of further collection is likely to exceed the amount that can be recovered.~~

~~2) Suspending Collection of Intentional Program Violation Claims – ARMS may suspend collection action on intentional Program violation claims at any time it has documentation that the household cannot be located. If ARMS has sent at least one (1) demand letter for claims under \$100, at least two (2) demand letters for claims between \$100 and \$400, and at least three (3) demand letters for claims of more than \$400, further collection action of any intentional Program violation claim against a non-participating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered.~~

~~3) Terminating Collection of Claims – A claim may be determined uncollectible after it is held in suspense for three (3) years. ARMS may use a suspended or terminated claim to offset benefits in accordance with DSSM 9011.~~

A terminated claim is a claim in which all collection action has ceased.

A written-off claim is no longer considered a receivable

subject to continued Federal and State agency reporting requirements.

Claim termination policy is as follows:

A. If the agency finds that the claim is invalid, the agency must discharge the claim and reflect the event as a balance adjustment rather than a termination unless it is appropriate to pursue the overpayment as a different type of claim, like as an IHE rather than an IPV claim.

B. If all household members die, the agency must terminate and write-off the claim unless the agency plans to pursue the claim against the estate.

C. If the claim balance is \$25 or less and the claim has been delinquent for 90 days or more, the agency must terminate and write-off the claim unless other claims exist against the household resulting in an aggregate claim total greater than \$25.

D. If the agency determines it is not cost effective to pursue the claim any further, the agency must terminate and write-off the claim.

E. If the claim is delinquent for three years or more, the agency must terminate and write-off the claim unless the agency plans to continue to pursue the claim through Treasury's Offset Program.

F. If the household cannot be located, the agency may terminate and write-off the claim.

G. If a new collection method or a specific event such as winning the lottery substantially increases the likelihood of further collections, the agency may reinstate a terminated and written-off claim.

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## **DIVISION OF SOCIAL SERVICES**

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

### **PUBLIC NOTICE**

#### **Delaware's A Better Chance and General Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Delaware's A Better Chance and General Assistance Programs is proposing to implement policy changes to the following sections of the Division of Social Services Manual: 2015 - 2019. These changes relate to medical assistance eligibility rules for cash assistance recipients.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by May 31, 2001.

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

### **REVISION**

#### ~~2015 Medicaid Eligibility for AFDC and GA Recipients~~

~~Medicaid is a medical assistance program available to needy persons who meet the technical and financial eligibility requirements of the program. Persons automatically eligible for Medicaid are:~~

- ~~1. ABC recipients,~~
- ~~2. ABC Two parent family recipients,~~
- ~~3. GA recipients under the age of 19.~~

~~Each month the payee of a public assistance unit receives a Medicaid Card for each Medicaid eligible unit member. The Medicaid cards are mailed in a mailer separate from the monthly public assistance check. It must be presented to the medical service provider each time a medical service is requested.~~

~~Medicaid normally pays for the following expenses provided within the State of Delaware:~~

- ~~1. Hospital care~~
- ~~2. X-rays and laboratory services~~
- ~~3. Physician and Specialist Services~~
- ~~4. Prescription drugs and some over the counter drugs~~
- ~~5. Home health services including physical therapy, occupational therapy and speech therapy.~~
- ~~6. Podiatric Services~~
- ~~7. Long Term nursing home care~~
- ~~8. Prenatal care and family planning services~~
- ~~9. Children's health screening program~~
- ~~10. Some medical equipment and supplies~~
- ~~11. Eye exam's, eyeglasses, and dental care for children~~
- ~~12. Dialysis.~~

~~Most medicaid recipients are now required to enroll in a managed care organization and choose a primary physician in order to receive benefits.~~

~~2016 Other Persons Eligible for Medicaid~~

~~In addition to recipients of cash assistance, the following groups of people are also eligible for Medicaid:~~

~~1. Persons eligible for ABC, ABC Two parent family program, and persons under age 19 eligible for GA, but who do not receive a grant because their need for assistance is less than \$10.~~

~~2. Pregnant women from the date of medical verification of pregnancy if the pregnant woman's income falls below the ABC income and resource Standard of Need for two people.~~

~~If the pregnant woman lives with the father of her child, the family's income must fall below the ABC standard for three people.~~

~~3. Children who are ineligible for ABC because of income deemed to them in the step-parent budgeting process.~~

~~4. Children of minor parents who are ineligible for ABC because of the deeming of grandparent or legal guardian income.~~

~~Note: The minor parent in this situation is not Medicaid eligible.~~

~~5. Children who are ineligible for ABC because of the mandatory inclusion in the assistance of unit of a sibling with income.~~

~~6. Legally admitted aliens who are ineligible because of the deeming of sponsor income.~~

~~2017 Retroactive Medicaid~~

~~All ABC and ABC Two parent family applicants, and GA applicants that are excluded from the Diamond State Health Plan because they have other accessible managed care coverage or medicare who claim unpaid medical bills that were incurred any time in the period three (3) months prior to the month of application are eligible for Medicaid in the month the bill was incurred if:~~

~~1. The applicant would have been eligible for ABC, ABC Two parent family program or GA in the month that the bill was incurred; and~~

~~2. The bill is for a medical service that Medicaid covers; and~~

~~3. The bill has not been placed with a collection agency for payment; and~~

~~4. The bill is not the responsibility of a third party; and~~

~~5. The provider of the medical services is a participant in the Delaware Medicaid Program.~~

~~The intake worker will refer requests for payment of such unpaid bills to the Medicaid Unit by forwarding a copy of Form 402 and a TD that indicates the current status~~

~~of the case.~~

~~NOTE: A family may be ineligible for assistance in the month of application, but be eligible for retroactive Medicaid coverage in an earlier month. It is appropriate to make referrals for retroactive Medicaid when it appears that a family would have been eligible in a prior month even if the family's current circumstances renders it ineligible for assistance.~~

~~2018 Prospective Medicaid - Child Support~~

~~Any ABC recipient whose case is closed solely because of an initial or increased child support payment may be eligible for four (4) months of continued Medicaid eligibility.~~

~~2019 Transitional Medicaid - Employment~~

~~Recipients of ABC and ABC-UP are eligible for continued Medicaid coverage when their public assistance cases are closed if:~~

~~1. The case is closed solely because of new employment or an increase in income from current employment, or loss of 30 or 1/3 disregard; and~~

~~2. The family correctly received ABC in at least three (3) months of the six (6) month period that precedes the month that new employment or increased earnings began.~~

~~Eligible families can receive Transitional Medicaid for a period not to exceed twelve (12) months. Eligibility begins in the month that the earned income exceeds the ABC standard.~~

**Proposed:****2015 Medical Assistance Eligibility for Cash Assistance Recipients**

Please refer to the following sections of DSSM 13000 Medical Assistance Program Overview 14000 Common Eligibility, 15000 Family and Community Eligibility, and 16000 Federal Poverty Level Related Programs.

2016 Reserved

2017 Reserved

2018 Reserved

2019 Reserved

**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE****Delaware's A Better Chance and General Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Delaware's A Better Chance and General Assistance Programs is proposing to implement policy changes to the following sections of the Division of Social Services Manual: 3023.9 and 3023.9.1. These changes relate to Delaware's A Better Chance (DABC) and General Assistance (GA) rules for overlapping eligibility and overlapping eligibility exception.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by May 31, 2001.

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

**NEW****DSSM 3023.9 DABC and GA Overlapping Eligibility**

People can only receive one cash assistance payment for themselves at a time. This means that a person cannot be open in more than one DCIS case nor can they be open in more than one assistance group at the same time.

This does not preclude a person moving in the same month from a GA assistance group to a DABC assistance group in the same month. Please see DSSM 3023.9.1 ABC and GA Overlapping Eligibility Exception.

**DSSM 3023.9.1 ABC and GA Overlapping Eligibility Exception**

An individual can receive a GA benefit and become eligible for DABC in the same month. The individual is entitled to the difference between the GA benefit received and the DABC benefit.

An example of this is when a pregnant woman receiving GA has her baby and is opened in DABC. In this situation the GA assistance group is closed for the mother after the baby is born.

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**DIVISION OF SOCIAL SERVICES**

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

**PUBLIC NOTICE****Delaware's Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to amend the following Medicaid policies related to eligibility: clarification about the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) delinking of Medicaid from Welfare; clarification about state residency; clarification that adults in the expanded population are not eligible for emergency services and labor and delivery only; presumptively eligible pregnant women do not enroll in managed care; clarification that Medicaid families must cooperate with medical support not child (cash) support; clarification about dependent care expenses; there is no post partum extension for illegally residing pregnant alien women; DSS is adding age limits between ages 16-50 to the Family Planning extension.

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 the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, Delaware by May 31, 2001.

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

**REVISION****13402 Delaware's A Better Chance Welfare Reform Program**

Before the passage of PRWORA, anyone receiving cash assistance under AFDC was automatically entitled to Medicaid. Under the new law, persons receiving assistance

under the block grant (TANF) are not automatically entitled to Medicaid. A new Medicaid eligibility group for low income families with children is established at Section 1931 of the Social Security Act added by section 114 of PRWORA.

~~Section 1931 also gives States more flexibility in determining Medicaid eligibility. This means that any family eligible for and receiving cash assistance under A Better Chance Welfare Reform Program is also eligible for Medicaid under Section 1931.~~

### ~~13403 AFDC Applicants With A Budgeted Need Of Less Than \$10~~

~~Anyone who is otherwise eligible for ABC cash assistance but does not receive cash because their need for assistance is less than \$10.00, is still eligible for Medicaid under Section 1931.~~

### 14110.8.1 Prohibitions

A State cannot deny Medicaid eligibility:

- a) to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.
- b) because of a durational residence requirement.
- c) to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.
- d) or terminate a resident's Medicaid eligibility due to temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.
- e) or wait to approve Medicaid eligibility in situations where the individual has moved to Delaware from another State and the Medicaid case is still open in the former State. The individual is no longer a resident of the former State and is ineligible in that State. The case may not be closed yet due to administrative processes.

### 14300 Citizenship and Alienage

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the United States. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. The term qualified refers to groups of aliens whose members may establish Medicaid eligibility under certain circumstances and subject to certain limitations. For specific groups of aliens identified as nonqualified, eligibility is limited to the treatment of an emergency medical condition as defined in this section.

In State Fiscal Year 1998, (SFY 98), the Delaware

legislature appropriated STATE ONLY FUNDS to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Aliens who may be found eligible for full Medicaid coverage using the state funds include legally residing nonqualified aliens and qualified aliens subject to the 5 year bar. Illegally residing aliens and ineligible aliens ARE NOT ELIGIBLE for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.

All applicants, whether aliens or citizens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, emergency services and labor and delivery only, or the state funded benefits. The adult expansion population, under the 1115 demonstration waiver entitled Diamond State Health Plan, is not eligible for emergency services and labor and delivery only or the state funded benefits.

Receipt of Medicaid benefits cannot be considered by the Immigration and Naturalization Service (INS) when making public charge determinations.

### 14320.1 Medicaid Eligibility for Qualified Aliens (PRWORA and/or State Funds)

Effective January 1, 1998, all qualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does NOT include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years. Certain qualified aliens will be Medicaid eligible. Other qualified aliens will receive state funded benefits. The adult expansion population, under the 1115 demonstration waiver entitled Diamond State Health Plan, is not eligible for emergency services and labor and delivery only or the state funded benefits.

### 14900 Enrollment in Managed Care

On May 17, 1995, Delaware received approval from the Health Care Financing Administration for a Section 1115 Demonstration Waiver that is known as the Diamond State Health Plan. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The Diamond State Health Plan is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or

below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical service while improving cost effectiveness and slowing the rate of growth in health care costs.

The majority of the Medicaid population receiving noninstitutional services will be enrolled into the Diamond State Health Plan. Recipients in the cash assistance programs (TANF/AFDC, SSI, and GA) as well as the TANF/AFDC-related groups, SSI-related groups, and poverty level groups will be included in the managed care program. The following individuals cannot enroll in Diamond State Health Plan:

- a) Individuals entitled to or eligible to enroll in Medicare
- b) Individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR)
- c) individuals covered under the home and community based waivers
- d) non lawful and non qualified non citizens (aliens)
- e) individuals who have CHAMPUS
- f) presumptively eligible pregnant women

#### **14950.6 Termination of Guaranteed Eligibility**

The six-month period of eligibility terminates the earliest of: the last day of the sixth month following the effective date of enrollment in the DSHP or the last day of the month in which the individual:

- a) dies
- b) moves out-of-state or is no longer a Delaware resident
- c) becomes an inmate of a public institution
- d) requests termination of Medicaid eligibility and/or managed care enrollment
- e) ~~fails to complete the final determination as a presumptively eligible pregnant woman~~
- e) becomes eligible for long term care Medicaid
- f) becomes eligible for or entitled to Medicare
- g) becomes eligible for CHAMPUS
- h) becomes eligible for another comprehensive medical managed care program administered by the Delaware Medical Assistance Program
- i) is otherwise ineligible for the DSHP.

#### **15110.1 Medicaid Eligibility**

Before the passage of PRWORA, anyone receiving cash assistance under AFDC was automatically entitled to Medicaid. Under the new law, persons receiving assistance under the block grant (TANF) are not automatically entitled to Medicaid. A new Medicaid eligibility group for low income families with children is established at Section 1931 of the Social Security Act added by section 114 of PRWORA. These families will receive Medicaid if they

meet the AFDC eligibility criteria in effect as of 7/16/96. The eligibility criteria for this new group is described in the section, "Low Income Families with Children under Section 1931".

~~Section 1931 also gives States more flexibility in determining Medicaid eligibility. Delaware has used the authority in Section 1931 to ensure that any family eligible for and receiving cash assistance under A Better Chance is also eligible for Medicaid under Section 1931 without having to complete a separate Medicaid eligibility determination.~~

Families who are eligible for Medicaid under Section 1931 may be receiving ABC cash assistance or may be Medicaid only families.

#### **15120.1.2 ~~Child~~ Medical Support Cooperation**

Deprivation is not an eligibility requirement for this group. If the child is deprived of parental support, a referral to the Division of Child Support Enforcement for medical support is required.

#### **15200 Transitional Medicaid**

The Family Support Act of 1988, PL 100-485, mandated that effective April 1, 1990, states provide health care coverage known as Transitional Medical Assistance for up to twelve months for families who become ineligible for AFDC due to increased earnings, increased hours of employment, or loss of earned income disregards.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Delaware implemented its TANF program, A Better Chance Welfare Reform Program (ABC), on March 10, 1997.

Prior to PRWORA, a family's eligibility for Transitional Medicaid was linked to receipt of AFDC. Under PRWORA, a family's eligibility for transitional Medicaid is linked to receipt of Medicaid under Section 15120, "Low Income Families with Children under Section 1931". (See DSSM 15120)

The eligibility group described in "Low Income Families with Children under Section 1931", will be referred to as "receiving Medicaid under Section 1931" throughout this section. Any family eligible for and receiving ABC benefits is also eligible for Medicaid under Section 1931 and may be found eligible for Transitional Medicaid. This means references to "Medicaid under Section 1931" also refers to families receiving ABC.

Delaware's welfare reform waiver, "A Better Chance Welfare Reform Program" (ABC) includes a modification to the length of the Transitional Medicaid period. The ABC waiver extends Transitional Medicaid benefits for up to 24 months.

Families must meet the initial eligibility requirements described in this section to receive the first 12 months of coverage. Families can be eligible when their income exceeds either 185% of the standard of need or the standard of need. The standard of need used is the same as the ABC standard of need.

To continue to receive Medicaid for the second 12 months, the family's gross earned income less ~~child~~ dependent care costs must be at or below 185% FPL. Dependent care costs are for the care of dependent children or incapacitated persons living in the home. Family income will be budgeted prospectively.

### 15200.6.2.1 Good Cause for Terminating Employment

Good cause for terminating employment is:

1. Circumstances beyond the individual's control such as but not limited to illness, illness of another family member requiring the wage earner's presence, a household emergency, the unavailability of transportation, and the lack of adequate ~~child~~ dependent care.

2. Instances in which employment was unsuitable such as:

- wages offered less than the Federal minimum wage,
- employment on a piece-rate basis and the average hourly yield the employee receives is less than the Federal minimum wage,
- unreasonable degree of risk to one's health and safety,
- the individual is physically or mentally unfit to perform the employment as documented by medical evidence or reliable information from other sources,
- the distance from the individual's house to place of employment is unreasonable considering the expected wage and the time and cost of commuting,
- the working hours or nature of employment interferes with the members religious observance, convictions or beliefs.

3. Discrimination by an employer based on age, race, sex, disability, religious belief, national origin, or political belief.

4. Work demands or conditions that are unreasonable such as working without being paid on schedule.

5. Acceptance of other employment or enrollment at least half-time in a school, training program, or college.

6. Resignations by persons under the age of 60 that are recognized by the employer as retirement.

7. Leaving a job in connection with patterns of employment in which workers move from one employer to another as in migrant farm labor or construction work.

### 15200.6.3 Limit on Gross Monthly Earnings

The family's gross monthly earnings (less the monthly

costs of necessary ~~child~~ dependent care) are at or below 185% of the Federal Poverty Level (FPL) and continue to be at or below 185% FPL throughout the second 12-month period. The FPL is effective each July for Transitional Medicaid.

There are no limits on necessary ~~child~~ dependent care costs. Prospective budgeting is used to determine family income. Do not add unearned income to earned income. Count the earned income of all family members living in the home who were members of the family unit the month the family became ineligible for Medicaid under Section 1931 and any individual who would be included in the caretaker relative's assistance unit if the family were now applying for Medicaid under Section 1931.

Exception: Do not count the earned income of a dependent child, regardless of student status.

### 15200.8.2 Second 12-Month Period

Eligibility for Transitional Medicaid will be terminated if:

- the family no longer has a child living in the home
- the caretaker relative is no longer employed and good cause does not apply
- the family's monthly gross earned income minus ~~child~~ dependent care costs exceeds 185% FPL.

We must explore eligibility for any other Medicaid program before Transitional Medicaid is terminated.

### 16100.1.2 Initial Eligibility Determination

The two criteria for finding an applicant presumptively eligible are: a medically verified pregnancy and self-reported family income at or below 185% of the Federal Poverty Level. Countable family income is determined using the rules in this section including the \$90 earned income deduction and any self-reported ~~child~~ dependent care expenses. State residency is established for presumptive eligibility by the applicant writing a home address on the application that is a Delaware residence.

Note: Women who are nonqualified aliens or illegally residing in the U.S. are not eligible for presumptive Medicaid.

Verifications of all other factors of eligibility are postponed. Postponed verifications must be provided within 30 days from the date of receipt of the application. Under unusual circumstances, the deadline date for postponed verifications may be extended. The reason for the extension must be documented in the case record. The verifications that were postponed are required to determine final eligibility for Medicaid benefits. Presumptive eligibility continues until a final eligibility determination is completed. If the required verifications are not provided, eligibility under the presumptive period ends.

~~Pregnant women who are determined presumptively~~

~~eligible are required to enroll in the Diamond State Health Plan unless otherwise exempt.~~

#### **16230.1.4 Deductions from Earned Income**

- \$90 earned income deduction per month per earner
- ~~actual child care expenses up to \$175 per month per child for age two and older; up to \$200 per child for under age two. Convert weekly amount to a monthly amount. The dependent child must be related to the wage earner or must be included in the budget unit in order to allow the child care deduction.~~
- actual monthly dependent care expenses for the care of each dependent child or incapacitated adult living in the same home. Monthly dependent care expenses cannot exceed \$175 for each dependent child age two and older and each incapacitated adult and cannot exceed \$200 for each dependent child under age two.
- There is a special income disregard for pregnant teens. Exclude one-half of the gross parental income (includes earned and unearned income) in the eligibility determination for the pregnant teen.

#### **16270.1 Postpartum Period**

The postpartum period is a mandatory extension of benefits for women who were determined eligible for Medicaid in the month of birth or in a month prior to the month of birth (while still pregnant). A woman cannot apply and be found eligible for the postpartum period alone. The postpartum period is an extension of Medicaid coverage that was provided because of pregnancy. Illegally residing aliens are not eligible for the postpartum extension.

In most cases, a pregnant woman must apply in the month of birth or in a month prior to the month of birth (while still pregnant) in order to have Medicaid coverage for the delivery and postpartum period. This is because most pregnant women are required to enroll in managed care and are not eligible for retroactive Medicaid coverage. A woman who is excluded from managed care and therefore potentially eligible for retroactive coverage, could apply up to 3 months after the month of birth and be found eligible for the delivery and postpartum period.

If a pregnancy is terminated through miscarriage or a federally funded abortion, the woman is still entitled to the post-partum period. If a mother delivers a child who dies a few days after birth, she is still entitled to the post-partum period. The deceased child must be added to the case through DCIS to cover any bills he may have incurred between birth and death. Both birth and death verifications are waived in this instance.

If a pregnant woman plans to put her baby up for adoption, she will receive the regular post-partum period. The baby will also be eligible through the mother's post-

partum period. The baby may then be eligible for Medicaid under the Adoption Assistance Program. The adoption agency should apply for Medicaid for the infant while the child is awaiting an adoptive home.

The post-partum period is increased from 60 to 90 days as part of the demonstration waiver under the *Diamond State Health Plan*. Effective 10/1/95 the post partum period extends 90 days beginning on the last day of pregnancy. Any woman whose post partum period ends 9/30/95 or later will have the post partum period extended. This means that any woman who delivers on 8/1/95 or later will get 90 days post partum.

Medicaid eligibility related to the post partum extension ends on the last day of the month in which the 90 day period ends.

#### **16500.1 Eligibility Requirements**

Women may receive Family Planning services if they meet the following conditions:

1. ~~are of childbearing age~~ age 16 through age 50
  2. were receiving Medicaid but lost Medicaid eligibility on or after 12/31/95 for non fraudulent reasons. Females who lose eligibility as a QMB, SLMB, or QI or who were eligible for emergency services and labor and delivery only, are not eligible for the family planning extension. Fraud is defined by Section 1128B of the Social Security Act. The individual must be convicted of fraud by a court of competent jurisdiction.
  3. continue to meet Delaware residency requirements
  4. are not inmates of a public institution such as a correctional facility or mental health institution
  5. for the second year of the extension, have countable family income at or below 300% of the Federal Poverty Level. See Procedures for Implementation of Eligibility Rules for income limits at 300% of the FPL.
- Family income will be determined using the methodology of the Federal Poverty Level related programs. Resources are not counted.

#### **18100.2 Alien Status**

The DHCP does not provide state-funded benefits to qualified aliens subject to the 5 year PRWORA bar or to legally residing nonqualified aliens. The DHCP does not provide coverage of emergency and labor and delivery services to illegally residing and ineligible aliens. Receipt of or Delaware Healthy Children Program benefits cannot be considered by the Immigration and Naturalization Service (INS) when making public charge determinations.

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Section 311 (18 Del. C. 311)

The Delaware Insurance Department proposes a new regulation that will govern the treatment of nonpublic personal financial information about individuals by all licensees of the Department of Insurance. This proposed regulation, in part, meets the requirements of Title V of the Gramm-Leach-Bliley Act, Public Law 106-102 (1999).

A public hearing will be held on the proposed regulation on Tuesday, May 29, 2001 at 10:00 a.m. Hearing Room of the Department of Insurance, Rodney Building, 841 Silver Lake Boulevard, Dover, Delaware, 19904. The Department will receive and consider input in writing from any person on the proposed regulation. Any written comments should be submitted to the Department in care of Michael J. Rich, Deputy Attorney General, at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulation or to make comments at the public hearing should notify Joan Zimmerman at the above address by calling (302) 739-4251. Under 18 Del. C. § 701(18), there will be a \$16.00 charge for a photocopy of the regulation.

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

### Regulation No. 84

#### Privacy of Consumer Financial and Health Information Regulation

Adopted and signed on \_\_\_\_\_, 2001.

Effective July 11, 2001

### ARTICLE I. GENERAL PROVISIONS

#### Section 1. Authority

This regulation is promulgated pursuant to the authority granted by Sections 311 and 535 of Title 18, Delaware Code.

#### Section 2. Purpose and Scope

A. Purpose. This regulation governs the treatment of nonpublic personal financial information about individuals by all licensees of the state insurance department. This regulation:

(1) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(2) Describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

(3) Provides methods for individuals to prevent a

licensee from disclosing that information.

B. Scope. This regulation applies to:

Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This regulation does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.

C. Compliance. A licensee domiciled in this state that is in compliance with this regulation in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

#### Section 3. Rule of Construction

The examples in this regulation and the sample clauses in Appendix A of this regulation are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this regulation.

#### Section 4. Definitions

As used in this regulation, unless the context requires otherwise:

A. "Affiliate" means any company that controls, is controlled by or is under common control with another company.

B. (1) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) Examples.

(a) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(i) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(ii) Uses short explanatory sentences or bullet lists whenever possible;

(iii) Uses definite, concrete, everyday words and active voice whenever possible;

(iv) Avoids multiple negatives;

(v) Avoids legal and highly technical business terminology whenever possible; and

(vi) Avoids explanations that are imprecise and readily subject to different interpretations.

(b) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(i) Uses a plain-language heading to call attention to the notice;

(ii) Uses a typeface and type size that is easy to read;

(iii) Provides wide margins and ample line spacing;  
line spacing;  
words; and  
(v) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(c) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(i) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(ii) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

C. "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

D. "Commissioner" means the Insurance Commissioner of Delaware.

E. "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

F. (1) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

(2) Examples.

(a) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(b) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(c) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(d) An individual is a licensee's consumer if:

(i) (I) the individual is a beneficiary of a

life insurance policy underwritten by the licensee;

(II) the individual is a claimant under an insurance policy issued by the licensee;

(III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(ii) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 14, 15 and 16 of this regulation.

(e) Provided that the licensee provides the initial, annual and revised notices under Sections 5, 6 and 9 of this regulation to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 14, 15 and 16 of this regulation, an individual is not the consumer of the licensee solely because he or she is:

(i) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(ii) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(iii) A beneficiary in a workers' compensation plan.

(f) (i) The individuals described in Subparagraph (e)(i) through (iii) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subparagraph (e).

(ii) In no event shall the individuals, solely by virtue of the status described in Subparagraph (e)(i) through (iii) above, be deemed to be customers for purposes of this regulation.

(g) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(h) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

G. "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

H. "Control" means:

(1) Ownership, control or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

I. "Customer" means a consumer who has a customer relationship with a licensee.

J. (1) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(2) Examples.

(a) A consumer has a continuing relationship with a licensee if:

(i) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(ii) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(b) A consumer does not have a continuing relationship with a licensee if:

(i) The consumer applies for insurance but does not purchase the insurance;

(ii) The licensee sells the consumer airline travel insurance in an isolated transaction;

(iii) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(iv) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee;

(v) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(vi) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

(vii) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(viii) For the purposes of this regulation, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable

and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

K. (1) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

L. (1) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

M. (1) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(2) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

N. (1) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Insurance Law of this state, [and health maintenance organizations holding a certificate of authority pursuant to Section [insert section] of this state's Public Health Law].

(2) (a) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Articles I, II, III and IV of this regulation if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

(i) The principal otherwise complies with, and provides the notices required by, the provisions of

this regulation; and

(ii) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this regulation.

(b) Examples of employee, agent or other representative of a principal:

(i) An insurance broker, public adjuster or other licensee who is employed by another insurance broker, public adjuster or other licensee;

(ii) An independent adjuster adjusting a claim or benefit on behalf of an insurer;

(iii) An insurance agent of an insurer;

(iv) An insurance broker that has binding authority for an insurer; or

(v) A sublicensee of a licensee, whether or not the sublicensee is licensed in any other capacity.

(3) (a) Subject to Subparagraph (b), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed pursuant to the Delaware Insurance Code.

(b) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Articles I, II, III and IV of this regulation provided:

(i) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this regulation, except as permitted by Section 15 or 16 of this regulation; and

(ii) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

#### PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

O. (1) "Nonaffiliated third party" means any person except:

(a) A licensee's affiliate; or

(b) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that

jointly employs the person).

(2) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

P. "Nonpublic personal information" means nonpublic personal financial information.

Q. (1) "Nonpublic personal financial information" means:

(a) Personally identifiable financial information; and

(b) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) Nonpublic personal financial information does not include:

(a) Health information;

(b) Publicly available information, except as included on a list described in Subsection T(1)(b) of this section; or

(c) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) Examples of lists.

(a) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(b) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

R. (1) "Personally identifiable financial information" means any information:

(a) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(c) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(2) Examples.

(a) Information included. Personally identifiable financial information includes:

(i) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(ii) Account balance information and payment history;

(iii) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(iv) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(v) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(vi) Any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and

(vii) Information from a consumer report.

(b) Information not included. Personally identifiable financial information does not include:

(i) Health information;

(ii) A list of names and addresses of customers of an entity that is not a financial institution; and

(iii) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

S. (1) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(a) Federal, state or local government records;

(b) Widely distributed media; or

(c) Disclosures to the general public that are required to be made by federal, state or local law.

(2) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(a) That the information is of the type that is available to the general public; and

(b) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(3) Examples.

(a) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(b) Widely distributed media. Publicly

available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(c) Reasonable basis.

(i) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(ii) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

## **ARTICLE II. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION**

### **Section 5. Initial Privacy Notice to Consumers Required**

A. Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(1) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and

(2) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

B. When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection A(2) of this section if:

(1) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16, and the licensee does not have a customer relationship with the consumer; or

(2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

C. When the licensee establishes a customer relationship.

(1) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(2) Examples of establishing customer relationship.  
A licensee establishes a customer relationship when the consumer:

(a) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(b) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

D. Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection A of this section as follows:

(1) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(2) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection A of this section.

E. Exceptions to allow subsequent delivery of notice.

(1) A licensee may provide the initial notice required by Subsection A(1) of this section within a reasonable time after the licensee establishes a customer relationship if:

(a) Establishing the customer relationship is not at the customer's election; or

(b) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) Examples of exceptions.

(a) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(b) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(c) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other

means by which the customer may view the notice, such as on a web site.

F. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10. If the licensee uses a short-form initial notice for non-customers according to Section 7D, the licensee may deliver its privacy notice according to Section 7D(3).

### **Section 6. Annual Privacy Notice to Customers Required**

A. (1) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflect its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

(2) Example. A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

B. (1) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(2) Examples.

(a) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(b) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(c) For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(d) A licensee no longer has a continuing

relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

D. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10.

## **Section 7. Information to be Included in Privacy Notices**

A. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(1) The categories of nonpublic personal financial information that the licensee collects;

(2) The categories of nonpublic personal financial information that the licensee discloses;

(3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(5) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14 (and no other exception in Sections 15 and 16 applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(6) An explanation of the consumer's right under Section 11A to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(7) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) The licensee's policies and practices with respect to protecting the confidentiality and security of

nonpublic personal information; and

(9) Any disclosure that the licensee makes under Subsection B of this section.

B. Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

C. Examples.

(1) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(a) Information from the consumer;

(b) Information about the consumer's transactions with the licensee or its affiliates;

(c) Information about the consumer's transactions with nonaffiliated third parties; and

(d) Information from a consumer reporting agency.

(2) Categories of nonpublic personal financial information a licensee discloses.

(a) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Paragraph (1), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(i) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(ii) Transaction information, such as information about balances, payment history and parties to the transaction; and

(iii) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(c) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(3) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(a) A licensee satisfies the requirement to

categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(b) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(c) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(4) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection A(5) of this section if it:

(a) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection A(2) of this section, as applicable; and

(b) States whether the third party is:

(i) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(ii) A financial institution with whom the licensee has a joint marketing agreement.

(5) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16, the licensee may simply state that fact, in addition to the information it shall provide under Subsections A(1), A(8), A(9), and Subsection B of this section.

(6) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(a) Describes in general terms who is authorized to have access to the information; and

(b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

D. Short-form initial notice with opt out notice for non-customers.

(1) A licensee may satisfy the initial notice requirements in Sections 5A(2) and 8C for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(2) A short-form initial notice shall:

(a) Be clear and conspicuous;

(b) State that the licensee's privacy notice is available upon request; and

(c) Explain a reasonable means by which the consumer may obtain that notice.

(3) The licensee shall deliver its short-form initial notice according to Section 10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(4) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(a) Provides a toll-free telephone number that the consumer may call to request the notice; or

(b) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

E. Future disclosures. The licensee's notice may include:

(1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

F. Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this regulation.

### **Section 8. Form of Opt Out Notice to Consumers and Opt Out Methods**

A. (1) Form of opt out notice. If a licensee is required to provide an opt out notice under Section 11A, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(a) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(b) That the consumer has the right to opt out of that disclosure; and

(c) A reasonable means by which the

consumer may exercise the opt out right.

(2) Examples.

(a) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(i) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Section 7A(2) and (3), and states that the consumer can opt out of the disclosure of that information; and

(ii) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(b) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(i) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(ii) Includes a reply form together with the opt out notice;

(iii) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(iv) Provides a toll-free telephone number that consumers may call to opt out.

(c) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(i) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(ii) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(d) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

B. Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

C. Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

D. Joint relationships.

(1) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee

may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer (as explained in Paragraph (5) of this subsection).

(2) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(a) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(b) Permit each joint consumer to opt out separately.

(3) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(a) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(b) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(c) Permit John and Mary to make different opt out directions. If the licensee does so:

(i) It shall permit John and Mary to opt out for each other;

(ii) If both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(iii) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

E. Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

F. Continuing right to opt out. A consumer may exercise the right to opt out at any time.

G. Duration of consumer's opt out direction.

(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer

relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

H. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

### **Section 9. Revised Privacy Notices**

A. General rule. Except as otherwise authorized in this regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(2) The licensee has provided to the consumer a new opt out notice;

(3) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

#### B. Examples.

(1) Except as otherwise permitted by Sections 14, 15 and 16, a licensee shall provide a revised notice before it:

(a) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(b) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(c) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

C. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 10.

### **Section 10. Delivery**

A. How to provide notices. A licensee shall provide any notices that this regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

B. (1) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(a) Hand-delivers a printed copy of the notice to the consumer;

(b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(c) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(d) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(2) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(a) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(b) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

C. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(1) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

D. Oral description of notice insufficient. A licensee may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.

#### E. Retention or accessibility of notices for customers.

(1) For customers only, a licensee shall provide the initial notice required by Section 5A(1), the annual notice required by Section 6A, and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(a) Hand-delivers a printed copy of the notice to the customer;

(b) Mails a printed copy of the notice to the last known address of the customer; or

(c) Makes its current privacy notice available

on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

F. Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

G. Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 5A, 6A and 9A, respectively, by providing one notice to those consumers jointly.

### **ARTICLE III. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION**

#### **Section 11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties**

A. (1) Conditions for disclosure. Except as otherwise authorized in this regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

- (a) The licensee has provided to the consumer an initial notice as required under Section 5;
- (b) The licensee has provided to the consumer an opt out notice as required in Section 8;
- (c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and
- (d) The consumer does not opt out.

(2) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16.

(3) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

(b) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Paragraph (1) of this subsection electronically, and the licensee allows the customer to opt

out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

B. Application of opt out to all consumers and all nonpublic personal financial information.

(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(2) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

C. Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

#### **Section 12. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information**

A. (1) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16 of this regulation, the licensee's disclosure and use of that information is limited as follows:

(a) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(c) The licensee may disclose and use the information pursuant to an exception in Sections 15 or 16 of this regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(2) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

B. (1) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16 of this regulation, the licensee may disclose the information only:

(a) To the affiliates of the financial institution from which the licensee received the information;

(b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(c) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(2) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 or 16:

(a) The licensee may use that list for its own purposes; and

(b) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 15 or 16, such as to the licensee's attorneys or accountants.

C. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 15 or 16 of this regulation, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to the licensee's affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

D. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16 of this regulation, the third party may disclose the information only:

(1) To the licensee's affiliates;

(2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

### **Section 13. Limits on Sharing Account Number Information for Marketing Purposes**

A. General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

(1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples.

(1) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(2) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

## **ARTICLE IV. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION**

### **Section 14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing**

A. General rule.

(1) The opt out requirements in Sections 8 and 11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(a) Provides the initial notice in accordance

with Section 5; and

(b) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes.

(2) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

B. Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection A of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

C. Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

### **Section 15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions**

A. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(4) Reinsurance or stop loss or excess loss insurance.

B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(a) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(b) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

(d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(e) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(f) In connection with:

(i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(ii) The transfer of receivables, accounts or interests therein; or

(iii) The audit of debit, credit or other payment information.

### **Section 16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information**

A. Exceptions to opt out requirements. The requirements for initial notice to consumers in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply when a licensee discloses nonpublic personal financial information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2) (a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service,

product or transaction;

(b) To protect against or prevent actual or potential fraud or unauthorized transactions;

(c) For required institutional risk control or for resolving consumer disputes or inquiries;

(d) To persons holding a legal or beneficial interest relating to the consumer; or

(e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

(5) (a) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(b) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(7) (a) To comply with federal, state or local laws, rules and other applicable legal requirements;

(b) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

(9) When the licensee is in liquidation or receivership.

B. Example of revocation of consent. A consumer may

revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 8F.

## **ARTICLE V. ADDITIONAL PROVISIONS**

### **Section 17. Protection of Fair Credit Reporting Act**

Nothing in this regulation shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under Section 603 of that Act.

### **Section 18. Nondiscrimination**

A. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this regulation.

B. A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this regulation.

### **Section 19. Violation**

Repeated failure to comply with this Regulation will be grounds for investigation and enforcement as unfair practices in the insurance business pursuant to Chapter 23, Title 18, Delaware Code.

### **Section 20. Severability**

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

### **Section 21. Effective Date**

A. Effective date. This regulation is effective as of July 11, 2001.

B. (1) Notice requirement for consumers who are the licensee's customers on the compliance date. By November 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 11, 2001.

(2) Example. A licensee provides an initial notice to consumers who are its customers on November 1, 2001, if, by the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

C. Two-year grandfathering of service agreements.

Until July 11, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Section 14A(1)(b) of this regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 11, 2000.

### **APPENDIX A – SAMPLE CLAUSES**

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1–Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(1) to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A-2–Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of Section 7A(2) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our

affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”]; and

- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

A-3–Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of Sections 7A(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in Sections 15 and 16.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4–Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(3) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16, as well as when permitted by the exceptions in Sections 15 and 16.

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

**A-5–Service provider/joint marketing exception**

A licensee may use one of these clauses, as applicable, to meet the requirements of Section 7A(5) related to the exception for service providers and joint marketers in Section 14. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

**Sample Clause A-5, Alternative 1:**

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

**Sample Clause A-5, Alternative 2:**

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

**A-6–Explanation of opt out right (institutions that disclose outside of the exceptions)**

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(6) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.

**Sample Clause A-6:**

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as “call the following toll-free number: (insert number)].

**A-7–Confidentiality and security (all institutions)**

A licensee may use this clause, as applicable, to meet the

requirement of Section 7A(8) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

**Sample Clause A-7:**

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as “those employees who need to know that information to provide products or services to you”]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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**DEPARTMENT OF LABOR**  
**DIVISION OF EMPLOYMENT & TRAINING**  
**COUNCIL ON APPRENTICESHIP AND TRAINING**

Statutory Authority: 19 Delaware Code,  
Section 202(a) (19 Del. C. §202(a))

PLEASE TAKE NOTICE, pursuant to 19 Del.C. §202(a), the Department of Labor has made proposed modifications to Section 106.5(D) of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The modification will clarify the ratios of Apprentices to Journeypersons applicable in the various trades.

The Council on Apprenticeship and Training will hold a public hearing on June 12, 2001 at 10:00 a.m. at Buena Vista State Conference Center, 661 South DuPont Highway, New Castle, Delaware to receive and consider input from any person on the proposed changes. Written comment can be submitted at any time prior to the hearing in care of Kevin Calio at the Division of Employment & Training, Department of Labor 4425 North Market Street, P.O. Box 9828, Wilmington, DE 19809-0828. The Council will determine its recommendation to the Secretary of Labor at its regular meeting following the public hearing.

In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Kevin Calio by calling (302)761-8121.

**SEC. 106.5 Standards of Apprenticeship**

(D) The ratio of Apprentices to Journeypersons should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements.

(1) The ratio of Apprentices to Journeypersons shall be one Apprentice up to each five (5) Journeypersons employed by the prospective Sponsor unless a different ratio based on an industry standard is contained in the signed Standards of Apprenticeship Agreement. ~~More restrictive~~

ratios will be granted upon request. More liberal ratios may be granted only after the requesting Sponsor has demonstrated that the number of Apprentices to be trained shall be in relation to:

(1) The needs of the plant and/or trade in the community with consideration for growth and expansion;

(2) The facilities and personnel available for training are adequate; and

(3) A reasonable opportunity that employment of skilled workers on completions exists:

The following ratios will be recognized as standard for the trades of:

Apprentice	Up to	Journeyman
Carpenter	±	5
Plumber/Pipefitter	±	5
Sheet Metal Worker	±	4
Insulation Worker	±	4
Electrician	±	3

If a "collective bargaining agreement" exists and stipulates a ratio of Apprentices to Journeymen, it shall prevail. Provided the Bargaining Ratio is not lower than the State standard.

(2) The following have been recognized to be the industry standard for the listed trades:

**Ratio of Apprentice to Journeymen\***

<u>1 up to 4</u>	<u>Sheet Metal Worker</u>
<u>1 up to 4</u>	<u>Insulation Worker</u>
<u>1 up to 4</u>	<u>Asbestos Worker</u>
<u>1 up to 3</u>	<u>Industrial Maintenance Mechanic</u>
<u>1 up to 3</u>	<u>Electrician</u>
<u>1 up to 3</u>	<u>Precision Instrument Repairers</u>
<u>1 up to 3</u>	<u>Glaziers</u>
<u>1 up to 2</u>	<u>Roofers</u>
<u>1 up to 1</u>	<u>Sprinkler Fitters</u>

\* The ratio has no effect until the second apprentice is registered. Only one Journeyman is necessary in any trade for the first Apprentice.

(3) Exceptions.

a. If a collective bargaining agreement stipulates a ratio of Apprentices to Journeyman, it shall prevail provided the Bargaining Ratio is not lower than the State standard.

b. A deviation from the established standard may be granted by the Administrator upon written request after considering the needs of the plant and/or trade with consideration for growth, the availability of relevant training, and the opportunity for employment of skilled workers following the completion of their training. Such exception shall last no more than one year but may be renewed upon written request.

## OFFICE OF LABOR LAW ENFORCEMENT

Statutory Authority: 29 Delaware Code,  
Section 8503(7) (29 Del.C. §8503(7))

Pursuant to the authority granted to the Department of Labor under 29 Del.C. §8503 (7), the Department is proposing an amendment to regulations under 29 Del.C. §6960, "Prevailing Wage Requirements". Pursuant to the requirements of 29 Del.C. §10115(a), Interested parties are invited to present their views at the public hearing which is scheduled as follows:

9:00 a.m., Tuesday, May 22, 2001  
Department of Labor  
4425 North Market Street  
Wilmington, Delaware 19802

Third Floor, Industrial Affairs Conference Room 203

Interested parties can obtain copies of the proposed amendments at no charge by contacting the Office of Labor Law Enforcement at the above address, or by telephone at (302) 761-8211.

### III. CONCEPTS AND DEFINITIONS

This section presents definitions and explanations to provide a basic understanding of elements inherent in collecting wage data and issuing wage determinations, and enforcing prevailing rates.

A. Activity Covered. 29 Del.C. §6960 applies to every contract or aggregate of contracts relating to a public works project in excess of \$100,000 for new construction (including painting or decorating) or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers.

**See 1 DE Reg. 519 (11/1/97)**

B. "Building" or "Work". The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or

furnishing of materials, articles, supplies or equipment is not a "building" or "work" within the meaning of the regulations unless conducted at the site of such a building or work.

C. Laborers and Mechanics. The terms "laborer" and "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices and Supportive Service Program (SSP) trainees. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity are not deemed to be laborers or mechanics. Working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are deemed to be laborers and mechanics for the time so spent.

The terms "laborers" and "mechanics" do not apply to watchmen, guards, dispatchers, or weighmasters. The following classifications of workers are recognized by the Department:

- Asbestos Workers
- Boilermakers
- Bricklayers
- Carpenters
- Cement Finishers
- Electricians
- Elevator Constructors
- Glaziers
- Insulator
- Iron Workers
- Laborers
- Millwrights
- Painters
- Plasterers
- Plumbers/Pipefitters/Steamfitters
- Power Equipment Operators
- ~~Roofers~~
- Roofer - Composition
- Roofer - Shingle, Slate and Tile
- Sheet Metal Workers
- Soft Floor Layers
- Sprinkler Fitters
- Terrazzo/Marble/Tile Setters
- Terrazzo/Marble/Tile Finishers
- Truck Drivers

Definitions for each classification are contained in a separate document entitled, "Classifications of Workers Under Delaware's Prevailing Wage Law." Workers shall be classified by the Department of Labor with the advice of the Prevailing Wage Advisory Council members. Classification determinations shall be recorded by the Department as they

are made and shall be published annually.

**See 4 DE Reg. 1186 (1/1/01)**

Laborers and mechanics are to be paid the appropriate wage rates for the classification of work actually performed, without regard to skill.

