

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF LONG TERM CARE RESIDENTS PROTECTION**  
Statutory Authority: 29 Delaware Code, Section 7903(10) (29 Del.C. §7903(10))  
16 DE Admin. Code 3210

**FINAL**

**ORDER**

**3210 Nursing Homes Admitting Pediatric Residents**

**NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("Department"), Division of Long Term Care Residents Protection, initiated proceedings to amend the regulations regarding the Nursing Facilities Admitting Pediatric Residents. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code**, Section 10114, with authority prescribed by 29 **Delaware Code**, Section 7971.

The Department published its notice of proposed regulatory change pursuant to 29 **Delaware Code** Section 10115 in the December 2012 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2012 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSED CHANGE**

These revisions concern the information that must be contained in the facility's emergency plans, establishes a uniform format for the plan and requires that each facility submit copies of certificates demonstrating that two staff members have completed FEMA's Incident Command System training.

**Statutory Authority**

16 **Del.C.**, ch. 11, Nursing Facilities and Similar Facilities

**Background**

Partly as result of circumstances encountered by the Division and the facilities it regulates during and after Hurricane Irene in 2011 the Division recognized a need to strengthen the emergency preparedness capabilities of our facilities. The Division joined with the University of Delaware College of Nursing and Emergency preparedness in conducting a two day seminar for long term care facility administrators was conducted in the spring of 2012. The Division also contracted with an emergency preparedness consulting firm that is presently working with each facility to develop an all hazards plan. This regulatory amendment delineates what information must be contained in the plan, establishes a uniform format for the plan and requires that each facility have two staff members who have completed FEMA's Incident Command System training.

**Summary of Comments Received with Agency Response and Explanation of Changes**

The Governor's Advisory Council for Exceptional Citizens, the Developmental Disabilities Council, and the State Council for Persons with Disabilities and the Delaware Health Care Facilities Association offered the comments and recommendations summarized below. DLTCRP has considered each comment and responds as follows:

**Comment:** §12.6.3 could be "renumbered" as §12.7. Section 12.6 is a sentence which requires facilities to submit a plan and certificates. Section 12.6.3 is another independent sentence which does not comport with the format and grammar in §12.6.

**Agency Response:** Amended as follow:

~~12.6.3 The Division may grant an extension of time for either requirement in 12.6 upon request and for good cause shown.~~

**12.7 The Division may grant an extension of time for either requirement in 12.6 upon request and for good cause shown.]**

**Comment:** §12.6 does not literally require submission of plans in connection with initial license applications. The skilled and intermediate facility "licensing requirements and procedures" regulation (16 **DE Admin Code** 3201 §4.0 requires facilities to comply with initial and renewal licensing standards codified at 16 **Del.C.**, ch. 11. Title 16 §1104(e) refers to an "annual renewal application". Therefore we recommend amending §12.6 to read as follows: "Each facility shall submit with an application for a license and annual renewal of license of a license:"

**Agency Response:** Amended as follows:

12.6 Each facility shall submit with ~~its annual license~~ an application for a license and annual renewal of a license];

**Comment:** A one year extension was requested on the requirement at §12.3 that the plans be submitted to the Division and DEMA in digital format-conforming to the template prescribed by the Division.

**Agency Response:** The regulations, at the new §12.7, allow for an extension of the requirement upon request and for good cause shown.

**Comment:** A one year extension was requested on the requirement that copies of FEMA certificates demonstrating that at least two active full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months be submitted to the Division at the time of application for their annual license renewal effective January 1, 2013.

**Agency Response:** The regulations, at the new §12.7, allow for an extension of the requirement upon request and for good cause shown.

## FINDINGS OF FACT

The Department finds that the proposed changes set forth in the December 2012 *Register of Regulations* should be adopted, subject to the withdrawal and the modification set forth above which are not substantive.

**THEREFORE, IT IS ORDERED**, that the proposed changes to Regulation 3210 Nursing Facilities Admitting Pediatric Residents, with the withdrawal and the modification indicated herein, is adopted and shall be final effective February 13, 2013.

Rita Landgraf, Secretary, DHSS

### 3210 Nursing Homes Admitting Pediatric Residents

#### 1.0 Purpose

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

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

5 DE Reg. 2126 (5/1/02)

#### 2.0 Authority and Applicability

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

5 DE Reg. 2126 (5/1/02)

#### 3.0 Definitions

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

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

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

**“Department”**- Department of Health and Social Services.

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

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

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

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

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

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

**5 DE Reg. 2126 (5/1/02)**

**6 DE Reg. 79 (7/1/02)**

#### **4.0 General Requirements**

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

**5 DE Reg. 2126 (5/1/02)**

**6 DE Reg. 79 (7/1/02)**

#### **5.0 Facility Requirements**

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

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

**5 DE Reg. 2126 (5/1/02)**

**6 DE Reg. 79 (7/1/02)**

## **6.0 Medical Services**

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

**5 DE Reg. 2126 (5/1/02)**

**6 DE Reg. 79 (7/1/02)**

## **7.0 Therapy Services**

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

**5 DE Reg. 2126 (5/1/02)**

**6 DE Reg. 79 (7/1/02)**

## **8.0 Nutritional Services**

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

**5 DE Reg. 2126 (5/1/02)**

## **9.0 Nursing Services**

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

### **5 DE Reg. 2126 (5/1/02)**

## **10.0 Educational Services**

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

### **5 DE Reg. 2126 (5/1/02)**

## **11.0 Family Services**

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

### **5 DE Reg. 2126 (5/1/02)**

## **12.0 Emergency Preparedness**

- 12.1 Nursing facilities shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction.
- 12.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 12.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The plan must be submitted to the Division and DEMA in a digital format and it must conform to the template prescribed by the Division.
- 12.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 12.5 In the event of a facility evacuation, the evacuation plan shall, at a minimum, provide for the transfer or availability of resident medications and records.
- 12.6 Each facility shall submit with ~~its annual license~~ an application for a license and annual renewal of a license]:
- 12.6.1 A current all hazards emergency plan, and
- 12.6.2 Copies of the FEMA certificate of achievement which demonstrates that at least two active, full-time employees have completed FEMA training in ICS-100 and NIMS-700a in the past 24 months.
- ~~[12.6.3~~ 12.7] The Division may grant an extension of time for either requirement in 12.6 upon request and for good cause shown.

### **123.0 Miscellaneous Services**

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

**5 DE Reg. 2126 (5/1/02)**

**6 DE Reg. 79 (7/1/02)**

### **134.0 Resuscitation Orders**

- 134.1 Upon admission to the facility, the PCP and PCN shall discuss with the parents/guardian of the pediatric resident procedures to follow in terms of a Do Not Resuscitate (DNR) status and shall include in the pediatric resident's chart, documentation of either DNR or Full Code status.
- 134.2 The DNR status of a pediatric resident shall not prohibit full participation by that pediatric resident in school/recreational field trips and/or events.

**5 DE Reg. 2126 (5/1/02)**

**145.0 Waiver**

Waivers may be granted by the Division for good cause.

**5 DE Reg. 2126 (5/1/02)**

**156.0 Severability**

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

**5 DE Reg. 2126 (5/1/02)**

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