D. Apprentices and Supportive Service Program Trainees.

1. Definitions. As used in this section:

a. The term "apprentice" means persons who are indentured and employed in a bona fide apprenticeship program and individually registered by the program sponsor with the Delaware Department of Labor.

b. The term "apprenticeship agreement" means a written agreement between an apprentice and either his/her employer or a joint apprenticeship committee which contains the terms and conditions of the employment and training of the apprentice.

c. The term "apprenticeship program" means a complete plan of terms and conditions for the employment and training of apprentices.

d. The term "Joint apprenticeship committee" means a local committee equally representative of employers and employees which has been established by a group of employers with a bona fide bargaining agent or agents to direct the training of apprentices with whom it has made agreements.

e. The term "SSP Trainee" or "trainee" means a participant in the "Supportive Service Program" mandated by the Federal Highway Administration for federally aided state highway projects.

f. The term "registration" means the approval by the Department of Labor of an apprenticeship program or agreement as meeting the basic standards adopted by the Bureau of Apprenticeship and Training, United States Department of Labor. The term "registration" for SSP Trainees means the individual registration of a participant in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

2. Employment of Apprentices and SSP Trainees on State Projects.

a. Apprentices and SSP Trainees will be permitted to work as such on State contracts in excess of \$100,000 for new construction or \$15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction only when they are registered with the Department of Labor or an approved SSP Training Program.

b. The mechanic's rate on all such State contracts is that rate determined by the Department of Labor. The percentage of the mechanic's rate that the registered apprentice or SSP Trainee receives will be the percentage that the apprentice or trainee qualifies for under the terms of the individual's formal Apprenticeship/Trainee agreement.

c. Any person employed at an apprentice or

trainee wage rate who is not registered as above, shall be paid the wage rate determined by the Department of Labor for the classification of work (s)he actually performed.

d. The ratio of apprentices to mechanics on the site of any work covered by 29 Del.C. §6960 in any craft classification may not be greater than the ratio permitted to the contractor for the entire workforce under the registered apprenticeship program. Any apprentice performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the wage rate that the applicable wage determination specifies for the work (s)he actually performs. Entitlement to mechanic's wages shall be based upon seniority in the apprenticeship program or (in the case of equal seniority) seniority on the job site.

**See 1 DE Reg. 519 (11/1/97)**

3. Records.

a. Every employer who employs an apprentice or SSP trainee under this part must keep the records required by Title 19, Delaware Code, Chapters 9 and 11, including designation of apprentices or trainees on the payroll. In addition, every employer who employs apprentices or SSP trainees shall preserve the agreements under which the individuals were employed.

b. Every joint apprenticeship committee or SSP Program sponsor shall keep a record of the cumulative amount of work experience gained by the apprentice or trainee.

c. Every joint apprenticeship committee shall keep a list of the employers to whom the apprentice was assigned and the period of time (s)he worked for each. Every SSP Program sponsor shall keep a list of the projects to which the trainee was assigned and the period of time (s)he worked on each.

d. The records required by paragraphs (a), (b), and (c) of this section shall be maintained and preserved for at least three (3) years from the termination of the apprenticeship or training period. Such records shall be kept safe and accessible at the place or places of employment or at a central location where such records are customarily maintained. All records shall be available at any time for inspection and copying by the Department of Labor.

E. Working Foremen. 29 Del.C. §6960 does not apply to (and therefore survey data are not collected for) workers whose duties are primarily administrative, executive or clerical, rather than manual. However, working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent and data will be collected for the hours spent as laborers or mechanics.

**See 1 DE Reg. 519 (11/1/97)**

F. Helpers. Helper classifications are not recognized by the Department of Labor. All laborers and mechanics are to be paid the appropriate wage rate for the classification of work actually performed, without regard to skill.

G. Construction Projects. In the wage determination process, the term "project" refers to construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work away from the site of the work and consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in the purpose, time and place. For example, demolition or site clearing work preparatory to construction is considered a part of the project.

1. Character Similar. 29 Del.C. §6960 requires the predetermination of wage rates which are prevailing on projects of a "character similar to the construction work." As a general rule, the Department identifies projects by end use type and classifies them into three major categories:

**See 1 DE Reg. 519 (11/1/97)**

a. Building Construction. Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment shall not change the project's character as a building. Examples: Alterations and additions to nonresidential buildings; Apartment buildings (5 stories and above); Arenas (enclosed); Auditoriums; Automobile parking garages; Banks and financial buildings; Barracks; Churches; Hospitals; Hotels; Industrial buildings; Institutional buildings; Libraries; Mausoleums; Motels; Museums; Nursing and convalescent facilities; Office buildings; outpatient clinics; Passenger and freight terminal buildings; Police stations; Post offices; City halls; civic centers; Commercial buildings; Court houses; Detention facilities; Dormitories; Farm buildings; Fire stations; Power plants; Prefabricated buildings; Remodeling buildings; Renovating buildings; Repairing buildings; Restaurants; Schools; Service stations; Shopping centers; Stores; Subway stations; Theaters; Warehouses; Water and sewage treatment plants (building only).

b. Heavy Construction. Heavy projects are those that are not properly classified as either "building" or "highway". Unlike these classifications, heavy construction is not a homogeneous classification. Examples of Heavy construction: Antenna towers; Bridges (major bridges designed for commercial navigation); Breakwaters; Caissons (other than building or highway); Canals; Channels; Channel cut-offs; Chemical complexes or facilities (other than buildings); Cofferdams; Coke ovens; Dams; Demolition (not incidental to construction); Dikes; Docks; Drainage projects; Dredging projects; Electrification projects (outdoor); Flood control projects; Industrial incinerators (other than building);

Irrigation projects; Jetties; Kilns; Land drainage (not incidental to other construction); Land leveling (not incidental to other construction); Land reclamation; Levees; Locks, Waterways; oil refineries; Pipe lines; Ponds; Pumping stations (pre-fabricated drop-in units); Railroad construction; Reservoirs; Revetments; Sewage collection and disposal lines; Sewers (sanitary, storm, etc.); Shoreline maintenance; Ski tows; Storage tanks; swimming pools (outdoor); Subways (other than buildings); Tipples; Tunnels; Unsheltered piers and wharves; Viaducts (other than highway); Water mains; Waterway construction; Water supply lines (not incidental to building); Water and sewage treatment plants (other than buildings); Wells.

c. **Highway Construction.** Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, greenway projects and other similar projects not incidental to building or heavy construction. Examples: Alleys; Base courses; Bituminous treatments; Bridle paths; Concrete pavement; Curbs; Excavation and embankment (for road construction); Fencing (highway); Grade crossing elimination (overpasses or underpasses); Parking lots; Parkways; Resurfacing streets and highways; Roadbeds; Roadways; Shoulders; Stabilizing courses; Storm sewers incidental to road construction; Street Paving; Guard rails on highway; Highway signs; Highway bridges (overpasses; underpasses; grade separation); Medians; Surface courses; Taxiways; Trails.

d. **Multiple Categories.** In some cases a project includes construction items that in themselves encompass different categories of construction. Generally, a project is considered mixed and a "multiple schedule" used if the construction items are substantial in relation to project cost, i.e. more than twenty (20) percent. Only one schedule is used if construction items are "incidental" in function to the overall character of a project (e.g., paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category.

2. **Site of Work.** A basic characteristic of the construction industry is the continual shift in the site of employment. 29 Del.C. §6960 provides that prevailing wages are to be paid to "...all mechanics and laborers employed directly upon the site of the work ..." (emphasis added). The site of the work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed.

**See 1 DE Reg. 519 (11/1/97)**

H. **Prevailing Wage Rates.** Every contract and the specifications for every contract to which section 6960 applies are required to contain a provision stating the minimum wages to be paid various classes of laborers and mechanics. These rates are to be based upon the wages that the Department of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed

on projects of a character similar to the contract work in the county in which the work is to be performed, as reported in the Department's annual prevailing wage survey.

**See 1 DE Reg. 519 (11/1/97)**

The prevailing wage shall be the wage paid to a majority of employees performing similar work as reported in the Department's annual prevailing wage survey or, in the absence of a majority, the weighted average wage paid to all employees reported.

I. **Wages.** The term "wages" means the basic hourly rate of pay plus fringe benefits as defined below.

J. **Fringe Benefits.** Fringe benefits may be considered in determining whether an employer has met his/her prevailing wage obligations. As a general rule, any fringe benefit may be considered as long as the employer is not legally required to provide it. Therefore, benefits such as health, welfare or retirement benefits, vacation, holiday pay or sick leave pay could be considered fringe benefits. Employer payments for unemployment insurance, workers' compensation, FICA, etc. (which are required by law) would not be considered fringe benefits.

In order to be considered a valid fringe benefit, payments must be made either in cash, or contributed to an irrevocable escrow account at least once each month. "Irrevocable" means that the benefit may not be forfeited. However, a benefit plan can be considered by the Department provided that payments to the plan are made irrevocably by the employer, even though certain employees may forfeit their individual rights to the benefits under certain prescribed conditions. Thus, if payments are made by the employer, and no return of those payments is possible, the plan would be acceptable, even though individual employees might not receive the benefits under certain situations. Benefits forfeited by such employees remain in an escrow account for the use of the other employees.

The actual cost of the benefit to the employer is the basis for evaluating the value of the fringe benefit. Administration costs are not considered fringe benefits.

The cost of the benefits must be apportioned between employment on both public and private projects. Thus, the total value of the benefit would be divided by the total amount of time worked. This will result in benefit per unit of time which would be equally applicable to public and private employment projects. Example: an employee works two weeks (80 hours) on a public project and two weeks (80 hours) on a private project. The employer pays \$160 for the employee's health insurance for the month. The value of the benefit is \$1.00 per hour. The employer is not permitted to apply the entire premium to the public project alone.

K. **Peak Week.** In determining prevailing wages, the Department utilizes a "peak week" survey concept to ensure that wage and fringe benefit data obtained from employers reflects for each classification, the payroll period during which the greatest number of workers in each classification

are used on a project. The survey solicits the number of employees and wages paid at each given rate during the peak week. The contractor or reporting organization selects the week (between July 1 to December 31 of the previous year) during which the greatest number of each classification of laborers and mechanics was working. Peak weeks may be different for each classification of worker.

L. Wage Determinations. A "wage determination" is the listing of wages (including fringe benefits) for each classification of laborers and mechanics, which the Administrator has determined to be prevailing in a given county and type of construction. Wage determinations are issued annually.

M. Maintenance Work. To "maintain" means to preserve or keep in an existing state or condition to prevent a decline, lapse, or cessation from that state or condition. Wages paid to workers performing maintenance work shall not be used in determining prevailing wage rates.

N. Area. The term "area" in determining wage rates under 29 Del.C. §6960 shall mean the county of the State in which the work is to be performed. The term "area" in determining classifications of workers under 29 Del.C. §6960 shall mean the State of Delaware.

**See 1 DE Reg. 519 (11/1/97)**

O. Secretary. "Secretary" means the Secretary of Labor for the State of Delaware.

P. Administrator. "Administrator" means the Administrator of the Office of Labor Law Enforcement for the Delaware Department of Labor, Division of Industrial Affairs.

Q. Department. "Department" means the Delaware Department of Labor.

**See 1 DE Reg. 519 (11/1/97)**

## VI. Issuing Wage Determinations.

### A. Publication of Preliminary Determination.

On or before February 15th of each year, the Department shall publish a "Preliminary Determination of Prevailing Wage Rates." In the event that February 15th falls on a Saturday, Sunday, or legal holiday, the Department shall issue the preliminary results on the next Department business day following February 15th.

### B Appeals.

From February 15th to February 25th, the Administrator of the Office of Labor Law Enforcement will consider protests and inquiries relating to the preliminary results. An interested person seeking review or reconsideration of a wage determination must present a request in writing accompanied by a statement with any supporting data or other pertinent information.

Requests for reconsideration must be substantive and specific in order to be considered by the Department. For example: A request stating that, "the highway rates don't look right", would not be considered substantive or specific.

However, a request stating that, "residential rates appear to have been erroneously included for carpenters in New Castle County Building Construction" would be considered substantive and specific.

From February 25th to March 1st, the Department will attempt to gather information necessary to resolve objections and requests for reconsideration. However, no appeals, objections, or requests will be considered if received by the Department after the February 25th deadline. The Department will respond in writing to all interested persons who submit a written request for review.

An appeal from the Administrator's decision must be made in writing and received by the Secretary of Labor within five calendar days from the date of the postmark on the Administrator's decision. The Secretary or his/her designee shall render a final decision in writing.

### C. Issuance of Determination

On or before March 15th of each year, the Department shall publish its annual "Prevailing Wage Determination." The Determination shall be valid for a period of one year or until subsequent rates or amendments are issued by the Department.

Public agencies (covered by the provisions of 29 Del.C. §6960) are required to use the rates which are in effect on the date of the publication of specifications for a given project. "Date of publication" means the date on which the specifications are made available to interested persons (as specified in the published bid notice). In the event that a contract is not executed within one hundred and twenty (120) days from the earliest date the specifications were published, the rates in effect at the time of the execution of the contract shall be the applicable rates for the project.

**See 1 DE Reg. 519 (11/1/97)**

D. Post Determination Actions. Wage determinations will be modified only for the purpose of correcting errors. Determinations will not be modified to include survey data received after the close of the survey period.

#### 1. Amendment to Correct Errors of Inadvertence.

Amendments may be issued to correct inadvertent errors in the written text of a wage determination. The sole purpose is to correct wage schedules so that the wage determination will accurately and fully reflect the actual rates prevailing in the locality at the time the wage determination was issued. Such amendments (which may be issued at any time) are used to correct errors due to transposition of rates and other clerical mistakes made in processing the schedule; they are not used to correct errors in judgment. Contracts which have already been awarded will not be affected by such amendments. Amendments issued more than ten (10) days prior to a bid opening must be used. Amendments issued less than ten (10) days prior to a bid opening may be disregarded.

#### 2. Amendment to Correct Errors in Survey Data.

Amendments which affect the validity of a wage determination may be issued to correct errors in rates resulting from erroneous information submitted by survey participants.

When the Department of Labor is notified in writing that a survey participant has submitted erroneous data (with regard to wages, fringe benefits, characterization of project, classification of workers, or county in which the work was performed), the Department shall determine the validity of the data. Corrections, if warranted, shall be made in the form of amended determinations at the end of each calendar quarter (beginning with the date the wage determination was issued). Contracts which have already been awarded will not be affected by such amendments. Amendments issued more than ten (10) days prior to a bid opening must be used. Amendments issued less than ten days prior to a bid opening may be disregarded.

**3. Incorrect Wage Determinations: Before Contract Award.**

If notification is received from the Department of Labor any time prior to the contract award that the bid documents contain the wrong wage schedule, such schedule or wage determination shall no longer be valid and may not be used - without regard to whether the bid opening has occurred.

If the bid documents contain no wage schedule, it is the contractor's (or subcontractor's) responsibility to contact the Department of Labor for the correct wage schedule. Such requests must be in writing. Responses to such requests will be in writing. Any contractor or subcontractor found using an incorrect wage schedule will be required to pay the correct wages based upon the proper classification of work as determined by the Department of Labor.

**4. Lack of Valid Wage Determination: After Contract Award.** If a contract is awarded without a wage determination or awarded with an incorrect wage determination, the contractor is responsible for the payment of the appropriate prevailing wage rates as determined by the Department of Labor.

**5. Additional Classifications.** Any class of laborers or mechanics which is not listed in the applicable wage determination but which is to be employed under the contract is to be classified by the Department of Labor in accordance with the procedures set forth in Part III, Section C, of these regulations.

**6. Determination of Wages for Classifications for Which No Rates Are Published.** Whenever a public project requires the services of a laborer or mechanic for which no rate has been published, the Department shall be notified in writing and shall determine the worker classification (from among the ~~21~~ 24 classifications recognized by the Department of Labor) and the rate to be paid. The rate shall be determined as follows:

a. Using "Building Construction" rates as the baseline rate in each county, the Department of Labor will determine the relationship between the "Building Construction" rates and the rates of the type of construction for which the rate is sought. To determine the relationship, (which is to be expressed as a percentage), the Department will use only those rates which were determined by data received in the relevant survey.

b. The Department will compare only those classifications for which corresponding rates were determined.

c. The total of the corresponding rates will be determined for each type of construction. The Heavy or Highway total will be divided into the Building rate to find the percentage of the Heavy or Highway rate to the Building rate.

d. The Department of Labor will multiply the Building rate for the requested classification of worker by the percentage determined in "c" to establish the applicable prevailing wage rate.

Hypothetical example:

A plumber's rate is needed for a New Castle County project. The Department of Labor has not published a rate for this classification.

The Department of Labor will determine the relationship between New Castle County Highway rates and Building rates, comparing only corresponding rates which were actually determined by the relevant survey (rates carried forward from previous years due to lack of sufficient data are not to be used).

	N.C.C. Building	N.C.C. Highway
Bricklayers	\$19.65	\$12.29
Carpenters	23.37	21.69
Cement Finishers	23.55	15.52
Laborers	3.62	10.60
Power Equipment Operator	22.94	15.77
Truck Drivers	15.15	13.75
	\$118.28	\$89.62

$$\$89.62 \div 118.28 = 75.77\%$$

The plumber's rate for New Castle County Building is \$26.54.  $\$26.54 \times 75.77\% = \$20.11$

The plumber's rate for New Castle County Highway = \$20.11

The same method can be used between corresponding types of construction when the Building construction rates do not contain a rate for the requested classification of worker; i.e., Heavy construction rates in Sussex County can be compared with Heavy construction rates in New Castle."

## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF WATER RESOURCES SURFACE WATER DISCHARGES SECTION

Statutory Authority: 7 Delaware Code,  
Section 6010 (7 Del.C. 6010)



#### REGISTER NOTICE SAN # 2001-11

#### 1. TITLE OF THE REGULATIONS:

Regulations For Licensing Operators of Wastewater Facilities

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

The Department of Natural Resources and Environmental Control is proposing to revise its Regulations For Licensing Operators of Wastewater Facilities by withdrawing the current regulations and replacing the current regulations with the proposed regulations. The changes to the regulations include updated definitions, consistent use of terms, clearer language, and recognition of new technology.

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

No sunset date for the proposed regulations.

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

7 Delaware Code, Chapter 60, Section 6023.

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

None.

#### 6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on Wednesday, June 27, 2001 beginning at 1:30 p.m. in the Delaware Tech, Terry Campus Room 400B, Dover, DE

#### 7. PREPARED BY:

Joseph F. Mulrooney, Program Manager I, Surface Water Discharges Section, 302-739-5731

#### Section 1 - Authority and Purpose

1.01 Authority - These regulations are adopted by the Secretary of the Department of Natural Resources and Environmental Control, under and pursuant to, the authorities set forth in 7 Del.C. Chapter 60, Section 6023.

1.02 Purpose - The purpose of these regulations is to protect the public health and to conserve and protect the water resources of the State; to provide for the classification of all public and private (including industrial) wastewater treatment facilities; to require the examination of operators and licensing of their competency to operate, on-location, such facilities; to create a Board of Certification; and to provide for reciprocal licensing arrangements with other states.

#### Section 2 - Definitions

##### 2.01 Association of Boards of Certification For Operating Personnel in Water and Wastewater Utilities (ABC) -

Means that organization which: serves as an information center for certification activities; recommends minimum standards and guidelines for classification of Wastewater Facilities and certification of operators; aids in the establishment of reciprocity between State Programs; and assists authorities in establishing new certification programs and updating existing ones.

2.02 **Board** - Means the State Board of Certification for Operators of Wastewater Facilities.

2.03 **Department** - Means the Department of Natural Resources and Environmental Control.

2.04 **Direct Responsible Charge (DRC)** - Means on-location accountability for, and on-location performance of, active daily operation (including Technical Supervision, Administrative Supervision, or Maintenance Supervision) for a Wastewater Facility, an operating shift of a system or a facility, or a major segment of a system or facility.

2.05 **On-Site Wastewater Disposal System** - Means a Wastewater Facility permitted under Delaware's Regulations Governing the Design, Installation, and Operation of On-site Wastewater Treatment and Disposal Systems.

2.06 **Operate** - Means the actions necessary for the effective performance of a Wastewater Facility or a major segment of a system or facility.

2.07 **Person** - Means any individual, partnership, firm, association, joint venture, public or private corporation,

trust, estate, commission, board, public or private institution, utility, cooperative, municipality or any other political subdivision of this State, any interstate body, or any other legal entity.

2.08 **Secretary** - Means the Secretary of the Department of Natural Resources and Environmental Control or his/her duly authorized designee.

2.09 **Wastewater Facility (Facilities)** - Means the system of pipes, structures, equipment, or processes required to treat any wastewater, and dispose of the effluent; including the treatment, handling, and disposal of residuals and biosolids related thereto.

2.10 **Wastewater Operator** - Means an individual, who at a given time, through observation, interpretation, or decision, operates a Wastewater Facility or a segment of a system or facility.

### **Section 3 - State Board of Certification For Operators of Wastewater Facilities**

3.01 The Board shall be appointed by the Secretary to advise and assist the Secretary in the administration of the certification program. The Board will consist of three (3) members: One (1) member who is currently certified as a Wastewater Operator or who is eligible to be licensed under these regulations; one (1) member representing the Department, who shall be responsible for maintaining records; and one (1) member-at-large. Board members will serve three (3) year terms which will be staggered so that the term of not more than one (1) member will expire in any single year.

3.02 The Board, with the consent of the Secretary, shall establish such procedures and guidelines as may be necessary for the administration of these regulations, and shall include at least the following provisions:

[a] procedures for examination of applicants and renewal of licenses

[b] procedures for the suspension and revocation of licenses

[c] guidelines for evaluating equivalency of training and examinations conducted by recognized agencies and institutions

[d] guidelines for evaluating equivalency of other certification and/or licensing programs for the purpose of according reciprocal treatment

[e] procedures for establishing regularly scheduled meetings

[f] procedures for evaluating continuing education requirements, in accordance with Section 8.01(d)

[g] procedures for evaluating applications to operate

more than one (1) Wastewater Facility.

3.03 When taking action pursuant to these regulations, the Board may consider generally applicable criteria and guidelines developed by the Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities (ABC).

### **Section 4 - Licensing Requirements**

4.01 Any Wastewater Facility (except those specifically exempted by the Department), whether publicly or privately owned, used or intended for use by the public or private persons, *shall* be under the supervision of a Wastewater Operator(s) in Direct Responsible Charge, whose competency is licensed by the Secretary in a classification corresponding to, or higher than, the classification of the Wastewater Facility.

4.02 No person shall perform the duties of a Wastewater Operator without obtaining a Delaware Wastewater Operator's License.

4.03 Any Wastewater Facility (except those specifically exempted by the Department), whether publicly or privately owned, used or intended for use by the public or private persons, *shall* at all times have available, a Delaware Licensed Wastewater Operator(s) capable of operating the Wastewater Facility.

4.04 On or before January 31 of each year, any owner of a Wastewater Facility whether publicly or privately owned, used or intended for use by the public or private persons, *shall* register with the Department and list the type of facility, the average daily flow, and the name(s) of all Wastewater Operators in Direct Responsible Charge (DRC). Any personnel changes involving the operator(s) in Direct Responsible Charge (DRC) shall be reported to the Department within 30 days after the change.

4.05 On-Site Wastewater Disposal Systems with a design flow less than 2,500 gallons, are exempt from the provisions of these regulations. Other Wastewater Facilities may be granted exemption by the Department under Section 5.02.

4.06 All persons must be operating (or have written offer of employment) at a Wastewater Facility in Delaware, in order to be issued a Wastewater Operators License.

### **Section 5 - Classification of Wastewater Facilities**

5.01 The Department shall classify Wastewater Facilities which discharge into other wastewater systems, or to receiving bodies of water, or on land surface or subsurface.

The classification shall consider the skill, knowledge, and experience required of an operator; and shall be in accordance with the criteria hereby established.

5.02 Classification of Wastewater Facilities: Wastewater Facilities shall be classified in one of four classes. These classifications shall be made in accordance with the Point System established in accordance with the "State Board of Certification Point System Classification of Wastewater Facilities" (included as Table 1 of these regulations), and the range of points for each class of facility as shown below:

Class I	11 - 30 Points
Class II	31 - 55 Points
Class III	56 - 75 Points
Class IV	76 Points or greater

Wastewater Facilities other than those with on-site wastewater disposal systems, scoring fifteen (15) points or less, shall be exempt from the requirements of Section 4.01 of these regulations, and the owner shall be so notified by the Department. Wastewater Facilities with on-site wastewater disposal systems only, scoring ten (10) points or less, shall be exempt from the requirements of these regulations (unless otherwise required by the Department), and the owner shall be so notified by the Department.

5.03 Any Wastewater Facility may be classified in a group other than indicated by the general criteria after determination by the Secretary. The Secretary may consider special features of design, characteristics or conditions of flow, or use of the receiving waters or combination of such conditions. The owner of the facility shall be given due notice of the Secretary's tentative determinations, and any comments shall be considered before making the final determination.

5.04 The classification of any Wastewater Facility may be changed at the discretion of the Secretary by reason of changes in condition or circumstances on which the original classification was predicated. Due notice of any such change shall be given to the owner of the Wastewater Facility.

## Section 6 - Operator Qualifications and Classifications

6.01 Applicants for Licensing shall be evaluated by the Board as to education, experience, and knowledge. Further, applicants may be required to give evidence of good character, dependability, interest in work, and other pertinent characteristics in relation to responsible operations. Applicants must pass the required written examination, unless the Board determines that an alternate examination format is necessary.

6.02 In evaluating an applicant's qualifications, the Board will be guided by the following:

[a] Experience requiring technical knowledge, and whether or not Direct Responsible Charge (DRC) was included. In large plants where responsibility is divided, operators of important divisions may be credited with having Direct Responsible Charge, as long as the DRC designation appears on the annual Section 4.04 submission.

[b] Experience, to be acceptable, must be the result of satisfactory accomplishment of work. Evaluation may be based on reports of the employers, or by state and local agencies having appropriate responsibilities for supervising systems and plants.

[c] Partial credit may be given for operating experience in maintenance, laboratories, or other work involving water or wastewater facilities.

[d] Where applicable, education may be substituted for a portion of operating experience requirements as specified below:

[i] Where education or training is substituted for operating experience, it shall not exceed an amount which would reduce the requirement of actual operating experience to less than one year for Class I, or less than two years actual operating experience for Classes II, III, and IV.

[ii] Education applied to the operating experience requirement cannot also be applied to the education requirement.

[iii] College Level education in engineering or allied subjects, or equivalent, as approved by the Board, may be substituted on a year for year basis for operating experience (any Wastewater Facility Classification).

[iv] Specialized operator training courses, correspondence courses, Seminars, workshops, etc., may be substituted for operating experience on a case by case basis; and the equivalency will be determined by the Board.

[e] Where applicable, operating experience may be substituted for educational requirements as specified below:

[i] Operating experience applied to educational requirement may not also be applied to the operating experience requirement.

[ii] One year of Direct Responsible Charge operating experience may be substituted on a year-for-year basis for one year of college level education.

[f] Substitutions for formal education may be made as follows:

[i] Specialized operator training courses, correspondence courses, seminars, workshops, etc., may be substituted for formal education on a case by case basis; and the equivalency will be determined by the Board.

[ii] An acceptable High School Equivalency Certificate (GED) may be used to substitute for a High School Diploma.

[g] Additionally, the Board may be guided by special circumstances, if appropriate.

6.03 Wastewater Operators - Four (4) Classes of operators are hereby established. The qualifications are intended to relate, as nearly as possible, to the corresponding classifications for Wastewater Facilities.

**Class IV**

[1] A college degree or completion of four (4) years in a standard curriculum in engineering or allied subjects, **plus**

[2] Four (4) years of acceptable operating experience in Wastewater Facilities of Class III or higher; two years of which must have been in a position of Direct Responsible Charge (DRC).

**Class III**

[1] High School Diploma and two (2) years of approved college level education in engineering or allied subjects, **plus**

[2] Four (4) years of acceptable operating experience in Wastewater Facilities of Class II or higher; two years of which must have been in a position of Direct Responsible Charge (DRC).

**Class II**

[1] High School Diploma, **plus**

[2] Three (3) years of acceptable operating experience in Wastewater Facilities of Class I or higher.

**Class I**

[1] High School Diploma, **plus**

[2] One (1) year of acceptable operating experience.

6.04 Specialty License - where a Wastewater Facility is of a highly unusual character, requiring skills and techniques other than those indicated by the general criteria, the Board **may**, with the consent of the Secretary, provide a Specialty License to an operator. Such Specialty License shall only be valid for operating the specific Wastewater Facility for which it is issued. The requirements for a Specialty License shall be determined by the Board on a case-by-case basis.

**Section 7 - Examination**

7.01 The Board, or its authorized designee, shall prepare written examinations to be used in determining knowledge, ability, and judgement of the operators.

7.02 Examinations shall be held at places and times as set by the Board, with a suitable method of advance announcement made by the Board. Examinations shall be conducted at least semi-annually.

7.03 Examinations shall be written, unless the Board determines that an alternate format is necessary. All examinations will be graded by the Board, or by others designated by the Board, and the applicant notified of the outcome. Papers will not be returned to the applicant.

However, a method will be provided to review the results with a member of the Board or its authorized designee on request by the applicant.

7.04 Separate examinations shall be prepared to cover each class of operator, as established in Section 6.03.

7.05 Any person who has failed the written examination for a particular operator class on three (3) consecutive occasions, shall then satisfactorily complete an approved educational examination review course prior to again being considered to take that particular class of written examination.

**Section 8 - Licensing**

8.01 Issuance of a License

[a] Upon satisfactory fulfillment of the requirements provided herein, and based on the recommendation of the Board, the Secretary **may** issue a suitable license to the applicant. This license will indicate the class for which the operator has qualified.

[b] A license may be issued, without examination, in a comparable classification, to any person who holds a current valid certificate or license in any jurisdiction, if in the judgement of the Board, the requirements under which the person's certification or license was issued, are of a standard not lower than that specified by these regulations.

[c] A license shall be renewable every two years unless revoked for cause, replaced by one of a higher grade, or invalidated under subsection [d] below.

[d] An applicant for a license renewal shall submit with the renewal application, proof that the applicant has in the preceding two years, attended or satisfactorily completed a minimum of twenty (20) classroom, seminar, or workshop hours, relating to Wastewater Facility operations or maintenance, that are sponsored by recognized government, educational, or industrial groups, including equipment manufacturers.

[e] An operator whose license is invalidated, may be issued a new license of like classification, provided appropriate proof of competency is presented to the Board. Successful completion of a written examination shall be required if the license has been invalidated for two (2) or more years.

[f] Operator-In-Training License - An applicant who desires to become licensed and does not meet the experience or educational requirements may, with the approval of the Board, receive an Operator-In-Training (OIT) license, pending fulfillment of these requirements, providing the appropriate examination has been successfully passed. A holder of an OIT license **may, only with the recommendation of the Board** be allowed to be in Direct Responsible Charge (in accordance with Section 4.01) of a

Wastewater Facility on a temporary basis, until the requirements are met; up to a maximum period of two years.

[g] Emergency License - An emergency license may be issued, when it is demonstrated to the satisfaction of the Secretary, that the owner is unable to hire a licensed operator in spite of good faith efforts. The applicant for an Emergency License shall meet specific requirements as set forth by the Board. Such licenses may be issued with special conditions or requirements deemed necessary to protect the public health and the water resources of the State. An emergency license shall be valid only for that plant or system for a period of one (1) year, and may be renewed for a maximum of one (1) additional year, when extreme extenuating circumstances are shown and concurred with by the Board.

8.02 Suspension and Revocation of License - The Secretary may suspend or revoke the license of an operator, after considering the recommendation of the Board, when it is found that the operator has practiced fraud or deception; that reasonable care, judgement, or the application of knowledge or ability, was not used in the performance of the operator's duties; or that the operator is incompetent or unable to perform duties properly. The Board shall act in accordance with the procedures established under Section 3.02[b] of these regulations, and shall hold a hearing before making its recommendations.

8.03 Additional Persons Licensed - The Secretary may determine, due to size of plant, shift operation, or other influencing factors, that more than one (1) operator shall be required to be in Direct Responsible Charge at a given facility.

8.04 Additional Wastewater Facilities

[a] Application may be made to the Secretary to operate more than one Wastewater Facility, and must include justification and capabilities. The Board will evaluate the application in accordance with the procedures established under Section 3.02[g].

[b] Any person considered in Direct Responsible Charge of more than one (1) Wastewater Facility may be required to be licensed in a classification higher than the classification of those facilities in the operator's charge. The degree of operator classification may be further increased depending upon the total number of facilities under the responsible charge of the operator. The Board will recommend, with the consent of the Secretary, the degree of classification in accordance with these factors.

**Section 9 - Fees**

9.01 The fee schedule for wastewater operator applications, examinations, and licenses, shall be established by the

General Assembly.

**Section 10 - Prohibited Acts**

10.01 It shall be unlawful:

[a] To operate any Wastewater Facility (except those exempted under provisions of these regulations) unless the person(s) in Direct Responsible Charge is (are) duly licensed under the provisions of these regulations; and

[b] For any person to routinely perform the duties of an operator without being duly licensed under the provisions of these regulations.

**Section 11 - Penalties**

11.01 Any person who knowingly and willfully violates any provision of these regulations shall be subject to enforcement and penalties under 7 Del. C., Subsection 6005.

**Section 12 - Reciprocity**

12.01 Certification or licensing of operators by any State, as determined by the Secretary, which accepts certifications made or certification requirements determined to be substantially equivalent to the requirements of these regulations or any rules promulgated hereunder, shall be recognized as valid and sufficient within the purview of these regulations.

12.02 In making determination pursuant to subsection 12.01 of this section, the Secretary shall consult with the Board, and may consider any generally applicable criteria and guidelines developed by the Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities (ABC).

**Section 13 - Repealer**

13.01 The provisions of these regulations are intended to supersede existing regulations of this State insofar as they relate to the matters included in these regulations.

**Section 14 - Severability**

14.01 If any part of these regulations, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances and the remainder of these regulations shall not be affected thereby, and shall be deemed valid and effective.

**Section 15 - Department Contact Point**

15.01 Division of Water Resources, Wastewater Board of Certification Department of Natural Resources and

Environmental Control, 89 Kings Highway, Dover, DE 19901, Telephone: 302-739-5731

**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

IN THE MATTER OF THE  
ADOPTION OF RULES  
CONCERNING THE  
IMPLEMENTATION OF 72  
DEL. LAWS CH. 402 (2000)  
GRANTING THE  
THE COMMISSION THE  
JURISDICTION TO GRANT  
AND REVOKE THE  
CERTIFICATES OF PUBLIC  
CONVENIENCE AND  
NECESSITY FOR PUBLIC  
UTILITY WATER UTILITIES |  
(FILED NOVEMBER 21, 2000) |

PSC REGULATION  
DOCKET NO. 51

**ORDER NO. 5709**

AND NOW, this 24<sup>th</sup> day of April, 2001, the Commission having considered the statements of position and evidence submitted to the Hearing Examiner, and the Report of the Hearing Examiner dated April 9, 2001;

IT IS ORDERED THAT:

1. As and for its summary of the evidence pursuant to 29 Del. C. § 10118(b)(1), the Commission incorporates by reference the "Appearances", "Background", and "Summary and Discussion" sections (sections I through III) of the Report of the Hearing Examiner herein dated April 9, 2001.
2. The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the notice attached hereto as Exhibit "A" and the proposed regulations as attached to the Hearing Examiner's Report as Exhibit "B."
3. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before April 26, 2001.
4. The Secretary shall cause the notice attached hereto as Exhibit "A" to be sent by U.S. Mail to all water utilities currently operating under a CPCN in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.
5. The public utilities regulated by the Commission are notified that they may be charged for the cost of this

proceeding under 21 Del. C. § 114.

6. Report of the Hearing Examiner. The Commission adopts the "Recommendations" (section IV) set forth in the Report of the Hearing Examiner dated April 9, 2001 and the Proposed Regulations attached as Exhibit "A" to the Report. A copy of the Report of the Hearing Examiner with Exhibit "A" is attached hereto as Exhibit "B".

7. The Commission retains jurisdiction in this matter, including the authority to make such further Orders as may be just or proper.

**BY ORDER OF THE COMMISSION:**

- Robert J. McMahon, Chairman
- Joshua M. Twilley, Vice Chairman
- Arnetta McRae, Commissioner
- Donald J. Puglisi, Commissioner
- John R. McClelland, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

**EXHIBIT "A"**

IN THE MATTER OF THE  
ADOPTION OF RULES  
CONCERNING THE  
IMPLEMENTATION OF 72  
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NECESSITY FOR PUBLIC  
UTILITY WATER UTILITIES |  
(FILED NOVEMBER 21, 2000) |

PSC REGULATION  
DOCKET NO. 51

**NOTICE OF COMMENT PERIOD AND PUBLIC HEARING ON PROPOSED REGULATIONS CONCERNING WATER UTILITIES INCLUDING THE COMMISSION'S JURISDICTION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION**

The Delaware General Assembly has enacted legislation that will make applications by water utilities for Certificates of Public Convenience and Necessity ("CPCN") subject to the jurisdiction of the Public Service Commission (the "Commission"). The new law is found at 72 Delaware Laws Ch. 402. Presently, water utilities file applications for CPCNs with the Department of Natural Resources and



**PSC REGULATION DOCKET NO. 51**

DATED: APRIL 9, 2001

G. ARTHUR PADMORE, HEARING EXAMINER

**REPORT OF THE HEARING EXAMINER**

G. Arthur Padmore, duly appointed Hearing Examiner in this Docket pursuant to 26 Del. C. § 502 and 29 Del. C. Ch. 101, by Commission Order No. 5646, dated January 30, 2001:

**I. APPEARANCES**

On behalf of Artesian Water Company ("Artesian"):  
MORRIS, NICHOLS, ARSHT & TUNNELL  
BY: MICHAEL HOUGHTON, ESQUIRE  
JOSEPH A. DINUNZIO

On behalf of United Water Delaware ("UWD"):  
BY: NANCY J. TRUSHELL

On behalf of Tidewater Utilities, Inc. ("Tidewater"):  
BY: GERARD L. ESPOSITO

On behalf of the Division of Public Advocate ("DPA"):  
BRIAN GALLAGHER

On behalf of the Public Service Commission Staff ("Staff"):  
MURPHY SPADARO & LANDON  
BY: FRANCIS J. MURPHY, ESQUIRE

**II. BACKGROUND**

1. During the course of 2000, the Delaware General Assembly enacted legislation making applications by water utilities for Certificates of Public Convenience and Necessity ("CPCN") subject to the jurisdiction of the Public Service Commission of Delaware ("the Commission"). The new law is found at 72 Del. Laws Ch. 402. Currently in Delaware, investor-owned water utilities file applications for CPCNs with the Department of Natural Resources and Environmental Control ("DNREC"). Transfer of jurisdiction from DNREC to the Commission becomes effective July 1, 2001.

2. In preparation for the transfer of jurisdiction, the Commission initiated this Rulemaking proceeding in order to promulgate regulations to govern certain practices and procedures before the Commission relating to water utilities. In addition, certain of the regulations proposed for promulgation are necessary to comply with the General Assembly's directive to the Commission, codified at 26 **Del.C.** §203(C)(1), requiring the Commission to establish rules governing the revocation of a CPCN held by a water utility.

3. On January 30, 2001 the Commission considered the proposed regulations prepared by Staff, the comments and discussions at a workshop conducted on November 30, 2000, and written comments received from interested parties. On the same date, the Commission issued Order No. 5646 to address matters raised by the new legislation. The Commission's Order also directed publication of notice and circulation of the proposed regulations to all water utilities currently operating under a CPCN in Delaware and all persons who had made timely written requests for advance notice of the Commission's regulation-making proceedings.

4. The Commission's Order also designated this Hearing Examiner to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct public hearing(s), and to make proposed findings and recommendations to the Commission concerning Staff's proposed regulations on the basis of the materials, evidence, and testimony submitted. The Hearing Examiner was also authorized, in his discretion, to solicit additional comment and to conduct, on due notice, such public hearing(s) as may be required to develop further materials and evidence concerning any later-submitted proposed regulations or amendments thereto. Lastly, the Commission directed the Hearing Examiner to submit a report in such time as to allow the Commission to promulgate final regulations by July 1, 2001.

5. In the public notice published for these proceedings (Ex. 1),<sup>1</sup> the Commission invited all interested persons and the public to file written comments on the proposed regulations on or before March 15, 2001.

6. The following participants submitted written comments: UDW (submission dated March 14, 2001) (Ex. 4), Artesian (submission dated March 15, 2001) (Ex. 2), and Tidewater (submission dated March 15, 2001) (Ex. 3). No other person filed written comments.

7. On March 28, 2001, the Hearing Examiner conducted a duly noticed (Ex. 1) public hearing in the Commission's Dover office to consider the comments and the proposed regulations. Representatives of Artesian, UWD, Tidewater, the DPA,<sup>2</sup> and Staff were in attendance at the hearing. No other person appeared or otherwise participated in these proceedings.

8. At the onset of the hearing, Staff Counsel requested

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1. References to the pre-filed direct testimony and other exhibits introduced into this record will be cited as "Ex. \_\_\_" or "Ex. \_\_ at \_\_\_." The transcript of the proceedings will be referred to as "Tr. at \_\_\_."
  2. Although it filed no written comments, the DPA, through Mr. Gallagher, fully participated in the informal discussions and negotiations at the March 28, 2001 hearing.

that the Hearing Examiner grant a “brief” adjournment to afford the participants an opportunity to discuss their written comments and to determine what compromises, if any, could be reached among the participants. With my permission, the hearing was adjourned for approximately two hours and forty-five minutes while the participants met and discussed the proposed regulations.

9. When the hearing was reconvened, the participants jointly recommended certain modifications to the proposed regulations. With my approval, the participants agreed to incorporate their recommendations into a revised form of proposed regulations, which they proposed to submit for my review.

10. On April 5, 2001, the participants jointly submitted the hereto attached revised regulations, along with a proposed Report of the Hearing Examiner, most of which I have incorporated herein. I have carefully considered the entire record of this proceeding.<sup>1</sup> Based thereon, I submit for the Commission’s consideration this Report and the thereto attached proposed regulations (Exhibit “A”).

### III. SUMMARY & DISCUSSION

11. Section 10.103 (c)(7) Section 10.103 (c)(7) . The participants agreed that the reference to “local” authorities should be deleted, because matters related to water quality are typically addressed at the state and federal level. Thus, the reference to “local” authorities was unnecessary and potentially confusing.

12. Section 10.103(e)Section 10.103(e) . As originally promulgated, section 10.103(e) provided:

- (e) after a completed application has been filed, the Commission may require an applicant to furnish additional information during the course of the Staff investigation of an application.

The participants jointly proposed that this paragraph be changed to read:

- (e) After a completed application has been filed and during the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and consideration of an application, including the provision of safe, adequate and reliable water service.

The revised language is intended to clarify that the

1. At the conclusion of the March 28, 2001 hearing, the record consisted of 4 exhibits and a 25-page *verbatim* transcript of proceedings.

materials requested by the Staff in its investigation should relate to the statutory standards for Commission review and consideration of a CPCN.

13. Section 10.106. Section 10.106 originally read:

- (a) An applicant for a CPCN shall file a copy of the application and supporting documentation with DNREC, the State Fire Marshal, and DPH within three days of filing the same with the Commission. The Staff shall send written requests to DNREC, the State Fire Marshal, and DPH soliciting comments on each application. The Staff shall coordinate and cooperate with DNREC, the State Fire Marshal, and DPH during the process of reviewing an application for a CPCN. The Staff shall also coordinate and cooperate with other interested state, local and federal authorities.

The participants jointly proposed adding the phrase “required by Section 10.103(a)(5) and (6)” after the words “supporting documentation” in the first sentence. The purpose of the modification is to reduce the burden on the applicant for a CPCN by relieving the applicant of the obligation to file potentially voluminous documents with DNREC, the State Fire Marshal and DPH that are not needed for a review of the CPCN. Likewise, the change will reduce the burden on the state agencies associated with maintaining records related to CPCN applications.

14. The participants agreed to delete the second sentence in paragraph 10.106 and replace it with the following language:

The Staff shall send written requests to DNREC, the State Fire Marshal, and DPH soliciting immediate written comment as to whether they are aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable drinking water service to existing customers.

The revised proposal includes the phrase “soliciting immediate written comment” to signify that state agencies will be asked to comment on an application for a CPCN as quickly as possible. In addition, the participants seek to clarify that the comments sought from other state agencies relate to whether “the applicant has been unwilling or unable to provide safe, adequate, and reliable drinking water service to existing customers” and not extraneous matters.

15. Sections 10.107(b), 10.108(b), 10.109(a)Sections 10.107(b), 10.108(b), 10.109(a) . As originally promulgated, section 10.107(b) required the applicant for a CPCN to send written notice to all landowners not more than forty-five days and not less than thirty days prior to the filing of the application. The participants agreed that a change from

“forty-five days” to “sixty days” was appropriate to enlarge the period for filing the application after written notice is sent to the landowners. The proposed change will give all interested persons additional time to address the CPCN application. The provisions of Sections 10.108(b) and 10.109(a) also require amendment to make them conform to the revised time frame in section 10.107(b).

16. Section 10.109(a) Section 10.109(a) . The participants jointly proposed to add the following to paragraph (1) of the notice set forth in Section 10.109(a):

If you agree to the inclusion of your property in the proposed service area, no action on your part is required.

The participants agreed that the addition of this language to paragraph (1) of the minimum required notice would help landowners better understand their options upon receipt of the notice of an application for a CPCN.

17. Section 10.110 Section 10.110 . The participants agreed to delete Section 10.110 related to the imposition of conditions on a CPCN. The deletion of this section is without prejudice to the position of the Commission or any party about the Commission’s authority to impose such conditions. The participants agreed that it was unnecessary to address this legal issue in the abstract and in the context of a rulemaking proceeding.

18. Section 10.111(a)(1). The participants agreed that the word “material” should be inserted before the word “non-compliance” in Section 10.111(a)(1) so that the language of the regulation would track the language in 26 Del. C. §203 C (k)(1).

19. Section 10.112(b)Section 10.112(b). The participants agreed that the words “pursuant to proceedings conducted in accordance with subsection (a) above” should be inserted after the words “Unless the Commission finds. . . .” This amendment clarifies that proceedings to suspend or revoke a CPCN must be conducted in accordance with the Administrative Procedures Act, 29 Del. C., Chapter 101, Subchapter III.

20. In addition, the participants agreed that the words “a water utility” should be inserted at the beginning of Section 10.112(b)(ii).

21. The participants’ remaining comments concerned minor, non-substantive proofreading errors in the regulations as originally promulgated. These errors have been corrected in the revised regulations submitted with this report.

22. I commend the participants, the state’s 3 largest water utilities, the Division of the Public Advocate, and the Commission Staff, for having voluntarily entered into informal discussions and to have crafted the attached proposed regulations for the Commission’s consideration. The resulting regulations are, in my view, reflective of the intent of the statute. Furthermore, I find the proposed regulations to be balanced, reasonable, and in the public interest. I, therefore, recommend to the Commission their approval.

#### IV. RECOMMENDATIONS

23. In summary, and for the reasons discussed above, I propose and recommend that the Commission adopt the proposed regulations, attached hereto in final form as Exhibit “A”, entitled *Regulations Concerning Water Utilities Including The Public Service Commission’s Jurisdiction To Grant And Revoke Certificates Of Public Convenience and Necessity*.

Respectfully submitted,  
G. Arthur Padmore, Senior Hearing Examiner

Dated: April 9, 2001

#### EXHIBIT "A"

IN THE MATTER OF THE	
ADOPTION OF RULES	
CONCERNING THE	
IMPLEMENTATION OF 72	
DEL. LAWS CH. 402 (2000)	
GRANTING THE	PSC REGULATION
THE COMMISSION THE	
JURISDICTION TO GRANT	DOCKET NO. 51
AND REVOKE THE	
CERTIFICATES OF PUBLIC	
CONVENIENCE AND	
NECESSITY FOR PUBLIC	
UTILITY WATER UTILITIES	
(FILED NOVEMBER 21, 2000)	

#### PROPOSED REGULATIONS CONCERNING WATER UTILITIES INCLUDING THE PUBLIC SERVICE COMMISSION’S JURISDICTION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

##### 10.101 Scope of Regulations.

These regulations are intended to govern certain practices and procedures before the Delaware Public Service Commission relating to water utilities.

##### 10.102 Definitions.

As used in these regulations:

"Commission" means the Delaware Public Service Commission.

"CPCN" means a Certificate of Public Convenience and Necessity.

"DPH" means the Delaware Division of Public Health.

"DNREC" means the Delaware Department of Natural Resources and Environmental Control.

"Staff" means the Staff of the Delaware Public Service Commission.

"Secretary" means the Secretary of the Delaware Public

Service Commission.

### 10.103 Application for Certificate of Public Convenience and Necessity.

(a) An application for a Certificate of Public Convenience and Necessity to begin the business of a water utility or to extend or expand the business or operations of any existing water utility shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission, these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:

(1) Contain a statement explaining the reason(s) why the Commission should grant the CPCN, and citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application;

(2) Clearly state the relief sought by the application;

(3) State the name, address, telephone number, and e-mail address (if any) of the person to be notified in the event the Staff determines there are deficiencies in the application;

(4) Contain the supporting documentation required by 26 Del.C. § 203C, including evidence that all the landowners of the proposed territory have been notified of the application;

(5) Include a complete list of county tax map parcel number(s) for the area covered by the application;

(6) Include (along with a complete list of tax map number(s)) corresponding names and addresses of property owners and a copy of all tax map(s) for the area;

(7) For any proposed extension of service, contain a certification by the applicant that the extension will satisfy the provisions of 26 Del. C. § 403C, including the following:

(i) The applicant is furnishing water to its present customers or subscribers in this State in such fashion that water pressure at every house supplied is at least 25 pounds at all times at the service connection;

(ii) The applicant shall furnish water to the house or separate location of each new customer or subscriber in this State at the pressure of at least 25 pounds at each such location or house at all times at the service connection while continuing also to supply each old customer or subscriber at the pressure of at least 25 pounds at each house at all times at the service connection;

(iii) The applicant is not subject to a finding by the appropriate federal or state regulatory authority that it has materially failed to comply with applicable safe drinking water or water quality standards; and

(iv) The applicant is not subject to any Order

issued by the Commission finding that the company has materially failed to provide adequate or proper safe water services to existing customers; and

(8) For applications submitted under 26 Del. C. § 203C(e), include a statement indicating whether the applicant has determined if a majority of the landowners of the proposed territory to be served object to the issuance of a CPCN to the applicant, and the documentation relied upon to support the applicant's determination.

(b) If an application for a CPCN involves a water utility project or service that requires the review, approval or authorization of any other state or federal regulatory body, including DNREC, the State Fire Marshal or DPH, the application to the Commission shall so state and shall include the following:

(1) A statement of the current status of such application;

(2) If the application to the other regulatory body or bodies has already been filed, a copy of any permit, order, certificate, or other document issued by the regulatory body relating thereto; and

(3) If such an application or amendment thereof is filed with another state or federal regulatory body or a determination is made by any such regulatory body subsequent to the date of filing the CPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document that has been issued relating thereto shall be filed with the Commission.

(c) An applicant for a CPCN – other than a municipality or other governmental subdivision – shall provide with the application (if not presently on file with the Commission) the following:

(1) A corporate history including dates of incorporation, subsequent acquisitions and/or mergers;

(2) A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates. Furnish a chart or charts which depict(s) the inter-company relationships;

(3) A map identifying all areas, including all towns, cities, counties, and other government subdivisions to which service is already provided;

(4) A statement identifying any significant element of the application which, to the applicant's knowledge, represents a departure from prior decisions of the Commission;

(5) Annual reports to stockholders for applicant, its subsidiaries, and its parent for the last two years;

(6) The applicant's audited financial statements, 10K's, and all proxy material for the last two years; and

(7) Any reports submitted by the applicant within the preceding twelve months to any state or federal authorities in any proceedings wherein an issue has been raised about the applicant's failure to comply with any statute, regulation, rule, or order related to the provision of

safe, adequate and reliable water service, including the water quality of water provided to existing customers.

(d) A municipality or other governmental subdivision applying for a CPCN shall provide with the application (if not presently on file with the Commission) the statement and documents identified in subsections (c)(3), (4) and (7) hereof.

(e) After a completed application has been filed and during the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and consideration of an application, including the provision of safe, adequate, and reliable water service.

(f) Supporting documentation not filed with the application must be made available for Staff inspection upon request.

#### **10.104 Additional requirements for an application filed by a new water utility.**

(a) If the applicant for a CPCN is a new water utility that has not previously been awarded a CPCN in Delaware, the application, in addition to meeting the requirements of section 10.103, shall include the following:

(1) Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and federal safe drinking requirements and that it has, or will procure, adequate supplies of water to meet demand, even in drought conditions, by maintaining supply sufficient to meet existing and reasonably anticipated future peak daily and monthly demands;

(2) A certified copy of the applicant's certificate of incorporation;

(3) Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and

(4) A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.

(b) If the applicant for a CPCN is a new water utility that is an unincorporated proprietorship, the applicant shall be subject to a rebuttal presumption that the applicant lacks the financial, operational, and managerial capacity to comply with the requirements for a CPCN.

#### **10.105 Review of application; deficiencies in the application.**

(a) The Staff shall review all CPCN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty-one days after the date of filing, specifically identify any deficiencies in the application, and immediately request the Secretary to promptly notify the applicant of the alleged deficiencies.

The applicant shall have thirty days from the date of the receipt of the notice from the Secretary of the deficiencies in the application to file a corrected or supplemental application. The Commission may, in its discretion, extend the period to cure deficiencies in the application for an additional thirty days.

(b) Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 Del. C. §203C(h). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these regulations.

(c) Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice, such informal review and comment not to be unreasonably withheld by Staff; nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non-compliance is deemed minor or immaterial by the Commission or its Staff.

#### **10.106 Filing of application with DNREC, the State Fire Marshal, and DPH; coordination and cooperation.**

An applicant for a CPCN shall file a copy of the application and the supporting documentation required by section 10.103(a)(5) and (6) with DNREC, the State Fire Marshal, and DPH within three days of filing the same with the Commission. The Staff shall send written requests to DNREC, the State Fire Marshal, and DPH soliciting immediate written comment as to whether they are aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable drinking water service to existing customers. The Staff shall coordinate and cooperate with DNREC, the State Fire Marshal, and DPH during the process of reviewing an application for a CPCN. The Staff shall also coordinate and cooperate with other interested state, local, and federal authorities.

#### **10.107 Provision of notice to all landowners of the proposed territory.**

(a) Pursuant to the provisions of 26 Del.C. §203C(d)(1) and (e)(1), prior to filing the application with the Commission, the applicant shall provide written notice to all landowners of the proposed territory of the anticipated filing of the application.

(b) The written notice required by 26 Del.C. 203C(d)(1) and (e)(1) shall be sent to all landowners of the proposed territory not more than sixty days and not less than thirty days prior to the filing of the application.

**10.108 Landowners who object, opt-out, and/or request a public hearing; time limits; extension of time.**

(a) In proceedings involving an application submitted under 26 Del.C. §203C(e), any landowner whose property, or any part thereof, is located within the proposed territory to be served shall be permitted to (i) object to the issuance of the CPCN; (ii) opt-out of inclusion in the territory; and/or (iii) request a public hearing. The applicant shall inform the Commission of the name and address of all landowners who notify the applicant of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall file with the Commission any written notices received from such landowners. The Commission shall maintain records identifying all landowners who have provided written notice of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall make such records available to the applicant.

(b) A landowner shall notify the Commission, in writing, if the landowner (i) objects to the issuance of the CPCN; (ii) intends to opt-out of inclusion in the territory; and/or (iii) requests a public hearing. The notice to the Commission from the landowner must be filed with the Commission within (i) sixty days from the date of the landowner's receipt of a written notice from the water utility that complies with applicable statutes and these regulations, of the landowner's inclusion in the service territory; or (ii) thirty days of the filing of the completed application, whichever period is greater. The Commission may, in the exercise of its discretion, extend the time to object, opt-out, and/or request a public hearing even though the period in which to do so has expired. The Commission shall accept for filing written notices from landowners that were sent to the applicant and transmitted by the applicant to the Commission.

**10.109 Notification to all landowners of the proposed territory of their rights to object, opt-out, and/or request a public hearing.**

(a) Pursuant to 26 Del.C. §203C(e), and for the purposes of notification to all landowners of the proposed territory encompassed by the CPCN, the notice sent to the landowners of the proposed territory must include, at a minimum, the following statement:

"(1) Pursuant to Title 26, §203C(e) of the Delaware Code, an application for a Certificate of Public Convenience and Necessity (CPCN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area {enter name of your organization} intends to serve with public water and we are

required to inform you of certain information. The area to be served is {provide a shorthand description of the service area}. If you agree to the inclusion of your property in the proposed service area, no action on your part is required.

(2) Pursuant to current law, you may file an objection to receiving water service from {enter name of your organization}. Under Delaware law, the Public Service Commission cannot grant a CPCN to {enter name of your organization} for the proposed service area, including your property, if a majority of the landowners in the proposed service area object to the issuance of the CPCN. If you object to receiving water service from {enter the name of your organization}, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(3) Pursuant to current law, you may also elect to opt-out of inclusion in the proposed service area. The term "opt-out" means that you decide that you do not want to receive water service from {enter name of your organization}, even if a majority of the landowners in the proposed service area do elect to receive water service from {enter name of your organization}. If you decide that you do not want to receive water service from {enter name of your organization} and instead wish to opt-out, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(4) You may also request a public hearing on this matter. A request for a public hearing must be made in writing to the Commission within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(5) The written notice of your decision to object to the issuance of the CPCN, to opt-out of receiving water service from {enter name of your organization}, and/or your written request for a public hearing, shall be sent to the Secretary of the Delaware Public Service Commission at the following address:

Secretary  
Delaware Public Service Commission  
{insert the address of the Secretary of the Delaware  
Public Service Commission}

(6) Any written notice you send to the Commission must include the description of the service area

referred to in paragraph (1) above and the name of the applicant so the Commission will be able to identify the CPCN application to which your notice is related.

(7) Questions regarding objections, opt-outs, and hearings may be directed to: {enter the name or title, and the address and telephone number of the Commission's contact person(s)}."

(b) If a landowner sends a written notice directly to the applicant, the applicant shall file the notice with the Commission.

**10.110 Suspension or revocation of CPCN for good cause.**

(a) Pursuant to the provisions of 26 **Del.C.** § 203C(k) and (l), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:

(1) A finding by the Commission of material non-compliance by the holder of a CPCN with any provisions of Titles 7, 16, or 26 of the Delaware Code dealing with obtaining water or providing water and water services to customers, or any order or rule of the Commission relating to the same; and

(2) A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service, including a trustee or receiver appointed by the Delaware Court of Chancery; and

(3) Either (i) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (ii) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

(b) In addition to the factors required by section 10.110(a)(1), (2) and (3), the Commission may consider one or more of the following factors in determining whether to suspend or revoke a CPCN:

(1) Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or

(2) Criminal conduct on the part of the water utility; or

(3) Actual, threatened or impending insolvency of the water utility; or

(4) Persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by paragraph (a)(1) above; or

(5) Failure or inability on the part of the water

utility to comply with an order of any other state or federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

(6) Such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

**10.111 Proceedings to suspend or revoke a CPCN for good cause.**

(a) Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 **Del.C.** Ch. 101, Subchapter III.

(b) Unless the Commission finds, pursuant to proceedings conducted in accordance with subsection (a) above, that (i) the conduct of a water utility poses an imminent threat to the health and safety of its customers; or (ii) a water utility is unable to provide safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without first affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN.

**10.112 Compliance with 29 Del. C. Ch. 101, Subchapter III.**

Proceedings before the Commission involving Certificates of Public Convenience and Necessity for water utilities shall be conducted in accordance with the procedures set forth in 29 **Del.C.** Ch. 101, Subchapter III, including any proceedings related to any findings under 26 **Del. C.** § 203C(f) that an applicant is unwilling or unable to provide safe, adequate, and reliable water service to existing customers, or is currently subject to such a Commission finding.

**10.113 Waiver of requirements of sections 10.103 and 10.104.**

The Commission may, in the exercise of its discretion, waive any of the requirements of sections 10.103 and 10.104 above.

## Symbol Key

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

## Final Regulations

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

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

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF ELECTRICAL EXAMINERS  
24 DE Admin. Code 1400  
Statutory Authority: 24 Delaware Code,  
Sections 1406(a)(1) (24 Del.C. §§1406(a)(1))**

### ORDER

A Public Hearing was held to receive comments on March 7, 2001 at the regularly scheduled meeting of the Board of Electrical Examiners. During the meeting the Board considered changes to its rules and regulations that were published in the Register of Regulations, Vol. 4, Issue 8, February 1, 2001. Board members suggested changes to Rules 13.2.4 and 14.2 that were not noticed.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

1. Robert Smith commented that Rules 10.0, 10.1.1, and 10.1.2 were not clear.
2. Robert Keis disagreed with the changes to Rule 3.5. He thought that would preclude a T2 licensee from becoming a T1 if all of the experience had to be obtained

under the supervision of a T1 to qualify. He thought the knowledge that could be tested would be sufficient and that any other provision was not fair. Mr. Keis also asked for clarification about the 60 days in Rule 8.2.3 and the log in Rule 8.5.

3. Paul Buchhofer commented on Rule 15.3. He advised the Board that the testing company, Experior, was not offering the exam necessary under the Rule because of financial difficulties. Individuals have been on a waiting list for 3 months to be testified.

4. Austin F. Sutch advised the Board that some T1 licensees just do residential work. An applicant may not have commercial experience just because the applicant worked under a T1.

### FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

1. The language in Rules 10.1.1 and 10.1.2 is from the statute and the Board explained that the intent was to distinguish between individuals who are employees of corporations and those who are employees of licensees.

2. The Board finds that the experience necessary for a license as a master electrician (T1) should be obtained under the supervision of a T1. Requiring commercial and industrial experience to qualify is not new but was in the old statute as well. Twenty-four Del.C. §1408(a)(1) requires experience "under the supervision of a licensed master electrician;..." In order to ensure safe and efficient services,

it is necessary that an individual, who is to be licensed as a master electrician, have had experience in commercial and industrial work. The Board does not believe test results alone are sufficient; there must also be mechanical aptitude that comes with experience. The Board does not agree that this requirement necessarily creates hardship. If a limited electrician (T2) continues to work under the supervision of a T1, that person is acquiring the experience necessary to advance to T1. The hardship arises if a T2 goes into business for himself or herself performing residential work and is no longer performing supervised industrial or commercial work.

3. With respect to Rule 8.2.3, the 60 day requirement is only necessary for pre-approval. If an application comes in within the 60 days, it still can be given approval after the course is offered. Since the Board only meets once a month it is necessary to present the curriculum well in advance to insure that it can be on a Board agenda for pre-approval. The logs required by new Rule 8.5 are being sent out with the renewal material.

4. The Board recognizes there may be some problem with the testing service if Experior is not providing frequent opportunities for exam. The statutory time periods for testing cannot be changed by regulation.

5. The Board finds that the changes to Rules 13.2.4 and 14.2 suggested by members are non-substantive changes that do not require republication. The changes make the rules consistent with the enabling legislation.

6. The term "professional" used to describe a member who can act as a complaint officer in Rule 13.2.4 is to be stricken. The Board finds the qualifier is more limiting than the enabling statute. A public member is capable of serving as complaint officer.

7. Rule 14.2 related to installing a hot tub or swimming pool is misleading because the scope is not limited to electrical work as it is under the statute. The current rule is stricken and replaced as follows:

14.2 A homeowner shall not be permitted to install his or her own internal wiring, electrical work or equipment associated with a hot tub or a swimming pool.

#### **DECISION AND EFFECTIVE DATE**

The Board of Electrical Examiners hereby adopts the changes to the Rules and Regulations as provided herein 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. 4, Issue 7, February 1, 2001 as

modified by the changes described above including deletion of the word 'professional' in Rule 13.2.4 and the revision of 14.2 relating to the homeowners permit.

#### **BOARD OF ELECTRICAL EXAMINERS**

Donald King, Vice President  
Leroy James, Secretary  
Anthony Szczuka  
Kenneth Draper  
William J. Carson  
Shirley Good

**Board of Electrical Examiners**  
Statutory Authority:(24 Del.C. 1406)

- 1.0 License required
- 2.0 Applications
- 3.0 Qualifications
- 4.0 Examinations
- 5.0 Fees
- 6.0 License and Insurance
- 7.0 Expiration and Renewal
- 8.0 Continuing Education
- 9.0 Loss of license holder
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- 12.0 Required Inspection
- 13.0 Organization of the Board
- 14.0 Homeowners Permits
- 15.0 Inspection agencies
- 16.0 Voluntary treatment option for chemically dependent or impaired professionals

#### **1.0 License required.**

1.1 No person shall perform electrical services or represent themselves as qualified to perform electrical services without first having been duly licensed unless specifically excepted by statute. 24 Del.C. §§1407, 1419

1.2 To perform "electrical services" or "electrical work" means to plan, estimate, layout, perform, or supervise the installation, erection, or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device, or fixture for the purpose of lighting, heating, or power in or on any structure or for elevators, swimming pools, hot tubs, electric signs, air conditioning, heating, refrigeration, oil burners, and overhead and underground primary distribution systems.

1.3 A license is not required for servicing equipment in the fields of heating, air conditioning, refrigeration or appliances.

#### **2.0 Applications.**

2.1 Applications may be obtained in person during regular business hours or by mail from the Division of

Professional Regulation, Cannon Building, Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904-2467. Applications must be made in the name of the individual, not a company. The Board shall approve the application form to insure that it contains all of the information necessary to satisfy the statutory requirements for licensure.

2.2 Applications which are incomplete shall be retained for one year to allow an applicant the opportunity to supplement the application. After one year, incomplete applications are destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

2.3 Applications approved for testing will be valid for two years. If the test isn't taken, the application is destroyed. Thereafter, an applicant must resubmit a current application with the appropriate fee.

### 3.0 Qualifications.

3.1 Persons demonstrating the education and experience qualifications set forth in 24 Del. C. §1408 may be licensed as a master electrician, limited electrician, master electrician special, or limited electrician special.

3.2 An applicant shall submit proof of qualifications verified by his or her affidavit on a form approved by the Board. Proof of experience requires either an employer's affidavit or a tax form w-2, or tax Schedule C. The required experience and training must be completed prior to taking the licensure test.

3.3 Applicants relying on military training and experience shall submit official documentation from the supervising officials showing type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted when supervisory officials are not available or cannot be located.

3.4 The requirement of two years of technical training under 24 Del.C. § 1408 (a)(1)(c) can be met by successful completion of two years of technical training related to electrical technology in a vocational/technical high school or by completion of 48 credit hours in technical training related to electrical technology at an accredited post-secondary school.

3.5 The experience necessary under 24 Del.C. §1408 to qualify for a particular license must relate to the activity authorized by such a license as defined in 24 Del.C. §1402(10) - (13).

### 4.0 Examinations.

4.1 As a condition of licensure, applicants shall obtain a grade of 75% on the Division-approved test. Only the National Electrical Code Book can be used during the test as a reference. Applicants should submit a completed application with all necessary credentials for Board approval at least 45 days before the test is given. As long as the credentials have been approved, a license may issue from the

Division of Professional Regulation upon proof of obtaining a passing score on the test, proof of insurance, and payment of the fee as provided herein. A member of the State Board of Electrical Examiners ~~will~~ may attend the examination. All scores will be presented to the Board at the first meeting after the examination results are available. The roster of persons qualified for licensure will appear in the minutes.

4.2 Applicants who fail two consecutive times with a grade of less than 50% each time must wait one year before retesting.

### 5.0 Fees

5.1 Fee information can be obtained from the Division of Professional Regulation, Cannon Building Ste. 203, 861 Silver Lake Boulevard, Dover, DE 19904 -2467.

### 6.0 License and Insurance.

6.1 The license will be issued by the Division of Professional Regulation to a qualified applicant upon receipt of the required fee and proof of insurance.

6.2 Each licensee shall maintain general liability insurance of at least \$300,000.00. Proof of said insurance shall be submitted at the time of license issuance and each renewal.

6.3 The insurance requirement is satisfied for a licensee who is performing work as an employee as long as the employer is insured for the risk on the work performed as required under these regulations. A licensee who also works independently from his or her employer must maintain separate insurance for that risk as provided under these regulations.

### 7.0 Expiration and Renewal.

~~7.1 All licenses as master electrician or master electrician special expire on June 30, 2000 and even-numbered years thereafter. All licenses as limited electrician or limited electrician special expire on June 30, 2001 and odd-numbered years thereafter. Beginning in 2002, all licenses expire June 30 and biennially every two years thereafter.~~

7.2 As a condition of renewal, each applicant must show proof of continuing education as required in the Rules and Regulations. Extra continuing education hours do not carry over to the next licensing period. Renewal applications will be audited by the Board for compliance with the continuing education requirements.

7.3 A license is ~~lapsed~~ expired when a licensee has failed to either complete the requirements for renewal or obtain permission for inactive status. A licensee may activate a ~~lapsed~~ an expired license within one year of the date the renewal application was due by meeting all requirements and paying an additional fee set by the Division of Professional Regulation.

7.4 A licensee with a valid license may request in

writing to be placed on inactive status. An inactive status can be effective for up to two years and renewed biennially by application to the Division upon proof of 10 hours of continuing education. Said license may be reactivated by the Board upon written request ~~which includes evidence of 10 hours of continuing education completed within the preceding 2 years~~, proof of insurance, and payment of a prorated fee to be computed by the Division of Professional Regulation.

7.5 A licensee is not authorized to work as a licensed electrician in this State during the period of ~~lapse or~~ inactive status.

7.6 An individual whose license has expired for more than one year must reapply as a new applicant. Any prior training and experience satisfies the requirements under 24 Del.C. §1408(a). However, the applicant must take the examination required by §1408(5) again and achieve a passing score.

### **8.0 Continuing Education**

8.1 Continuing education (CE) is required of all licensees and proof shall be submitted to the Board by April 30 of any year after 2000 in which a license is to be renewed. For example, if a license must be renewed June 30, 2001, the proof of completion of CE is due on April 30, 2001. A licensee who has submitted CE hours that are not allowed will be notified so that he or she may obtain replacement CE before the June 30 expiration of the license.

8.2 Courses must be approved by the Board in order to qualify as CE. Licensees may contact the Administrative Assistant of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.

8.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing electrical services.

8.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours and name of the instructor.

~~8.2~~ 8.2.3 Sponsors or licensees seeking pre-approval of CE hours should submit the request as provided in 8.1.2 on a form approved by the Board at least 60 days before the CE course is being offered.

8.2.4 Approval of CE automatically expires on September 1, 2002 and every three years thereafter on each September 1. A sponsor or licensee must reapply for approval as provided in 8.2.1.

8.3 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions - a person licensed less than one year does not need to complete CE at the first renewal; a person licensed one year but less than two years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, 5 of the 10

CE hours required for renewal must be related to the National Electrical Code.

8.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

8.5 A log of CE on a form approved by the Board shall be maintained and submitted. Documentation of the CE should not be routinely sent with the log but must be retained during the licensure period to be submitted if the renewal application is selected for CE audit. Random audits will be performed by the Board to ensure compliance with the CE requirements. Licensees selected for the random audit shall submit attendance verification.

### **9.0 Loss of license holder**

9.1 A procedure permitting temporary practice after loss of a licensee to avoid business interruption is provided in 24 Del.C. §1418 and is necessary only where there is no currently employed licensee to assume the duties of the former license holder.

9.2 The notification must include documentation of the business relationship with the former license holder.

### **10.0 Exceptions.**

10.1 No license is required for performing electrical work by the following persons or entities:

10.1.1 persons working under the supervision of a Delaware licensed master or limited electrician;

10.1.2 persons under the supervision of a licensed electrician who is the owner or full-time employee of a company performing electrical work;

10.1.3 a professional engineer in a manufacturing or industrial plant having six years experience in electrical planning and design who is registered with the Board as the person responsible for the plant repairs, maintenance, and electrical additions;

10.1.4 the Department of Transportation, or a contractor, for work performed by or under the supervision of the Department for the installation erection, construction, reconstruction and/or maintenance of drawbridges and traffic control devices

10.1.5 persons working beyond the main breaker or fuse of 200 amps or less in a structure used exclusively for agriculture;

10.1.6 persons performing the work of any light or power company, electric or steam railway company, telegraph or telephone company when the work is part of the plant or service used in rendering authorized service to the public such as power delivery by an electric company. This exception ends at the point of service, termination box, or demarcation point;

10.1.7 a homeowner who has obtained a homeowner's permit provided by law.

### 11.0 Reciprocity

11.1 An applicant for licensure by reciprocity shall complete an application approved by the Board and cause a certificate of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed. Upon request an applicant for licensure under this provision must submit to the Board a copy of reciprocal state's current licensure requirements. If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least five years after licensure. Proof of practice can be by an employer's affidavit, tax form w-2, or tax Schedule C

### 12.0 Required Inspection.

12.1 Every licensee shall file for an inspection by a licensed inspection agency no later than five working days after the commencement of electrical work. The inspection agency shall complete the inspections no later than five working days after the application has been received.

12.2 Any professional engineer excepted from licensure shall at least annually file with the Board a certificate of inspection by a licensed inspection agency and a letter stating that all repairs, maintenance, and additions to a manufacturing or industrial plant meet the Standards of the National Electrical Code. The annual inspection should include a representative sampling of the work performed by the authority of the responsible professional engineer.

12.3 Any person performing electrical work on agricultural structures excepted from licensure shall nevertheless obtain a certificate of inspection from a licensed inspection agency for new installations.

12.4 Any person authorized to perform work by a homeowner's permit shall obtain a final inspection by a licensed inspection agency.

### 13.0 Organization of the Board

#### 13.1 Election of Officers

Annually during the July meeting, the Board shall elect officers to serve for a one year term from September 1-August 31.

#### 13.2 Duties of the Officers

13.2.1 President - The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position. In conducting meetings or hearings, the President may limit or exclude evidence as provided under the Administrative Procedures Act unless overruled by a majority of the Board.

13.2.2 Vice President - The Vice President assumes the duties and powers of the President when the President is unavailable.

13.2.3 Secretary - The Secretary assumes the duties and powers of the President when neither the President nor

the Vice President is available.

13.2.4 Complaint officer - The complaint officer shall be a ~~professional~~ member who works with the investigator of the Division of Professional Regulation when complaints are investigated pursuant to 29 Del.C. §8807. The complaint officer shall report to the Board when complaints are closed and recuse himself or herself from participating in disciplinary hearings involving matters that have been reviewed in his or her capacity as complaint officer.

13.2.5 Education officer - The education officer may review courses submitted for continuing education approval and makes recommendations to the Board.

#### 13.3 Meeting Minutes

The minutes of each meeting are taken by the Administrative Assistant from the Division of Professional Regulation and approved by the Board.

### 14.0 Homeowners Permits

14.1 The Division of Professional Regulation is authorized to issue homeowners' permits pursuant to an application process approved by the Board. Generally homeowner's permits are not required for replacement in kind but are required for new construction, renovation, and any work that requires a building permit.

14.2 A homeowner shall not be permitted to install **[his or her own internal wiring, electrical work or equipment associated with]** a hot tub or a swimming pool.

### 15.0 Inspection agencies

15.1 Inspection agencies shall be licensed in accord with the provisions of 24 Del.C. §1421 in order to operate in Delaware. An application on a form approved by the Board must be filed at the Division of Professional Regulation. Licenses must be renewed annually on June 30 by completing the renewal form and paying the fee determined by the Division.

15.2 No inspection agency will be approved until it produces proof of general liability insurance in the amount of at least \$1,000,000.00 and errors and omissions insurance in the amount of at least \$1,000,000.00.

15.3 Inspection agencies must submit, to the Division of Professional Regulation, the names of its employees who are inspectors and proof of compliance with the statutory requirements for inspectors. Inspectors must have seven years of experience in residential, commercial, or industrial wiring. Proof of experience shall be submitted by affidavit of the named employer, a tax form w-2, or tax Schedule C. The experience requirement for an inspector employed by an approved inspection agency on July 20, 1999 is satisfied with seven years of inspection experience. Each inspector shall also submit a passing score for the Electrical one and two family dwelling and the Electrical General examinations within 18 months of employment and the Electrical Plan

Review examination within 24 months of employment. For inspectors employed by the inspection agency on July 20, 1999, the time for taking said examinations shall run from the date these regulations become effective and not the date first employed.

**16.0 Voluntary treatment option for chemically dependent or impaired professionals.**

A voluntary treatment option is available for chemically dependent or impaired professionals as provided in 29 Del.C. §8807 (n) who are reported to the Board or Division using the following procedures:

16.1 If the report is received by the president of the Board, that president 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 president of the Board, or that president's designate or designates.

16.2 The president of the Board or that president's designate or designates shall, within seven (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.

16.3 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 thirty (30) days following notification to the professional by the participating Board president or that president's designate(s).

16.4 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 president or that president's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the 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 president of the Board or that president'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 President of the Board.

16.5 Failure to cooperate fully with the Board president or that president'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 Board president or that president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in 29 Del.C. §8807(h).

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

16.6.1 Entry of the regulated professional into a treatment program approved by the 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.

16.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the president of the Board or to that president'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 president of the Board or that president'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.

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

16.6.4 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 paragraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the 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.

16.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the Board's president, 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.

16.7 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.

16.8 The Board's president, 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.

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

16.10 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 Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

16.11 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.

16.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

24 DE Admin. Code 3500

Statutory Authority: 24 Delaware Code,  
Section 3506(a) (24 **Del.C.** §3506(a))

**ORDER ADOPTING RULES AND REGULATIONS**

**AND NOW**, this 2nd day of April, 2001, in accordance with 29 **Del.C.** §10118 and for the reasons stated hereinafter, the Board of Examiners of Psychologists 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.** §3506(a)(1) and (a)(4), the Board proposed to revise its existing Rules and Regulations to clarify the acceptable passing score on the Examination for Professional Practice in Psychology (the "EPPP") for various exam

administrations, and to implement new computer based testing procedures established by the Association of State and Provincial Psychology Boards (the "ASPPB"). Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated January 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 **Del.C.** §10115. The public hearing was held on February 5, 2001 at 9:00 a.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 Board received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. No public comment was received at the February 5, 2001 hearing.

**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 clarify the acceptable passing score on the EPPP examination for various exam administrations, and to implement new computer based testing procedures established by the ASPPB. The proposed amendments will assist applicants in understanding the process applicable to the administration of the examination required for licensure.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 **Del.C.** §3506(a)(1). The Board further concludes that it has statutory authority to adopt the administration, grading procedures and passing score of the ASPPB under 24 **Del.C.** §3506(a)(4).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 **Del.C.** Chapter 35.

**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 A 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 EXAMINERS OF PSYCHOLOGISTS**

(As authenticated by a quorum of the Board)

Sharon L. Mitchell, Ph.D., President, Professional Member

Constance Dancu, Ph.D., Vice President, Professional Member

Peter B. Appel, Ph.D., Secretary, Professional Member

Bobby Benjamin, Public Member

Richard Lindale, Public Member

Shirley Reichelt, Public Member

Frank Szczuka, Public Member

William Ulmer, Jr., M.Ed., Professional Member

Edward S. Wilson, Ph.D., Professional Member

**Board of Examiners of Psychologists**

- 1.0 General Rules and Regulations
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- 3.0 Meetings of the Board
- 4.0 Officers of the Board
- 5.0 Procedures for Licensure
- 6.0 Evaluation of Credentials
- 7.0 Supervised Experience
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- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 General Rules and Regulations**

The Board of Examiners of Psychologists has been established under the 24 **Del.C.** Ch. 35, and current amendments to that Law. Within the framework of the Law, the Board has the responsibility for interpreting and implementing the legal provisions and requirements of the Law through the establishment of operating Rules and Regulations. The Board and the public may propose changes in the Rules and Regulations in accordance with the Administrative Procedures Act, 29 **Del.C.** Ch. 101.

**2.0 Official Board Office**

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all

correspondence must be addressed to this office in written form before official action can be taken. In addition, the Division of Professional Regulation will provide an Administrative Assistant who will take notes at Board meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

**3.0 Meetings of the Board**

The Board will hold such meetings during the year as it may deem necessary to review licensure applications and psychological assistant applications, evaluate continuing education, hold disciplinary hearings, or conduct other Board business. Either the President, or the majority of the Board may call a Board meeting. The Division of Professional Regulation, Board members, and the public shall be notified of the meeting agenda, time and location in accordance with the Freedom of Information Act.

**4.0 Officers of the Board**

The Board elects its own officers at the first meeting of each calendar year. The President of the Board sets the agendas of the meetings, chairs meetings, and represents the Board at state regulatory meetings, the American Association of State and Provincial Psychology Boards, and other organizations that may interface with the Board unless someone else is designated to attend in place of the President. The Vice President or Secretary acts for the President in the President's absence. The Secretary of the Board, in conjunction with the Administrative Assistant from the Division of Professional Regulation, is responsible for taking care of Board correspondence.

**5.0 Procedures for Licensure****5.1 Application - Initial Licensure**

An applicant who is applying for licensure as a psychologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3508. The applicant must submit the following:

5.1.1 An application for licensure, which shall include:

5.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3508(a)(1).

5.1.1.2 Supervised experience documented by having each supervisor complete a Supervisory Reference Form.

5.1.1.3 Evidence that the applicant passed the written "Examination for Professional Practice in Psychology", developed by the Association of State and Provincial Psychology Boards (ASPPB), by achieving the passing score recommended by the ASPPB ~~at the time of the application for licensure.~~ for that particular examination

(computer or paper) administration. Candidates who are not licensed in any other state must have passed the written examination within five (5) years of application for licensure in Delaware. Applicants who have not taken the examination must submit all other required documents to the Board for review prior to sitting for the examination. Only those applicants the Board determines are otherwise eligible for Delaware licensure shall be approved to sit for the examination, subject to the administration policies and procedures of the ASPPB. After sitting for the examination, applicants must supplement their application materials by submitting evidence of their passing score as recommended by the ASPPB.

**See 3 DE Reg 1067 (2/1/00)**

5.1.1.4 Verification that the applicant has no past or pending disciplinary proceedings. [24 Del.C. §3508(a)(4)]

5.1.1.5 The application shall not be considered complete until all materials are received by the Board for review at an officially scheduled meeting. The applicant will have twelve (12) months from the date of initial submission of the application and fee to complete the application process.

5.1.2 Completed certification form. The applicant will be notified, once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

**5.2 Application - By Reciprocity**

An applicant who is applying for licensure as a psychologist by reciprocity, as defined in 24 Del.C. §3511, shall submit evidence that he/she meets the following requirements:

5.2.1 An application for licensure, which shall include:

5.2.1.1 Evidence that the applicant is licensed or certified in another state and that the applicant has practiced continuously, as a doctoral-level psychologist, in good standing in that jurisdiction for two (2) years.

5.2.1.2 Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP). The Board shall accept the passing score recommended by the ASPPB for that particular examination (computer or paper) administration, a score of 70% or better, or, for examinations taken prior to 1992, the Board shall accept either the ASPPB recommended passing score or the minimum passing score accepted by the Delaware Board in the year the examination was take, whichever was lower.

**See 4 DE Reg. 979 (12/1/00)**

5.2.2 Completed certification form. The applicant will be notified once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

**5.3 Computer Based Testing Procedures<sup>1</sup>**

5.3.1 The EPPP will be offered by computerized delivery beginning in 2001. An applicant for examination shall complete an application for computer based-testing, available from the Board.

5.3.2 Once a candidate has been approved to sit for the EPPP by the Board, the Board shall forward a notice of approval to the examination service, which will then forward instructions to the examination candidate.

5.3.3 It shall be the responsibility of the applicant to schedule his or her EPPP administration with a test delivery site pursuant to the instructions given by the examination service.

5.3.4 The examination service will forward test results directly to the Board. Test results will not be available to the candidate at the testing center, nor will test results be given over the phone.

5.3.5 The Board shall notify the applicant of his or her examination score, and pass/fail status upon receipt of this information from the testing service.

5.3.6 If an applicant has been approved to sit for the EPPP by a jurisdiction other than Delaware, it shall be the responsibility of the applicant to arrange to have the score transferred to the Delaware Board.

5.3.7 An applicant who fails the examination may re-take the exam no sooner than 60 days after the prior examination date. An applicant may take the examination a maximum of four (4) times in any 12 month period. [24 Del. C. §§ 3506(a)(4).]

**6.0 Evaluation of Credentials**

6.1 Candidates for licensure as psychologists in the State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 Del.C. §3508(a)(1) having a graduate program which states its purpose to be the training and preparation of psychologists. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service approved by the National Association of Credential Evaluation Services, to determine equivalency to the accreditation requirements of §3508(a)(1) and equivalency of psychological content and training. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service

1. This rule shall take effect upon implementation of the computer-based EPPP by ASPPB. The expected implementation date is April 2001.

Providers in Psychology, as follows:

**See 2 DE Reg. 776 (11/1/98)**

**See 4 DE Reg. 980 (12/1/00)**

6.1.1.1 Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

6.1.1.2 Or, all of the following criteria, (1) through (9):

6.1.1.2.1 Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

6.1.1.2.2 The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

6.1.1.2.3 The psychology program must stand as a recognizable, coherent organizational entity within the institution.

6.1.1.2.4 There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

6.1.1.2.5 The program must be an integrated, organized sequence of study.

6.1.1.2.6 There must be an identifiable psychology faculty and a psychologist responsible for the program.

6.1.1.2.7 The program must include a body of students who are matriculated in that program for a degree.

6.1.1.2.8 The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

6.1.1.2.9 The curriculum shall encompass a minimum of three (3) academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards research design and methodology, statistics, and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (5 or more graduate quarter hours) in each of these 4 substantive content areas:

6.1.1.2.9.1 Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

6.1.1.2.9.2 Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

6.1.1.2.9.3 Social bases of behavior: Social psychology, group processes, organizational and systems theory.

6.1.1.2.9.4 Individual differences:

Personality theory, human development, abnormal psychology.

6.1.1.3 In addition, all professional education programs in psychology will include course requirements in specialty areas.

6.2 Have had, after receiving the doctoral degree, at least 2 years of supervised experience in psychological work satisfactory to the Board; and

6.3 Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor; or

6.4 The Board will qualify for licensing without examination any person who applies for licensure and who is a Diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

**See 2 DE Reg. 776 (11/1/98)**

## 7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

7.2 Postdoctoral supervision is required for initial licensure as a psychologist. Postdoctoral experience must consist of 3,000 hours of actual work experience. This experience is to be completed in not less than two years 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 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.

7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.

7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

**See 2 DE Reg. 776 (11/1/98)**

## 8.0 Failure to Pass Examination

Applicants may take the Examination for the Professional Practice in Psychology as many times as they choose. Intervals between testing will be determined by the testing agency and the ASPPB.

## 9.0 Psychological Assistants

9.1 A psychological assistant is an individual who meets the requirements of 24 **Del.C.** Section 3509(2a-2e). This individual may be registered as a psychological assistant in order to receive supervision to be eligible for later licensure to practice independently as a psychologist and/or for any other reason as recognized by law.

9.2 Psychological assistants are supervised, directed, and evaluated by a Delaware licensed psychologist who assumes professional and legal responsibility for the services provided.

9.2.1 Any Delaware licensed psychologist who has had a least two (2) years of experience following the granting of licensure in this or in any other state may supervise a maximum of seven (7) psychological assistants.

9.2.2 It is the responsibility of the supervising psychologist in conjunction with the psychological assistant to diagnose and form treatment plans for patients seen by the psychological assistant and to file such plan in the patient/client's chart.

9.2.3 The patient/client must be informed that

services are being delivered by a psychological assistant and that the licensed psychologist is responsible for the treatment.

9.2.4 The patient/client shall sign a statement of informed consent attesting that he/she understands that the services are being delivered by a psychological assistant and that the licensed psychologist is ultimately responsible for his/her treatment. This document shall include the supervising psychologist's name and the telephone number where he/she can be reached. One copy shall be filed with the patient/client's record and another given to the patient.

9.3 The Delaware licensed psychologist is identified as the legally and ethically responsible party in all advertising, public announcements, and billings. In addition, billings and advertisements will clearly indicate that the service is being provided by a psychological assistant. All treatment and evaluation reports prepared by the psychological assistant must be signed by the psychologist and the psychological assistant.

9.4 The Delaware licensed psychologist who accepts the responsibility of using a psychological assistant shall develop and maintain a current, written job description delineating the range and type of duties, educational practicum and clinical experience to be assigned to the psychological assistant, limits of independent action, emergency procedures for contacting the supervising psychologist, and the amount and type of supervision to be provided. This job description must be signed by the psychologist and the psychological assistant and will be filed in the Division of Professional Regulation, along with an official copy of the psychological assistant's college transcript, and proof of a 450-hour clinical practicum supervised by a licensed psychologist or by a faculty member in a nationally accredited doctoral level clinical training program in the State of Delaware who is actively pursuing licensure. The psychological assistant will also provide a statement under oath as outlined in 24 **Del.C.** §3509(b1 - b3).

9.5 The Board will then review credentials, job description and supervisory arrangements, and if the arrangements are acceptable, will inform the psychologist in writing that the psychological assistant can begin work. No psychological assistant shall begin work until the Board has approved the application. Registration for psychological assistants expires biennially and continued performance of the duties of a psychological assistant requires proof of twenty (20) hours of continuing education and payment of the renewal fee.

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist

should be familiar with each patient/client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning. The Board will consider requests to substitute group supervision for some portion of the one-to-one, face-to-face supervision requirement. A supervising psychologist must petition the Board and show good cause for this substitution. If the supervising psychologist's request is granted, no more than five (5) psychological assistants may meet with the supervising psychologist at one time and there must be two (2) hours of group supervision in place of every one (1) hour of individual supervision. All psychological assistants must have at least one (1) hour of individual supervision per week. The Board reserves the right to withdraw their permission for the substitution at any time.

9.7 Psychological Assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she is expected to provide clear contingency plans for consultation for the psychological assistant. It is assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision and contingency coverage of the psychological assistant. Supervising psychologists will be expected to describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

9.8 Psychological assistants who work for agencies must be supervised by a psychologist employed by or under contract to the agency. Supervision must occur on site, and the agency must have clearly spelled out plans for providing consultation and backup when the supervising psychologist is not on site. A psychological assistant, who provides services that are under the direction of different psychologists, must be registered as a psychological

assistant by all of the psychologists who are directly supervising the clinical work.

9.9 When there is a complaint of incompetent, improper, or unethical behavior on the part of the psychological assistant, in addition to the disciplinary action against the psychological assistant, disciplinary action may be taken against the supervising psychologist for failing to provide adequate supervision of the psychological assistant. The Board reserves the right to suspend or revoke the Delaware licensed psychologist's privilege of hiring a psychological assistant when just cause has been established through a formal hearing. Violation of this regulation may constitute cause for suspending or revoking the future privilege of hiring a psychological assistant.

9.10 Patients/clients are always the responsibility of the supervising psychologist. Termination or transfer plans must be worked out with the approval of the supervising psychologist. A psychological assistant will be considered to be working for the supervising psychologist until the Board of Examiners is notified in writing of the change in arrangements. The letter terminating a psychological assistant arrangement must also specify when the supervising psychologist is terminating the arrangement because of concerns about the ethical or professional behavior of the psychological assistant.

**See 2 DE Reg. 776 (11/1/98)**

## **10.0 Continuing Education**

10.1 Psychologists must obtain 40 hours of continuing education every two years in order to be eligible for renewal of license. Psychologists will be notified in January that they may submit their documentation beginning March 1st. Continuing education credit must be submitted for the period of August 1st of the year of renewal to July 31st of the second year. Individuals licensed within the two year period will be notified by the Board of the prorated amount to submit.

10.2 Psychological assistants must obtain 20 hours of continuing education every two years for re-registration. Psychological assistants may submit their documentation beginning March 1st. The appropriate period for credits to be accrued is from August 1st of the year of renewal to July 31st of the second year. Psychological assistants registered within the two year period will be notified by the Board of the prorated amount to submit.

10.3 Psychologists or psychological assistants who have not submitted their material by July 31st will be allowed to reapply for licensure or registration until August 31st. In the situation where the appropriate amount of documentation has been submitted in a timely fashion and in good faith and with reasonable expectation of renewal, but has been found to be inadequate, the practitioner has 30 days from the notification of inadequacy to submit valid continuing education credit in the amount specified, or until

August 31st of that year, whichever is later.

**Hardship.** An applicant for license renewal or registered psychological assistant may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not complete the requisite continuing education pursuant to the terms of the extension.

**See 4 DE Reg. 983 (12/1/00)**

10.4 It is the responsibility of the psychologist or psychological assistant to file a record of his/her continuing education. Documentation of continuing education will consist of letters/certificates of attendance from the sponsoring entity.

10.5 The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

10.6.1 Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives. To document attendance and completion, a certificate of attendance is required. In these circumstances, hours will be accrued on the basis of clock hours involved in the training.

10.6.2 Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each credit hour of a course is equivalent to 5 CE hours.

10.6.3 Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credits. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a

letter from the academic institution stating that the course was taught.

10.6.4 Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

10.6.5 Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

10.6.5.1 Author of a book (maximum of 40 CE hours)

10.6.5.2 Author of a book chapter or journal article (maximum of 15 CE hours)

10.6.5.3 Editor of a book (maximum of 25 CE hours)

10.6.5.4 Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

10.6.5.5 Proof of the above (10.6.5.1 - 10.6.5.4) must include the submission of the work or documentation of authorship by copy of title pages.

10.6.6 Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

**See 2 DE Reg. 776 (11/1/98)**

10.7 The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

10.8 The following will not be considered for credit: service to organizations; attending business meetings of professional organizations; business management or office administration courses; group supervision; or case conferences.

**11.0 Professional Conduct**

Psychologists and psychological assistants may be disciplined for violations of provisions of 24 Del.C. §3514.

**12.0 Complaint Procedures**

12.1 Complaints against psychologists and psychological assistants will be investigated as provided by 29 Del.C. §8807 and all hearings shall be conducted in accordance with the Administrative Procedures Act, 29

**Del.C.** Chapter 101.

12.2 Complaints must be filed, in writing, with the Division of Professional Regulation.

### **13.0 License Renewal**

13.1 Renewal notices will be mailed to the current address on file in the Board's records in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. It shall be the responsibility of each psychologist and psychological assistant to advise the Board, in writing, of a change of name or address.

13.2 Continuing education requirements must be fulfilled as detailed in Section 10.0 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. The Board may, in its discretion, grant a license renewal under the terms of a continuing education hardship extension pursuant to rule 10.3 Should any psychologist fail to renew or obtain a hardship extension and continue to make representation as a licensed psychologist beyond July 31st, that individual is practicing without a license. Should any psychological assistant fail to renew or obtain a hardship extension and continue to make representation as a registered psychological assistant beyond July 31st, that individual is considered no longer to be registered, and his/her supervising psychologist is in violation of the law.

**See 4 DE Reg. 984 (12/1/00)**

### **14.0 Procedures for Licensure Applicable to Full Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware**

14.1 University faculty employed full time in a nationally accredited doctoral level clinical training program in the State of Delaware, as specified in 24 **Del.C.** §3519(e), who are not licensed, are subject to the following rules and regulations:

14.1.1 Notification. Such individuals must notify the Board of Examiners of Psychologists no later than 30 days after the commencement of employment, indicating employer, position and date employment began. At that time they will receive a copy of the statute and Rules and Regulations which detail the exemption under which they operate.

14.1.2 Professional Activities. These individuals may participate in activities defined by statute as the practice of psychology (including the supervision of matriculated graduate students) only within the context of a clinical training program. They may conduct any research and teaching activities related to the activities of such a program.

14.1.3 Education. Such individuals must have completed the doctoral degree at the time employment commences consistent with 24 **Del.C.** §3508(a).

14.1.4 Active Pursuit of Licensure. Such individuals are required to be in active pursuit of licensure

for a period not to exceed six (6) years. The six year time frame for the completion of licensure requirements commences with the initial date of employment. The six-year time frame for individuals employed as of June 12, 1995 commenced on that date.

14.1.5 Supervision. The supervised experience required for licensure of such individuals is described in Section 7.0 of the Rules and Regulations.

**See 2 DE Reg. 776 (11/1/98)**

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

15.1 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.

15.2 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.

15.3 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).

15.4 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.

15.5 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.

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

15.6.1 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.

15.6.2 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.

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

15.6.4 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.

15.6.5 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.

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

15.7 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.

15.8 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.

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

15.10 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.

15.11 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.

15.12 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.

## APPENDIX A

"Professional psychology" refers to psychology as a profession. The term is not intended in the more restrictive sense of applied or practice areas of psychology since the intent is for a generic designation system.

"Professional psychology" refers to psychology as a profession. The term is not intended in the more restrictive

sense of applied or practice areas of psychology since the intent is for a generic designation system.

6.1.1.2.1 refers to an institution with regional accreditation in the United States, an institution with provincial authorization in Canada, or in other countries, or an institution that is accredited by a body which was deemed by the ASPPB/National Register Joint Designation Committee to be performing a function equivalent to U.S. regional accrediting bodies.

In reference to "instruction in scientific and professional ethics and standards" rule 6.1.1.2.9, it is understood that a course of three or more graduate semester hours (five or more graduate quarter hours) or its equivalent is highly desirable; substantial instruction in these issues is required.

It is understood that rule 6.1.1.2.9 includes the requirement of a minimum of one year's residency at the educational institution granting the doctoral degree.

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**DIVISION OF PROFESSIONAL REGULATION**  
**BOARD OF SPEECH/LANGUAGE PATHOLOGISTS,**  
**AUDIOLOGISTS & HEARING AID DISPENSERS**

24 DE Admin. Code 3700

Statutory Authority: 24 Delaware Code,  
Section 3706(a)(1) (24 **Del.C.** 3706(a)(1))

**ORDER**

A Public Hearing was held to receive comments on April 11, 2001 at the regularly scheduled meeting of the Board Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers. During the meeting the Board considered changes to its rules and regulations that were published in the Register of Regulations, Vol. 4, Issue 9, March 1, 2001.

**SUMMARY OF THE EVIDENCE AND  
INFORMATION SUBMITTED**

There were no verbal comments. The written comments are summarized as follows:

Rita Mariani, Chairperson of the State Council for Persons with Disabilities (SCPD), submitted a letter dated March 29, 2001. SCPD believes the presence of the supervising professional during speech therapy in the schools is a good idea to maintain the quality of the services provided to students. It supports allowing exceptions for continuing education in extenuating circumstances, including disability, and endorses the anti-discrimination provision.

SCPD does have concerns about the standard language in the **Rule 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**. The

term "report" is not well-defined. The following language was suggested for §10.1 - "If a credible written report of illegal drug or alcohol abuse materially affecting performance of professional duties is received, the chairperson shall immediately notify the Director of Professional Regulation or designee of the report." Alternatively, the word "may" could be substituted for "shall" to give the Board some discretion if a report was not credible. SCPD believes Rule 10.4 uses overbroad language and cites examples. SCPD commented that drug dependency is not inherently wrong. A person with diabetes is dependent on insulin, for example. Finally, SCPD suggests the rules may be inconsistent with federal regulations (42 C.F.R. §§2.23, 2.31 and 2.32) to the extent that treatment records may be used in disciplinary proceedings.

2. Patricia L. Maichle, Chairperson of the Governor's Advisory Council for Exceptional Citizens (GACEC), submitted a letter dated April 6, 2001. The observations and recommendations of GACEC are similar to those presented by SCPD.

**FINDINGS OF FACT WITH RESPECT TO THE  
EVIDENCE AND INFORMATION**

1. The comprehensive rule changes are necessary to ensure that each rule implements or clarifies a specific section of the statute that became effective February 4, 2000.

2. **Rule 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professional** was not noticed for changes in this revision. The commentators correctly observed that it is a standardized rule for many of the Title 24 Boards.

3. The following clerical changes should be made for clarification:

Rule 1.1.1 - The words "after completion" and the first two commas are omitted.

Rule 1.1.3 - The word "inquires" should read "inquiries."

Rule 2.6.3 - The term "this section" in the next to last sentence is replaced with "24 Del. C. § 3710."

Rule 3.4.2 - The term "this section" in the next to last sentence is replaced with "24 Del. C. § 3710."

Rule 5.2.1 - The word "of" in the first sentence is replaced with the word "by."

The Board finds that these changes are not substantive.

**DECISION AND EFFECTIVE DATE**

The Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers hereby adopts the changes to the Rules and Regulations as provided herein to be effective 10 days following final publication in the Register of Regulations.

## TEXT AND CITATION

The text of the Rules and Regulations is as it appears in the Register of Regulations, Vol. 4, Issue 8, March 1, 2001, amended by the clerical changes.

**BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS, AND HEARING AID DISPENSERS**

Andrea Lipchak President  
Kenneth Jones, Secretary  
Gary Marencin  
Frank Divita  
Marilyn Karam  
Carmetah Murray  
Eric Smith

Date: April 11, 2001

**Board of Examiners of Speech/Language Pathologists, Audiologist & Hearing Aid Dispensers**  
**Statutory Authority: 24 Del. C. ~~3714(3)~~ 3706(a)(1)**

- 1.0 Division of Professional Regulation
- ~~1.0~~ 2.0 Licensure Requirements for Speech/Language Pathologists and Audiologists
- 2.0 3.0 Licensure Requirements for Hearing Aid Dispensers
- 4.0 Expired Licenses and Inactive Status
- 3.0 5.0 Requirements for Audiology Aids
- 4.0 6.0 Requirements for Speech Pathology Aids
- 7.0 Electronic Equipment
- 5.0 8.0 Continuing Education For All Licensees: Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers
- 6.0 ~~Code of Ethics for Speech/Language Pathologists and Audiologists~~
- 7.0 ~~Code of Ethics for Hearing Aid Dispensers~~
- 9.0 Code of Ethics for Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers
- 8.0 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Division of Professional Regulation**

**1.1 Responsibilities**

1.1.1 All applications and other forms may be obtained from and must be returned ~~after completion~~ to the Division of Professional Regulation, ATTN: SLP-AUD-HAD, at 861 Silver Lake Blvd., Ste. 203, Dover, DE 19904-2467 by mail or in person during regular business hours.

1.1.2 Fees required under the statute are to be made payable to the State of Delaware and remitted to the Division of Professional Regulation. No license shall be issued until all required fees are paid.

1.1.3 The Administrative Assistant assigned by the Division of Professional Regulation performs support functions for the Board and serves as the contact person for the Board to receive inquiries.

**~~1.0~~ 2.0 Licensure Requirements for Speech-Language Pathologists and Audiologists**

~~1.1~~ 2.1 Education

~~1.1.1~~ 2.1.1 To be eligible for a license as a Speech/Language Pathologist or Audiologist, the applicant must submit verification by an official transcript of completion of at least a master's degree or its equivalent ~~from an educational institution recognized by the Board, from an accredited college or university~~ with major emphasis in speech-language pathology, audiology, communication disorders or speech-language and hearing science.

~~1.2~~ 2.2 Clinical Practicum

~~1.2.1~~ 2.2.1 The Speech/Language Pathology and Audiology applicant must have completed a minimum of 375 clock hours of supervised clinical practicum with major emphasis in the professional area for which the license is being sought.

~~1.2.2~~ 2.2.2 A minimum of 250 clock hours in the area of specialty of the supervised clinical practicum must have been obtained at the graduate level.

~~1.3~~ 2.3 Clinical Fellowship Year (CFY)

~~1.3.1~~ 2.3.1 The Speech/Language Pathology or Audiology applicant must have the equivalent of nine (9) months of full-time or eighteen (18) months of part time (defined as 15-20 hours per week) supervised \* CFY in the major professional area in which the license is being sought. The CFY must start after completion of the academic and clinical practicum requirements.

\* Supervision is defined as direct observation consisting of 36 supervisory activities, including 18 one hour on-site observations and 18 other monitoring activities. (From Appendix E of Clinical Fellowship Year adopted ASHA 1985)

~~1.3.2~~ A temporary license valid for only 1 year from the date of issuance and non-renewable must be obtained for fulfillment of the supervised CFY in Delaware. An applicant for a temporary license must demonstrate that he is or will be supervised by a person who holds a license in the appropriate discipline. (See Section 6)

~~1.4~~ 2.4 National Examination

~~1.4.1~~ 2.4.1 The Speech/Language Pathology and Audiology applicant must have completed and passed the appropriate national examination approved by the Division of Professional Regulation for the area of specialty and license with at least the minimum nationally recommended score. Scores must be sent directly from the testing service to the Division of Professional Regulation.

~~1.4.2~~ 2.4.2 A Speech/Language Pathology or Audiology applicant with a temporary license is permitted to

complete the appropriate national examination during the period of the temporary license. ~~The requirements in Section 4.1 must be completed prior to expiration of the temporary license which is non-renewable.~~

2.4.3 Anyone who fails two examinations may not be reexamined for a period of one year following the second failure. Prior to reexamination after a second failure, an applicant must submit proof of additional course work and/or clinical experience.

**1.5 Reciprocity**

~~1.5.1 A license will be granted to an applicant who provides proof of a current license from those states with equivalent standards for licensure. The applicant must provide verification statement(s) or letter(s) of good standing (active or inactive) from each state in which a license has been issued.~~

~~1.5.2 A license will be granted to an applicant who holds the current Certificate of Clinical Competence from the American Speech Language Hearing Association.~~

**1.6 2.5 Application Process-Temporary Licensure**

~~1.6.1 2.5.1 An applicant must complete an a notarized application for temporary licensure. Items which must be provided to the Board office Division of Professional Regulation include:~~

~~1.6.1.1 2.5.1.1 Official Transcript(s);~~

~~1.6.1.2 2.5.1.2 Documents verifying the appropriate number and level of supervised clinical practicum hours;~~

~~1.6.1.3 2.5.1.3 CFY plan on a form approved by the Board or letter of intent, signed by the licensed professional who will provide the supervision;~~

~~1.6.1.4 2.5.1.4 payment of appropriate fees.~~

~~1.6.2 2.5.2 A temporary license is valid for one year from the date of issuance and is not renewable may be renewed for one year in extenuating circumstances upon application to the Board. Requests for Board consideration of a renewal shall be made in writing and sent to the Division of Professional Regulation 60 days prior to expiration.~~

**1.7 2.6 Application Process -Permanent Licensure**

~~1.7.1 2.6.1 All Speech/Language Pathology and Audiology applicants must complete the application on a form approved by the Board and submit the appropriate fee.~~

~~1.7.2 2.6.2 An applicant who has ASHA Certification must comply with Section 1.7.1 2.6.1 and submit a copy of current ASHA certification. to facilitate the issuance of a license(See Section 5)~~

~~1.7.3 2.6.3 An applicant who is currently licensed in another state , the District of Columbia, or territory of the United States whose standards for licensure are substantially similar to those of this state which has equivalent standards for licensure, must comply with Section 1.7.1 2.6.1 and submit verification of licensure in good standing from all jurisdictions where he or she is or has been licensed. proof of the current license (copy of license). Verification of the~~

~~license and a statement of good standing with active or inactive status should be sent to the Board office. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in this [section: 24 Del.C. 3710] Verification of practice should be by notarized letter from the employer(s).~~

~~1.7.4 2.6.4 An applicant who has completed the supervised CFY in Delaware and has a current temporary license, must submit the following documentation to the Board office Division of Professional Regulation 30 days prior to expiration of the temporary license:~~

~~1.7.4.1 2.6.4.1 proof of completion of the CFY,~~

~~1.7.4.2 completion of the appropriate national examination (if taken during CFY period) with scores sent directly to the Board office, and~~

~~1.7.4.3 any required items not received with the earlier application for the temporary license.~~

~~2.6.4.2 national examination score unless previously provided.~~

~~2.6.4.3 licensure fee.~~

~~1.7.5 An applicant not included in 7.2, 7.3 and 7.4 above, must provide items to the Board office as required in the application including:~~

~~1.7.5.1 official transcript(s),~~

~~1.7.5.2 documents verifying the appropriate number and level of supervised clinical practicum~~

~~1.7.5.3 National examination scores (sent directly to the Board office);~~

~~1.7.5.4 verification of completion of the required supervised CFY signed by a licensed professional and notarized, and~~

~~1.7.5.3 verification of all current and expired licenses held in any state with a statement of good standing (active or inactive status).~~

**2.0 3.0 Licensure Requirements for Hearing Aid Dispensers**

**2.1 3.1 Education**

~~2.1.1 3.1.1 To be eligible for a license as a Hearing Aid Dispenser, the applicant must submit verification of high school diploma or its equivalent.~~

**2.2 Clinical Practicum**

~~2.2.1 The Hearing Aid Dispensing applicant is not required to complete a practicum.~~

**2.3 Supervised Professional Employment**

~~2.3.1 A Hearing Aid Dispensing applicant applying for a temporary license must be supervised \*by a Hearing Aid Dispenser licensed in Delaware.~~

~~\*Supervision is defined as a minimum of 25% direct on-site observations during the temporary licensure period.~~

**2.4 3.2 National Examination**

~~2.4.1~~ 3.2.1 Hearing Aid Dispensing applicants must have completed and passed the ~~appropriate~~ national examination ~~for the license~~ approved by the Division of Professional Regulation, in accordance with scores as recommended by the national testing service, National Institute for Hearing Instruments Studies (NIHIS), or its successor. ~~or one selected by the Board to be equivalent.~~

3.2.2 Anyone who fails two examinations may not be reexamined for a period of one year following the second failure. Prior to reexamination after a second failure, an applicant must submit proof of course work and/or supervised experience.

### 2.5 3.3 Application Process - Temporary Licensure

~~2.5.1~~ 3.3.1 An applicant must complete the application for temporary licensure. Items which must be provided to the Division of Professional Regulation Board office include:

~~2.5.1.1~~ 3.3.1.1 verification of a high school diploma or its equivalent,

~~2.5.1.2~~ 3.3.1.2 payment of appropriate fees, and

~~2.5.1.3~~ 3.3.1.3 three letters of recommendation, and

~~2.5.1.4~~ 3.3.1.3 notarized signature of a Delaware licensed sponsor stating a willingness to provide direct supervision and training. Direct supervision is defined as a minimum of 25% direct on-site observations during the temporary licensure period.

~~2.5.2~~ 3.3.2 A temporary license is valid for one year from date of issuance ~~and is not renewable. A temporary license cannot be renewed for any reason. and may be renewed for one year in extenuating circumstances upon application to the Board. Requests for Board consideration of a renewal shall be made in writing and sent to the Division of Professional Regulation 60 days prior to expiration.~~

~~2.5.3~~ Examination(s) for licensure as a Hearing Aid Dispenser are made available by the Board at least twice yearly. Successful completion of the national examination (See 4.1 above) is required to become permanently licensed and must be completed before the expiration of the temporary license.

### 2.6 3.4 Application Process-Permanent Licensure

~~2.6.1~~ 3.4.1 All Hearing Aid Dispensing applicants must complete an application on a form approved by the Board and submit it with ~~three letters of recommendation~~ and the appropriate fee to the Division of Professional Regulation, the Board office.

2.6.2 Any Hearing Aid Dispensing applicant who has been licensed in any state must provide verification of all current and expired licenses held in any state with a statement of good standing (active or inactive status).

~~2.6.3~~ 3.4.2 A Hearing Aid Dispensing applicant who is currently licensed in another state ~~which has equivalent standards for licensure~~, the District of Columbia, or territory of the United States, whose standards for

licensure are substantially similar to those of this state, must comply with ~~6.1~~ 3.4.1 and submit verification of licensure in good standing from all jurisdictions where he or she is or has been licensed. ~~proof of the current license (copy of license)-~~ Verification of the license and a statement of good standing with active or inactive status should be sent to the Board office. Applicants for reciprocal licensure from states not substantially similar to this state shall provide proof of practice for a minimum of five years after licensure in addition to meeting the other qualifications in this [section- **24 Del.C. 3710]** Verification of practice should be by notarized letter from the employer(s).

~~2.6.4~~ 3.4.3 It is the responsibility of the Hearing Aid Dispensing applicant to contact the Board office 30 days prior to expiration of the temporary license to insure that all requirements for permanent licensure have been completed. This may include: Licenses holding temporary Hearing Aid Dispensing licenses must submit a passing score on the national examination described in 3.2.1 and the required fee to the Division of Professional Regulation to obtain a permanent license.

~~2.6.4.1~~ completion of appropriate National exam

~~2.6.4.2~~ any required item not received

~~2.6.5~~ Any Hearing Aid Dispensing applicant not included in 2.6.3 or 2.6.4 must follow the directions in Section 5 above, completing an application for temporary licensure and submitting it with

~~2.6.5.1~~ verification of high school diploma or its equivalent,

~~2.6.5.2~~ national exam score,

~~2.6.5.3~~ three letters of recommendation,

~~2.6.5.4~~ payment of the appropriate fees, and

~~2.6.5.5~~ notarized signature of a Delaware licensed sponsor who is willing to provide supervised professional employment with training and direct supervision (minimum of 25% on site).

## **4.0 Expired Licenses and Inactive Status**

### 4.1 Expired Licenses

4.1.1 A holder of an expired license may renew the license within one year of the date the renewal was due by fulfilling all of the renewal requirements and paying the late fee established by the Division of Professional Regulation.

### 4.2 Inactive Status

4.2.1 A licensee may apply to the Board for inactive status for up to five years. The license may be reactivated upon application on a form approved by the Board and proof of 20 CE's completed within the preceding 24 months (30 CE's for a triple license) as required by Section 8.2.3, and paying the fee established by the Division of Professional Regulation.

## **3-0 5.0 Requirements for Audiology Aides**

### 3-1 Education and Supervised Employment

~~3.1.1 An Audiology Aide must have a minimum of a high school diploma or its equivalent. An Audiology Aide assists a licensed audiologist in professional endeavors with the audiologist's direct supervision.~~

~~3.2~~ 5.1 Certification

~~3.2.1~~ 5.1.1 Certification of the Audiology Aide must be by the Council of Accreditation of Occupational Hearing Conservationists, or its equivalent, with documentation. The Audiology Aide must be registered with the Board annually by the supervising, Delaware licensed audiologist. The supervising Delaware-licensed audiologist must annually register each Audiology Aide using a form approved by the Board.

5.2 Direct Supervision

5.2.1 An Audiology Aide assists a licensed audiologist in professional activities with direct supervision [of by] the audiologist. Direct supervision requires the presence of the supervising audiologist on the premises when the aide is performing professional activities.

~~3.3~~ 5.3 Duties of the Audiology Aide

~~3.3.1~~ 5.3.1 Duties of the Audiology Aide must be specified by the supervising audiologist and may include the following:

- ~~3.3.1.1~~ 5.3.1.1 Accurate Air conduction pure tone assessment and data recording.
- ~~3.3.1.2~~ 5.3.1.2 Hearing screenings.
- ~~3.3.1.3~~ 5.3.1.3 Assisting with conditioning techniques.
- ~~3.3.1.4~~ 5.3.1.4 Cursory otoscopy.
- ~~3.3.1.5~~ 5.3.1.5 Basic hearing aid maintenance.
- ~~3.3.1.6~~ 5.3.1.6 Routine instrument sterilization.
- ~~3.3.1.7~~ 5.3.1.7 Biological ~~and electroacoustic assessment of the audiometer check.~~
- ~~3.3.1.8~~ 5.3.1.8 Assist with ~~electroacoustic assessment of the audiometer.~~
- ~~3.3.1.9~~ 5.3.1.8 Clerical support.
- ~~3.3.1.10~~ 5.3.1.9 Participation with the professional in research projects, in service training, or similar endeavors.
- ~~3.3.1.11~~ 5.3.1.10 Other duties as may be appropriately determined with training from and direct supervision of the Delaware licensed audiologist.

**4.0 6.0 Requirements for Speech/Language Pathology Aides**

~~4.1~~ 6.1 Education and Supervised Employment:

~~4.1.1~~ 6.1.1 A Speech Pathology Aide must have a minimum of a high school diploma or its equivalent. A Speech Pathology Aide assists a licensed speech/language pathologist in professional activities with direct supervision by the speech/language pathologist.

~~4.1.2~~ The definition of direct supervision for Speech/Language Pathology Aides shall be: "in any situation where an aide is assisting with testing, and/or treatment,

direct supervision shall constitute presence of the speech pathologist with the aide and the client at all times."

6.2 Direct Supervision

6.2.1 A Speech Pathology Aide assists a licensed Speech/Language Pathologist in professional activities with direct supervision of the Speech Pathologist. Direct supervision requires the presence of the supervising Speech/Language Pathologist at all times where an aide is assisting with testing, and/or treatment.

6.3 Duties of the Speech/Language Pathology Aide

6.3.1 Duties of the Speech Pathology Aide must be specified by the supervising Speech/Language Pathologist and may include the following:

- 6.3.1.1 Assisting with testing or treatment.
- 6.3.1.2 Clerical support.
- 6.3.1.3 Client escort.
- 6.3.1.4 Preparation of therapeutic materials
- 6.3.1.5 Equipment maintenance.
- 6.3.1.6 Participation with the professional in research projects, in service training, or similar endeavors.
- 6.3.1.7 Other duties as may be appropriately determined with training from and direct supervision of the Delaware licensed Speech/Language Pathologist.

**7.0 Electronic equipment**

7.1 Standards

7.1.1 Calibration of electronic equipment used to assess hearing shall be performed by a certified professional consistent with the standards set by the American National Standards Institute (ANSI).

7.1.2 Every licensed Audiologist and Hearing Aid Dispenser shall annually submit proof of calibration to the Board. Any Audiologist who does not have such equipment may file an affidavit so stating on a form approved by the Board.

**5.0 8.0 Continuing Education For All Licensees: Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers**

~~5.1~~ 8.1 Philosophy

~~5.1.1~~ 8.1.1 Continuing education is required by the Delaware Board of Examiners to maintain professional licensure in the fields of Speech/Language Pathology, Audiology and Hearing Aid Dispensing. Continuing education requirements arise from an awareness that these fields are in a continual state of transition due to the introduction of new philosophies and the refinement of already existing knowledge. Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers should continually strive to update their clinical skills in an effort to deliver high quality services.

~~5.1.2~~ 8.1.2 The Delaware Board of Examiners is keenly aware of existing educational opportunities in Delaware and neighboring states and has established

regulations which will provide continuing education credit as effortlessly as possible while assuring quality instruction. Credit will be given for participation in a variety of activities which increase knowledge and enhance professional growth.

~~5.1.3~~ 8.1.3 These regulations recognize the financial and time limitations of Delaware's professionals while assuring continued appropriate services to those individuals who require them.

~~5.2~~ 8.2 Continuing Education Hours and Definitions

~~5.2.1~~ 8.2.1 One contact hour is abbreviated as CE and is defined as 60 minutes of attendance/participation in an approved continuing education activity unless otherwise stated. (Therefore, credits and CEU's issued by various organizations must be translated. e.g., 1.0 ASHA CEU = 10 CE's)

~~5.2.2~~ 8.2.2 Continuing Education Time Frame: CE requirements must be completed by April 30th of each license renewal period. Each licensee has up to 24 months in which to complete the minimum continuing education requirements, that is from May 1 (of the current renewal year) to April 30 of the next renewal year. Licenses ~~are renewed in the odd numbered years. expire on July 31 of the odd-numbered years.~~

~~5.2.3~~ 8.2.3 The required number of continuing education contact hours vary with certification and/or professional status as outlined below:

~~5.2.3.1~~ 8.2.3.1 New License: If a license would cover less than one year, the licensee is not required, but is encouraged, to accrue continuing education hours. If a license would cover more than one year, but less than 2 years, the licensee is required to obtain 10 CE's or one-half of the required total hours.

~~5.2.3.2~~ 8.2.3.2 Single License: Individuals retaining a license in one area of specialty must obtain a minimum total of 20 CE's for each two-year license period.

~~5.2.3.3~~ 8.2.3.3 Dual License: Individuals retaining licenses in two areas of specialty must obtain a minimum total of 20 CE's for each two year license period, with 10 CE's obtained in each area of licensure. One course may be split between areas of licensure to fulfill multiple continuing education requirements. Content must be shown to be relevant to those areas.

~~5.2.3.4~~ 8.2.3.4 Triple License: Individuals retaining licenses in three areas of specialty must obtain a minimum of 30 CE's for each two-year license period, with 10 CE's obtained in each area of licensure. One course may be split between areas of licensing to fulfill multiple continuing education requirements. Content must be shown to be relevant to those areas.

~~5.2.3.5~~ 8.2.3.5 Temporary License: All continuing education requirements will be waived for temporary licensees; however, individuals are encouraged to participate in continuing education activities during the ~~maximum one year period. their CFY period.~~

~~5.2.3.6~~ 8.2.3.6 Extenuating Circumstances:

The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation. Extenuating circumstances may include, but are not limited to, disability, illness, extended absence from the jurisdiction, and exceptional family responsibilities.

~~5.3~~ 8.3 Suggested Activities for Obtaining CE's

~~5.3.1~~ 8.3.1 Continuing education courses shall focus on professional growth and the enhancement of clinical skills and be recorded on the appropriate Board form(s). Verification is required and allows the licensee to show the relevance of continuing education to professional practice.

~~5.3.2~~ 8.3.2 All continuing education activities approved and sponsored by the American Speech, Language and Hearing Association or other accredited related professional associations, including study of professional journals which grant ASHA CEU's. Verification is required--photocopy acceptable.

~~5.3.3~~ 8.3.3 All scientific and clinical sessions and short courses of the American Speech, Language and Hearing Association National Conventions or other accredited related professional associations. Verification required--photocopy of short course completion acceptable. Agenda of sessions attended and time spent is required for convention activities.

~~5.3.4~~ 8.3.4 All Delaware Speech, Language and Hearing Association (DSHA) sponsored activities, including professional meetings. Verification of completion required.

~~5.3.5~~ 8.3.5 Delaware Department of Education course offerings in areas related to the professions. (1/5 Delaware Department of Education (DDE) credit = 3 hours= 3 CE's) Verification required.

~~5.3.6~~ 8.3.6 Professional study group and journal group meetings recognized and monitored by the Delaware Speech, Language and Hearing Association. Verification required including summary/agenda and time spent.

~~5.3.7~~ 8.3.7 Professional course work for academic credit in Speech/Language Pathology, Audiology or Hearing Aid Dispensing. ~~Verification of credits earned required. Undergraduate and graduate level courses should be submitted, using appropriate forms, for prior approval 45 days before the activity with course description, brochure, and class schedule/ hours so that the licensee will know in advance the number of CE's to be approved by the Board. Verification of credits earned upon course completion along with a course description should be submitted to the Board for approval. The course description may be submitted for prior approval of the course. (1 undergraduate credit = minimum of 3 CE's ; 1 graduate credit = minimum of 5 CE's)~~

~~5.3.8~~ 8.3.8 Professional presentations by licensee

on professional required topics. Verification, including summary, time spent and verification from sponsor. Credit is given for each presentation only once during a licensure period. (1 hour of presentation = 3 CE's)

5.3.9 8.3.9 Professional publication by licensee within ASHA or related specialty journals. Verification required. Reprint of publication.

5.3.10 8.3.10 Other continuing education with documentation of content and hours attended. A licensee who wishes to be sure that an activity will be approved by the Board may ~~contact the Board office for information and assistance.~~ request advance approval from the Board (See Rule 4.1.3)

5.4 8.4 Continuing Education Checklist of Responsibilities

5.4.1 8.4.1 All licensees shall:

5.4.1.1 8.4.1.1 obtain a Continuing Education Record form

5.4.1.2 8.4.1.2 document completed continuing education activities on Continuing Education Record

5.4.1.3 8.4.1.3 obtain Advance a Board Approval form and submit 45 days before the Board meeting preceding the start of a proposed activity for which prior approval is required by the Board or preferred by the licensee if a licensee seeks advance approval and determination of CE's.

5.4.1.4 8.4.1.4 ~~submit Non-Prior Approved forms within 30 days of completion of activities, as recommended by the Board, to facilitate accumulation of CE's by licensees.~~ obtain a Board Approval form and submit after completion of the CE activity for approval and determination of CE's.

5.4.1.5 8.4.1.5 mail Continuing Education Record to the ~~Board office~~ the Division of Professional Regulation by April 30 May 1 of the renewal year.

5.4.1.6 8.4.1.6 retain photocopy of Continuing Education Record for personal records.

5.4.2 All continuing education sponsors shall:

5.4.2.1 ~~complete a Sponsor Request for Activity Approval Form and submit it 45 days before the start of the proposed activity.~~

5.4.2.2 ~~upon approval, be able to advertise the activities as Delaware Licensure Board Approved for continuing education with the specific number of CE's noted.~~

5.4.2.3 ~~at the conclusion of the activity, verify each attendee's participation by signing attendee's Continuing Education Record and/or providing and signing an individual certificate of attendance showing date and title of activity, number of CE's and name of attendee.~~

5.4.2.4 ~~submit attendance roster with copy of Board Approval form to the Board.~~

5.5 Board Continuing Education Coordination

~~Any Board member may be designated to process continuing education requests between scheduled meetings and may~~

~~5.5.1 review, approve or disapprove Sponsor Requests.~~

~~5.5.2 review, approve or disapprove Non-Prior and Prior Approval Requests from licensees.~~

~~5.6 Licensure Board Administrative Assistant~~

~~5.6.1 Receives and prepares for Board meeting and forwards to designated Board member(s), all Sponsor Requests, Prior and Non-Prior Approval forms.~~

~~5.6.2 Receives decision regarding request and notifies person filing request.~~

~~5.6.3 Maintains file of course activities approved for CE's during the current 24 months licensure period.~~

~~5.6.4 Receives Continuing Education Records from licensees. Checks for completeness and approved documentation when appropriate. Audits each licensee's CE's annually and notifies Board of those in jeopardy of not completing requirements.~~

~~5.6.5 Maintains files holding original applications and relevant documentation for the Board.~~

~~5.6.6 Receives Non-Prior Approved Activity forms and forwards to Board member(s) for approval/disapproval.~~

## 6.0 Code of ethics for Speech Language Pathologists and Audiologists

6.1 Preamble

6.1.1 The Preservation of the highest standards of integrity and ethical principles is vital to the responsible discharge of obligations in the professions of speech-language pathology and audiology. This Code of Ethics sets forth the fundamental principles and rules considered essential to this purpose.

6.1.2 Any action that violates the spirit and purpose of this Code shall be considered unethical. Failure to specify any particular responsibility or practice in this Code of Ethics shall not be construed as denial of the existence of such responsibilities or practices.

6.1.3 The fundamentals of ethical conduct are described by Principles of Ethics and by Rules of Ethics as they relate to responsibility to persons served, to the public, and to the professions of speech-language pathology and audiology.

6.1.4 Principles of Ethics, aspirational and inspirational in nature, form the underlying moral basis for the Code of Ethics. Individuals shall observe these principles as professional activity.

6.1.5 Rules of Ethics are specific statements of minimally acceptable professional conduct or of prohibitions and are applicable to all individuals.

6.2 Principle of Ethics I

6.2.1 Individuals shall honor their responsibility to hold paramount the welfare of persons they serve

professionally.

#### 6.2.2 Rules of Ethics

6.2.2.1 Individuals shall provide all services competently.

6.2.2.2 Individuals shall use every resource, including referral when appropriate, to ensure that high-quality service is provided.

6.2.2.3 Individuals shall not discriminate in the delivery of professional services on the basis of race, sex, age, religion, national origin, sexual orientation, or handicapping condition.

6.2.2.4 Individuals shall fully inform the persons they serve of the nature and possible effects of services rendered and products dispensed.

6.2.2.5 Individuals shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefit can reasonably be expected.

6.2.2.6 Individuals shall not guarantee the results of any treatment or procedure, directly or by implication; however, they may make a reasonable statement of prognosis.

6.2.2.7 Individuals shall not evaluate or treat speech, language, or hearing disorders solely by correspondence.

6.2.2.8 Individuals shall maintain adequate records of professional services rendered and products dispensed and shall allow access to these records when appropriately authorized.

6.2.2.9 Individuals shall not reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

6.2.2.10 Individuals shall not charge for services not rendered, nor shall they misrepresent in any fashion, services rendered or products dispensed.

6.2.2.11 Individuals shall use persons in research or as subjects of teaching demonstrations only with their informed consent.

6.2.2.12 Individuals shall withdraw from professional practice when substance abuse or any emotional or mental disability may adversely affect the quality of services they render.

For purposes of this Code of Ethics, misrepresentation includes any untrue statements or statements that are likely to mislead. It also includes the failure to state any information that is material and that ought, in fairness, to be considered.

#### 6.3 Principle of Ethics II

6.3.1 Individuals shall honor their responsibility to achieve and maintain the highest level of professional competence.

#### 6.3.2 Rules of Ethics

6.3.2.1. Individuals shall engage in the provision of clinical services only when they hold the appropriate Certificate of Clinical Competence or when they are in the certification process and are supervised by an individual who holds the appropriate Certificate of Clinical Competence.

6.3.2.2. Individuals shall engage in only those aspects of the professions that are within the scope of their competence, considering their level of education, training, and experience.

6.3.2.3. Individuals shall continue their professional development throughout their careers.

6.3.2.4. Individuals shall delegate the provision of clinical services only to persons who are certified or to persons in the education or certification process who are appropriately supervised. The provision of support services may be delegated to persons who are neither certified nor in the certification process only when a certificate holder provides appropriate supervision.

6.3.2.5. Individuals shall prohibit any of their professional staff from providing services that exceed the staff member's competence, considering the staff member's level of education, training, and experience.

6.3.2.6. Individuals shall ensure that all equipment used in the provision of services is in proper working order and is properly calibrated.

#### 6.4 Principle of Ethics III

6.4.1 Individuals shall honor their responsibility to the public by promoting public understanding of the professions, by supporting the development of services designed to fulfill the unmet needs of the public, and by providing accurate information in all communications involving any aspect of the professions.

#### 6.4.2 Rules of Ethics

6.4.2.1. Individuals shall not misrepresent their credentials, competence, education, training, or experience.

6.4.2.2. Individuals shall not participate in professional activities that constitute a conflict of interest.

6.4.2.3. Individuals shall not misrepresent diagnostic information, services rendered, or products dispensed or engage in any scheme or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

6.4.2.4. Individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, about the professions, and about professional services.

6.4.2.5. Individuals' statements to the public (advertising, announcing, and marketing professional services, reporting research results, and promoting products) shall adhere to prevailing professional standards and shall not contain misrepresentations.

#### 6.5 Principle of Ethics IV

6.5.1 Individuals shall honor their responsibilities

to the professions and their relationships with colleagues, students and members of allied profession. Individuals shall uphold the dignity and autonomy of the professions, maintain harmonious interprofessional and intraprofessional relationships, and accept the professions' self-imposed standards.

#### 6.5.2 Rules of Ethics

6.5.2.1. Individuals shall prohibit anyone under their supervision from engaging in any practice that violates the Code of Ethics.

6.5.2.2. Individuals shall not engage in dishonesty, fraud, deceit, misrepresentation, or any form of conduct that adversely reflects on the professions or on the individual's fitness to serve persons professionally.

6.5.2.3. Individuals shall assign credit only to those who have contributed to publication, presentation, or product. Credit shall be assigned in proportion to the contribution and only with the contributor's consent.

6.5.2.4. Individuals' statements to colleagues about professional services, research results, and products shall adhere to prevailing professional standards and shall contain no misrepresentations.

6.5.2.5. Individuals shall not provide professional services without exercising independent professional judgment, regardless of referral source or prescription.

6.5.2.6. Individuals who have reason to believe that the Code of Ethics has been violated shall inform the Ethical Practice Board.

6.5.2.7. Individuals shall cooperate fully with the Ethical Practice Board in its investigation and adjudication of matters related to this Code of Ethics.

6.5.2.8. Individuals shall not discriminate in their relationships with colleagues, students and members of allied professions on the basis of race, sex, age, religion, national origin, sexual orientation, or handicapping condition.

### **7.0 Code of Ethics for Hearing Aid Dispensers**

#### **7.1 Code of Ethics**

7.1.1 This is a Code of Ethics for those engaged in the testing of human hearing, and in the selection, counseling, fitting, dispensing and servicing of hearing instruments. This Code sets standards of professional integrity and practice, including relationships with patients/clients, colleagues and the general public.

7.1.2 Ethical principles are standards by which the profession and individual Hearing Aid Dispensers determine the propriety of their conduct. Adherence to these standards serve to assure public confidence in the integrity of the services of Hearing Aid Dispensers in this profession. It is incumbent on all Hearing Aid Dispensers to abide by all laws, or rules and regulations applicable to the dispensing of hearing aids in Delaware.

#### 7.1.3 Rules of Ethics

7.1.3.1 Individuals shall state only the true facts in public announcements and advertising of hearing aids and related products, and shall not, in any way, mislead or misrepresent in regard to their performance, appearance, benefits, elements, and use.

7.1.3.2 Individuals shall provide thorough and ethical consulting services when dispensing instruments, including the appropriate testing and fitting suitable for the patient/client's particular type of hearing loss.

7.1.3.3 Individuals shall, at all times, provide the best possible service to the hearing toward their deriving the maximum benefit from their hearing instruments.

7.1.3.4 Individuals shall constantly encourage and support research, cooperating with medical and other hearing health professionals and societies to employ the maximum accumulation of scientific knowledge and technical skills in the testing of human hearing for the selection, fitting and maintenance of hearing instruments.

#### 7.2 Conduct and Relationship with Patient/Client

7.2.1 Hearing Aid Dispensers engaged in the practice of the testing of human hearing, and in the selection, counseling, fitting, dispensing and servicing of hearing instruments, shall hold paramount the welfare of the patient/client.

#### 7.3 Continuing Education

7.3.1 Hearing Aid Dispensers shall engage and participate in continuing education during each year of active practice in the best interest of the patient/client and professional development.

#### 7.4 Referral

7.4.1 Hearing Aid Dispensers shall utilize all resources available, including referral to other specialists as needed.

#### 7.5 Services Rendered

7.5.1 Hearing Aid Dispensers shall accept and seek full responsibility for the exercise of judgment within their area of expertise. These services include the testing of human hearing, and the selection, counseling, fitting, dispensing and servicing of hearing instruments.

7.5.2 Hearing Aid Dispensers shall not guarantee outstanding results from the use of hearing instruments, products, services or counseling when such is not the case. They shall exercise caution not to mislead persons to expect results that cannot be predicted.

#### 7.6 Confidential Aspects of Patient/Client Relations

7.6.1 Hearing Aid Dispensers shall hold in professional confidence all information and professional records concerning a patient/client and use such data only for the benefit of the patient/client or as the law demands.

#### 7.7 Conduct in Regard to Colleagues and Hearing Health Care Professions

7.7.1 Hearing Aid Dispensers shall keep the welfare of the patient/client uppermost at all times. They shall avoid personal invective directed toward professional colleagues

or members of hearing health care professions. They shall conduct themselves at all times in a manner which will enhance the status of the profession. They shall be supportive to individuals and organizations with whom they are associated to their mutual benefit. They shall not agree to practice under terms or conditions which tend to interfere with or impair the proper exercise of their professional judgment and skill, which tend to cause a deterioration in the quality of service, or which require consent to unethical conduct.

#### 7.8 Maintenance of Records

7.8.1 Hearing Aid Dispensers shall initiate and maintain records of service provided to patients/clients. All laws, or rules and regulations pertaining to keeping of records shall be carefully observed.

#### 7.9 Fees and Compensation

7.9.1 Hearing Aid Dispensers shall not participate with other health professionals or any other person in agreements to divide fees or to cause financial or other exploitation when rendering professional services.

#### 7.10 Delay in Providing Services

7.10.1 Hearing Aid Dispensers shall not delay furnishing care to patients/clients served professionally, without just cause.

#### 7.11 Discontinuance of Services

7.11.1 Hearing Aid Dispensers shall not discontinue service to patients/clients without providing reasonable notice of withdrawal, and satisfying all contractual agreements.

#### 7.12 Responsibility of The Profession and Colleagues

7.12.1 Hearing Aid Dispensers have the duty to observe all laws, rules and regulations, applicable to the dispensing of hearing aids, to uphold the dignity and honor of the profession and to accept its ethical principles. They shall not engage in any activity that will bring discredit to the profession and shall expose, without fear or favor, illegal or unethical conduct in the profession.

7.12.2 In the event it appears that a Hearing Aid Dispenser is in violation of this Code, fellow Hearing Aid Dispensers are encouraged to report the circumstances to the Board.

7.12.3 Hearing Aid Dispensers holding an appointed position in the State or Provincial Chapter, shall not use such a position for self-aggrandizement.

#### 7.13 Advertising

7.13.1 Hearing Aid Dispensers who choose to advertise services shall use only material considered ethical and complying with laws, or rules and regulations governing advertising.

7.13.2 Hearing Aid Dispensers shall endorse the following statement of principles that assures protection of the hearing impaired and the public in general.

7.13.2.1 TRUTH Advertising shall tell the truth, and shall reveal significant facts, the concealment of

which would mislead the public, and shall not dispense any product or part thereof, representing that it is new, unused, or rebuilt, when such is not the fact.

7.13.2.2 RESPONSIBILITY Advertisers shall be willing and able to provide substantiation of claims made.

7.13.2.3 TASTE AND DECENCY Advertising shall be free of statements, illustrations, or implications which are offensive to good taste or public decency.

7.13.2.4 DISPARAGEMENT Advertising shall offer merchandise or service on its merits, and shall refrain from attacking competitors or disparaging their products, services or methods of doing business.

7.13.2.5 BAIT ADVERTISEMENT Advertising shall offer only merchandise or services which are readily available for purchase during the advertised period at the advertised price; it is unethical for any Hearing Aid Dispenser to advertise a particular model or kind of instrument to obtain prospects for the sale of a different model kind of instrument than that advertised, or to imply a relationship with a manufacturer or trade name that does not exist.

7.13.2.6 GUARANTEES AND WARRANTIES Advertising of guarantees and warranties shall be explicit. Advertising of any guarantee or warranty shall clearly and conspicuously disclose its nature and extent, the manner in which the guarantor or warrantor will perform, and the identity of the guarantor or warrantor. It is unethical to use, or cause to be used, any guarantee or warranty which is false, misleading, deceptive, or unfair whether in respect to the quality, construction, serviceability, performance, or method of manufacture of any industry product, or in respect to the terms and conditions of refund of purchase price thereof, or in any other respect.

#### 7.14 Standards

7.14.1 Maintenance of high standards by all Hearing Aid Dispensers is in the best interest of persons served professionally, Hearing Aid Dispensers and the profession.

7.14.1.1 It shall be unethical for Hearing Aid Dispensers to willfully and knowingly violate any law or rule or regulation applicable to the dispensing of hearing aids.

7.14.1.2 It shall be unethical to use such terms or to use any abbreviation of such terms as doctor, physician, otologist, certified hearing aid audiologist, clinical audiologist, medical audiologist, research audiologist, industrial audiologist, when such is not the fact.

7.14.1.3 It shall be unethical to use any symbol or depiction which connotes the medical profession.

7.14.1.4 It shall be unethical to use any terms that may reasonably be said to confuse the public that a private business practice has some relationship to a governmental or

~~nonprofit medical, educational or research institution.~~

~~7.15 Discrimination~~

~~7.15.1 Hearing Aid Dispensers shall not discriminate in the delivery of professional services on the basis of race, national origin, religion, sex, age, marital status, sexual orientation, or handicapping condition.~~

**9.0 Code of Ethics for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers**

9.1 PREAMBLE. The preservation of the highest standards of conduct and integrity is vital to achieving the statutory declaration of objectives in 24 Del. C. §3701. Adopting a code of ethics by regulation puts licensees on notice of the kinds of activity that violate the level of care and protection to which the clients are entitled. The provisions are not intended to be all-inclusive but rather they should serve as examples of obligations that must be satisfied to maintain minimum standards.

9.2 Standards of Professional Conduct

9.2.1 A licensee who violates the following Standards of Professional Conduct may be guilty of illegal, negligent, or incompetent practice and disciplined pursuant to 24 Del. C. § 3715(a)(2).

9.2.1.1 Licensees shall provide all services competently. Competent service refers to the use of reasonable care and diligence ordinarily employed by similarly licensed individuals.

9.2.1.2 Licensees shall use every resource, including referral, to provide quality service.

9.2.1.3 Licensees shall maintain reasonable documentation of professional services rendered.

9.2.1.4 Licensees shall not evaluate or treat a client with speech, language, or hearing disorders solely by correspondence. Correspondence includes telecommunication.

9.2.1.5 Licensees shall delegate responsibility only to qualified individuals as permitted by law with appropriate supervision.

9.2.1.6 Licensees who have evidence that a practitioner has violated the Code of Ethics or other law or regulation shall present that information by complaint to the Division of Professional Regulation for investigation.

9.3 Standards of Professional Integrity.

9.3.1 A licensee who violates the following Standards of Professional Integrity may be guilty of consumer fraud, deception, restraint of competition, or price-fixing and disciplined pursuant to 24 Del. C. § 3715(a)(6).

9.3.1.1 Licensees shall not charge for services not rendered nor misrepresent the services or products dispensed.

9.3.1.2 Licensees shall inform clients of the nature and possible effects of services. Care must be taken to speak to a client in lay terms that he or she can understand.

9.3.1.3 Licensees may use clients in research

or as subjects of teaching demonstrations only with their informed consent. An informed consent must be explained and written in lay terms..

9.3.1.4 Licensees shall inform clients in any matter where there is or may be a conflict of interest. Conflicts of interest may be found when a client is steered to a particular provider by one with an expectation of financial gain (kickbacks) or a provider is involved in double dipping by providing services in a private practice that he or she is obligated to provide through public employment (double-dipping).

9.3.1.5 Licensees shall make no guarantees of the results of any product or procedure but may make a reasonable statement of prognosis.

9.3.1.6 Licensees shall provide services or dispense products only when benefits can reasonably be expected.

9.3.1.7 Licensees shall not engage in misrepresentation, dishonesty, fraud, or deceit. Misrepresentation includes statements likely to mislead or an omission of material information.

9.3.1.8 Licensees who advertise shall provide information in a truthful manner that is direct and not likely to mislead the public.

9.3.2 A licensee who violates the following Standards of Professional Integrity may be guilty of misrepresentation, impersonation, or facilitating unlawful practice and disciplined pursuant to 24 Del. C. §3715(a)(1).

9.3.2.1 Licensees shall accurately represent any credentials, education, and experience to the public.

9.3.2.2 A licensee who has evidence that an individual is practicing the profession without a license in violation of 24 Del.C. §3707 has a duty to report that information to the Division of Professional Regulation.

9.4 Miscellaneous Professional Standards

9.4.1 A licensee who violates the following Professional Standards may be subject to disciplinary action under 24 Del. C. §3715(a)(7)

9.4.1.1 Licensees shall respect the privacy of clients and not reveal, written authorization, any professional or personal information unless required by law.

9.4.1.2 Licensees shall not discriminate on the basis of race, sex, age, religion, national origin, sexual orientation, or disability.

9.4.1.3 Licensees shall offer services and products on their merits and should refrain from making disparaging comments about competing practitioners or their services and products.

**8-0 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals**

10.1 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.

10.2 ~~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.

10.3 ~~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).

10.4 ~~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.

10.5 ~~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.

10.6 ~~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:

10.6.1 ~~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.

10.6.2 ~~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.

~~10.6.3~~ 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.

10.6.4 ~~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.

10.6.5 ~~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.

10.6.6 ~~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.

10.7 ~~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.

~~10.8~~ ~~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.

~~10.9~~ ~~8-9~~ If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

~~10.10~~ ~~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.

~~10.11~~ ~~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.

~~10.12~~ ~~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.

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**BOARD OF CLINICAL SOCIAL WORK  
EXAMINERS**

**24 DE ADMIN. CODE 3900**

Statutory Authority: 24 Delaware Code,  
Sections 3906(1) and (7) (24 **Del.C.**  
§§3906(1)and(7))

**ORDER ADOPTING RULES AND REGULATIONS**

**AND NOW**, this 12th day of March, 2001, in accordance with 29 *Del.C.* § 10118 and for the reasons stated hereinafter, the Board of Clinical Social Work Examiners 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.* §3906(1) and (4), the Board proposed to revise its existing Rules and Regulations to clarify the continuing education

requirement for ethics credits, and to establish the time frames for continuing education reporting periods and biennial licensing periods. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated December 1, 2000, and in two Delaware newspapers of general circulation, in accordance with 29 *Del.C.* § 10115. The public hearing was held on January 22, 2001 at 9:30 a.m. in Dover, Delaware, as duly noticed, 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 Board received written comment from Ms. Rita Mariani, Chairperson, State Council for Persons with Disabilities dated December 28, 2000. Ms. Mariani noted the proposed change in language of Rule 5.3 from "social work ethics" to "ethics for mental health professionals" and stated that the State Council for Persons with Disabilities endorsed the proposed change. No members of the public attended the January 22, 2001 public hearing.

**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. The Board received a written comment in support of the proposed amendments. A summary of the evidence is contained in Section II.

2. The proposed amendments to the Rules and Regulations are necessary to clarify the continuing education requirements for ethics credits and to establish the continuing education reporting periods. The amendments will assist licensees in understanding their responsibilities related to continuing education.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del.C.* §3906(1). The Board further concludes that it has statutory authority to establish continuing education standards required for license renewal under 24 *Del.C.* § 3906(7).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del.C.* Chapter 39.

**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 A 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 CLINICAL SOCIAL WORK EXAMINERS**

(as authenticated by a quorum of the Board)

Grace A. Pesikay, LCSW, President, Professional Member

Maria M. Carroll, Ph.D., LCSW, V. Pres., Professional Member

Charles E. Marvil, LCSW, Professional Member

Frances E. Pruitt, Public Member

Janet Tovo, LCSW, Professional Member

Thomas C. Tulley, Public Member, Public Member

- 1.0 Election of Officers and Responsibilities
- 2.0 Professional Supervision
- 3.0 Application and Examination
- 4.0 Renewal
- 5.0 Continuing Education
- 6.0 Inactive Status (24 Del. C. §3911(c))
- 7.0 Ethics
- 8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

**1.0 Election of Officers and Responsibilities**

1.1 Officers shall be elected in September of each year, for a one year term. Special election to fill vacancies shall be held upon notice and shall be only for the balance of the original term.

1.2 Officers have the following responsibilities:

1.2.1 The President will preside at all meetings and sign official documents on behalf of the Board.

1.2.2 The Vice-President will perform the duties of the President when the latter is unavailable or unable to perform the duties of the President.

1.2.3 The Secretary will preside over meetings in the absence of the President and Vice-President.

**2.0 Professional Supervision**

2.1 Acceptable supervision shall be that amount of personal oversight by the licensed professional that would be considered usual and customary in the profession consistent with the applicant's level of skill, education and experience, but in any event should include the following activities, by way of example and not by way of limitation:

2.1.1 Individual case reviews.

2.1.2 Evaluations of diagnosis and courses of treatment.

2.1.3 Proper adherence to agency policy and procedures.

2.2 The amount of supervisory contact shall be at least one hour per week during the supervised period. This contact must be on a one-to-one face-to-face basis.

2.3 The Board shall require submission of the following information from the supervisor(s): supervisor's name, business address, license number, professional field and State in which the license was granted during the period of supervision; agency in which the supervision took place (if applicable); the number of qualifying practice hours toward the statutory requirement; and the number of one-to-one face-to-face supervisory hours.

2.4 A licensed Psychiatrist shall be defined as a licensed Medical Doctor with a specialty in psychiatry or a licensed Doctor of Osteopathic Medicine with a specialty in psychiatry.

**3.0 Application and Examination**

3.1 Applications will be kept active and on file for two (2) years. If the applicant fails to meet the licensure requirements and/or pass the examination within two (2) years, the application shall be deemed to have expired and the applicant must reapply in the same manner as for initial application, i.e., by submitting the application documentation along with the proper fee to be eligible to sit for the examination.

3.2 The Board will not review incomplete applications.

3.3 All signatures must be original on all forms.

3.4 The applicant shall have obtained the passing score on the national clinical examination approved by the American Association of State Social Work Boards (AASSWB). The Board shall accept the passing grade as determined by the AASSWB.

3.5 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from International Consultants of Delaware, Inc., its successor, or any other similar agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board. (29 Del. C. § 3907(a)(1))

**4.0 Renewal**

4.1 The licensee's failure to receive notices or letters concerning renewal will not relieve the licensee of the responsibility to personally assure delivery of his/her renewal application to the Board.

4.2 In order to be eligible for license renewal during the first year after expiration, the practitioner shall be required to meet all continuing education credits for continued licensure, pay the licensure fee, and pay any late fee established by the Division of Professional Regulation.

**5.0 Continuing Education****5.1 Required Continuing Education Hours:**

5.1.1 Hours Required. All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, 1999 and thereafter, documentation, as required by Rule 5.4, of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

5.1.2 Proration. 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 prorated as follows:

License Granted During FirstCredit Hours  
Year Of Licensing PeriodRequired

January 1 - June 30 35 hours  
July 1 - December 31 25 hours

License Granted During SecondCredit Hours  
Year Of Licensing PeriodRequired

January 1 - June 30 15 hours  
July 1 - December 31 5 hours

5.1.3 Hardship. A candidate for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception.

**See 2 DE Reg 775 (11/1/98)****5.2 Definition and Scope of Continuing Education:**

5.2.1 Continuing Education is defined to mean approved courses offered by colleges and universities, televised and extension courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including self-directed activity and preparation of a first-time clinical course as described herein.

5.2.1.1 Approved Courses shall be those courses which: increase the clinical social worker (CSW)'s knowledge about, skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional

disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate-level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.

5.2.1.2 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.

5.2.1.3 Self-Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board.

5.2.2 Any program submitted for continuing education hours must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.

5.2.3 An "hour" for purposes of continuing education credit shall mean 60 minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

5.2.4 The Board may, upon request, review and approve credit for self-directed activities, to a maximum of 15 hours per biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

5.2.5 The Board may award a maximum of 5 continuing education hours for the first-time preparation and presentation of a clinical social work course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

**5.3 Continuing Education Content Requirements:**

During each biennial licensing period, licensees shall complete a minimum of thirty (30) hours of continuing education in Category I courses. The remaining fifteen (15) continuing education hours may be taken in Category II courses. At least three (3) of the 30 Category I hours shall be consist of courses acceptable to the Board in the area of social work ethics ethics for mental health professionals.

Category I: Courses which have as their primary focus and content the assessment, diagnosis, and biopsychosocial (biological, psychological and social) treatment of mental and emotional disorders, developmental

disabilities, and/or substance abuse; courses which have as their primary focus and content the ethical practice of social work.

Category II: Courses in any of the following areas which are related to and increase the CSW's knowledge of mental and emotional disorders, developmental disabilities, and/or substance abuse

- research methods and findings;
- psychology and sociology;
- human growth and development;
- child and family constructs;
- physical illness and health;
- social action;
- advocacy;
- human creativity;
- spirituality
- HIV

#### 5.4 Continuing Education Reporting and Documentation

##### 5.4.1 Continuing Education Reporting Periods

Licenses are valid for 2 year periods, renewing on January 31 of odd numbered years (e.g. January 31, 2001, 2003). Continuing education reporting periods run from October 31 to October 31 of the preceding two even-numbered years (e.g. credits for the January 2001 license renewal may be obtained between October 31, 1998 and October 31, 2000). The Board will allow credits obtained between October 31 and January 31 to apply to either (but not both) of the biennial licensing periods, at the licensee's discretion.

Beginning with the January 2003 license renewal, all required continuing education should be completed within the previous two year October to October period (e.g. between October 31, 2000 and October 31, 2002 for January 2003 renewal). The Board shall continue to have the discretion, however, to grant extensions of time in which to complete continuing education in cases of hardship, pursuant to 24 Del.C. §3912 and Rule 5.1.3.

~~5.4.2~~ 5.4.1 In order to assure receipt of receive continuing education credits, a licensee must complete and submit the appropriate continuing education form provided by the Division of Professional Regulation no later than October 31<sup>st</sup> of the biennial licensing period.

~~5.4.3~~ 5.4.2 In addition to the form, each licensee must submit the following documentation as to each course attended: a certificate of attendance or completion signed by the presenter and attesting to the number of hours the licensee attended; documentation identifying the date and location of the course, the total number of CE hours attended and the agenda, outline or brochure describing the course. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation, such as copies of program materials, to

verify CE compliance.

**See 3 DE Reg 1680 (6/1/00)**

#### 6.0 Inactive Status (24 Del. C. § 3911(c))

6.1 A licensee asking to have his/her license placed on inactive status must notify the Board of his/her intention to do so, in writing, prior to the expiration of his/her current license. Each subsequent request for extensions of inactive status must be submitted to the Board in writing, before the end of the immediately prior inactive period.

6.2 A licensee on inactive status must comply with Rule 5.0, "Continuing Education," for each period of inactivity. A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the appropriate fee, and provide the Board with documentation of any continuing education hours required by Rule 5.0.

6.3 On written request and a showing of hardship, the Board may grant additional time for completion of continuing education requirements to licensees returning to practice from inactive status. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities.

**See 2 DE Reg 775 (11/1/98)**

**See 3 DE Reg 1680 (6/1/00)**

#### 7.0 Ethics

##### 7.1 Duties to Client

7.1.1 The LCSW's primary responsibility is the welfare of the client.

7.1.2 In providing services, the LCSW must not discriminate on the basis of age, sex, race, color, religion/spirituality, national origin, handicap, political affiliation, or sexual orientation.

7.1.3 When a client needs other community services or resources, the LCSW has the responsibility to assist the client in securing the appropriate services.

7.1.4 The LCSW should refer a client to other service providers in the event that the LCSW cannot provide the service requested. In the case of a referral, no commission, rebate or any other remuneration may be given or received for referral of clients for professional services, whether by an individual or an organization.

7.1.5 The LCSW must, in cases where professional services are requested by a person already receiving therapeutic assistance from another professional, clarify with the client and the other professional the scope of services and division of responsibility which each professional will provide.

7.1.6 The LCSW must maintain appropriate boundaries in his/her interactions with a client. The LCSW must not engage in sexual activity with a client. The LCSW must not treat a family member or close personal friend where detached judgment or objectivity would be impaired. Business, social or professional relationships with a client

(outside of the counseling relationship) should be avoided, where such relationships may influence or impair the LCSW's professional judgment.

#### 7.2 Confidentiality/privileged Communications

7.2.1 The LCSW must safeguard the confidentiality of information given by clients in the course of client services.

7.2.2 The LCSW must discuss with clients the nature of and potential limits to confidentiality that may arise in the course of therapeutic work.

7.2.3 No LCSW or employee of such person may disclose any confidential information they may have acquired from persons consulting them in their professional capacity except under the following conditions:

7.2.3.1 With the written consent of the person or persons (the guardian, in the case of a minor) or, in the case of death or disability, of his/her personal representative, or person authorized to sue, or the beneficiary of an insurance policy on his/her life, health or physical condition, or

7.2.3.2 Where the communication reveals the contemplation of a crime or harmful act.

7.2.3.3 When the person waives the privilege by initiating formal charges against the LCSW.

7.2.3.4 When otherwise specifically required by law or judicial order.

7.2.4 The disclosure of confidential information, as permitted by Rule 7.2.3, is restricted to what is necessary, relevant, verifiable and based on the recipients' need to know. The LCSW should, provided it will not adversely affect the client's condition, inform the client about the nature and scope of the information being disclosed, to whom the information will be released and the purpose for which it is sought.

#### 7.3 Ethical Practice

7.3.1 The LCSW is responsible for confining his/her practice to those areas in which he/she is legally authorized and in which he/she is qualified to practice. When necessary the LCSW should utilize the knowledge and experience of members of other professions.

7.3.2 The LCSW is responsible for providing a clear description of what the client may expect in the way of scheduling services, fees and any other charges or reports

7.3.3 The LCSW, or any employee or supervisee of the LCSW, must be accurately identified on any bill as the person providing a particular service, and the fee charged the client should be at the LCSW's usual and customary rate. Sliding fee scales are permissible.

7.3.4 An LCSW employed by an agency or clinic, and also engaged in private practice, must conform to contractual agreements with the employing facility. He/She must not solicit or accept a private fee or consideration of any kind for providing a service to which the client is entitled through the employing facility.

7.3.5 An LCSW having direct knowledge of a colleague's impairment, incompetence or unethical conduct should take adequate measures to assist the colleague in taking remedial action. In cases where the colleague does not address the problem, or in any case in which the welfare of a client appears to be in danger, the LCSW should report the impairment, incompetence or unethical conduct to the Board.

7.3.6 The Board has voted to adopt the Voluntary Treatment Option, in accordance with 29 Del.C. §8807(n).

7.3.7 An LCSW should safeguard the welfare of clients who willingly participate as research subjects. The LCSW must secure the informed consent of any research participant and safeguard the participant's interests and rights.

7.3.8 In advertising his or her services, the LCSW may use any information so long as it describes his/ her credentials and the services provided accurately and without misrepresentation.

7.3.9 In the areas of computer and Internet technology and non-established practice, the LCSW should inform the client of risks involved. The LCSW should exercise careful judgment and should take responsible steps (such as research, supervision, and training) to ensure the competence of the work and the protection of the client. All precautions should be taken with computer-based communications to ensure that no confidential information is disseminated to the wrong individual and identities are protected with respect to privacy.

#### 7.4 Clinical Supervision

7.4.1 The LCSW should ensure that supervisees inform clients of their status as interns, and of the requirements of supervision (review of records, audiotaping, videotaping, etc.). The client shall sign a statement of informed consent attesting that services are being delivered by a supervisee and that the LCSW is ultimately responsible for the services. This document shall include the supervising LCSW's name and the telephone number where he/she can be reached. One copy shall be filed with the client's record and another given to the client. The LCSW must intervene in any situation where the client seems to be at risk.

7.4.2 The LCSW should inform the supervisee about the process of supervision, including goals, case management procedures, and agency or clinic policies.

7.4.3 The LCSW must avoid any relationship with a supervisee that may interfere with the supervisor's professional judgment or exploit the supervisee.

7.4.4 The LCSW must refrain from endorsing an impaired supervisee when such impairment deems it unlikely that the supervisee can provide adequate professional services.

7.4.5 The LCSW must refrain from supervising in areas outside his/her realm of competence. Statutory Authority: 24 Del.C. §§3901, 3906(1)(6)(9), 3913, 3915.

See 3 DE Reg 1680 (6/1/00)

### 8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

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 3 DE Reg 1680 (6/1/00)**

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## **DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10103 (3 **Del.C.** 10103)

### **ORDER**

Pursuant to 29 **Del.C.** 10118 and 3 **Del.C.** 10103, the Delaware Thoroughbred Racing Commission ("Commission") hereby issues this Order promulgating proposed amendments to the Commission's Rules. Following notice of the proposed Rules, the Commission makes the following findings and conclusions:

#### **SUMMARY OF EVIDENCE AND INFORMATION**

#### **SUBMITTED**

1. The Commission posted public notice of the proposed rule revisions in the March 1, 2001 **Register of Regulations** and in the News-Journal and the Delaware State News. The proposal contained proposed changes to the Commission's existing Bleeder Medication rules in Rule 15.02. The proposed rule amendments were as follows:

amend Rule 15.02 to add new subsection (g-i) to provide for quantification of lasix.

2. The Commission accepted written comments from the public on the proposed amendments from March 1, 2001 until April 3, 2001. The Commission received no written comments during this period.

#### **FINDINGS OF FACT**

3. The public was given notice and an opportunity to provide the Commission with comments in writing regarding the proposed rule amendments.

4. Prior to proposing these amendments, the Commission formed a subcommittee to study the issue of lasix quantification. The subcommittee was composed of representatives from the Commission, the stewards, the Commission's chemist, and the horsemen's association. The proposed amendments to Rule 15.02(g-i) are based on recommendations received from the subcommittee. The amendment to Rule 15.02(d) is essentially a technical amendment to delete the specific term "detention barn" and replace it with a more general term "area" where horses are to be brought for administration of lasix.

#### **CONCLUSIONS**

5. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 **Del.C.** 10103. The Commission deems these rules as proposed to be necessary for the effective enforcement of 3 **Del.C.** Chapter 101 and for the full and efficient performance of the duties thereunder.

6. The Commission concludes that the adoption of the proposed rules are necessary and desirable to ensure the integrity and security of thoroughbred racing in the State of Delaware.

7. The Commission therefore adopts the following rule amendments pursuant to 3 **Del.C.** 10103 and 29 **Del.C.** 10113:

Amendment to Rule 15.02(d)

Amendment to Rules 15.02(g)(h)(i)

These rules replace in their entirety the former version of the Rules of the Delaware State Thoroughbred Racing Commission.

8. The effective date of this Order shall be ten (10)

days from the publication of this order in the Register of Regulations on May 1, 2001. Attached hereto and incorporated herein is the amended Rules marked as Exhibit A and executed simultaneously this 4th day of April, 2001.

IT IS SO ORDERED this 4th day of April, 2001.

Bernard Daney, Chairman  
 Ducan Patterson, Commissioner  
 H. James Decker, Commissioner  
 Carolyn Wilson, Commissioner

## PART 15 -- MEDICATION, TESTING PROCEDURES

### 15.01 Prohibition and Control of Medication:

It shall be the intent of these Rules to protect the integrity of horse racing, to guard the health of the horse and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs and medications or substances foreign to the natural horse. In this context:

(a) No horse participating in a race shall carry in its body any substance foreign to the natural horse, except as hereinafter provided.

(b) No foreign substance shall be administered to a horse (entered to race) by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four (24) hours prior to the scheduled post time for the first race, except as hereinafter provided.

(c) No person other than a veterinarian shall have in his possession any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition as prescribed by a veterinarian.

(d) Notwithstanding the provisions of Rule 15.01(c) above, any person may have in his possession within a race track enclosure, any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any Federal law or law of this State without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him.

(e) Notwithstanding the provisions of Rule 15.01(c) above, any person may have in his possession within any race track enclosure, any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the Stewards: (1) of his possession of such device; (2) of the size of such device; and (3) of the chemical substance to be administered by such device and has obtained written permission for possession and use from the Stewards.

#### 15.01.1 Definitions:

The following terms and words used in these Rules are defined as:

(a) Hypodermic Injection shall mean any injection into or under the skin or mucous, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection and intraocular (intraconjunctival) injection.

(b) Foreign Substances shall mean all substances except those which exist naturally in the untreated horse at normal physiological concentration.

(c) Veterinarian shall mean a veterinary practitioner authorized to practice at the race track.

(d) Horse includes all horses registered for racing under the jurisdiction of the Commission and for the purposes of these Rules shall mean stallion, colt, gelding, ridgling, filly or mare.

(e) Chemist shall mean the Commission's chemist.

(f) Test Sample shall mean any body substance including, but not limited to, blood or urine taken from a horse under the supervision of the Licensee's Veterinarian and in such manner as prescribed by the Commission for the purpose of analysis.

(g) Race Day shall mean the 24-hour period prior to the scheduled post time for the first race.

#### 15.01.2 Foreign Substances:

No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.01.2(c):

(a) A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

(b) A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.01 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

(c) A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission.

(d) The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenbutazone in the level stated in subsection (e) or (f). The presence of any other NSAID at any test level is forbidden. Notwithstanding the foregoing, the presence of any NSAID at any test level is forbidden for a two-year old horse.

Revised: 1/6/92.

(e) The test level of phenylbutazone under this Rule shall not be in excess of two point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense-\$250.00 fine
2.6 to 4.9	Second Offense within 365 days - \$500.00 fine
2.6 to 4.9	Third Offense within 365 days - \$500.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

(f) The test level for oxphenbutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense-\$250.00 fine
2.6 to 4.9	Second Offense within 365 days - \$500.00 fine
2.6 to 4.9	Third Offense within 365 days - \$500.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

**15.02 Bleeder Medication:**

Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (Lasix) to control epistaxis (bleeding) to horses under the following conditions:

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed by the Commission's Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Commission's Veterinarian at the detention barn within one (1) hour of workout or race.)

(b) A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Commission's Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the

Licensee's Veterinarian or Stewards on official forms from that State prior to entry.

(c) The Commission's Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

**4 DE Reg. 183 (7/1/00)**

(d) A horse in the Bleeder Program shall be required to be brought to a ~~detention barn~~ an area designated by the Licensee and approved by the Commission not later than three and one-half (3 ½) hours before post time for the race in which it is entered ~~and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time.~~ During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

(e) (Deleted.)

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

Revised: 6/19/92.

(g) Dosage. Furosemide (Lasix) shall be administered intravenously, or intramuscularly as permitted under subsection (h) of this Rule, to horses in the Bleeder Program by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

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

(h) 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 or intramuscular form, except that the stewards may approve intramuscular administration for a horse based on written documentation

from the Commission veterinarian and the trainer's veterinarian.

(i) Post-Race Quantification. 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 furosemide (lasix) per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower.

If post-race analysis indicates that the specific gravity of a horse's urine is less than 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter, the stewards shall take the following action (for each horse):

A. If such overage is the first violation of this rule for this horse, the trainer and/or attending veterinarian shall be issued a warning and be required to participate in a review of all pertinent Commission rules and subsequent penalties at a time scheduled by the stewards. If the trainer wishes to contest the overage, the trainer shall follow a specific procedure under which all of the following conditions must be met:

i) the horse in question must report to the detention barn four hours prior to post time.

ii) the same handler/room must stay with the horse at all times.

iii) a blood sample shall be taken by the Commission veterinarian before the administration of furosemide.

iv) the trainer's veterinarian must administer furosemide at a dosage not to exceed 500 milligrams.

v) the Commission veterinarian must witness the administration of furosemide.

vi) the horse must return to the detention barn after the race for the taking of post-race blood and urine testing by the Commission veterinarian or assistant, no matter how the horse finishes in the race.

If, after all of the above conditions are met, the post race tests reveal that the specific gravity of the horse's urine is again below 1.010 and the concentration of furosemide in the blood plasma is greater than 100 nanograms per milliliter of plasma, and the blood sample taken in the detention barn before the administration of furosemide tests negative for furosemide, the horse will be placed on an "exempt" list and the first offense will be removed, provided further that any horse on the "exempt" list will be required to have all future prerace lasix treatments administered pursuant to the procedure set forth in items i) through vi) set forth above. Any horse that is placed on the "exempt" list and later fails to follow the prerace procedure for lasix administration set forth in items i) through vi) above will be removed from the "exempt" list, disqualified from the race, and subject to the penalties in items B-D of this Rule for subsequent offenses.

B. If such overage is the second violation of

this rule for the same horse, the trainer and/or attending veterinarian shall be fined a minimum of \$100.00 and a maximum of \$500.00.

C. If such overage is the third violation of this rule for the same horse, the trainer and/or attending veterinarian shall be issued a minimum suspension of seven (7) days and a maximum suspension of fifteen (15) days and shall be fined a minimum of \$100.00 and a maximum of \$1,000.00, and the stewards in their discretion may order loss of purse as an additional penalty.

D. If such overage is the fourth violation for the same horse, the trainer and/or attending veterinarian shall be issued a suspension of fifteen (15) days to thirty (30) days, and shall be fined \$250.00 to \$1,000.00, and the stewards will order loss of purse as a mandatory penalty.

### **15.03 Responsibility for Prohibited Administration:**

Any person found to have administered or authorized a medication, drug or substance which caused or could have caused a violation of Rules 15.01 or 15.02, or caused, participated or attempted to participate in any way in such administration, shall be subject to disciplinary action.

(a) The registered Trainer of a horse found to have been administered a medication, drug or substance in violation of Rules 15.01 or 15.02 shall bear the burden of proof to show freedom from negligence in the exercise of a high degree of care in safeguarding such horse from being tampered with and, failing to prove such freedom from negligence (or reliance on the professional ability of a licensed Veterinarian), shall be subject to disciplinary action.

(b) The Assistant Trainer, groom, stable watchman or any other person having the immediate care and custody of a horse found to have been administered a medication, drug or substance in violation of Rules 15.01 or 15.02, if found negligent in guarding or protecting such horse from being tampered with, shall be subject to disciplinary action.

(c) A licensed Veterinarian shall be responsible for any medication, drug or substance that he administers, prescribes or causes to be administered by his direction on a horse. If found to have made an error in type or quantity of same administered and if in reliance upon the correctness thereof a Trainer races such treated horse in violation of Rules 15.01 and 15.02, such licensed Veterinarian shall be subject to disciplinary action.

### **15.04 Reports of Administration:**

Before a licensed Veterinarian administers or prescribes any drug or restricted substance for a horse, he shall ascertain by reasonable inquiry whether the horse has been entered to race at any track and, if the horse has been entered, he shall not administer or prescribe any drug or restricted substance within the time or manner restricted by these Rules.

If, however, an emergency exists involving the life or

health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the State Veterinarian and Stewards.

(a) Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Track Veterinarian as to any medication prescribed or administered or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48) hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be grounds for disciplinary action against such Veterinarian.

(b) Such daily reports shall accurately reflect the identity of the horse treated, diagnosis, time of treatment, type and dosage of medication, drug or substance and method of administration.

(c) Such daily reports shall remain confidential except that the Commission's Veterinarian may compile general data therefrom to assist the Commission in formulating policies or rules and the Stewards may review the same in investigating a possible violation of these rules. See Rule 11.02(d) respecting a public list of horses declared to race on medication.

**4 DE Reg. 184 (7/1/00)**

(d) When making an entry, it shall be the duty of the Trainer or his representative, as required by Rule 11.02(d), to disclose and declare to the Racing Secretary or his representative whether said horse will race on any medication permitted by these rules.

**15.05 Report Prior to Race of Cessation or Reduction of Medication:**

For any horse entered to run in a race, a timely report of the elimination or reduction since its last race in the level of Phenylbutazone and/or similar medications administered to it at the time of such last race shall be made to the Commission's Veterinarian by the horse's Owner, Trainer, attending Veterinarian and/or any other person having supervision over, or custody of, such horse.

**4 DE Reg. 184 (7/1/00)**

Violation of this Rule will constitute grounds for disciplinary action.

**15.06 Bettors' Safeguard:**

To help protect against inconsistent performances, a horse which last raced after having been administered Phenylbutazone and/or similar medication shall not be permitted to race without having been administered the same or similar medication at a comparable level, unless the Commission's Veterinarian grants his prior, express approval that such horse may race notwithstanding that the medication program to which it was subjected at the time of its last race has subsequently been eliminated or reduced.

**4 DE Reg. 184 (7/1/00)**

Violation of any aspect of this Rule by an Owner, Trainer, attending Veterinarian or any other person having supervision or custody of the horse will constitute grounds for disciplinary action as provided by these Rules.

**15.07 Commission List:**

As a guide to Owners, Trainers and Veterinarians, the Commission may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. Such list shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Rule 15.01.

**15.08 Detention Area:**

Each Licensee may provide and maintain on its grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing; such detention area shall be under the supervision and control of the Commission's Veterinarian.

**4 DE Reg. 184 (7/1/00)**

**15.09 Horses to be Tested:**

The Stewards may at any time order the taking of a blood, urine, or saliva specimen for testing from any horse entered. Any Owner or Trainer may at any time request that a specimen be taken from a horse he owns or trains by Licensee's Veterinarian and be tested by Commission's Chemist, provided the costs of such testing are borne by the Owner or Trainer requesting such test.

**15.10 Procedure for Taking Specimens:**

(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 hotwalker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

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

(a) Buckets and water shall be furnished by the Commission veterinarian.

(b) 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.

(c) A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

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

(a) The owner;

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

(c) A stable representative designated by such owner or trainer.

(4) (a) 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) of this section.

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

(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.

(a) 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.

(b) The Commission veterinarian shall:

1. Identify the horse from which the specimen was taken.
2. Document the race and day, verified by the witness; and
3. Place the detached portions of the identification tags in sealed envelope for delivery only to the stewards.

(c) 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.

(d) 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.

(e) 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.

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

(g) 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.

(h) 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.

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

(j) In the event of an initial finding of a prohibited drug or in violation of these Rules & Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral 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.

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.

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.

(k) 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.

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.

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

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 to the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(l) 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 the possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

(m) 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.

#### **15.11 Commission Chemist:**

The Commission's Chemist, who shall be a member of the Association of Official Racing Chemists, shall conduct tests on specimens provided him in order to detect and identify prohibited substances therein and report on such in such a manner, and according to such procedures, as the Commission from time to time may approve and/or prescribe.

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

### **DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section 122, 7906 (16 Del.C. 122, 7906)

### **ADOPTION OF THE STATE OF DELAWARE RULES AND REGULATIONS GOVERNING A DETAILED PLUMBING CODE**

#### **NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Regulations Governing a Detailed Plumbing Code. The DHSS's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 79.

On March 1, 2001 (Volume 4, Issue 9), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 1, 2001, or be presented at a public hearing on March 23, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

#### **FINDINGS OF FACT:**

No verbal comments were received during the public hearing and no written comments were received during the official public comment period. The public comment period was open from March 1, 2001 to April 1, 2001. Verifying

documents are attached to the Hearing Officer's record. The regulation has been reviewed and approved by the Delaware Attorney General's office.

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the State of Delaware proposed Rules And Regulations Governing a Detailed Plumbing Code are adopted and shall become effective May 11, 2001, after publication of the final regulation in the Delaware Register of Regulations.

April 16, 2001, VINCENT P. MECONI, SECRETARY

\* PLEASE NOTE: THE TEXT OF THE FINAL REGULATION "A DETAILED PLUMBING CODE" IS UNCHANGED FROM THE PROPOSED REGULATION. THEREFORE, THE REGULATION IS NOT BEING REPRINTED. PLEASE REFER TO 4 DE REG. 1447 (03/01/01) FOR THE TEXT OF THE REGULATION.

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## **DIVISION OF PUBLIC HEALTH OFFICE OF EMERGENCY MEDICAL SERVICES**

Statutory Authority: 16 Delaware Code, Chapters 97, 98 (16 Del.C. Ch. 97, 98)

### **ADOPTION OF THE STATE OF DELAWARE RULES AND REGULATIONS GOVERNING AIR MEDICAL AMBULANCE SERVICES**

#### **NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Air Medical Ambulance Services. The DHSS's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 97 and Chapter 98.

On March 1, 2001 (Volume 4, Issue 9), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by March 31, 2001, or be presented at a public hearing on March 26, 2000, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

## FINDINGS OF FACT

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the March 1, 2001, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing The State of Delaware Air Medical Ambulance Services are adopted and shall become effective May 11, 2001, after publication of the final regulation in the Delaware Register of Regulations.

April 16, 2001, VINCENT P. MECONI, SECRETARY

## SUMMARY OF EVIDENCE

## STATE OF DELAWARE RULES AND REGULATIONS GOVERNING AIR MEDICAL AMBULANCE SERVICES

A public hearing was held on March 26, 2001, at 10:00 AM, in the conference room of the Delaware Office of Emergency Medical Services (OEMS), Blue Hen Corporate Center, Suite 4-H, 655 Bay Road, Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed Delaware Health and Social Services (DHSS) Rules and Regulations Governing Air Medical Ambulance Services. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Ms. Mary Sue Jones from the Office of Emergency Medical Services, Division of Public Health, made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Public testimony was given at the public hearing and one letter was received commenting on the proposed regulations during the comment period. That letter was from the Delaware Healthcare Association. A second letter was received from the Delaware Volunteer Firemen's Association (DVFA). The DVFA letter was dated (April 3, 2001) and received after the public comment period ended (March 1 - March 31, 2001). All public comments and the DHSS (Agency) responses are as follows:

- **A clarification question was asked about the type of refresher training required by the regulations.**

*Agency Response:* According to the regulations

(Appendix A, C.1), 48 hours of continuing education related to the job that is done in the aircraft must be completed every two years. Training will include topics specific to air medical operations as well as any aspect of the clinical care provided in this environment.

- **Definition/clarification of an "unusual circumstance" used for launching an aircraft other than Delaware State Police for scene responses (page 25, paragraph (d)).**

*Agency Response:* The actual language in paragraph (d) on page 25, "unusual conditions" was left as originally written with the intent that the conditions considered 'unusual' be defined through policy in a service agreement developed between DSP, Division of Public Health (DPH) and air medical ambulance services. This would permit an air medical ambulance service to be utilized for prehospital service without DSP involvement on the scene (for example when DSP is unavailable for maintenance or are committed on another response).

As a result of this comment, paragraph (d) on page 25 of the regulation will be amended as follows for clarification purposes.

The first sentence of paragraph (d) is amended to read:

"Air medical ambulance services, other than DSP, may engage in prehospital scene responses and transports under certain unusual conditions **that will be defined in a service agreement with the Division and DSP.**"

The last sentence of paragraph (d) is amended to read:

**"To perform prehospital scene responses and transports, an air medical ambulance service must have previously entered into a service agreement with the Division and the Delaware State Police."**

- **Concern about the Delaware Paramedic Standing Orders being addressed on page 38, X.C, but education to familiarize providers with the Standing Orders is not addressed on page 46 (Educational Requirements).**

*Agency Response:* The educational requirements in Appendix A (page 45) are very generic in nature (i.e. respiratory emergencies or toxicology). Although not specifically addressed, the opening paragraph of Appendix A identifies state requirements and medical direction as an initial education requirement for any air medical ambulance service. State requirements include Delaware standing

orders/medical protocols. In addition, an orientation to the Delaware protocols would also be needed to pass a protocol exam as part of an out of state paramedic gaining reciprocity (for Delaware certification as an Advanced Life Support provider).

- **There was a concern that the language on page 25, paragraph (d) allows the county paramedic service to request an air medical ambulance aircraft. This may be contradictory to the Fire Chief's Law, which states that the fire chief is the incident commander at that scene.**

*Agency Response:* The language on page 25, paragraph (d) could be interpreted as contradictory to the statute that identifies the fire chief as the incident commander. The contradiction between the statute and the authority identified in the original regulation was identified and addressed on page 25, paragraph (e) – “All requests for air medical services, other than the DSP, must be initiated by the emergency communications center responsible for managing or coordinating Emergency Medical Services resources in the county where the need for assistance exists.”

To clarify this paragraph, DHSS will delete the words “...when requested by a county paramedic service.” in paragraph (d), page 25. Paragraph (d) is intended to identify when a non-DSP service can be requested. Paragraph (e), page 25 is intended to state *who* the request should come through (i.e. the communication center). This change will not conflict with the Fire Chief's statute.

- **Will air medical transport based in other states be required to meet Delaware's certification standards if they are transporting patients to and from Delaware hospitals. We would appreciate clarification regarding this issue and would support the inclusion of language in the regulations that would require such certification.**

*Agency Response:* Two areas of the regulations address this concern. In Section V (Staffing), A.2. a) (4) (page 23) this is addressed stating that “The paramedic on such missions (Interhospital/interfacility), must be a Delaware certified paramedic, functioning in accordance with the Board of Medical Practice Regulations.” Additionally, the Advanced Life Support Interfacility Transportation Regulations (03/01) apply to any ALS transport service, including air ambulances, unless specifically exempted in Section III (General Provisions) of those regulations. Therefore, the paramedics on the aircraft will have met the same standards that are applied to the rest of the paramedics functioning in the State.

If the question is in regard to air medical transport programs rather than personnel needing to meet Delaware's

certification standards, reference I.C., page 6: “Air ambulance services that provide transport (service) within the state of Delaware, or interstate transport (services) that originate in Delaware, shall be subject to all parts of these regulations.” The sentence may be clearer to understand with the above notations. The revisions to the existing regulations had no intent to alter the previously existing application to out-of-state programs flying into Delaware. Both personnel and the air medical ambulance service will be certified to operate in Delaware.

- **It was recommended that language used in paragraph (e) on page 25, specifically ‘emergency communications center responsible for managing or coordinating Emergency Medical Services resources in the county where the need for assistance exists’ (be utilized in paragraph (d)).**

*Agency Response:* By deleting the words “...when requested by a county paramedic service.” in paragraph (d), page 25, as a result of the previous comment, the concern leading to this comment is no longer applicable.

- **In paragraph (f) of page 25, it was recommended that the words Advanced Life Support be inserted into the proposed language: “...by the ground advanced life support emergency medical services....”**

*Agency Response:* After careful review of this comment and the intent of paragraph (f) on page 25, the Office of Emergency Medical Services within the Division of Public Health decided they could facilitate the completion of this report electronically, by including it in the Emergency Data Information Network (EDIN) system.

As a result of this comment, the words, "or electronic" will be inserted into the first sentence of paragraph (f), page 25, between the words “written” and “report.” Making this change will facilitate the completion of this report by the ground EMS service.

In addition to changes recommended in this Summary of Evidence, minor grammatical corrections were made to the draft regulations.

The public comment period was open from March 1, 2001 to March 31, 2001.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

**REGULATIONS FOR AIR MEDICAL AMBULANCE SERVICES****Definitions**

**ABEM** American Board of Emergency Medicine

**ABOEM** American Board of Osteopathic Emergency Medicine

**ACLS (Advanced Cardiac Life Support)** A syllabus and certification of the American Heart Association (AHA).

**AIRCRAFT TYPE** Particular make and model of helicopter or airplane.

**AIR MEDICAL SERVICE** A company or entity of a hospital or public service which provides air transportation to patients requiring medical care. This term may be used interchangeably with the term "air medical program" throughout the document.

**AIR MEDICAL PERSONNEL** Refers only to the patient care personnel involved in an air medical transport.

**AIR MEDICAL TEAM** Refers to the pilot(s) and patient care personnel who are involved in an air medical transport.

**ALS MISSION** The transport of a patient who receives care during an interfacility or scene response commensurate with the scope of practice of an EMT-Paramedic.

**ALS PROVIDER** A certified provider of skills required for advanced life support.

**ATLS (Advanced Trauma Life Support)** A syllabus and certification offered to physicians by the American College of Surgeons.

**BLS MISSION** The transport of a patient who receives care during an interfacility or scene response that is commensurate with the scope of practice of an EMT-B.

**BLS PROVIDER** A certified provider of skills required for basic life support.

**BTLS (Basic Trauma Life Support)** A syllabus offered by the American College of Emergency Physicians to provide a standard of care for the prehospital trauma victim.

**CERTIFICATE** Signifies a pilot level of competency, i.e., student, private, commercial. It can also refer to the type of service a company is qualified to provide under Federal Aviation Regulations.

**CONSORTIUM PROGRAM** An air medical service sponsored by more than one health care facility or entity.

**CONTINUOUS QUALITY IMPROVEMENT (CQI)** CQI is a management strategy that integrates dedication to a quality product into every aspect of the service; it brings together a variety of personnel and management tools to examine the sources of problems within the system. CQI seeks to establish and remedy the root cause of problems by identifying and correcting the system's errors, rather than ascribing fault to individuals.

**CONTROLLED AIR SPACE** Air space designated as continental control area, terminal control area, or transition area within which some or all aircraft may be subject to air traffic control.

**CRITICAL CARE MISSION** The transport of a patient from an emergency department or critical care unit (or scene, RW) who receives care commensurate with the scope of practice of a physician or registered nurse.

**CROSS COUNTRY (CC)** Generally when the destination is greater than 25 nautical miles from the departure point or as designated by a geographic boundary.

The DSP cross country is 25 nautical miles outside of the state of Delaware.

**DSP** Delaware State Police

**ELECTIVE TRANSPORTS** Air medical transports that may not be medically necessary but are done for patient or physician preference; these often are fixed wing, prepaid scheduled transports.

**ELT (Emergency locator transmitter)** A radio transmitter attached to the aircraft structure which is designed to locate a downed aircraft without human action after an accident.

**FAA** Federal Aviation Administration

**FAR** Federal Aviation Regulation.

**HEAD-STRIKE ENVELOPE** The volume of air space which a person's head would potentially move through during any abrupt aircraft motion.

**HELIPAD** A small, designated area usually with a prepared surface, on an airport, landing/take-off area, or apron/ramp used for take-off, landing or parking helicopters.

**HOT LOAD/UNLOAD** The loading or unloading of patient(s) or equipment with rotors turning.

**IABP (Intra aortic balloon pump)** A cardiac assist machine which can be retrofitted into some types of aircraft.

**IFR** Instrument Flight Rules

**INSTALLED EQUIPMENT** Includes all items or systems on the aircraft at the time of certification and any items or systems subsequently added to the aircraft with FAA approval through a Supplemental Type Certificate (STC), FAA Form 8110 or Form 337 action.

**IMC** Instrument meteorological conditions.

**INDEPENDENT PROGRAM** Referring to an air medical service not sponsored by a hospital and operating under its own FAA certificate.

**INFECTION CONTROL** An approach to reducing the risk of disease transmission to care takers, patients and others

**LOCAL** **Day-local:** Less than 25 nautical miles from departure point to destination point with generally the same terrain elevation.

**Night-Local:** The urban area of the helicopter base with enough illumination to maintain ground reference.

The DSP local is within the State of Delaware and less than 25 nautical miles outside the State of Delaware.

**MODALITIES** Treatment plans and equipment used in the delivery of patient care.

**PERSONNEL, SCHEDULED** Staff employed by the air medical service with scheduled working hours during which air medical transport is their primary responsibility. This includes those who take call for the primary purpose of being available for air medical transport.

**PERSONNEL, NON-SCHEDULED** Staff employed in patient care roles by another department or facility who have received the helicopter orientation and may be utilized as a second crew member, particularly during a specialty transport

**PHTLS** Prehospital Trauma Life Support: A course offered by the American College of Surgeons to provide a standard of care for the prehospital victim.

**PIC** Pilot in command.

**QUALITY ASSURANCE (QA)** QA is a process of reviewing the quality of care delivered through the examination of known or potential problems. It measures the degree of compliance of the service's personnel with established standards.

**SPECIALTY CARE MISSION** The transport of a patient who requires care by professionals who can be added to the regularly scheduled personnel.

**SPECIALTY CARE PROVIDER** A provider of specialty care, such as neonatal, pediatric, etc.

**VFR** Visual Flight Rules.

## **I. Purpose**

The purpose of these regulations is to provide minimum standards for the operation of Air Medical Ambulance Services in the State of Delaware. It is the further intent of these regulations to ensure that patients are quickly and safely served with a high standard of care and in a cost-effective manner.

## **II. General Provisions**

A. No person or agency (governmental or private) may operate, conduct, maintain, advertise, engage in or profess to engage in air ambulance services in Delaware unless the agency or person holds a current valid certificate issued by the Division of Public Health (**the Division**).

B. Air ambulance services will provide access to its services without discrimination due to race, creed, sex, color, age, religion, national origin, ancestry, or ~~handicap~~ **disability**. Requests for service for those patients with a potentially life threatening illness or injury, who require rapid transportation, will be honored without prior inquiry as to the patient's ability to pay.

C. Air ambulance services ~~based outside of Delaware~~ that provide ~~intra or inter Delaware patient transfers~~ **transport services within the state of Delaware, or interstate transport services that originate in Delaware** shall be subject to all parts of these regulations, unless covered by mutual aid agreements entered into with the Division of Public Health, in conjunction with other applicable state laws.

D. All air ambulance services operated by hospitals licensed by the Department of Health and Social Services (the Department) will be subject to all parts of these regulations. A permit will be issued to approve air ambulance services operated by hospitals.

E. Pre-hospital scene works shall be conducted only by air ambulance services owned and operated by the State of Delaware, or private air ambulance services which have entered into appropriate agreements to provide such pre-hospital scene work with the Division of Public Health.

## **III. Application Process**

A. An application for a certificate to operate an air ambulance service may be obtained from the Division of Public Health (the Division), Office of ~~Paramedic Administration~~ **Emergency Medical Services** (the Office).

An application for an original or renewal certificate shall be submitted to the Office and shall include the following:

1. Name and address of the vendor of the ambulance service or proposed air ambulance service and the name and address under which the service will operate.
2. Name, address and FAA (Federal Aviation Administration) certification number of the aircraft operator.
3. Submission of the air medical service's mission statement and scope of service to be provided.
4. Experience and qualifications of the applicant to operate an air ambulance service.
5. Description of each aircraft to be used as an air ambulance, including the make, model, year of manufacture, registration number, name, monogram or other distinguishing designation and FAA air worthiness certification.
6. The geographical service area and the location and description of the places from which the air ambulance services is to operate.
7. Name, training, and qualifications of the air ambulance medical director who is responsible for medical care provided by the service.
8. Roster of medical personnel which includes level of certification or licensure.
9. Roster of pilots including training and qualifications.
10. Statement in which the applicant agrees to provide patient specific data to the Division for EMS system quality management program purposes.
11. Other information the Division deems necessary and prescribes as part of the application.

B. Change of ownership of the air ambulance service requires re-application for certification. An air ambulance certificate holder shall file with the Division an application for renewal of the air ambulance service certificate within 10 business days of acquisition of the service by the new owner.

#### IV. Certification Process

Within 30 days of receipt of an appropriately completed application from the proposed air ambulance service, the Office will notify the applicant in writing of the approval or disapproval of the application.

##### A. Certification Approval

1. The Division will issue a certificate to operate an air ambulance service after an on-site inspection and review conducted by the Office indicates that the applicant's service is in compliance with these regulations and other applicable laws.

2. No certificate to operate an air ambulance service shall be issued unless the applicant satisfies the Division that the certification requirements for the air ambulance, medical supplies and equipment, as well as the qualifications of medical and operating personnel, as discussed herein, have been satisfied.

3. Certification will be granted only to services that meet all Federal Aviation Regulations (FAR's) specific to the operations of the air medical service.

4. A certificate will be issued for three years from the date of issue and will remain valid for that time period unless revoked or suspended by the Division.

5. The current certificate shall be posted in a conspicuous place in the air ambulance operations center and on, or in, the aircraft where it is clearly visible.

##### B. Denial of Certification

1. If the Division determines that deficiencies exist which warrant ~~disapproval~~ denial of the application, ~~written notice identifying the deficiencies will be given to the applicant along with the disapproval notice~~ the air medical service shall be provided a list of these deficiencies in writing.

2. The applicant shall have 30 days from receipt of the disapproval notice in which to:

a) Respond to the Division with plans to correct the deficiencies.

(1) After review of an acceptable plan, the Division will conduct a re-inspection consistent with an agreed upon time frame.

(2) If the Division is satisfied with the results of the re-inspection, The Division will promptly issue a certificate of approval. If the Division determines that deficiencies still exist, the Division will give the applicant written notice of disapproval, which shall identify deficiencies. The applicant shall have 30 days from receipt of the second refusal notice in which to ~~appeal the decision to the Secretary of the Department of Health and Social Services (the Department) or his designee~~ request a review of their application and accompanying documents by the Director of the Division of Public Health or their designee.

(a) If the result is a denial of application, the applicant may not reapply for a period of six (6) months.

~~or~~

~~(b) Appeal the decision to the Secretary of the Department~~

##### C. Renewal

~~1. The Division will notify the air ambulance service at least 90 days prior to the expiration date of the certification.~~

~~2. 1.~~ The service shall submit to the Division the renewal application postmarked at least 60 days prior to the expiration date of the certificate.

~~3. 2.~~ The criteria for certification renewal ~~is~~ are the same as the current requirements for original certification.

##### D. Inspections

1. The Division reserves the right to enter and make inspections at least quarterly and shall conduct, at a minimum, an annual inspection to ensure compliance with these regulations. Additional inspections may be conducted

upon receipt of a complaint to the Division of Public Health or if there is a reasonable belief that violations may exist.

2. Upon request of an agent of the Division during regular business hours, or at other times when a reasonable belief that violations of these regulations may exist, a certificate holder shall produce for inspection, the air ambulance, equipment, personnel and other such items as is determined by the Division's agent.

~~3. Within 30 days of the inspection, the air ambulance service shall be notified as to the result of the inspection.~~

4 ~~3.~~ All records pertaining to the operation of the air medical service must be retained for a minimum of two (2) years.

E. Investigatory Procedures

1. Upon receipt of a written complaint describing specific violations of these regulations the Division will:

- a) Initiate an investigation of the specific ~~changes~~ charges.
- b) Notify the air ambulance service of the charges and investigation procedures.
- c) Conduct and develop a written report of the investigation.
- d. Notify the air ambulance service in writing of the results of the investigation with a request for a written response.

e. The Division will conduct an appropriate follow-up investigation.

~~2. If the Division determines that these regulations have been violated, the Division may suspend certification for a period of up to 30 days. The Division may revoke certification for repeated violations.~~

~~3. Upon suspension or revocation of an air ambulance certificate, the service shall cease operations and no person may permit or cause the service to continue.~~

~~4. The Division will provide public notification of suspension, including length of suspension period or revocation of an air ambulance service certificate.~~

F. Grounds for Suspension, Revocation or Refusal of an Air Ambulance Certification

1. The Division may, in compliance with proper administrative procedure as provided by law, suspend, revoke or refuse to issue certificates for the following reasons:

- ~~1.~~ a) A serious violation of these regulations. A serious violation is one ~~which that~~ which that poses a significant threat to the health and safety ~~to~~ of the public.
- 2. b) Failure of the certified party or applicant to submit a reasonable timetable plan to the Division to correct deficiencies and violations cited by the Division by the deadline requested by the Division.

(1) The plan must correct the deficiencies within the timeframe specified by the Division.

3. c) The existence of a continuing pattern of

deficiencies or violations over a period of ~~3~~ three (3) or more years.

~~4.~~ d) Fraud or deceit in obtaining or attempting to obtain certification.

5. e) Lending a certificate or borrowing or using the certificate of another, or knowingly aiding or abetting the improper granting of a certificate.

6. f) Incompetence, negligence or misconduct in operating the air ambulance service or in providing emergency medical services (EMS) to patients.

7. g) Failure to employ or contract for a medical director responsible for the care provided by the air ambulance service.

8. h) Failure to have appropriate medical equipment and supplies required for certification.

9. i) Failure of the air ambulance service to have an aircraft equipped in compliance with these regulations.

~~10.~~ j) Failure of the aircraft operator to maintain required FAA certifications.

~~11.~~ k) Failure to employ a sufficient number of certified or licensed personnel to provide services during the time frames identified in the application and approved certification.

~~12.~~ l) Failure of the air ambulance service to be available during time periods specified upon in the approved certification. Exceptions to this requirement include unsafe weather conditions, commitment to another flight, grounding due to maintenance or other reasons that would prevent commitment to another flight, grounding due to maintenance or other reasons that would prevent response. The air medical service shall maintain a record of each failure to respond to a request for service, and make the record available upon request to the Division. Financial inability to pay does not constitute sufficient grounds to deny response for emergency air service.

~~13.~~ m) Failure of an air ambulance service to notify the Division of the change of ownership or aircraft operation.

~~14.~~ n) Abuse or abandonment of a patient.

~~15.~~ o) Unauthorized disclosure of medical or other confidential information.

~~16.~~ p) Willful preparation or filing of false medical reports or records, or the inducement of another to do so.

~~17.~~ q) Destruction of medical records.

~~18.~~ r) Refusal to render EMS emergency medical services because of a patient's race, sex, creed, national origin, sexual preference, age, ~~handicap~~ disability, medical problem or financial inability to pay.

~~19.~~ s) Misuse or misappropriation of drugs/medications.

~~20.~~ t) Failure to produce requested records for inspection or to permit examination of equipment and

facilities shall be grounds for suspension, revocation or denial of certification provided, however, that not certificate shall be suspended, revoked or denied for a period not to exceed sixty days in the event that a dispute regarding the production of such records exists and remains unresolved, except that such suspension or revocation may occur within the sixty day period if the Division determines that such action is necessary to prevent a clear and immediate danger to public health.

~~21.~~ u) Other reasons as determined by the Division which pose a significant threat to the health and safety of the public.

2. If the Division determines that these regulations have been violated, the Division may:

a) Place the service on probation until the deficiency is remedied and accepted by the Division.

(1) This will include a timeframe and method by which the service must demonstrate the deficiency or violation rectified.

(2) If an air medical service is unable to demonstrate that the deficiency or violation has been rectified within the specified timeframe it must submit a written progress report to the Director of Public Health requesting a deadline extension.

(a) Failure to comply will result in the 'Probation' status being changed to 'Suspension'.

(b) Failure to correct the deficiencies or violations within the extension period will result in suspension of the certificate.

b) Suspend certification for a period of up to 30 days.

(1) In circumstances where an alleged violation poses an immediate threat to public health is being investigated, the certification may be suspended during the investigation.

(2) The Division must investigate the violation and issue a written report containing the findings of the investigation.

(a) The report must describe the deficiencies or violations that must be corrected in order to reinstate certification.

(b) A hearing must be scheduled within thirty (30) days of the date of suspension.

(3) Upon suspension or revocation of an air ambulance certificate, the service shall cease operations and no person may permit or cause the service to continue.

(4) The air medical service must correct any deficiencies identified to be an immediate danger to public health within the suspension period.

(a) All other deficiencies or violations may be addressed in a correction plan submitted to the Division.

(b) The status of the air medical service certificate will be changed to 'Provisional' for

implementation of the corrective plan.

c) Revoke certification.

(1) Violations or deficiencies that resulted in a 'Suspension' status and have not been rectified pursuant to the requirements of those sections will result in the revocation of the air medical service's certificate.

(2) A hearing will be scheduled within thirty (30) days of the date of revocation.

d) Continue current certificate status.

e) The Division will provide public notification of their decisions involving probation, suspension-including the length of suspension period, or revocation of an air ambulance service certificate.

#### G. Emergency Suspension

1. Where the complaint alleges a violation of these regulations that constitute a serious and imminent threat to the public safety, the Division may order immediate suspension of the alleged violator's certification. Upon such emergency suspension, the Division shall promptly investigate and issue a written report.

#### G. Reinstatement Process

1. When an air medical service has corrected a problem that has resulted in suspension or revocation of their certificate, it shall notify the Division of Public Health in writing, requesting reinstatement.

2. Based on the recommendations of the Division, a review will be arranged to verify resolution of the problem.

3. Outcomes of the review will be:

a) Reinstatement of certification

b) Continuation of suspension or revocation.

#### H. Right of Appeal

~~Any air ambulance provider who's application or reapplication for certification has been denied or who's certification has been revoked or suspended may appeal to the Secretary of the Department within thirty (30) days of receipt of notice of such denial, suspension or revocation. The Secretary or his designee will conduct a hearing on the Division's action. The Division's actions shall not be automatically stayed during the pendency of the appeal. Any air ambulance provider who's application or reapplication for certification has been denied or who's certification has been revoked or suspended may appeal to the Secretary of the Department within thirty (30) days of receipt of notice of such denial, suspension or revocation. The Secretary or his designee will conduct a hearing on the Division's action. The Division's actions shall not be automatically stayed during the pendency of the appeal.~~

1. Any air medical ambulance service that has their certification revoked or suspended may appeal the decision.

2. Written notification of the intent to appeal must be received by the Director of Public Health within thirty (30) days of receipt of notice of such denial, suspension or revocation.

3. The Director or their designee will conduct a hearing on the Division's action.

4. Information pertinent to the case will be presented by a member of the Division's investigation committee (or the Office of EMS) and a representative of the air medical service.

5. The hearing panel will make a recommendation to the Director that the decision stand, be reversed, or modified.

a) Specific recommendation for modification shall be outlined.

6. The Director of Public Health will make a decision based on the hearing panel's recommendations and will provide written notification of the action to the air medical service.

7. The Division's action shall not be automatically stayed during the pendency of the appeal.

**I. Voluntary Discontinuation of Service**

1. Certified Air Ambulance Services may not voluntarily discontinue service until ninety (90) days after the certificate holder notifies the Division in writing that the service is to be discontinued.

2. The Air Ambulance Service shall notify the Division in advance of anticipated temporary discontinuation of service expected to last at least seven (7) consecutive days.

**V. Staffing**

**A. Air Medical Personnel Classifications**

The aircraft, by virtue of medical staffing and retrofitting of medical equipment, becomes a patient care unit specific to the needs of the patient. Staffing shall be commensurate with the mission statement and scope of care of the air medical service.

**1. Administrative Air Medical Staff**

**a) Medical Director**

The Medical Director of the program is a physician who is responsible for supervising and evaluating the quality of medical care provided by the air medical personnel.

**(1) Credentials/Experience**

(a) The Medical Director shall be licensed and authorized to practice medicine in the state in which the air medical service is based. The medical director must have educational and clinical experiences in Emergency Medicine as well as other areas of medicine that are commensurate with the mission statement of the air medical service (e.g., adult trauma, pediatrics, neonatal transport, etc.). When specific missions fall outside the scope of expertise of the medical director, specialty care physicians must serve as consultants.

(b) The medical director shall be experienced in both air and ground emergency medical services (as appropriate to the mission statement) and be

familiar with the general concepts of appropriate utilization of air medical services.

~~(e) Additionally, the medical director shall have the following educational experiences as appropriate to the mission statement and scope of care of the air medical service:~~

~~(i) Certification by the American Board of Emergency Medicine (ABEM), or currency in Advanced Life Support (ACLS) according to current standards of the American Heart Association and currency in Advanced Trauma Life Support (ATLS) according to the current standards of the American College of Surgeons.~~

~~(ii) Specialty education consistent with the mission statement of the air medical service (e.g., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc. or equivalent education in these areas). Alternately, the medical directors must have immediate access to specialty physicians as consultants.~~

~~(iii) In-flight patient care capabilities and limitations (e.g., assessment and invasive procedures).~~

~~(iv) Infection control as it relates to prehospital, aircraft and hospital environment.~~

~~(v) Stress recognition and management.~~

~~(vi) Altitude physiology/stressors of flight.~~

(c) Additionally, the medical director shall have the following educational experiences as appropriate to the mission statement and scope of care of the air medical service:

(d) The Medical Director shall also have education in the following areas:

(i) Specialty education consistent with the mission statement of the air medical service (e.g., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc. or equivalent education in these areas). Alternately, the medical directors must have immediate access to specialty physicians as consultants.

(ii) In-flight patient care capabilities and limitations (e.g., assessment and invasive procedures).

(iii) Infection control as it relates to prehospital, aircraft and hospital environment.

(iv) Stress recognition and management.

(v) Altitude physiology/stressors of flight.

**(2) General Areas of Responsibility**

(a) The medical director must be actively involved in the quality assurance/continuous quality

improvement (QA/CQI) program for the service.

(b) The medical director must be involved in administrative decisions affecting medical care for the service.

(c) The medical director must be involved in training and continuing education of all air medical personnel for the service.

(d) The medical director ~~is~~ must be actively involved in the care of critically ill and/or injured patients.

(e) The medical director must be actively involved in orienting physicians providing on line (in-flight) medical direction to the policies, procedures and patient care protocols of the air medical service.

(f) When applicable, the medical director or his designee sets cabin air pressure altitude limits, for specific disease processes of the patient(s) (through policies and procedures) and maximum altitudes, for specific disease processes of the patient(s) for rotor wing transports.

b) Clinical Care Supervisor

The responsibility for supervision of patient care provided by the various clinical care providers (e.g., EMT-B, EMT-P, RN, etc.) will be the responsibility of the medical director, unless the responsibilities are assigned to another professional (flight nurse, flight physician, or flight paramedic) who possesses the knowledge, experience and is legally qualified to provide clinical supervision.

(1) Credentials/Experience

The clinical care supervisor must ~~have~~ possess the following qualifications:

~~(a) ABEM certified or currency in CPR, ACLS, and ATLS for physicians.~~

(a) If the clinical care supervisor is a Physician:

(i) ABEM, or ABOEM certified or currency in CPR, ACLS, and Advanced Trauma Life Support (ATLS).

~~(b) Currency in CPR, ACLS, and Flight Nurses Advanced Trauma Courses (may audit ATLS for nurses)~~

(b) If the clinical care supervisor is a Registered Nurse:

(i) Currency in CPR, ACLS and the Flight Nurse Advanced Trauma Course (FNATC).

(a) ATLS may be audited in lieu of FNATC.

~~(e) Currency in SPR, ACLS, and PHTLS or BTLS for paramedics~~

(c) If the clinical care supervisor is a Paramedic:

(i) Currency in CPR, ACLS, and PHTLS or BTLS (Advanced).

~~(d) Current specialty education consistent with the mission statement of the air medical~~

~~service (i.e., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc.). Alternatively, the clinical care supervisor must have immediate access to specialty personnel as consultants.~~

~~(e) In-flight patient care limitations, e.g., assessment and invasive procedures~~

~~(f) Infection control~~

~~(g) Stress recognition and management~~

~~(h) Altitude physiology/stressors of flight~~

~~(i.) Appropriate utilization of air medical services~~

~~(j) Emergency Medical Services (helicopter services)~~

~~(k) Hazardous materials scene recognition and response (helicopter services)~~

(d) General Requirements regardless of provider level:

(i) Current specialty education consistent with the mission statement of the air medical service (i.e., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc.). Alternatively, the clinical care supervisor must have immediate access to specialty personnel as consultants.

(ii) In-flight patient care limitations, e.g., assessment and invasive procedures.

(iii) Infection control.

(iv) Stress recognition and management.

(v) Altitude physiology/stressors of flight.

(vi) Appropriate utilization of air medical services.

(vii) Delaware Emergency Medical Services system.

(viii) Hazardous materials scene recognition and response (helicopter services).

(2) General Areas of Responsibility

~~(a) The clinical supervisor is actively involveds~~ Active involvement in the flight program's QA/CQI program process.

~~(b) The clinical supervisor is actively involved~~ Active involvement in all administrative decisions affecting patient care for the service.

~~(c) The clinical care supervisor is actively involved~~ Active involvement in hiring, training, and continuing education of all non-physician air medical personnel for the service.

~~(d) The clinical care supervisor is actively involved~~ Active involvement in the care of the critically ill and/or injured patients.

(e) Ensuring adequate mechanisms are in place for evaluating the clinical practice of the patient

care providers.

2. Direct Care Providers

a) General

(1) The type of medical care providers staffing each mission shall be directly related to the mission type: advanced life support mission, specialty care mission or basic life support mission.

(2) All medical care providers must have current appropriate state licensure or certification which legally ~~shows~~ allows them to function in their respective professions.

(3) Initial and continuing education requirements for all levels of medical care providers are specified in Appendix A.

a) ~~(b) Advanced Life Support (ALS) Mission Providers~~

~~An Advanced Life Support (ALS) mission is defined as the transport of a patient who receives care during a prehospital or interfacility/interhospital transport that is commensurate with the scope of practice of a flight physician, flight nurse or flight paramedic.]~~

(4) Interhospital/Interfacility Transports

(a) A minimum of two (2) air medical team members are required to staff interhospital/interfacility ALS missions. One of the air medical ALS providers must be a member of the regular ALS staff of the air medical ambulance service.

(b) All air medical team members must be licensed, certified, or permitted according to the appropriate state regulations with current re-licensing, recertification, or re-permitting status.

(c) A qualified flight physician or flight nurse must be designated as the primary care provider during interfacility or interhospital transports.

(d) A flight paramedic or an approved flight specialty care provider may serve as the second ALS air medical team during an interfacility or interhospital ALS mission.

~~(2)~~ (i) The specialty care provider must have expertise relative to the needs of the patient.

~~(3)~~ (ii) The paramedic, on such missions, must:

~~(a) Be a State of Delaware certified paramedic, currently on duty with the Delaware State Police paramedic service, or a paramedic on duty with an out of state air medical ambulance service that is certified to function in the State of Delaware.~~

(a) Be a State of Delaware certified paramedic, functioning in accordance with the Board of Medical Practice Regulations.

(b) Function according to the statewide standard treatment protocol or under the direction of an authorized medical control physician for that

service.

(c) One ALS air medical care provider may be considered sufficient staff for ALS missions, where the patient has been categorized and documented as being stable, by the sending physician, and requires 'limited ALS care'.

(i) 'Limited ALS care' shall mean patient assessment, monitoring and interventions common to, and within the scope of practice of the paramedic. Patients may require cardiac monitoring and/or intravenous therapy (without medication additives).

(ii) ~~An approved A~~ A flight paramedic or RN may serve as the single care provider for the transport of stable ALS patients who meet the criteria as ~~described below:~~ established by the operation or agency medical director.

(5) Prehospital Scene Responses

(a) Except as provided below, the Delaware State Police (DSP) paramedic service is the only primary air medical service authorized to engage in prehospital scene responses and transports in the State of Delaware.

~~(b) A DSP A DSP The flight paramedic will function as the primary care provider during all such such scene response missions.~~

(b) A flight paramedic must be a crew member on all prehospital missions.

(i) The Aeromedical crew assumes patient care responsibility at the time the patient is secured on the aircraft.

(c) Non-scheduled personnel may be added as the second medical team member according to the protocols of the air medical services as long as an orientation has been conducted which includes in-flight treatment protocols, general aircraft safety, emergency procedures, operational policies, and infection control.

(d) Air medical ambulance services, other than DSP, may engage in prehospital scene responses and transports under certain unusual conditions **[that will be difined in a service agreement with the Division and DSP .When when requested by a county paramedic service.]**

~~The use of air medical ambulance services other than the State Police must occur only in disaster situations or other severe emergency situations where additional air medical support is needed. [Such To perform prehospital scene responses and transports, an air medical ambulance] service[s] must have previously entered into a service reciprocity agreements with the Division and the Delaware State Police.~~

(e) All requests for air medical services, other than the DSP, must be initiated by the county paramedic service emergency communications center responsible for managing or coordinating Emergency Medical Services resources in the county which where the

need for assistance exists.

(f) The request and use of an air medical ambulance service ~~is~~ other than the DSP for prehospital services, requires the submission of a written [**or electronic**] report by the ground EMS service that utilized the air ambulance to the Office of Paramedic Administration Emergency Medical Services, within ~~7~~ **seven (7)** days of the request and/or response. The report must identify the conditions and circumstances precipitating the request.

(i) The “Air Medical Ambulance Service Use Report” (See Appendix D) shall be used to communicate this information.

(g) All patient care services provided by the air medical ambulance crew during a prehospital scene response shall be documented using the Delaware Emergency Data Information Network (EDIN).

(i) This shall be provided in addition to any documentation that the service generates internally.

(ii) The EDIN system is a secure Internet based data management system.

(a) Access to an Internet connection is necessary to provide the documentation required by these regulations.

⇒ **[b] Advanced Life Support (ALS) Mission Providers**

**An Advanced Life Support (ALS) mission is defined as the transport of a patient who receives care during a prehospital or interfacility/interhospital transport that is commensurate with the scope of practice of a flight physician, flight nurse or flight paramedic.]**

↳ c) Specialty Care Mission Providers

(1) A specialty care mission is defined as the transport of a patient requiring special patient care by one or more professionals who must be added to the regularly scheduled air medical team. Dedicated teams providing specialty-oriented care (e.g., neonatal transport teams, IABP transport teams) must follow the specific mission standards.

(2) The air medical team must, ~~at a minimum~~ minimally consist of a specially trained physician or registered nurse as the primary caregiver whose expertise must be consistent with the needs of the patient.

(3) Specialty care missions require at least two air medical team members while a patient(s) is on board. Personnel shall be available for each transport within a reasonable time determined by the service.

(4) All specialty team members must have received a basic minimum orientation to the air medical service which includes in-flight treatment protocols, general aircraft safety and emergency procedures, operational policies and infection control.

(5) Specialty care mission personnel must be accompanied by at least one regularly scheduled air

medical staff member, of the air medical service, except when independent, dedicated flight specialty teams are used.

(6) Specialty care personnel must be educated in in-flight treatment modalities, altitude physiology, general aircraft safety, and emergency procedures.

e d) Basic Life Support Mission Providers

A Basic Life Support (BLS) mission is generally defined as the transport of a patient who receives care during an interfacility/interhospital transport that is commensurate with the scope of practice of an Emergency Medical Technician-Basic (EMT-B). In the State of Delaware, when such care is provided in the air medical environment, it must be assumed, at a minimum, by a flight Emergency Medical Technician-Paramedic (EMT-P).

B. Pilot Personnel

1. There shall be a sufficient number of pilots permanently assigned to the air medical service to provide services approved by the Division of Public Health, and which assures adequate crew rest as per FAA regulations.

2. All pilots must possess a commercial rotorcraft-helicopter airman’s certificate.

3. Pilot in Command (PIC) must possess 2000 rotorcraft flight hours as PIC prior to assignment with an air medical service or be currently employed by the Delaware State Police (DSP) and have completed a DSP pilot training program.

4. A planned structure program must be provided for relief pilots, which at a minimum includes specific roles and responsibilities, and familiarization with the region served.

5. A lead pilot and designated safety officer must be appointed by the FAR 135 certificate holder to insure adherence to operational safety regulations for the program. Adequate training and experience in air medical missions management and evaluation skills must be possessed to carry out these duties.

6. The pilot has the right to decline or abort any portion of a mission if there is doubt as to the safety of the mission.

7. The pilot shall meet education and experience requirements as listed in Appendix A.

a) Pilots employed by DSP must comply with the requirements set by that agency.

C. General Staff Policies - Operational policies must be present to address the following areas:

1. Medical Flight Personnel

a) Minimize duty-related fatigue

b) Hearing protection

c) Crash survivability

(1) Flame retardant clothing

(2) Seat belts/shoulder harnesses

(3) Head-strike protection

(4) Securement of on-board and carry-on

medical equipment

d) Protective clothing and dress codes relative to:

- (1) Mission type
- (2) Infection control
- e) Universal infection control
- f) Flight status during pregnancy
- g) Flight status during acute illnesses (especially respiratory ailments)

h) Flight status while taking medications that may cause dizziness

i) Weight/height and/or lifting abilities if appropriate

2. Pilot Personnel

- a) Minimize duty-related fatigue
- b) A policy of the certificate holder that

specifies higher weather minimums for new pilots for a time frame based on the pilot's experience, flight time, local environment and personal adaptation. ~~The time frame shall be defined by an evaluation tool applied individually to each new pilot. An evaluation tool applied individually to each new pilot by the flight program shall define the time frame.~~

**VI. AIRCRAFT REQUIREMENTS**

A. Medical Considerations

1. The aircraft shall have an interior medical configuration that is installed according to FAA criteria. Minimum specifications are listed in APPENDIX B.

2. The aircraft must be configured in such a way that the air medical personnel have access to the patient for the initiation and/or maintenance of basic advanced life support treatments.

3. The aircraft must be equipped with medical equipment and supplies consistent with the mission statement and scope of care. Minimum equipment and supplies required are identified in APPENDIX B.

4. The aircraft design and configuration must not compromise patient stability ~~in either~~ during loading, unloading or in-flight operations.

a) The aircraft must have an entry that allows loading and unloading without excessive movement of the patient or compromise to monitoring systems, without interfering with the pilot's vision. The cockpit should be capable of being shielded from light in the patient care area during night operations.

b) The cockpit must be sufficiently isolated, by protective barrier, to minimize distractions from the patient care compartment.

c) The interior of the aircraft must be climate controlled to prevent adverse effects upon the patient from temperature extremes.

d) The avionics shall not interfere with the functioning of medical equipment, nor shall the intravenous lines, manual or mechanical ventilation.

e) Adequate interior lighting shall be available to allow for patient care monitoring. Medical equipment shall not interfere with the avionics.

B. Aircraft Equipment

1. The aircraft must be equipped with a 180 degree controllable searchlight of at least 400,000 candle power for rotor-wing aircraft ~~(RW)~~.

2. Radio capabilities

a) Radios (as range permits) shall be capable of transmitting and receiving communications from:

- (1) Medical ~~direction~~ direction control
- (2) Flight operations center
- (3) Air traffic control
- (4) EMS and law enforcement agencies

~~(RW)~~

~~b) Pilot is~~ The pilot must be able to control and override radio transmissions from the cockpit in the event of an emergency situation.

~~e) Flight team is~~ The flight crew must be able to communicate internally.

3. The aircraft must be equipped with a functioning emergency locator transmitter (ELT) in compliance with the applicable ~~FAR's~~ Federal Aviation Regulations (FARs).

4. A fire extinguisher must be accessible to air medical personnel and pilot(s) in compliance with applicable FARs.

C. Maintenance

Maintenance may be provided by an outside vendor who is FAA and manufacturer certified. If an in-house maintenance department is utilized, the following criteria must be met:

1. Credentials/Experience

a) Lead mechanic must possess 2 years of rotorcraft experience as a certified airframe and power plant mechanic prior to assignment with an air medical service.

b) The mechanic must be factory schooled or equivalent in an approved program, and FAR 135 qualified to maintain the aircraft designated by the air medical service.

2. Training related to the interior modification of the aircraft:

a) Shall prepare the mechanic for inspection of the installation as well as the removal and reinstallation of special medical equipment.

b) Supplemental training on service and maintenance of medical oxygen systems and a policy as to who maintains responsibility for refilling the medical oxygen system.

3. Staffing of Mechanics

a) A single mechanic on duty or on call 24 hours a day shall be relieved from duty for a period of at least 24 hours during any ~~7~~ seven (7) consecutive days, or the equivalent thereof, within any 1 calendar month.

b) Back-up personnel shall be provided to the

mechanic during periods of extensive scheduled or unscheduled maintenance or inspection. Complexity of the aircraft and an increased number of flight hours may be considerations for increased mechanic staffing.

c) A policy of the certificate holder shall be in place that documents the disciplinary process for a mechanic.

4. Maintenance Facilities

a) There must be a mechanism/procedure for alerting flight and air medical personnel when the aircraft is not air worthy.

b) A hangar or similar-type facility shall be available for the mechanic to perform heavy maintenance.

### VII. Visual Flight Rules (VFR) Weather Issues

A. VFR weather minimums shall be specified for day and night local, and day and night cross country (CC).

B. The "local flying area" shall be determined by the operator based upon the operating environment.

C. There is a system of obtaining pertinent weather information.

1. The pilot in command (PIC) is responsible for obtaining weather information according to policy which shall address at a minimum:

- a) Routine weather checks
- b) Weather checks during marginal conditions
- c) Weather trending

2. Communication between pilots, medical personnel, and communication specialists at shift change regarding the most current and forecasted weather is part of a formal briefing.

D. VFR "response" weather minimums:

Recommended minimums to begin a transport shall be no less than:

CONDITIONS	CEILING	VISIBILITY
DAY/LOCAL	500 ft.	1 mile
DAY/ <del>Xcountry</del> CC	1000 ft.	1 mile
NIGHT/LOCAL	800 ft.	2 miles
NIGHT/ <del>Xcountry</del> CC	1000 ft.	3 miles

E. Policies include provisions for patient care and transport alternatives in the event that the aircraft must use alternate landing facilities due to deteriorating weather.

F. Instrument flight rules, (IFR) Weather Issues – When transitioning to an off-airport site after an instrument approach, the following shall apply:

1. Local VFR weather minimums shall be followed if within a defined local area and if the route and off-airport site are familiar.

2. Cross-country VFR weather minimums shall be followed if not in defined local area or if not familiar with

route and off-airport site.

### ~~VII.~~ VIII. Helipad

A. Primary, receiving hospital(s) helipad(s) must be marked (with a painted H or similar landing designation), lighted for night operations, and be equipped with a device to identify wind direction. In addition, there shall be:

1. Unobstructed approach according to the FAA Advisory circular entitled Helipad Design Advisory Circular, AC 150/5390-2.

2. Evidence of compliance with local, state, or federal regulations including appropriate and adequate fire retardant chemicals.

3. Documented on-going safety programs for those responsible for loading and unloading patients or working around the helicopter on the helipad.

4. Evidence of adequate security-A minimum of one person to prevent bystanders from approaching the helicopter as it lands or lifts off, or perimeter security such as fencing, rooftop etc. A means must exist to monitor the primary helipad if accessible to the public (e.g., through direct visual monitoring or closed circuit TV).

5. There is limited distance from the helipad, (a limited distance is defined as not requiring intermediary transport of any type from the helipad to the receiving facility\*), to the hospital in order to minimize the ~~affects~~ effects to the patient.

a) Patient monitoring shall continue without interruption between the helipad and the hospital.

b) Emergent patient interventions can be performed as needed between helipad and hearing protection is provided for all personnel who assist with patient hot loading and unloading.

~~\*Facilities who are not currently in compliance with this regulation will be provided an exemption period of 5 years (from the effective date of these regulations) in which to relocate helipads.~~

6. Hearing protection is ~~provided for~~ provided for ~~provided for~~ worn by all personnel who assist with patient hot loading and unloading.

B. Occasional or episodic use of helipad

Helipads used occasionally (at referring or receiving hospitals) shall be reviewed annually by the air medical service for:

1. Identification and removal of obstructions
2. Appropriate lighting (permanent or temporary for night operations)
3. Helicopter ingress/egress limitations
4. Adequate security - a minimum of one person to prevent bystanders from approaching the helicopter as it lands or lifts off.
5. Evidence of safety programs (through review of training program records) offered to personnel responsible

for operations at the landing site and availability of appropriate fire retardant chemicals.

C. Temporary scene landings shall be secured

1. Perimeter lighting with handheld floodlights, emergency vehicles or other lighting source to clearly illuminate the designated landing area at night.
2. Free of overhead obstruction and ground debris.
3. Appropriate in size to the type of the aircraft.
4. Safety programs must be provided to public safety/law enforcement agencies to include:
  - a) Identifying and designating an appropriate landing zone (LZ).
  - b) Helicopter safety.
5. Two-way communications between helicopter and ground personnel.

## IX. COMMUNICATIONS

A. The flight crew or a communication specialist must assume the responsibility of receiving and coordinating all requests for the air medical service.

1. Should a communication specialist be employed, training shall be commensurate with the scope of responsibility of the communications center personnel and include:

- ~~1.~~ a) EMT-B certification or equivalent knowledge and experience.
- ~~2.~~ b) Knowledge of Federal Aviation Regulations and Federal Communications Commission regulations pertinent to the air medical service.
- ~~3.~~ c) General safety rules and emergency procedures pertinent to air medical transportation and flight following procedures.
- ~~4.~~ d) Navigation techniques/terminology and understanding weather interpretation.
- ~~5.~~ e) Types of radio frequency bands used in air medical EMS.
- ~~6.~~ f) Assistance with the materials response and recognition procedure using appropriate reference materials.

B. Communication policies of the air medical service must reflect:

1. Aircraft must communicate, when possible, with ground units securing unprepared landing sites prior to landing.
2. A readily accessible post incident/accident plan must be part of the flight following protocol so that appropriate search and rescue efforts may be initiated in the event the aircraft is overdue, radio communication can not be established nor location verified
  - a) Written post incident/accident plans are easily identified and readily available.
  - b) Current phone numbers are easily accessed.
  - c) An annual drill is conducted to exercise

the post incident/accident plan.

C. Continuous flight following must be monitored and documented and shall consist of the following:

1. Initial coordination to include communication and documentation of:
    - a) Time call received
    - b) Name and phone number of requesting agency
    - c) Time aircraft departed
    - d) Pertinent LZ information
    - e) Number of persons on board
    - f) Amount of fuel on board
    - g) Estimated time of arrival (ETA)
    - h) Diagnosis or mechanism of injury
    - i) Referring and receiving physician and facilities (for inter facility transports) as per policy of the air medical service
    - j) Verification of acceptance of patient
  2. Communications during mission shall also be documented accordingly:
    - a). Direct or relayed communications to communications center (while in flight) specifying locations and ETAs, and deviations, if necessary.
    - b) Direct or relayed communications to communications center specifying all take-off and landing information.
    - c) Time between each communication:
      - (1) Time between each communication shall not exceed 15 minutes while in flight (If an IFR or VFR flight plan has been filed, may only be able to communicate with air traffic control, (ATC).
      - (2) Time between communications shall not exceed 45 minutes while on the ground.
      - (3) Alternate agencies are used to relay communications when direct contact is not possible.
- D. The Communications Center must contain the following:
1. At least one dedicated phone line for the air medical service.
  2. A system for recording all incoming and outgoing telephone and radio transmissions with time recording and playback capabilities. Recordings are to be kept for 30 days.
  3. Capability to immediately notify air medical team and on-line medical direction (through radio, pager, telephone, etc.).
  4. Back-up emergency power source for communications equipment, or a policy delineating methods for maintaining communications during power outages and in disaster situations.
  5. Communications policy and procedures manual.

**X. EMS SYSTEM INTEGRATION**

A. The air medical service shall be integrated with and communicate with other public safety agencies, including ground emergency service providers. This must include participation in regional quality assurance reviews, regional disaster planning and mass casualty incident drills, ~~(RW)~~.

B. The air medical service must interface (through telephone calls and outreach programs) with existing communications centers, public safety and law enforcement agencies, as well as with local off-line medical directors, as appropriate for prehospital ALS missions.

C. The air medical service must ensure continuity of care and expeditious treatment of patients by utilizing state EMS medical protocols and procedures, whenever applicable.

D. The air medical service shall facilitate integration of all emergency services and transport modalities by supporting joint continuing education programs and operational procedures, ~~such as for:~~

~~1. Hazardous materials recognition and response.~~

~~2. 1. Disaster response/triage.~~

~~3. 2. Interface of the air medical team with other regional resources.~~

~~3. Safety program consisting of patient preparation and personal safety around the aircraft to include landing zone (LZ) designation for rotary wing services.~~

~~4. Patients considered appropriate for transport by the air medical service.~~

E. The service shall promote a timely feedback to referring agency, facility or physician about patient outcome and treatment rendered before, during, and after transport where appropriate.

F. The flight service shall provide a planned, structured safety program ~~must be provided~~ to public safety/law enforcement agencies and hospital personnel who interface with the air medical service which includes:

1. ~~LZ~~ Landing zone designation and preparation.

2. Personal safety in and around the helicopter for all ground personnel.

3. Procedures for day/night operations, conducted by the air medical team, specific to the aircraft:

a) High and low reconnaissance.

b) Communication and coordination with ground personnel.

c) Approach and departure path selection.

Procedures for the pilot to ensure safety during ground operations in the ~~LZ~~ landing zone with or without engines running.

e) Procedure for the pilot to have ground control during engine start and departure from a landing site.

G. ~~Records are kept~~ The service shall maintain records of initial and recurrent training provided by the air medical service ~~of to~~ prehospital, ~~and~~ referring and receiving ground support personnel.

**XI. POST INCIDENT/ACCIDENT PLAN**

A Post Incident/Accident Plan ~~is~~ shall be written and understood by all program personnel and shall include at a minimum:

A. List of personnel to notify in order of priority (for communication specialist to activate) in the event of a program incident/accident. Two major goals in activating a notification list include:

1. Provide rapid rescue response.

2. Insure accurate information dissemination.

B. Preplanned time frame to activate the post incident/accident plan for overdue aircraft.

C. Procedure to secure all documents and tape recordings related to the particular incident/accident.

D. Procedure to deal with releasing information to the press.

**XII. PROFESSIONAL AND COMMUNITY EDUCATION**

A professional and community education program and/or printed information with the target audience to be defined by the air medical service shall include but not be limited to:

A. Hours of operation, phone number, and procedure to access.

B. Capabilities of air medical personnel.

C. Type of aircraft and operational protocols specific to type.

D. Service area for the aircraft.

E. Preparation and stabilization of the patient.

F. Safety program consisting of patient preparation and personal safety around the aircraft to include landing zone (LZ) designation for rotor wing services.

G. Patients considered appropriate for transport by the air medical service, (Generally, an appropriate transport is one which enhances patient outcome, safety or cost effectiveness over other modes of transport).

**XIII. INFECTION CONTROL**

A. Policies and procedures addressing patient transport issues involving communicable diseases, infectious processes and health precautions for emergency personnel as well as for patients must be current with the local standard of practice, standards of OSHA and as published by the center for Disease Control (CDC).

B. Policies and procedures must be written and readily available to all personnel of the air medical service.

C. Additional medical and agency resources pertinent to infection control must be identified and made available in the policy manual to all air medical personnel.

D. Education programs will include the institution's/service's infection control resources, programs, policies and CDC recommendations. Policies and procedures will be reviewed on an annual basis.

E. Air medical personnel transporting patients must practice preventative measures lessening the likelihood of transmission of pathogens. Policies and procedures address:

1. Personnel health concerns including record of:
  - a) Physical exams.
  - b) Immunization history – air medical personnel are encouraged to have tetanus and hepatitis B immunization.
  - c) Verification of post-vaccination antibody status, if immunized against hepatitis B.
  - d) Annual tuberculosis testing (purified protein derivative).
  - e. Measles, mumps, rubella (MMR) immunization.
2. Management of communicable diseases and infection control in the transport environment is outlined in policies:
  - a) Use of gloves, eye and mouth protection.
  - b) Sharps disposal container for contaminated needles and collection container for soiled disposable items on the aircraft.
  - c) Cleaning and disinfecting with appropriate disinfectant of the patient cabin area, equipment, and personnel's soiled uniforms.
  - d) Mechanism for identifying those at risk for exposure to an infectious disease.
  - e) A plan for communication between the air medical service personnel, EMS providers, and hospital when exposure is suspected/confirmed to include what follow-up is necessary.
    - (1) Written notification shall go out in an expedient manner.
    - (2) Follow-up is documented.
  - f) A policy for special provisions for transporting infected or possibly infected victims.
  - g) Proper cleaning or sterilization of all appropriate instruments or equipment.
  - h) Hand washing before and after each patient.

#### **XIV. QUALITY ASSURANCE/CONTINUOUS QUALITY IMPROVEMENT**

A. There is an established Quality Assurance/Continuous Quality Improvement Program which provides on-going monitoring and evaluation of the quality and effectiveness of the air medical ambulance service.

B. The QA/CQI program shall be comprehensively integrated, including activities related to patient care, communications, aviation, operations and equipment maintenance. The required elements and considerations of the written QA/CQI plan are listed in APPENDIX C.

C. The Medical Director has the primary responsibility for ensuring timely review of patient care activities and issues, utilizing the medical record and pre-established

criteria. A committee consisting of the medical director along with representatives of management, medical and non-medical personnel should be considered as a mechanism for ensuring initiation and continuation of QA/CQI program.

D. The air medical service has a policy and procedure manual available to all personnel which is reviewed, at least, annually for accuracy, completeness and currency.

E. The air medical service has established patient care guidelines/standing orders which must be reviewed annually (for content accuracy) by management, QA/CQI committee members and the Medical Director.

F. The QA/CQI program must be closely linked with risk management, so that concerns related through the risk management program can be followed up through the continuous quality improvement program.

#### **XV. GENERAL POLICIES**

A. There are well-defined lines of authority with a clear reporting mechanism to upper level management.

B. Air medical personnel understand the organizational structure and the chain of command.

C. A policy shall be in place that clearly explains the air medical service's disciplinary process for all levels of staff.

D. Management policies encourage ongoing communications between all levels and types of air medical service personnel.

E. There are formal, periodic staff meetings for which minutes are kept on file. There are defined methods for disseminating information between meetings.

F. For public or private institutions and agencies that contract with an aviation firm to provide air medical services, there shall be a policy that specifies the lines of authority between the medical management team and the aviation management team.

G. Management sets guidelines for press related issues and marketing activities.

##### **1. Policies Relating to Patient Management**

a) Management ensures, through policy, that all transfers of patient care occur from a lower level of care to an equal or higher level of care except for elective transfers for patient convenience or returning a patient to a referring facility.

b) A patient record shall be maintained on all patients utilizing the services of an air medical ambulance. The record shall be used to document care given during transport, as well as all other relevant patient related factors, such as status prior to, during at the end of transport.

c) A copy of the patient record will be left at the receiving hospital to facilitate continuity of care. A copy will be kept on file by the air medical ambulance service for a period of time to include that of the statute of limitations.

d) The air medical ambulance services has written policies and procedures which indicate what

therapies can be performed without on-line medical direction.

e) Inter facility transports require physician referral/acceptance to ensure continuity of care and establish patient care parameters during the transport. Patient transfer protocols must comply with existing Federal requirements.

f) Management ensures an appropriate utilization review process based on:

(1) Medical benefits to the patient:

(a) Timeliness of the transport as it relates to the patient's clinical status.

(b) Transport to an appropriate receiving facility; an appropriate receiving facility may include:

(i) A hospital or facility where the patient has previously undergone specialized treatment and where the patient's previous medical records are located.

(ii) A facility at too great a distance for ground transport.

(iii) A facility with a specialized level of care not available in the referring hospital.

(c) Specialized air medical personnel expertise available during transport that would otherwise not be available.

(d) Safety of the transport environment.

2. Cost of the transport:

a) A structured, periodic review of flights (to determine transport appropriateness or that the mode of transport enhances medical outcome, safety or cost effectiveness over other modes of transport) performed at least semi-annually and resulting in a written report.

b) Hospital or non-hospital based program director/administrator is oriented to ~~FAR's~~ FARs that are pertinent to the air medical service.

3. Policies Pertaining to Safety

a) A Safety Committee shall meet at least quarterly with written reports sent to management and kept on file as dictated by policy. The responsibilities of the safety committee may be assumed by the QA/CQI committee.

b) Written variances relating to "safety" issues will be addressed in Safety Committee meetings. The committee will promote communications between air medical personnel and pilots addressing safety practice, concerns, issues and questions.

c) Recommendations for operational and safety issues will be reviewed by management.

#### **APPENDIX A - EDUCATIONAL REQUIREMENTS**

Initial education preparation and requirements will be guided by each air medical ambulance service's mission statement, scope of care provided, levels of care providers, state requirements and medical direction.

#### **I. ALS, RN, MD and SPECIALTY CARE PROVIDERS; Scheduled Crew**

Prior to functioning as a provider in an air medical service, all ALS and Specialty care personnel must present documentation of having successfully completed an education program that validates minimum knowledge levels and skill competencies in the following identified areas:

A. Didactic Component that includes:

1. Advanced airway management  
2. Altitude physiology; gas laws; stressors of flight

3. Anatomy, physiology and assessment of the adult, pediatric and neonatal patients

4. Oxygen therapy in the air medical environment  
5. Mechanical ventilation and respiratory physiology for adults, pediatric and neonatal patients as appropriate to the mission statement and scope of care provided by the air medical service.

6. Respiratory emergencies

7. Recognition and management of cardiac emergencies including lethal dysrhythmias

8. Hemodynamic monitoring, pacemaker and automatic implantable cardiac defibrillator (AICD) management

9. Intra-aortic balloon pump, central lines, Swan Ganz and arterial catheters, left and right ventricular devices and extra corporeal membrane oxygenation (ECMO) when applicable

10. Environmental emergencies

11. High risk obstetric emergencies (bleeding, trauma, medical)

12. Neonatal emergencies (respiratory distress, cardiac, surgical)

13. Pediatric emergencies (medical, trauma)

14. Infection control practices and procedures

15. Metabolic/endocrine emergencies

16. Adult trauma and burns

17. Stress recognition and management

18. Toxicology

19. Pharmacology

20. Disaster and triage management\*\*

21. Survival training, if applicable

22. Hazardous materials scene recognition and response\*\*

23. Scene management/rescue/extrication\*\*

B. Clinical Component that includes experiences in providing:

1. Critical intensive care

2. Emergency care

3. Neonatal Intensive care

4. Obstetrics

5. Pediatric critical care

6. Prehospital care\*\*

7. Invasive procedures (or mannequin equivalent)

for refreshing specific skills, i.e.: endotracheal intubation

\*Refers to Inter hospital/inter facility **ALS** providers only

\*\* Refers to Prehospital **ALS** providers only.

NOTE: Specialty Care Providers must have included in their educational programs, additional content material and skills specific for their specialty area.

C., Continuing Education

1. Documentation of each scheduled crew ALS, RN, MD or Specialty care provider completion of a minimum of 48 hours of air medical refresher/continuing education every two years must be kept on file by the air medical ambulance service and submitted to the Office biennially.

2. Continuing education/staff development programs, specific and appropriate to the mission statement and scope of care of the air medical ambulance service, must be provided.

3. Continuing education/staff development programs must include reviews and/or updates of the following areas:

- a) Aviation-safety issues
- b) Altitude physiology
- c) Management of emergency/critical care adults, pediatric and neonatal patients (medical and trauma)
- d) Obstetrical emergencies
- e) Invasive procedures labs
- f) Stress Management
- g) Infection control
- h) Hazardous materials scene recognition and response
- i) Survival training, if applicable
- j) Current certification must be maintained

in the following areas:  
 (1) CPR (Cardio-pulmonary Resuscitation per guidelines of the American Heart Association)

- (2) ACLS\*
- (3) ATLS\*/Flight Nurse Advanced Trauma Course\*\*/PHTLS\*\*\* (specific certification depends on level of care provider)
- (4) PALS
- (5) Neonatal Resuscitation Course (neonatal specialty care providers, only)

\* Physicians must be either ABEM /ABOEM or ACLS & ATLS certified

\*\* Nurses may elect to audit ATLS

\*\*\* Paramedics may elect to be certified in Basic Trauma Life Support (BTLS)

**H. (Appendix A Section II did not exist)**

**II. Educational Requirements specific to the air medical in-flight environment for all air medical providers.**

**\*\*ALL AIR MEDICAL PROVIDERS\*\***

A. Air medical patient transport considerations (assessment, treatment, preparation, handling, equipment)

- 1. Day and night flying protocols
- 2. EMS communications
- 3. EMS systems
- 4. General aircraft safety annually to include:
  - a) aircraft evacuation procedures
  - b) communications during an emergency situation and knowledge of emergency communication frequencies
  - c) in-flight and ground fire suppression procedures
  - d) in-flight emergency and emergency landing procedures (e.g., position, oxygen, securing equipment)
  - e) safety in and around aircraft including FAA rules and regulations pertinent to safety for air medical team members, patients, and lay individuals
  - f) specific capabilities, limitations and safety measures for each aircraft used
  - g) use of emergency locator transmitter (ELT)

5. Ground operations

**IV. III. Pilot Training Requirements**

A. Initial training shall, at a minimum, consist of:

- 1. Training in specific type of aircraft as follows:
  - a) Less than 100 hours in aircraft type
    - (1) Factory school or equivalent (ground and flight)
    - (2) Twenty-five (25) hours as pilot in command in aircraft type prior to EMS missions
    - (3) Five (5) hours as pilot in command or at the controls prior to EMS missions
    - (4) Ten (10) hours as pilot in command or at the controls prior to EMS missions if transitioning from a single to a twin engine aircraft
  - b) Over 100 hours in aircraft type
    - (1) Part 135 check ride (for ~~part~~ Part 135 certificate holders)
    - (2) Five (5) hours local area orientation
- 2. Minimum requirements for area orientation
  - a) Five (5) hours area orientation of which two hours must be at night as pilot in command or at the controls prior to EMS missions
  - b) Training hours in aircraft type and area orientation may be combined depending on the experience and background of the pilot
- 3. Terrain and weather considerations specific to the program's geographic area
- 4. Instrument Meteorological conditions (IMC) recovery procedures by reference to instruments
- 5. A structured orientation must be conducted for relief pilots which at a minimum must include: roles,

responsibilities, and familiarization with the region served

6. Orientation to the hospital or health care system associated with the air medical service

7. Orientation to infection control, medical systems installed on the aircraft and patient loading and unloading procedures

8. Orientation to the EMS and public service agencies unique to the specific coverage area

B. Quality assurance and competency must be ensured through methodologies including monthly operational reviews, ensuring pilot proficiency in both standard and emergency procedures. Remediation must be implemented as deficiencies are identified.

C. Annual recurrent training will minimally include:

1. Factory or equivalent refresher course
2. FAR Part 135 training requirements
3. IMC recovery procedures
4. Flight by reference to instruments

#### **APPENDIX B - Aircraft and equipment**

The certificate holder must meet all Federal Aviation Regulations specific to the operations of the air medical ambulance service.

##### **A. AIRCRAFT MEDICAL CONFIGURATION STANDARDS**

1. Air medical personnel assure that all medical equipment is in working order through checklists.

2. All equipment (including specialized equipment) and supplies must be secured according to FAR's.

3. Personnel must be in seatbelts (and shoulder harnesses if installed) for all take-offs and landings according to FAA regulations.

4. Patients are restrained with straps that must comply with FAA regulations.

5. A policy must be in place to address refusal to transport patients who may be considered a threat to the safety of the flight and/or air medical personnel.

6. Patients under 60 pounds (27 kg), excluding transport isolette patients, shall be provided with an appropriately sized restraining device (for patient's height and weight) which is further secured by a locking device.

7. The pilot(s), flight controls, throttles (RW) and radios are physically protected from an intended or accidental interference by the patient, air medical personnel or equipment and supplies.

8. A minimum of one stretcher shall be provided that can be carried to the patient:

a) The stretcher and the means of securing it for flight must be consistent with FARs.

b) The stretcher shall be large enough to carry the 95th percentile adult American patient, full length in the supine position (the 95th percentile adult American male is 6 ft. and 212 lbs.).

c) The stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available.

d) The head of the stretcher is capable of being elevated at least 30 degrees for patient care and comfort.

9. Medical oxygen system - oxygen is installed according to FAA regulation and is capable of being shut off from inside the aircraft. Medical personnel can determine if oxygen is on by oxygen status using in-line pressure gauges mounted in the patient care area.

10. Each gas outlet is clearly marked for identification.

11. Supplemental lighting system will be installed in the aircraft for use in situations in which standard lighting is insufficient for patient care.

a) A self-contained lighting system powered by a battery pack or a portable light with a battery source must be available.

b) A means of protecting the cockpit from light in the patient care area shall be provided for night operations or use of red lighting (if not able to isolate the patient care area) to restrict light intensity.

12. Electric power outlet (with a minimum of 750 voltage amperage capacity) is provided, 28 volt DC and/or 115 volt AC, with sufficient output to meet the requirements of the complete specialized equipment package without compromising the operation of any electrical aircraft equipment.

13. No smoking signs are prominently displayed inside the cabin.

14. The air medical personnel "head-strike envelope" is clear of all obstructions.

##### **B. ADDITIONAL OPERATIONAL POLICIES**

There shall be specific policies and procedures regarding aircraft operations and evidence of training in the following areas:

1. Written patient loading and unloading procedures.

2. Specific policies concerning circumstances for hot loading or unloading if practiced.

3. Refueling policies for normal and emergency situations: Refueling with the engine running, rotor turning, and/or passengers on board is not recommended. However, emergency situations of this type can arise. Specific and rigid procedures should be developed by the operator to handles these occurrences. ~~Such "hot fueling" procedures will be covered by the operator's training program.~~ Refueling policies will address:

a) Refueling with engine(s) running or shut down.

b) Refueling with air medical personnel or patient(s) on board.

4. Specific policy to address the combative patient. Additional physical and/or chemical restraints should be available and used for combative patients who potentially endanger himself, the staff or the aircraft.

**C. MEDICAL MANAGEMENT and EQUIPMENT REQUIREMENTS**

**1. Airway Maintenance and Oxygen Delivery**

**a) Objectives:**

(1) The ability to initiate and maintain an airway with adequate ventilatory support for both adult and pediatric patients must be present.

(2) Adequate amounts of oxygen must be available for every mission.

(3) Oxygen flow can be stopped at or near the oxygen source from within the aircraft.

(4) A variety of oxygen delivery devices which are consistent with the scope of care must be present.

(5) The following indicators ~~are~~ must be available to personnel while in flight:

(a) quantity of oxygen remaining in the onboard oxygen supply system.

(b) measurement of oxygen liter flow

(6) There must be a back-up source of oxygen (of sufficient quantity to get safely to the ground for replacement) in the event the main system fails.

(7) Oxygen flow meters and outlets must be padded, flush mounted, or so located to prevent injury to personnel.

**b) Required Equipment:**

(1) Oral and nasopharyngeal airway adjuncts

(2) Oxygen supplies, including PEEP valves, appropriate for age and potential needs of patients

(3) Bag-Valve-Masks with oxygen reservoirs (assorted sizes appropriate to age of patients)

(4) Suction equipment (installed and portable) with appropriate suction tubes (sizes and types)

(5) Laryngoscope and tracheal intubation equipment

(6) Chest decompression and cricothyroidotomy equipment

(7) Pulse Oximeter

(8) Capnography (wave form)

(9) And all other equipment required to comply with the Delaware Standard Treatment Protocols.

**2. Intravenous Fluids**

**a) Objectives:**

(1) Fluids and supplies must be readily available.

(2) Hangers/hooks are available that secure the IV solutions in place.

(3) All hooks are padded and/or flush mounted to prevent injury to personnel.

(4) Glass IV containers are prohibited

unless explicitly required by medication administration specifications.

**b) Equipment:**

A variety of IV solutions, tubing and catheters which potentially may be needed must be carried.

**3. Medications**

**a) Objectives:**

(1) Medications must be easily accessible.

(2) Controlled substances are to be secured in a manner consistent with state laws.

(3) Medications are stored in such a manner as to protect them from temperature extremes.

**b) Equipment and Supplies:**

(1) All services whose scope of service include ALS and specialty care missions will carry ~~ACLS~~ the drugs required to comply with current Delaware Standard Treatment Protocols.

(2) Medications required by a specific specialty care mission must be carried on board during the mission.

(3) Appropriate medication administration equipment must be present.

**4. Cardiac Monitoring, Defibrillation and External Pacing**

**a) Objectives:**

(1) External cardiac pacing must be available.

(2) Equipment must be secured and positioned so that displays are clearly visible and usable to the attending personnel.

(3) The aircraft must allow for in-flight, 'effective' CPR.

(a) 'Effective' is defined as CPR that produces a compression pulse.

**b) Equipment Required:**

(1) Cardiac monitor/Defibrillator and External Cardiac ~~Pacer~~ Pacemaker:

(2) Pediatrics paddles must be present if appropriate to the scope of service.

(3) Extra power sources are available for cardiac monitor, defibrillator and external ~~pacer~~ cardiac pacemaker.

(4) Automatic blood pressure device

**APPENDIX C – Quality Management**

1. ~~There is a~~ The service or organization shall have a written QA/CQI plan which includes the following components:

- a) Responsibility/assignment of accountability
- b) Scope of care
- c) Important aspects of care
- d) Indicators
- e) Thresholds for evaluation which are

appropriate to the individual service

f) Methodology

2. ~~There will be regularly scheduled~~ The service or organization shall regularly hold QA/CQI meetings.

3. The service or organization's monitoring and evaluation process ~~has~~ shall have the following characteristics:

a) Driven by important aspects of care identified by the air medical service's QA/CQI plan

b) Indicators and control thresholds are used to objectively monitor the important aspects of care

c) Evidence of QA/CQI studies and evaluation in compliance with written QA/CQI plan

d) Evidence of reporting QA/CQI activities through established QA/CQI organizational structure

e) Evidence of on-going re-evaluation of action plans until problem resolution occurs

4. Quarterly review shall monitor, at a minimum, the following:

a) Reason for transport

b) Mechanism of injury or illness

c) Medical interventions performed or maintained

(1) Time of intervention consistently documented

(2) Patient's response to intervention documented

(3) Appropriateness of interventions performed or omission of needed interventions

d) Patient's outcome (morbidity and mortality) at the time of arrival at destination (including any change in condition during flight)

e) Timeliness of the transport

f) Safety practices

(1) Safety issues may be handled through the Safety Committee when a problem is identified.

(2) QA/CQI personnel may collect data and refer to the Safety Committee for action and resolution.

g) Operational criteria to include at a minimum the following ~~quantity~~ quantity-indicators:

(1) Number of aborted and canceled flights due to weather

(2) Number of aborted and canceled flights due to maintenance

(3) Number of aborted and canceled flights resulting in the use of alternative modes of transport due to patient condition.

5. Utilization appropriateness (RW) - the following indicators may trigger a review of the EDIN record by the Office of Emergency Medical Services, or their designate, to determine the medical appropriateness of the transport, based upon patients who are:

a) ~~Who are discharged~~ Discharged home directly from the Emergency Department, or discharged within 24 hours of admission

b) Transported without an IV line or oxygen

c) In ~~which~~ cardiopulmonary arrest where CPR is in progress at the referring location

d) ~~Who are not~~ Not transferred from a critical care unit, emergency department, or other specialty care unit.

e) "Scheduled transports"

f) Air transported more than once for the same illness or injury within 24 hours

g) Transported from the scene of an injury ~~with a trauma score of 15 or greater or fails to meeting area-specific triage criteria for a critically injured trauma patient and fails to meet the criteria outlined in the "Prehospital Trauma Triage Scheme" in Section VI of the State Trauma System Regulations.~~

h) Transported interfacility, and the receiving facility is not a higher level of care than the referring facility

i) ~~Transported from the scene of an injury to any hospital which was not the closest appropriate and available trauma center (based on regional trauma plans, if present)~~

6. For both QA/CQI and utilization review programs, there shall be evidence of actions taken in problem areas and the evaluation of the effectiveness of that action.

#### Appendix D—Glossary

~~ABEM—American Board of Emergency Medicine~~

~~ABOEM—American Board of Osteopathic Emergency Medicine~~

~~ACLS (Advanced Cardiac Life Support) A syllabus and certification of the American Heart Association (AHA).~~

~~AIRCRAFT TYPE Particular make and model of helicopter or airplane.~~

~~AIR MEDICAL SERVICE A company or entity of a hospital or public service which provides air transportation to patients requiring medical care. This term may be used interchangeably with the term "air medical program" throughout the document.~~

~~AIR MEDICAL PERSONNEL Refers only to the patient care personnel involved in an air medical transport.~~

~~AIR MEDICAL TEAM Refers to the pilot(s) and patient care personnel who are involved in an air medical transport.~~

~~ALS MISSION The transport of a patient who receives care during an interfacility or scene response commensurate with the scope of practice of an EMT-Paramedic.~~

~~ALS PROVIDER A certified provider of skills required for advanced life support.~~

~~ATLS (Advanced Trauma Life Support) A syllabus and certification offered to physicians by the American College of Surgeons.~~

~~BLS MISSION The transport of a patient who receives care during an interfacility or scene response that is commensurate with the scope of practice of an EMT-B.~~

~~BLS PROVIDER A certified provider of skills required for basic life support.~~

**BTLS (Basic Trauma Life Support)** A syllabus offered by the American College of Emergency Physicians to provide a standard of care for the prehospital trauma victim.

**CERTIFICATE** Signifies a pilot level of competency, i.e., student, private, commercial.

It can also refer to the type of service a company is qualified to provide under Federal Aviation Regulations.

**CONSORTIUM PROGRAM** An air medical service sponsored by more than one health care facility or entity.

**CONTINUOUS QUALITY IMPROVEMENT (CQI)** CQI is a management strategy that integrates dedication to a quality product into every aspect of the service; it brings together a variety of personnel and management tools to examine the sources of problems within the system. CQI seeks to establish and remedy the root cause of problems by identifying and correcting the system's errors, rather than ascribing fault to individuals.

**CONTROLLED AIR SPACE** Air space designated as continental control area, terminal control area, or transition area within which some or all aircraft may be subject to air traffic control.

**CRITICAL CARE MISSION** The transport of a patient from an emergency department or critical care unit (or scene, RW) who receives care commensurate with the scope of practice of a physician or registered nurse.

**CROSS COUNTRY (CC)** Generally when the destination is greater than 25 nautical miles from the departure point or as designated by a geographic boundary.

The DSP cross country is 25 nautical miles outside of the state of Delaware.

DSP Delaware State Police

**ELECTIVE TRANSPORTS** Air medical transports that may not be medically necessary but are done for patient or physician preference; these often are fixed wing, prepaid scheduled transports.

**ELT (Emergency locator transmitter)** A radio transmitter attached to the aircraft structure which is designed to locate a downed aircraft without human action after an accident.

FAA Federal Aviation Administration

FAR Federal Aviation Regulation

**HEAD-STRIKE ENVELOPE** The volume of air space which a person's head would potentially move through during any abrupt aircraft motion.

**HELIPAD** A small, designated area usually with a prepared surface, on an airport, landing/take-off area, or apron/ramp used for take-off, landing or parking helicopters.

**HOT LOAD/UNLOAD** The loading or unloading of patient(s) or equipment with rotors turning.

**IABP (Intra aortic balloon pump)** A cardiac assist machine which can be retrofitted into some types of aircraft.

IFR Instrument Flight Rules

**INSTALLED EQUIPMENT** Includes all items or systems on the aircraft at the time of certification and any

items or systems subsequently added to the aircraft with FAA approval through a Supplemental Type Certificate (STC), FAA Form 8110 or Form 337 action.

IMC Instrument meteorological conditions.

**INDEPENDENT PROGRAM** Referring to an air medical service not sponsored by a hospital and operating under its own FAA certificate.

**INFECTION CONTROL** An approach to reducing the risk of disease transmission to care takers, patients and others

**LOCAL Day local:** Less than 25 nautical miles from departure point to destination point with generally the same terrain elevation.

**Night Local:** The urban area of the helicopter base with enough illumination to maintain ground reference.

The DSP local is within the State of Delaware and less than 25 nautical miles outside the State of Delaware.

**MODALITIES** Treatment plans and equipment used in the delivery of patient care.

**PHTLS** Prehospital Trauma Life Support: A course offered by the American College of Surgeons to provide a standard of care for the prehospital victim.

PIC Pilot in command.

**QUALITY ASSURANCE (QA)** QA is a process of reviewing the quality of care delivered through the examination of known or potential problems. It measures the degree of compliance of the service's personnel with established standards.

**SPECIALTY CARE MISSION** The transport of a patient who requires care by professionals who can be added to the regularly scheduled personnel.

**SPECIALTY CARE PROVIDER** A provider of specialty care, such as neonatal, pediatric, etc.

VFR Visual Flight Rules.

#### **APPENDIX D Air Medical Ambulance Service Use Report**

Agency: \_\_\_\_\_ County (circle): NewCastle Kent Sussex

Incident #: \_\_\_\_\_ Incident Date: \_\_\_\_\_

Incident Location: \_\_\_\_\_

Incident Type: Medical Trauma Medical/Trauma Peds OB

Patient Priority: 1 2 3

Air Medical Service: \_\_\_\_\_

Radio Designation: \_\_\_\_\_

Responded From: \_\_\_\_\_

DSP Available? Y N Reason not utilized or not available: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ALS 10-8: \_\_\_\_\_ ALS 10-2: \_\_\_\_\_

Helo Request: Helo 10-8: Helo 10-2: \_\_\_\_\_

Circumstances \_\_\_\_\_

(Briefly describe the factors or circumstances that contributed to the use of this Air Medical Service)

Submitted by (print): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### **DIVISION OF SOCIAL SERVICES**

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

#### **PUBLIC NOTICE Food Stamp Program**

#### **REVISION OF THE REGULATIONS OF DELAWARE'S DIVISION OF SOCIAL SERVICES MANUAL SECTIONS 9042, 9028.1, 2012**

#### **NATURE OF THE PROCEEDINGS**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to amend policies related to the Division of Social Services Manual Sections 9042, 9028.1, 2012. The first change states that households applying for food stamps whose gross income is at or below 200 per cent of the Federal Poverty Level are categorically eligible. The second change moved joint application processing language to a new section (from DSSM 9042 to DSSM 9028.1). The third change clarifies the rule that eligible individuals may receive benefits up to and including the date of his/her death to include the Food Stamp and Medicaid Programs. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

#### **FINDINGS OF FACT**

The Department finds that the proposed changes as set forth in the March, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed

regulations of the Food Stamp Program are adopted and shall be final effective May 10, 2001.

April 16, 2001, Vincent P. Meconi, Secretary, DHSS

#### **REVISION**

#### **9042 ~~ABC/GA and~~ Categorically Eligible Households**

[273.2(j)]

~~Notify households applying for ABC/GA of their right to apply for food stamp benefits at the same time and permit them to do so. These households' food stamp eligibility and benefit levels are to be based solely on food stamp eligibility criteria. However, any household in which all members are recipients of ABC/GA and/or SSI benefits are to be considered eligible for food stamps because of their ABC/GA/SSI status in accordance with DSSM 9042.2.~~

~~Recipients include individuals authorized to receive ABC/GA and/or SSI benefits but who have not yet received payment. In addition, persons are considered recipients if the ABC/GA or SSI benefits are suspended or recouped. Persons entitled to ABC/GA benefits because the grant is less than \$10. are also considered ABC/GA recipients.~~

~~Households, whether jointly processed and/or eligible because of their ABC/GA/SSI status will be certified in accordance with the notice, procedural and timeliness requirements of the food stamp regulations.~~

~~Households applying for food stamps whose gross income is at or below 200 percent of the Federal poverty level are categorically eligible unless specifically excluded in DSSM 9042.2 or 9042.3. The household is categorically eligible because Delaware uses TANF funds to provide pregnancy prevention information. Reduction of out-of-wedlock pregnancies is the 3<sup>rd</sup> purpose of the TANF program.~~

~~The authorization to receive information and/or services for pregnancy prevention is included on all applications for food stamps as follows:~~

#### **AUTHORIZATION FOR RECEIPT OF PREGNANCY PREVENTION INFORMATION**

~~You are authorized to receive pregnancy prevention information. If you wish to receive this information you can call Planned Parenthood at 1-800-230-PLAN (7526). If you wish to get teen pregnancy prevention information, you may also call the Alliance for Adolescent Pregnancy Prevention at 1-800-499-WAIT (9248). You can also call the Delaware Helpline at 1-800-464-4357 for the Public Health Family Planning clinic in your area.~~

#### **9028.1 Joint Application Processing**

Notify households applying for ABC/GA of their right

to apply for food stamp benefits at the same time and permit them to do so. These households' food stamp eligibility and benefit levels are to be based solely on food stamp eligibility criteria. However, any household in which all members are recipients of ABC/GA and/or SSI benefits are to be considered eligible for food stamps because of their ABC/GA/SSI status in accordance with DSSM 9042.2 .

Recipients include individuals authorized to receive ABC/GA and/or SSI benefits but who have not yet received payment. In addition, persons are considered recipients if the ABC/GA or SSI benefits are suspended or recouped. Persons entitled to ABC/GA benefits because the grant is less than \$10. are also considered ABC/GA recipients.

Households, whether jointly processed and/or eligible because of their ABC/GA/SSI status, will be certified in accordance with the notice, procedural and timeliness requirements of the food stamp regulations.

#### **DSSM 2012 Deceased ~~Cash Assistance~~ Recipients**

Eligible individuals may receive benefits up to and including the date of his/her death.

##### For Cash Assistance:

If a recipient dies after midnight of the first day of the month, but before he has received his grant or was unable to endorse and cash it, the check may be returned to the Payments Section, DMS. There it will be marked "Payable to the estate of" the recipient. The name of the person handling the estate will be designated as payee. The check will be sent to the person handling the estate.

##### For Food Stamps:

If the deceased recipient was the only household member, the food stamp benefits are returned to the agency.

If the deceased recipient is the payee of the benefit for a household, the remaining household members are eligible for the benefit at the same level for the current month, and if eligible due to ten day notice, for the next month s benefit.

##### For Medical Assistance:

Individuals may receive benefits up to and including the date of his/her death.

##### For Long Term Care:

Institutions may receive vendor payment up to and including the date of death.

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### **DIVISION OF SOCIAL SERVICES**

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

#### **Medicaid/Medical Assistance Program**

### **NATURE OF THE PROCEEDINGS**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid Program initiated proceedings to add new policy related to Section 4913 Disabled Children to the Division of Social Services Manual Sections 17170 through 17170.6. These are proposed eligibility rules for a mandatory categorically needy eligibility group enacted under the Balanced Budget Act of 1997. Medicaid coverage is continued for children who lost Supplemental Security Income (SSI) payments (and automatic Medicaid) because they did not meet the new definition of disability enacted under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.

The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

### **FINDINGS OF FACT**

The Department finds that the proposed changes as set forth in the March, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed new regulations of the Medicaid Program are adopted and shall be final effective May 10, 2001.

April 16, 2001, Vincent P. Meconi, Secretary, DHSS

#### 17170 Section 4913 Disabled Children

Section 4913 of The Balanced Budget Act (BBA) provides that children who were receiving SSI payments on August 22, 1996, and who but for the enactment of the new disability definition under § 211(a) of the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), would continue to be paid SSI, are mandatory categorically eligible for Medicaid. This provision is effective for those children who lose their SSI payment on or after July 1, 1997.

##### 17170.1 Technical Eligibility

The child must meet all of the following requirements:

(a) The child was being paid SSI on August 22, 1996. This includes children who, as of August 22, 1996, were in current pay status, had received favorable or partially favorable administrative decisions, or had a Zebley appeal pending.

(b) The child's SSI payment stopped on or after July 1, 1997.

(c) The decision to stop SSI payments was due to a determination that the child does not meet the definition of disability enacted on August 22, 1996, at § 211(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(d) The child would, except for the disability determination described in (c), continue to be paid SSI.

A child, who was not receiving SSI on August 22, 1996, is not protected by Section 4913. A child who loses SSI after August 22, 1996, for a nondisability reason is also not protected by Section 4913. If either of these two situations occur, a redetermination of Medicaid eligibility for the child under another eligibility group will be done.

#### 17170.2 Disability Determination

The redetermination of disability will follow the rules in 20 CFR 416.920-930 as in effect on April 1, 1996.

#### 17170.3 Continuing Disability Reviews

The rules in 20 CFR 416.990 as published on April 1, 1996, will be used with the following modifications to the frequency of review:

(a) Review disability after, at most, 18 months if medical improvement is expected.

(b) Review disability after, at most, 3 years if disability is not permanent but medical improvement cannot be predicted.

(c) Review disability after, at most, 7 years if disability is permanent.

#### 17170.4 Financial Eligibility

Follow the SSI income and resource standards and methodologies.

#### 17170.5 Continued Eligibility

Medicaid eligibility for children covered under this provision continues until the earlier of:

(a) the child reaches age 18

(b) the child no longer meets the criteria of the SSI program for payment of benefits (other than the post August 22, 1996, definition of disability for children). A child who ceases to meet the non-disability SSI eligibility criteria can recover coverage under Section 4913 if the child again meets the non-disability SSI criteria. However, a determination that the child is no longer disabled under the pre-PRWORA disability criteria will permanently bar the child from protected coverage under Section 4913.

(c) the child is not eligible under another Medicaid eligibility group.

#### 17170.6 Redetermination of Eligibility

A redetermination of the nondisability criteria is

required at least every 12 months.

## **DEPARTMENT OF LABOR COUNCIL ON APPRENTICESHIP & TRAINING**

Statutory Authority: 19 Delaware Code,  
Section 202(a) (19 Del.C. §202(a))

### **ORDER**

Public hearings were held on December 12, 2000 and March 13, 2001 before the Council on Apprenticeship and Training to receive comments relating to proposed changes to Regulation 106.9 **Deregistration of State Registered** and Regulation 106.10 **Hearing**. At the regularly scheduled on March 13, 2001, the Council voted to recommend that the Secretary of Labor adopt the proposal as it was published in the Register of Regulations, Vol. 4, Issue 8 (February 1, 2001).

### **SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

At the public hearing on December 12, 2000

1. Bill McCloskey, President, Building Trades, spoke in support of the changes but recommend that the word "will" should be substituted in 106.9(C) to may initiating the proceedings mandatory. He thought there should be a period of deregistration such as three years. In his view, a sponsor has a special obligation of training and safety to the apprenticeship as a parent and child.

2. Ed Capodanno of Associated Builders & Contractors questioned the need for a change. He thought the term "appears" in 106.9(B) may be too vague. He wondered if an allegation of a violation from anyone would trigger deregistration.

3. Ken Adams of Pace Electric commented that he wasn't aware that the federal laws were implicated in enforcement. He was in favor of tightening up the regulations.

### **RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION**

1. The Council believes that the term "will" should be substituted for "may" to make the consequences of a violation more certain.

2. The Council recognizes that it is up to the Administrator to determine what "appears" to be a violation that will trigger an investigation and possible action. The Council believes that to protect the rights of the apprentice, the time for response by the Sponsor to a notice of violation

should be shortened to 10 days.

3. The Council agrees that a recommendation for involuntary deregistration should include a period during which the Sponsor could not reapply with a program. That recommendation could be up to three years.

These recommendations are respectfully submitted to the Secretary of Labor for consideration this 13<sup>th</sup> day of March, 2001.

#### COUNCIL ON APPRENTICESHIP AND TRAINING

Robert Buccini                      Thomas Archie  
Lewis Atkinson, Ed.D.          James T. Clothier

#### DECISION AND EFFECTIVE DATE

Having reviewed the record of the Public Hearings and adopted the recommendations of the Council on Apprenticeship and Training, the changes to Regulation 106.9 and 106.10 are hereby promulgated to be effective 10 days following publication of the final regulations in the Register of Regulations.

#### TEXT AND CITATION

The text of the Rules and Regulations appears in the Register of Regulations, Vol. 4, Issue 8, February 1, 2001.

#### DEPARTMENT OF LABOR

Harold E. Stafford, Secretary of Labor

#### Sec. 106.9 DEREGISTRATION OF STATE REGISTERED PROGRAM

~~(A) Deregistration proceedings shall be undertaken when the Program is not conducted, operated or administered in accordance with the Registration standards and the requirements of this chapter;~~

~~(B) Where it appears the Program is not being operated in accordance with the Registered standards or with the requirements of the chapter, the Administrator shall so notify the Program Registrant in writing;~~

~~(C) The notice shall be sent by registered or certified mail, return receipt requested, and shall state the deficiency(s) or violation(s);~~

~~(D) It is declared to be the policy to this State to:~~

~~(1) deny the privilege of operation of a Program to persons who, by their conduct and record, have demonstrated their indifference to the aforementioned policies; and~~

~~(2) discourage repetition of violations of rules and regulations governing the operation of Registered Apprenticeship Programs by individuals, Sponsors, or Committees against the prescribed policies of the State, and~~

~~its political subdivisions, and to impose increased and added deprivation of the privilege to operate Programs against those who have been found in violation of these rules and regulations;~~

~~(3) deregister a Program either upon the voluntary action of the Registrant by a Request for cancellation of the Registration, or upon notice by the State to the Registrant stating cause, and instituting formal deregistration proceedings in accordance with the provisions of this chapter;~~

~~(4) at the request of Sponsor, permit the Administrator to cancel the Registration of a Program by a written acknowledgment of such request stating, but not limited to, the following:~~

~~(a) that the Registration is canceled at Sponsor's request and giving the effective date of such cancellation.~~

~~(b) that, within fifteen (15) working days of the date of the acknowledgment, the Registrant must notify all Apprentices of such Cancellation, the effective date, and that such Cancellation automatically deprives the Apprentice of his/her individual Registration.~~

~~(E) Any Sponsor who violates major provisions of the rules repeatedly, as determined by the Administrator of Apprenticeship and Training (three violations in any give twelve month period), shall be sent a notice which shall contain the violations and will inform the Sponsor that the Program will be placed in a probationary status for the next six (6) month period. Any new major violations in this period shall constitute cause for deregistration. In such a case, the Administrator shall notify the chairman of the Apprenticeship and Training Council, who shall convene the Council.~~

~~The Sponsor in question will be notified of said meeting and may present whatever facts, witnesses, etc., the Sponsor deems appropriate. After said hearing, the Council shall make a recommendation based on the facts presented to the Secretary, as to whether the Program should be deregistered. The Secretary's decision shall be final and binding on the matter.~~

~~(F) Sponsors with fewer than three (3) violations shall be sent a notice by registered or certified mail, return receipt requested, stating that deficiencies for cause unless corrective action is taken within thirty (30) days. Upon request by Registrant, the thirty (30) day period may be extended for up to an additional thirty (30) day period.~~

~~(G) If the required action is not taken with the allotted time, the Administrator shall send a notice to the Registrant by registered or certified mail, return receipt requested, stating the following:~~

~~(1) this notice is sent pursuant to this subsection;~~

~~(2) that certain deficiencies were called to the Registrant's attention and remedial action requested;~~

~~(3) based upon the stated cause and failure of~~

remedy, the Program will be deregistered, unless within fifteen (15) working days of receipt of this notice, the Registrant requests a hearing;

(4) If a hearing is not requested by the Registrant, the Program will automatically be deregistered.

(H) Every order of deregistration shall contain a provision that the Registrant and State shall, within fifteen (15) working days of the effective date of the order, notify all registered Apprentices of the deregistration of the Program, the effective date, and that such action automatically deprives the Apprentice of his/her individual Registration.

(A) It is the policy of this State to discourage violations of the law or these rules and regulations by limiting or revoking the privilege to operate programs when Sponsors demonstrate an indifference to these requirements.

(B) Where it appears to the Administrator that a program is not being operated in accordance with federal or state law or these rules and regulations, the Administrator shall so notify the Sponsor in writing stating the deficiency and providing a period for corrective action not to exceed 10 days. Such notice shall be sent by certified mail, return receipt requested. The Sponsor shall respond in writing to the letter within 10 days of receipt.

(C) If the Sponsor fails to correct a deficiency after notice by the Administrator under (B), deregistration proceedings will be undertaken.

1. Voluntary deregistration is available to a Sponsor upon written request to the Administrator. Within fifteen (15) working days of the effective date of deregistration demonstrated by the acknowledgment of the Administrator, the Sponsor must notify all Apprentices of such deregistration, the effective date, and that the deregistration automatically deprives the apprentice of his/her individual registration.

2. Involuntary deregistration is initiated by the Administrator as follows:

(a) If the Sponsor fails to respond to the notice of deficiency, the Administrator shall advise the Sponsor by certified mail, return receipt requested, that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

(b) If the response by the Sponsor to the notice is insufficient to correct the deficiency, the Administrator shall so advise the sponsor by certified mail, return receipt requested. Said letter shall advise the Sponsor that the program will be recommended for deregistration unless within 10 days the Sponsor requests a hearing.

(c) If no hearing is timely requested, the Administrator will recommend deregistration to the Secretary. The decision of the Secretary is final and no further appeal is provided. The sponsor will be notified of the effective date of deregistration. In addition, a decision of

deregistration and its effective date will be mailed to all Apprentices registered in the program.

(d) All recommendations for involuntary deregistration as a result of violations of the Rules and Regulations will include a recommended period of deregistration of up to three (3) years.

#### SEC. 106.10. HEARING

(A) Within ten (10) working days of a request for a hearing, the Administrator or his/her designee, shall give reasonable notice of such hearing by registered mail, return receipt requested, to the Registrant. Such notice shall include:

- (1) the time and place of the hearing;
- (2) a statement of the provisions of the chapter pursuant to which the hearing is to be held;
- (3) a statement of the cause for which the Program may be deregistered and the purpose of the hearing.

(B) The chairman of the Council on Apprenticeship and Training or his/her designee shall conduct the hearing, which shall be informal in nature. Each party shall have the right to counsel, and the opportunity to present his/her case fully, including cross-examination of witnesses as appropriate.

(C) The Administrator shall make every effort to resolve the complaint and shall render an opinion within ninety (90) days after receipt of the complaint, based upon the record before him and an investigation, if necessary. The Administrator shall notify, in writing, all parties of his decisions. If any party is dissatisfied with or feels that they have been treated unfairly by said decision, they may request a hearing by the Apprenticeship and Training Council. Those provisions of the hearing process that are applicable shall be followed and Council shall make a determination on the basis of the record and the proposed findings of the Administrator. This determination shall be subject to review and approval by the Secretary, whose decision shall be final.

(A) A deregistration hearing will be scheduled before the Council on Apprenticeship and Training within 45 days of receipt of a timely request by the Sponsor.

(B) Notice shall be in accord with the provisions of the Administrative Procedures Act.

(C) Each party shall have the right to present evidence, to be represented by counsel, and to cross-examine witnesses.

(D) A record from which a *verbatim* transcript can be prepared shall be made of the hearing. A party may request a transcript at his or her expense.

(E) At the conclusion of the hearing, the Council will determine, by a majority of the quorum, its recommendation to the Secretary.

(F) The Council shall submit its recommended findings of fact, conclusions of law, and decision to the Secretary. Said recommendations may be authenticated by the

chairperson.

(G) The decision of the Secretary is final and no further appeal is provided. The decision will be sent by certified mail to the Sponsor. In addition, a decision of deregistration and its effective date will be mailed to all Apprentices registered in the program.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT**

**WASTE MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Chapter 60  
(7 Del.C. Ch. 60)

**Secretary's Order No.: 2001-A-0011  
Proposed Revisions to the Delaware Regulations  
Governing Solid Waste**

Date of Issuance: March 27, 2001

Effective Date of the Revisions: May 10, 2001

**I. Background**

On July 25, 2000, a public hearing was held in the DNREC Auditorium in Dover to receive comment on the Department's proposed revisions to the **Delaware Regulations Governing Solid Waste**. Notice of the proposed modifications and dates of the public workshop and public hearing were first published in the Delaware Register of Regulations, Vol. 3, Issue 10, on April 1, 2000. Thereafter, a public workshop was held on May 10, 2000, to explain the proposed changes. As a result of the comments received at the public workshop, the Solid and Hazardous Waste Management Branch of the Division of Air and Waste Management proposed modifications to the previously noticed changes. The revised proposed regulatory revisions were published in the Delaware Register of Regulations, Vol. 4, Issue 1, on July 1, 2000.

The aforementioned proposed revisions involve numerous minor modifications to Delaware's Regulations Governing Solid Waste. After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared his report and recommendation in the form of a memorandum to the Secretary dated March 6, 2001, and that memorandum is expressly incorporated herein by reference.

**II. Findings and Conclusions**

All of the findings and conclusions contained in the

Hearing Officer's Memorandum dated March 6, 2001, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

**III. Order**

In view of the above, I hereby order that the proposed revisions to the **Delaware Regulations Governing Solid Waste** be promulgated and implemented in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

**IV. Reasons**

Adopting these proposed revisions to the **Delaware Regulations Governing Solid Waste** will be beneficial to the State of Delaware. The Department's Division of Air & Waste Management has provided a sound basis for these revisions, including reasoned responses to the various comments, and has, where necessary, proposed minor changes to satisfy DSWA concerns. In addition, the implementation of these regulatory revisions will further the policy and purposes of 7 Del.C., Chapter 60.

Nicholas A. DiPasquale, Secretary

**MEMORANDUM**

TO: Nicholas A. DiPasquale, Secretary  
THROUGH: Robert R. Thompson, Hearing Officer  
FROM: Lisa A. Vest, Paralegal  
RE: Proposed Revisions to the **Delaware Regulations Governing Solid Waste**  
DATE: March 6, 2001

**I. Background:**

On July 25, 2000, a public hearing was held in the DNREC Auditorium in Dover to receive comment on the Department's proposed revisions to the **Delaware Regulations Governing Solid Waste**. Notice of the proposed modifications and dates of the public workshop and public hearing were first published in the Delaware Register of Regulations, Vol. 3, Issue 10, on April 1, 2000. Thereafter, a public workshop was held on May 10, 2000, to explain the proposed changes. As a result of the comments received at the public workshop, the Solid and Hazardous Waste Management Branch of the Division of Air and Waste Management proposed modifications to the previously noticed changes. The revised proposed regulatory revisions were published in the Delaware Register of Regulations, Vol. 4, Issue 1, on July 1, 2000.

The aforementioned proposed revisions involve numerous minor modifications to Delaware's Regulations

Governing Solid Waste. The following is a brief summary of the changes being proposed by AWM at this time:

**1. Section 2 (Scope and Applicability):**

- Clarification of requirements applicable to agricultural waste.
- Removal of composting and recycling from "Exemptions" and relocation of same to a new subsection, "Composting and Recycling Approvals".

**2. Section 3 (Definitions):**

- Definition of previously undefined terms.
- Deletion of terms no longer used in the regulations.
- Clarification of terms which are imprecise or incomplete.

**3. Section 4 (Permit Requirements and Administrative Procedures):**

- Addition of provision requiring all permittees to comply with the conditions of their permits.
- Clarification of procedures for transferring a permit.
- Increasing the notifications time for transfer of a permit.
- Streamlining the procedure for approving the closure of a solid waste facility.
- Provision of greater consistency in permitting requirements.

**4. Section 5 (Sanitary Landfills):**

- Prohibition of the acceptance of Conditionally Exempt Small Quantity Generator Waste.

**5. Section 7 (Transporters):**

- Clarification of administrative requirements pertaining to permit applications.
- Clarification of reporting and documentation requirements.
- Prohibition of transporters who have been denied a transporter permit from being listed as a subcontractor or sub-lease on another transporter's permit for a period of one year after the expiration of denial date.
- Provision of references to other sections of the regulations where applicable.
- Review financial assurance requirements to make them consistent with federal requirements.

**6. Section 10 (Transfer Stations):**

- Removal of language referring to flow control at Delaware Solid Waste Authority facilities.

**7. Section 11, Part 1 (Infectious Waste):**

- Reorganization of portions of this section to make requirements more understandable.

- Referencing of other applicable sections of the regulations to minimize misunderstanding of requirements.
- Removal of the provision allowing a transporter to complete a consolidated manifest for small quantity infectious waste generators.

In addition to the above proposed revisions, the Department is proposing the following changes throughout the regulations:

- The changing of "Solid Waste Management Branch" to "Solid and Hazardous Waste Management Branch".
- The elimination, where possible, of provisions requiring compliance with regulations, standards, or procedures not contained within this document and potentially subject to change by entities other than the DNREC Solid and Hazardous Waste Management Branch.

No one from the public attended the hearing, but written comments were received at that time from Richard Watson (representing the Delaware Solid Waste Authority) and subsequently from Harvey & Harvey (a division of Waste Management of Delaware, Inc.), all of which will be addressed below. The Solid & Hazardous Waste Management Branch of the Department responded to the comments from the Delaware Solid Waste Authority in a response document attached to their memorandum to the Hearing Officer, dated December 27, 2000. Proper notice of the hearing was provided as required by law.

**II. Summary of Comments:**

**A. Exhibits:**

The record contains four (4) exhibits from the Department's Solid and Hazardous Waste Management Branch, which are as follows:

- **Exhibit No. 1:** List of proposed revisions.
- **Exhibit No. 2:** Complete text of the regulations, with proposed revisions, as published in the Delaware Register of Regulations, Vol. 4, Issue 1, on July 1, 2000.
- **Exhibit No. 3:** Legal notice for Public Hearing and announcement of Public Workshop.
- **Exhibit No. 4:** Attendance list for Public Workshop.

Additionally, the Delaware Solid Waste Authority submitted written comments to the Department at the time of the hearing, which were identified by the Hearing Officer as "DSWA #1". Subsequent to the date of the hearing, the Department also received a letter dated July 28, 2000 from Harvey & Harvey, a Division of Waste Management of Delaware, Inc. Lastly, the Department prepared written

responses to the Delaware Solid Waste Authority's comments, and attached this response document to their memorandum addressed to the Hearing Officer dated December 27, 2000

**B. Comments:**

As noted above, the Delaware Solid Waste Authority (hereinafter referred to as "DSWA") submitted written comments on the Department's proposed revisions to the **Delaware Regulations Governing Solid Waste**. These comments, along with the Department's written responses to the same, are thoroughly addressed in the Department's response document attached to its memorandum to the Hearing Officer dated December 27, 2000, which is attached hereto.

The aforementioned proposed revisions involve various modifications to Delaware's Regulations Governing Solid Waste. These revisions, all of which are minor in nature, are quite numerous, and are already set forth in detail in the above noted document attached to the Department's memorandum dated December 27, 2000. This attachment also included the DSWA's comments regarding the Department's proposed revisions, as well as the Department's response to the same. Therefore, since the Department's response document is being attached to this report, it is unnecessary to reiterate the same herein.

With respect to the Department's responses to the DSWA's comments, there are only two responses that will be addressed by this report. First of all, on page one of the Department's responses attached to their memorandum of December 27, 2000, under "Section 2: Scope and Applicability", the Department is proposing to add the term, "land application" to the agricultural waste exemption. In its comments regarding this revision, DSWA believes that a definition for "land application" is needed. The Department agrees that the term "land application" should be defined, however, they propose to take that action as part of the next regulatory revision. Secondly, on the final page of the Department's response document, DSWA suggests that the Department should add another section to Section 6, which concerns industrial landfills. It is DSWA's position that industrial landfills have a potential for inadvertently receiving hazardous waste, and therefore the Department should have such a provision included within Section 6 of its regulations. In their response document, the Department stated that they believe this suggestion merits consideration, however, they propose to leave this matter for a future regulatory revision.

The Department has subsequently clarified their reasons for the decision to not revise the regulatory language in both of the above matters at this time. In both cases, parties other than DSWA would be affected by any changes that the Department was to make to the currently proposed language. Rather than make changes to their original

proposals based only on DSWA's input, the Department prefers to delay the changes until the same can be reworded and put through the customary public notice process in future regulatory revisions.

With respect to the letter subsequently received by the Department from Harvey & Harvey dated July 28, 2000, it states in pertinent part that this company supports the Department's proposal to delete the prohibition on commingling solid waste generated outside of the State of Delaware with solid waste generated in Delaware. Harvey & Harvey further points out that, since the DSWA has dropped its flow control regulation in favor of a rebate program, this regulation is no longer applicable. Thus, no objections from any parties other than the DSWA concerning the Department's proposed revisions to Delaware's Regulations Governing Solid Waste exist within the record that has been generated in this matter.

**III. Conclusions and Recommended Findings:**

On the basis of the record developed in this matter, it appears that the Solid & Hazardous Waste Management Branch of the Department's Division of Air & Waste Management has provided a sound basis for the proposed revisions to the **Delaware Regulations Governing Solid Waste**, including reasoned responses to the various comments and has, where necessary, proposed minor changes to satisfy DSWA concerns. Therefore, I recommend that AWM's suggested revisions be made and that the proposed regulatory revisions be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

In addition, I recommend issuing the attached Secretary's Order to effectuate this purpose and adopting the Hearing Officer's findings and conclusions as expressed hereinabove.

Lisa A. Vest, Paralegal  
Robert R. Thompson, Hearing Officer

**SYNOPSIS OF REVISIONS TO REGULATIONS  
GOVERNING SOLID WASTE****Section 2: Scope and Applicability**

- Revise the agricultural waste exemption to include land application (in addition to disposal) of agricultural wastes.
- Move provisions pertaining to composting and recycling approvals from "Exemptions" subsection and place them in a new subsection, "Approvals".

**Section 3: Definitions**

- Add definitions for the terms **compost**, **composting**, and **composting facility**.

- Revise definitions of **agricultural waste, bottom ash, final cover, fly ash, Secretary, and vehicle.**
- Delete the term **limited transporter.**

#### **Section 4: Permit Requirements and Administrative Procedures**

- Add a provision requiring permittees to abide by the conditions of their permit.
- Provide that the cost of advertising a permit application may (rather than shall) be borne by the applicant.
- Clarify what is meant by timely application for permit renewal.
- Revise procedures for transferring a permit, and increase the notification time from 15 to 90 days.
- Change references to "Solid Waste Management Branch" to read "Solid and Hazardous Waste Management Branch".
- Add a provision that third-party review of financial assurance documentation may be conducted by professionals other than Certified Public Accountants.
- Add a provision specifying that all information provided on a solid waste permit application is certified to be true, accurate, and complete by the applicant's signature.
- Add provisions requiring the engineering report submitted as part of an application for a resource recovery facility or an infectious waste management facility permit to be prepared and signed by a Professional Engineer registered in Delaware.
- For thermal recovery facilities, revise wording pertaining to the ash testing protocol.
- For transfer station submittal requirements, remove the reference to a Coastal Zone Permit.

#### **Section 5: Sanitary Landfills**

- For a natural liner, revise wording pertaining to test methods to be used in hydraulic conductivity testing.
- For ground water sampling and analysis, revise wording pertaining to test methods.
- Revise the provision pertaining to regulated hazardous waste that may not be disposed of at a sanitary landfill in Delaware.

#### **Section 6: Industrial Landfills**

- For a natural liner, revise wording pertaining to test methods to be used in hydraulic conductivity testing.
- For ground water sampling and analysis, revise wording pertaining to test methods.

#### **Section 7: Transporters**

- Revise the permit exemption for certain types of solid waste generated on a farm to clarify that the exemption applies only to farms located in Delaware.
- Revise the annual reporting requirement, to require reporting by weight only, and to require accurate reporting.
- Add a provision to require that annual reports be submitted once a year within 90 days after the end of the calendar year.
- Add a provision to prohibit a transporter who has been denied a transporter permit from becoming a subcontractor under another transporter's permit for a period of one-year.
- Revise financial responsibility requirements for Infectious Waste Transporters and for Dry Waste Only transporters, to make them consistent with federal requirements.

#### **Section 9: Resource Recovery Facilities**

- Revise provisions pertaining to closure of a facility, to specify that the proposed closure activity will be subject to public notice.
- Revise the procedure whereby the Department will approve closure of a facility.

#### **Section 10: Transfer Stations**

- Remove the provision prohibiting commingling of solid waste generated in Delaware with solid waste generated outside of Delaware.
- Revise provisions pertaining to closure of a facility, to specify that the proposed closure activity will be subject to public notice.
- Revise the procedure whereby the Department will approve closure of a facility.

#### **Section 11: Special Wastes Management (Part 1 - Infectious Waste)**

- Remove the provision allowing a transporter to complete a consolidated manifest for small quantity infectious waste generators that he or she services.
- Add wording to clarify that transporters of infectious waste must have obtained a transporter permit from the Department.
- Move the provisions pertaining to annual reporting requirements for generators and transporters of infectious waste from Subsection P (Manifest Requirements) to Subsection L (Recordkeeping and Reporting Requirements).

**PLEASE NOTE THAT DUE TO SPACE CONSTRAINTS THE TEXT OF THE PROPOSED AMENDMENTS TO THE STATE OF DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL REGULATIONS GOVERNING**

**THE CONTROL OF WATER POLLUTION ARE NOT BEING PUBLISHED. THE FULL TEXT IS AVAILABLE FROM THE REGISTRAR OR FROM THE REGISTER OF REGULATIONS WEBSITE AT [HTTP://WWW.LEGIS.STATE.DE.US](http://www.legis.state.de.us), IN THREE FORMATS: PDF, HTML AND TEXT.**

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 1902(a) (7 Del.C. §1902(a))

**ORDER****SUMMARY OF EVIDENCE AND INFORMATION**

Pursuant to due notice 4 DE Reg. 1490-1492 (03/01/01), the Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation Nos. 21 and 23 and add a new Tidal Finfish Regulation to adjust the recreational minimum size limit and implement a daily creel limit on scup, adjust the commercial fishing quarterly trip limits and quarterly closures as determined by the Atlantic States Marine Fisheries Commission (ASMFC) and maintain the closure of the commercial fishery for spiny dogfish. It also proposed a new shellfish regulation to require the use of bycatch reduction devices in all recreational crab pots to minimize the capture and subsequent drowning of diamond back terrapins. The tidal finfish regulations are required to remain in compliance with fishery management plans adopted by the Atlantic States Marine Fisheries Commission. The Atlantic States Coastal Fisheries Cooperative Management Act (1993) requires Atlantic coastal states to comply with interstate fishery management plans adopted by the ASMFC. The shellfish regulation is the result of four years of research to conserve the diamond back terrapin.

A public workshop on the bycatch reduction device for recreational crab pots was held on February 6, 2001. A public hearing was held on all the above proposed regulations on March 27, 2001.

**FINDINGS OF FACT**

I find the following facts from testimony and evidence presented:

- §903, 7 Del. C. authorizes the Department to promulgate tidal finfish regulations that are consistent with interstate fishery management plans.
- §1902, 7 Del. C. authorizes the Department to promulgate shellfish regulations to provide for the preservation and improvement of the shellfish resources of the state.

**SCUP**

- The Atlantic States Marine Fisheries Commission adopted measures that require states to the south of New Jersey to implement and enforce a minimum size limit on scup of 8 inches and a daily creel limit of 50 scup in order to reduce the coastwide landings of scup by 33%.

**BLACK SEA BASS**

- The Atlantic States Marine Fisheries Commission adjusts the quarterly trip limits for commercial fishermen for black sea bass.
- The Atlantic States Marine Fisheries Commission may close the black sea bass fishery for the remainder of any quarter when the quarterly quota is landed.

**SPINY DOGFISH**

- The Atlantic States Marine Fisheries Commission requires coastal states to maintain the emergency closure of the commercial fishery for spiny dogfish until such time the commission adopts a fishery management plan for the spiny dogfish or the fishery recovers.

**BLUE CRAB – DIAMOND BACK TERRAPIN**

- The population of diamond back terrapins is on a decline.
- Diamond back terrapins are captured and drown in crab pots.
- Bycatch reduction devices, placed in the funnel entrances to crab pots, can reduce the capture of diamond back terrapins and not adversely affect the catch of crabs
- The optimum size of a bycatch reduction device in Delaware for reducing the catch of diamond back terrapins is no more that 1.75 inches in height x 4.75 inches in height.
- Diamond back terrapins congregate near the shore in shallow water and in tidal tributaries where only recreational crab pots are authorized to be used.

**CONCLUSION**

I have reached the following conclusion:

The Department should adopt tidal finfish regulations to comply with the requirements of the Atlantic States Marine Fisheries Commission relative to recreational scup minimum size limits and creel limits, quarterly trip limits and closure

of the black sea bass fishery and the emergency closure of the spring dogfish fishery in state waters. It should also adopt a shellfish regulation requiring the use of bycatch reduction devices in recreational crab pots in order to reduce the fishing mortality of diamond back terrapins.

### ORDER

It is hereby ordered this 6<sup>th</sup> day of April in the year 2001 that amendments to Tidal Finfish Regulation Nos. 21 and 23, new Tidal Finfish Regulation No. 27 and new Shellfish Regulation No. S-34, copies of which are attached hereto, are adopted pursuant to 7 Del.C. §1902 and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on May 10, 2001.

Nicholas A. DiPasquale, Secretary, Department of Natural Resources and Environmental Control

### Shellfish Regulation

#### S-34 NON COMMERCIAL CRAB POT DESIGN: BYCATCH REDUCTION DEVICE

a) It shall be unlawful for the owner of any non-commercial crab pot to place said crab pot in the tidal waters of this State unless said crab pot has a bycatch reduction device securely attached in each entrance such that each crab entering said crab pot must pass through the bycatch reduction device. A bycatch reduction device shall mean a metal or plastic rigid rectangle that measures no more than 1.75 inches by 4.75 inches.

#### TIDAL FINFISH REGULATION 21. SCUP SIZE LIMIT.

a) It shall be unlawful for any recreational fisherman to have in possession any scup, **Stenotomus chrysops**, that measures less than ~~seven (7)~~ eight (8) inches, total length.

b) It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to possess any scup that measures less than nine (9) inches, total length.

c) It shall be unlawful for any commercial fisherman to sell, trade or barter or attempt to sell, trade or barter any scup or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of scup is determined to have been landed in this State by the Department. The de minimis amount of scup shall be 0.1% of the coast wide commercial quota as set forth in the Scup Fishery Management Plan approved by the Atlantic States Marine Fisheries commission.

d) It shall be unlawful for any recreational fisherman to have in possession more than 50 scup at or between the

place where said scup were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

#### TIDAL FINFISH REGULATION NO. 23 BLACK SEA BASS SIZE LIMIT; TRIP LIMITS; SEASONS; QUOTAS

a) It shall be unlawful for any person to have in possession any black sea bass **Centropritis striata** that measures less than ten (10) inches, total length.

b) Is omitted intentionally.

c) It shall be unlawful for any person to possess on board a vessel at any time or to land after one trip more than the ~~following quantities~~ quantity of black sea bass ~~during the quarter listed.~~ determined by the Atlantic States Marine Fisheries Commission for any quarter.

~~First Quarter (January, February and March)–~~  
9,000 pounds.

~~Second Quarter (April, May and June)–~~  
3,000 pounds.

~~Third Quarter (July, August and September)–~~  
2,000 pounds.

~~Fourth Quarter (October, November and December)–~~ 3,000 pounds.

The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission. One trip shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware.

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea bass for commercial purposes during any quarter ~~indicated in subsection (e)~~ after the date in said quarter that the ~~National Marine Fisheries Services~~ Atlantic States Marine Fisheries Commission determines that quarter's quota is filled. The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of any closure when a quarterly quota is filled.

#### TIDAL FINFISH REGULATION NO. 27, SPINY DOGFISH; CLOSURE OF FISHERY

a) It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish, **Squalus acanthias**.

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER FOURTEEN**

**TO: HEADS OF ALL STATE DEPARTMENTS  
AND AGENCIES**

**RE: DEVELOPMENT OF LIVABLE DELAWARE  
IMPLEMENTATION PLANS**

WHEREAS, Delaware has a well deserved reputation as an ideal place to live, work, raise a family, and enjoy recreational activities;

WHEREAS, our natural resources, sound economy, opportunities for personal and business success, and overall quality of life will add almost 190,000 additional Delawareans by the year 2020, a growth rate faster than any northeastern state;

WHEREAS, Delawareans are concerned that the quality of place in our state is threatened by sprawl, traffic congestion, loss of farmland and open space, diminished air and water quality, and a shortage of affordable housing;

WHEREAS, residential, transportation and employment patterns can have direct impacts on the means by which we move about the State and attainment of Delaware's air quality goals and the protection of public health;

WHEREAS, haphazard sprawl and unplanned growth create an inefficient demand for public infrastructure, services and facilities that all Delaware taxpayers must finance, no matter where they live;

WHEREAS, the Cabinet Committee on State Planning Issues has undertaken an extensive process of analyzing long term growth trends, soliciting public opinion, and considering the implications of expected growth throughout the State over the next 25 years, and has approved a comprehensive set of goals and strategies set forth in "Shaping Delaware's Future: Managing Growth in 21<sup>st</sup> Century Delaware, Strategies for State Policies and Spending" to guide Delaware's overall development and to ensure efficient, rational and cost-effective investments in necessary infrastructure;

WHEREAS, those development goals are restated herein:

- Direct investment and future development to existing communities, urban concentrations, and growth areas.
- Protect important farmlands and critical natural resource areas.
- Improve housing quality, variety and affordability for all income groups.
- Ensure objective measurement of long-term community

effects of land use policies and infrastructure investments.

- Streamline regulatory processes and provide flexible incentives and disincentives to encourage development in desired areas.
- Encourage redevelopment and improve the livability of existing communities and urban areas, and guide new employment into underutilized commercial and industrial sites.
- Provide high quality employment opportunities for citizens with various skill levels to retain and attract a diverse economic base.
- Protect the state's water supplies, open spaces, farmlands and communities by encouraging revitalization of existing water and wastewater systems and the construction of new systems.
- Promote mobility for people and goods through a balanced system of transportation options.
- Improve access to educational opportunities, health care and human services for all Delawareans
- Coordinate public policy planning and decisions among state, counties and municipalities.

WHEREAS, these planning goals provide an opportunity to promote sustainability of our economic and ecological growth and will maintain and enhance the qualities that make Delaware a unique place to live;

WHEREAS, the State must provide leadership and set an example by bringing its policies, programs, regulations and expenditures in line with the approved goals and strategies, and must play a major role in encouraging growth in areas that we've agreed are appropriate to accept it;

WHEREAS, my State of the State Address of January 25, 2001, calls for the development of "Livable Delaware" principles to keep sprawl in check, reduce traffic congestion, strengthen our towns and cities, improve our environment and protect our roads, schools and other infrastructure;

NOW, THEREFORE I, RUTH ANN MINNER, by the authority vested in me as Governor of the State of Delaware, hereby declare and order on this 22<sup>nd</sup> day of March, 2001:

1. As part of Livable Delaware, the Office of State Planning Coordination shall immediately make available to all State departments and agencies a copy of the "Shaping Delaware's Future" report and the adopted state development goals, along with instructions for preparing the implementation response called for herein;

2. All State departments and agencies shall, no later than August 31, 2001, complete and submit an implementation plan for these development goals and strategies which:

(a) Identifies all Department programs, policies and actions which are impacted by or can be used to support the state development goals and strategies;

(b) Identifies administrative, organizational,

regulatory, or statutory actions to be taken, including those already taken or underway, to ensure compliance and consistency with the state development goals and strategies;

(c) Identifies existing laws, programs, policies and actions that impede implementation of the development goals and strategies;

(d) Identifies how capital and budget planning will be used to implement the State investment strategies;

(e) Identifies essential legislative actions needed to ensure that state agency authorities and programs are consistent with and support the development goals and strategies;

(f) Sets forth an action plan, schedule for undertaking such actions, and proposes measures to gauge progress toward achieving the State development goals and investment strategies.

3. No later than October 31, 2001, the Cabinet Committee on State Planning Issues shall review and provide comments to the agencies and Office of State Planning Coordination on the implementation responses required in this Executive Order.

APPROVED this 28<sup>th</sup> day of March 2001

Ruth Ann Minner, Governor

Harriet Smith Windsor, Secretary of State

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**PUBLIC SERVICE COMMISSION**Statutory Authority: 26 Delaware Code,  
Section 209(a) (26 Del.C. 209(a))

IN THE MATTER OF THE INFORMAL |  
ADOPTION OF GUIDELINES TO |  
GOVERN NEGOTIATIONS, |  
MEDIATION, AND APPROVAL |  
OF AGREEMENTS | PSC DOCKET  
CONDUCTED PURSUANT TO THE | NO. 96-172  
TELECOMMUNICATIONS ACT |  
OF 1996, PUBLIC LAW 104-104 |  
(ADOPTED JULY 23, 1996) )

**ORDER NO. 5683**

This 27<sup>th</sup> day of March, 2001, the Commission determines and Orders the following:

**A. BACKGROUND**

1. In July 1996, this Commission adopted “Guidelines for Negotiations, Mediation, Arbitration, and Approval of Agreements Between Local Exchange Telecommunications Carriers.” See PSC Order No. 4245 (July 23, 1996) (the “Guidelines”). The impetus for the Guidelines was the then recent enactment of the Telecommunications Act of 1996, with its use of interconnection agreements as the vehicles to open the local exchange telecommunications market to competition. See 47 U.S.C. §§ 251 & 252. The purpose of these Guidelines was to provide a procedural map which the incumbent local exchange carrier, competitive local exchange carriers (“CLECs”), and the Commission could follow in implementing that new regime. As such, the Guidelines attempt to provide a “soup to nuts” menu of procedural rules to be applied in the negotiation, mediation, arbitration, and review processes envisioned by section 252. Since 1996, this Commission has reviewed and approved a large number of interconnection agreements negotiated between the incumbent carrier and its new competitors. Far less frequently, the Commission has been asked to arbitrate disputed terms and approve, or reject, the resulting contract with its partially arbitrated and partially negotiated terms. By this Order, the Commission makes minor revisions to two of the Guidelines. The revisions change the means of disseminating notice that the Commission has begun a proceeding to review a negotiated or arbitrated interconnection agreement.

**B. REVISIONS TO NOTICE PROCEDURES IN GUIDELINE 31 (NEGOTIATED AGREEMENTS)**

2. In original Guideline 31, the Commission set forth

a procedure for carriers to notify potentially interested persons when the carriers submitted a negotiated interconnection agreement for Commission approval. Currently, Guideline 31 requires the submitting carriers to publish notice of such filing in a newspaper, provide notice by facsimile and mail to each entity included on the service list in PSC Regulation Docket No. 45, and to send, by facsimile and mail, a notice to all entities holding certificates to provide local exchange telecommunications services within this State. The notices inform interested persons and entities of the opportunity to file (within twenty days) comments expressing their views about whether the agreement should be approved or rejected.

3. Staff reports that the manner of providing notice dictated by Guideline 31 has now become burdensome to submitting carriers. There has been, and continues to be, a steady flow of negotiated interconnection agreements submitted for review. At the same time, the number of carriers that hold certificates to provide local exchange service has grown, and also continues to increase. Consequently, with the filing of each new agreement, the submitting carriers must not only bear the still relatively-high cost of newspaper publication but also send more and more notices, first by facsimile and then by mail, to CLECs. And, on the other side, experience over the last four years suggests some reason to doubt whether the notice procedures dictated by Guideline 31 remain an effective means to solicit input to help the Commission in its review of such negotiated contracts. First, several of the participants included on the service list in PSC Regulation Docket No. 45 have receded from being active “players” in the current Delaware local exchange telecommunications market. And, more importantly, in almost every proceeding involving the submission of a negotiated agreement, Staff has been the only entity to submit comments. Despite the receipt of direct notice, in almost all instances, neither the entities participating in PSC Regulation Docket No. 45 nor other certificated CLECs have seen the need to file comments. This history of silence is one factor that must be weighed against continuing a process which requires submitting carriers to expend more and more time, and resources, in sending apparently mostly-unheeded notices.

4. Because of the above experiences, the Commission has now decided to revise the manner of broadcasting notice under Guideline 31. The Commission will no longer require the submitting carriers to publish a notice in a newspaper and to also send, by facsimile and mail, direct notices to a large number of entities. Rather, Guideline 31 is now changed to allow, in most instances, the Commission Staff to post the required notice on the Commission’s Internet website. Unless the Commission Staff directs additional dissemination, the submitted carriers will not be obligated to provide any further notice. The Commission believes that this procedure of Internet website posting may be just as

effective in providing notice than the procedures for notice required by present Guideline 31. First, the large number of CLECs with administrative offices in other states may find it easier to monitor filings in Delaware by consulting an Internet website than being forced to search for notices in the legal classified section of a local newspaper. Second, entities large and small might find it more convenient to keep abreast of filings by periodically reviewing a website rather than being forced to remain alert for form written notices which might remain hidden in a pile of undistributed facsimiles or mail. In fact, if an entity is really interested in monitoring what agreements have been submitted in Delaware, it can easily set up an internal procedure to simply review each week the notices posted on the Commission's Internet website.

5. This website-only posting method of providing notice will be applicable only in the cases of: (a) a negotiated interconnection agreement submitted for approval; and (b) an agreement submitted for filing after being adopted or constructed under the "pick and choose" provisions of 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809. In addition, the new Guideline 31 empowers the Commission Staff to require the submitting carriers to undertake other, additional forms of dissemination (including newspaper publication of direct notice to certain persons, entities, or carriers) if Staff believes that, in the context of the particular application, wider dissemination is needed to ensure that interested persons or entities have an opportunity to comment.

6. The new Guideline 31 will read as set forth in Exhibit "A."

#### **C. REVISIONS TO NOTICE PROCEDURES IN GUIDELINE 38 (ARBITRATED AGREEMENTS)**

7. Guideline 38 provides directions to a submitting carrier concerning the notice it must provide when a carrier seeks to have the Commission approve an agreement derived, in whole or in part, from arbitration. To a large extent, the method of providing notice under Guideline 38 tracks the procedures set forth in Guideline 31. The Commission now makes a slight revision to Guideline 38. The change deletes the requirement that notice be provided to the entities included on the service list in PSC Regulation Docket No. 45. As explained above, the Commission doubts whether the entities on that list continue to reflect those carriers actually interested in the Delaware local exchange market. Instead, the Commission will replace that requirement with one which directs that the form of notice required by Guideline 38 be posted on the Commission's Internet website. While making this particular substitution, the Commission will not, at this time, alter the other requirements for providing notice and, hence, will not move in the arbitrated agreement context to a website-only notice.

So far, arbitrated agreements have been the exception in the interconnection agreement regime. Given the small number of such proceedings, it would not appear burdensome to continue to require the present notice procedures, with the substitution noted above. Moreover, under the procedure crafted by the Guidelines, the Commission does not directly enter the underlying arbitration award. Rather, the Commission considers the substantive terms of the arbitrator's decision when it sits to approve or reject the resulting arbitrated agreement. In such proceeding, it is important that the widest variety of interests be afforded the opportunity to comment within very short time frames. Given that, the Commission - at least for now - believes that more extensive notice procedures set forth in Guideline 38 should be retained for arbitrated agreements.

8. The new Guideline 38 will read as set forth in Exhibit "A."

#### **D. ADOPTION OF THE PROCEDURAL CHANGES WITH OPPORTUNITY FOR RECONSIDERATION**

9. The Commission has been granted the authority to promulgate procedural rules for implementing the interconnection agreement process created by 47 U.S.C. §§ 251 & 252. See 26 Del. C. § 703(4). In addition, in promulgating such rules, the Commission need not adhere to the formal publication and comment requirements of the Administrative Procedures Act. See 26 Del. C. § 703(4). See also 29 Del. C. §§ 10113(b)(2) (rules of practice used by agency exempted from procedural requirements and may be adopted informally). In 1996, the Commission solicited comments from interested persons on proposed drafts before adopting the final version of the Guidelines. In this matter, the Commission decides, given the nature of the modifications being made, to follow a differing course. The Commission will adopt the proposed changes to Guidelines 31 and 38 now, but defer the effective date of such changes until May 10, 2001. Until April 20, 2001, any interested person or entity may file comments about the proposed changes. If, in light of those submissions, the Commission determines that it took a wrong turn in making the changes, then the Commission can, prior to the effective date, revoke this Order and reconsider the revisions. On the other hand, if no comments are received, or if the comments do not call into question the revisions, then the revised Guidelines 31 and 38 will become effective on May 10, 2001, without any further action by the Commission.

Now, therefore, **IT IS ORDERED:**

1. That Guidelines 31 and 38 of the Commission's "Guidelines for Negotiations, Mediation, Arbitration, and Approval of Agreements Between Local Exchange

Telecommunications Carriers” (adopted in PSC Order No. 4245 (July 23, 1996), are hereby revised and amended to read as set forth in Exhibit “A.” Such revisions shall become effective May 10, 2001, unless the Commission, before such date, determines to rescind this Order and reconsider the revisions.

2. That the Secretary shall forthwith send, by United States mail, a copy of this Order to Verizon Delaware Inc., and to the next ten largest entities holding Certificates of Public Convenience and Necessity to provide local exchange telecommunications services in this State. Those ten entities shall be determined by reference to the gross intrastate revenues reported on the last-filed annual report required by 26 Del. C. § 115. In addition, the Secretary shall post a copy of this Order on the Commission’s Internet website with a prominent notice indicating that the Commission has revised Guidelines 31 and 38 of its Guidelines for reviewing interconnection agreements under 47 U.S.C. § 252(e).

3. That any interested person or entity may file comments concerning the revisions set forth in Exhibit “A.” Such comments must be filed with the Commission at its Dover office on, or before, Friday, April 20, 2001. The Commission specifically reserves the right to reconsider the right to rescind the adoption of these revised Guidelines and reconsider the adoption of the revisions in light of the comments received. In the absence of any Order rescinding this Order and setting the revisions for reconsideration, the revisions set forth in Exhibit “A” will become effective on May 10, 2001.

4. Unless the Commission shall rescind the adoption of this Order, the Secretary shall send a copy of this Order to the Delaware Registrar of Regulations for publication in the May, 2001 volume of the Delaware Register of Regulations.

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

**BY ORDER OF THE COMMISSION:**

Robert J. McMahon, Chairman  
Joshua M. Twilley, Vice Chairman  
Arnetta McRae, Commissioner  
Donald J. Puglisi, Commissioner  
John R. McClelland, Commissioner

**ATTEST:**

Karen J. Nickerson, Secretary

**EXHIBIT “A”**  
**REVISIONS TO**

**“GUIDELINES FOR NEGOTIATIONS, MEDIATION,  
ARBITRATION, AND APPROVAL OF  
AGREEMENTS BETWEEN LOCAL EXCHANGE  
TELECOMMUNICATIONS CARRIERS”**

...

31. Within ten days after the filing of the agreement, the Commission shall provide notice of the filing of the agreement. Such notice shall indicate that any person may file with the Commission and serve upon the submitting carriers by a date certain, twenty days after publication of the notice, comments (with supporting documentation) concerning approval or rejection of the agreement. Such notice shall be posted on the Commission’s Internet website to be accessed through a home page heading entitled “Public Notices of Telecommunications Interconnection Agreements Submitted for Approval.” The notice to the submitted agreement shall be maintained on the Commission’s website for thirty days. The Commission Staff, at its discretion, may direct the submitted carriers to disseminate such notice by other, additional means, such as by newspaper publication or by direct transmission, by facsimile, courier, or mail, to particular entities or persons.

...

38. On the same day of the filing of the agreement, the carriers shall give notice of the filing of the agreement. Such notice shall inform interested parties that they may file with the Commission written comments accompanied with supporting documentation concerning the agreement within ten days after the date of the public notice. The notice shall also include the date, time, and place, when the Commission will conduct a public proceeding to approve or reject the tendered agreement. Such notice shall be: (1) published in a newspaper of state-wide circulation; and (2) sent by facsimile and United States mail to each other entity that then holds a Certificate of Public Convenience and Necessity to provide local exchange telecommunications service in Delaware. In addition, on the same date, the Commission shall post the notice on the Commission’s Internet website to be accessed through a hearing on the home page entitled “Public Notices of Telecommunications Interconnection Agreements Submitted for Approval.” The notice for the agreement shall be maintained on the Commission’s website for twenty days.

**DELAWARE SOLID WASTE  
AUTHORITY**

Pursuant to 7 Del.C. §6403, the Delaware Solid Waste Authority (DSWA) proposes to amend the **Regulations of the Delaware Solid Waste Authority** (hereafter DSWA Regulations)(hereafter DSWA Regulations), adopted March, 1999; to revise its **Differential Disposal Fee Program** (hereafter DDFP); and to revise the **Statewide Solid Waste Management Plan** (hereafter Statewide Plan).

A Public Hearing on the above proposals will be held on Thursday, May 24, 2001 at 10:00 A.M., at the Delaware Department of Natural Resources and Environmental Control (Auditorium), 89 Kings Highway, Dover, Delaware. The DSWA will receive and consider oral or written input provided at the hearing. DSWA will also accept and consider any written materials submitted to it at DSWA, attn: Thomas Houska, Delaware Solid Waste Authority, 1128 South Bradford Street, Dover, Delaware. Such written materials must be received by DSWA no later than 4:30 P.M., June 1, 2001. The entire text of the DSWA Regulations and the DDFP are printed herein following this notice. The revision to the Statewide Plan is solely in the form of a supplement and such supplement is printed in its entirety below. The complete Statewide Plan is approximately 300 pages long, and may be reviewed at the above DSWA address.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF LANDSCAPE ARCHITECTURE**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 205(a)(1), the Delaware Board of Landscape Architecture proposes to revise its Rules and Regulations. The proposed amendments implement and clarify the requirement that applicants seeking licensure pursuant to 24 Del. C. Section 206(a)(1) graduate from an approved or accredited college or university. Similarly, the proposed revisions clarify that applicants seeking licensure pursuant to 24 Del. C. Section 206(a)(3) take their courses in landscape architecture from an approved or accredited college or university.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, June 26, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Melvin at the above address. The final date to submit

written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Melvin at the above address by calling (302) 739-4522, extension 218.

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

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF DENTAL EXAMINERS**

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 1105(1) and (9), the Delaware Board of Dental Examiners proposes to revise certain portions of its rules and regulations. The proposed revisions amend and clarify the continuing education standards required for license renewal for dentists and dental hygienists.

A public hearing will be held on the proposed Rules and Regulations on Thursday, June 21, 2001 at 6:00 p.m. in the Second Floor Conference Room A, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider oral and written input on the proposed revisions to the Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed revisions to the Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling (302) 739-4522.

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**DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 3506(a)(1), the Delaware Board of Examiners of Psychologists proposes to revise its Rules and Regulations. The proposed revisions establish a regulation governing requests for postponement of a matter that is scheduled to be heard by the Board. Substantive changes include a requirement that a request for postponement be in writing and submitted no less than three business days prior to the date scheduled for the hearing. In addition, the proposed regulation establishes a maximum of one postponement per party absent a showing of exceptional circumstances.

A public hearing will be held on the proposed Rules and Regulations on Monday, June 4, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building,

861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address by calling (302) 739-4522, extension 220.

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

it is the big, two-story, brick building on the right just after the Merrill Lynch Building. Enter through the double doors at the front of the building.]

For clarifications or additional directions to either location, please call Gina Loughery or Joan Reynolds at 577-6661.

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

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

Such comments must be received by June 1, 2001.

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

**Training and Qualifications for Nursing Assistants and  
Certified Nursing Assistants  
PUBLIC NOTICE**

Delaware Health & Social Services (DHSS), in compliance with Senate Bill 20 passed in the 140<sup>th</sup> General Assembly, has prepared draft regulations governing training and qualifications for nursing assistants and certified nursing assistants as required in Title 16 **Del.C.**, Chapter 30A.

These regulations address certified nursing assistant training, the composition of the certified nursing assistant training course and curriculum, the mandatory orientation period and senior certified nursing assistant certification.

*Public hearings* will be held as follows:

Thursday, May 24, 2001, 10 am – noon  
Springer Building Training Room  
Herman Holloway Campus  
Delaware Health & Social Services  
1901 N. DuPont Highway  
New Castle, DE

Thursday, May 31, 2001, 10 am - noon  
Department of Natural Resources & Environmental  
Control\*  
89 Kings Highway  
Dover

[\*Traveling on Rt. 1/Rt. 13 to Smyrna, stay on Rt. 1 to Exit #104 for North Dover. Take this exit south on Rt. 13, passing the Rt. 8 intersection, to Lockerman Street. Turn right onto Lockerman (at the Burger King). Go to the second traffic light and turn right onto State Street, then make an immediate right onto Kings Highway. Go about 1 block and

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**DIVISION OF SOCIAL SERVICES  
PUBLIC NOTICE**

**Delaware's Medicaid/Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid/Medical Assistance Program is proposing to implement a Medicaid State Plan change related to the reimbursement methodology for Federally Qualified Health Centers (FQHCs). This change is made as a result of the Benefits Improvement and Protection Act (BIPA) of 2000 that repeals the reasonable cost-based reimbursement requirements for FQHC services and instead requires payment for FQHCs consistent with a new Prospective Payment System (PPS) described in section 1902(aa) of the Social Security Act. Under BIPA, the new Medicaid Prospective Payment System takes effect on January 1, 2001.

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 the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, Delaware by May 31, 2001.

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

**DIVISION OF SOCIAL SERVICES**
**PUBLIC NOTICE**
**Food Stamp Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement a policy change to the Division of Social Services Manual, Sections 7002.2, 7002.3, 7002.4, 7004.3, 7004.5, 7005. These changes are from the Final Rule entitled, Recipient Claim Establishment and Collections Standards, and published in the Federal Register on July 6, 2000. The regulations aim to improve claims management in the Food Stamp Program and provide flexibility in efforts to increase claims collections. Some changes were mandated by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by May 31, 2001.

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's A Better Chance and General Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Delaware's A Better Chance and General Assistance Programs is proposing to implement policy changes to the following sections of the Division of Social Services Manual: 2015 - 2019. These changes relate to medical assistance eligibility rules for cash assistance recipients.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must

submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by May 31, 2001.

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's A Better Chance and General Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Delaware's A Better Chance and General Assistance Programs is proposing to implement policy changes to the following sections of the Division of Social Services Manual: 3023.9 and 3023.9.1. These changes relate to Delaware's A Better Chance (DABC) and General Assistance (GA) rules for overlapping eligibility and overlapping eligibility exception.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by May 31, 2001.

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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**DEPARTMENT OF INSURANCE**

The **Delaware Insurance Department** proposes a new regulation that will govern the treatment of nonpublic personal financial information about individuals by all licensees of the Department of Insurance. This proposed regulation, in part, meets the requirements of Title V of the Gramm-Leach-Bliley Act, Public Law 106-102 (1999).

A public hearing will be held on the proposed regulation

on Tuesday, May 29, 2001 at 10:00 a.m. Hearing Room of the Department of Insurance, Rodney Building, 841 Silver Lake Boulevard, Dover, Delaware, 19904. The Department will receive and consider input in writing from any person on the proposed regulation. Any written comments should be submitted to the Department in care of Michael J. Rich, Deputy Attorney General, at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulation or to make comments at the public hearing should notify Joan Zimmerman at the above address by calling (302) 739-4251. Under 18 Del. C. § 701(18), there will be a \$16.00 charge for a photocopy of the regulation.

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

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**DEPARTMENT OF LABOR****DIVISION OF EMPLOYMENT & TRAINING****COUNCIL ON APPRENTICESHIP AND TRAINING**

PLEASE TAKE NOTICE, pursuant to 19 Del.C. §202(a), the Department of Labor has made proposed modifications to Section 106.5(D) of the Rules and Regulations Relating to Delaware Apprenticeship and Training Law. The modification will clarify the ratios of Apprentices to Journeypersons applicable in the various trades.

The Council on Apprenticeship and Training will hold a public hearing on June 12, 2001 at 10:00 a.m. at Buena Vista State Conference Center, 661 South DuPont Highway, New Castle, Delaware to receive and consider input from any person on the proposed changes. Written comment can be submitted at any time prior to the hearing in care of Kevin Calio at the Division of Employment & Training, Department of Labor 4425 North Market Street, P.O. Box 9828, Wilmington, DE 19809-0828. The Council will determine its recommendation to the Secretary of Labor at its regular meeting following the public hearing.

In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Kevin Calio by calling (302)761-8121.

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**OFFICE OF LABOR LAW ENFORCEMENT**

Pursuant to the authority granted to the Department of Labor under 29 Del.C. §8503 (7), the Department is proposing an amendment to regulations under 29 Del.C.

§6960, "Prevailing Wage Requirements". Pursuant to the requirements of 29 Del.C. §10115(a), Interested parties are invited to present their views at the public hearing which is scheduled as follows:

9:00 a.m., Tuesday, May 22, 2001

Department of Labor

4425 North Market Street

Wilmington, Delaware 19802

Third Floor, Industrial Affairs Conference Room 203

Interested parties can obtain copies of the proposed amendments at no charge by contacting the Office of Labor Law Enforcement at the above address, or by telephone at (302) 761-8211.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF FISH AND WILDLIFE****Adoption of an Emergency Amendment to Tidal Finfish  
Regulation No. 4, without notice of hearing, to reduce  
recreational landings of summer flounder in 2001.****Order No. 2001-F-0015**

Pursuant to 29 Del.C. §10119, The Department of Natural Resources and Environmental Control is adopting an amendment to **Tidal Finfish Regulation No. 4, SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS** without prior notice or public hearing to further reduce the recreational summer flounder landings in 2001. 7 Del.C. §903 authorizes the Department to adopt regulations concerning species of finfish that spend part or all of their life cycle within the tidal waters of this State; provided, that such regulations are consistent with interstate fishery management plans developed for the protection and conservation of said finfish.

The Department will receive, consider and respond to petitions by any interested person for recommendations or revision of this Order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901.

It is further ordered, the Department shall receive public testimony and evidence at a public hearing on May 1, 2001 to consider appropriate remedies to manage the summer flounder recreational fishery consistent with the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

**DIVISION OF WATER RESOURCES**  
**SURFACE WATER DISCHARGES SECTION**  
**REGISTER NOTICE, SAN # 2001-11**

**TITLE OF THE REGULATIONS:**

Regulations For Licensing Operators of Wastewater Facilities

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

The Department of Natural Resources and Environmental Control is proposing to revise its Regulations For Licensing Operators of Wastewater Facilities by withdrawing the current regulations and replacing the current regulations with the proposed regulations. The changes to the regulations include updated definitions, consistent use of terms, clearer language, and recognition of new technology.

**NOTICE OF PUBLIC COMMENT:**

A public hearing will be held on Wednesday, June 27, 2001 beginning at 1:30 p.m. in the Delaware Tech, Terry Campus Room 400B, Dover, DE

**PREPARED BY:**

Joseph F. Mulrooney, Program Manager I, Surface Water Discharges Section, 302-739-5731

hearing concerning the proposed changes on June 5, 2001, beginning at 1:00 PM. The public hearing will be held at the Commission's Dover office, located at the address set forth in the preceding paragraph. Interested persons may present comments, evidence, testimony, and other materials at that public hearing.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations will be available for review on the Commission's website: [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the Commission's secretary, Karen J. Nickerson, by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by e-mail at [knickerson@state.de.us](mailto:knickerson@state.de.us).

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**PUBLIC SERVICE COMMISSION**

**In The Matter Of The Adoption Of Rules Concerning  
The Implementation Of 72 Del. Laws Ch. 402 (2000)  
Granting The Commission The Jurisdiction To Grant  
And Revoke The Certificates Of Public Convenience And  
Necessity For Public Utility Water Utilities (Filed  
November 21, 2000)**

**PSC REGULATION DOCKET NO. 51**

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. All such materials shall be filed with the Commission on or before May 21, 2001. Persons who wish to participate in the proceedings but who do not wish to file written materials are asked to send a letter informing the Commission of their intention to participate on or before May 21, 2001.

In addition, the Commission will conduct a public

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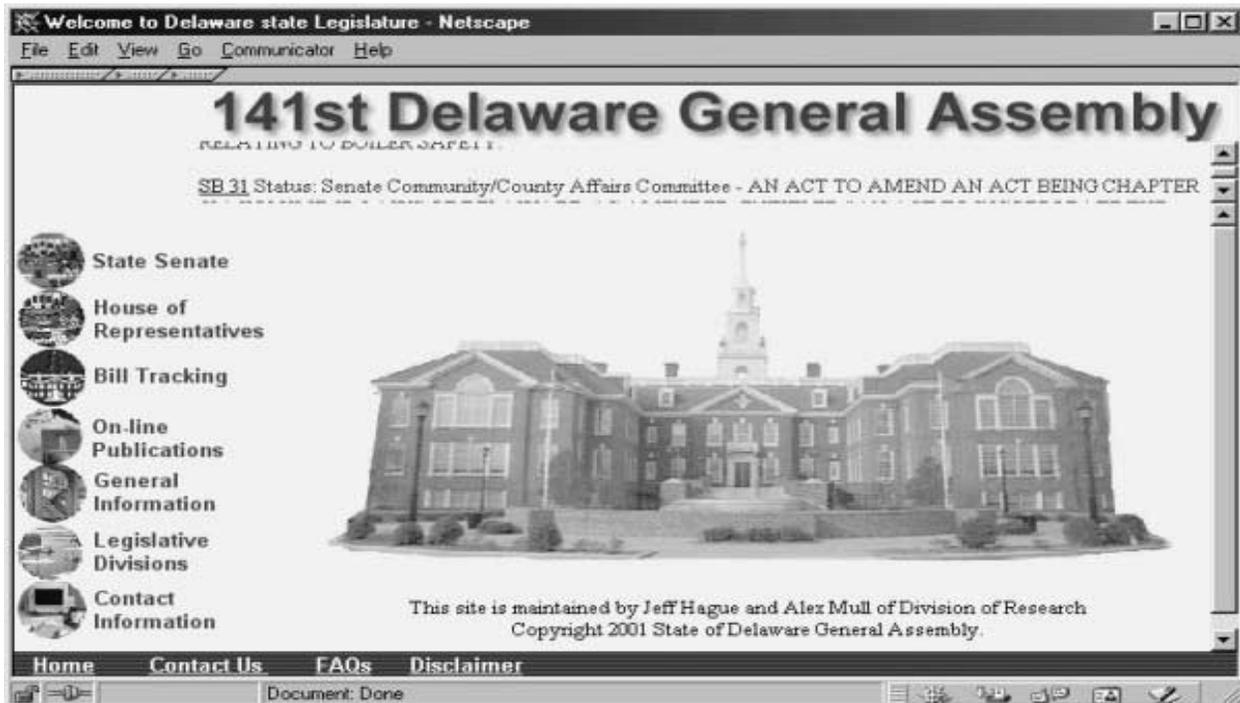
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