

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119  
(16 Del.C. §1119C & 29 Del.C. §10119)  
16 DE Admin. Code 3315

### EMERGENCY

#### EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119

16 DE Admin. Code 3315 Family Care Homes

#### 3315 Family Care Homes

#### AUTHORITY

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 DE Admin. Code 3315 Family Care Homes. Additionally, 29 Del.C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del.C. §10115. Moreover, 16 Del.C. §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for family care homes.

#### REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 has significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 17 (07/01/21).

In addition, staff at family care homes must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 11.0.

#### EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 DE Admin. Code 3315 Family Care Homes, specifically, Section 11.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

#### **11.0 Infection Control**

##### 11.2 Specific Requirements for COVID-19

11.2.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

11.2.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

11.2.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

11.3 The licensee shall amend their policies and procedures to include:

11.3.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.

- 11.3.2 Staff refusals to participate in COVID-19 testing;
- 11.3.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.
- 11.3.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and
- 11.3.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

This Emergency Order shall take effect on September 30, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

## PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to [Corinna.Getchell@Delaware.gov](mailto:Corinna.Getchell@Delaware.gov), or by fax to 302-421-7401.

## ORDER

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3315 Family Care Homes, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS  
Cabinet Secretary

## 3315 Family Care Homes

### 1.0 Purpose

These regulations are developed and promulgated to promote and ensure the health, safety and well-being of all residents of Family Care Homes. These regulations also ensure that Family Care Homes will be responsible and accountable to their residents. The regulations establish the minimal acceptable level of services for residents of Family Care Homes.

### 2.0 Definitions

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

**"Activities of Daily Living"** (ADL) means the tasks for self-care which are performed either independently, with supervision, or with assistance. Activities of daily living include but are not limited to ambulating, transferring, grooming, bathing, dressing, eating and toileting.

**"Affiliated Social Agency/Program"** means an agency which has entered into an agreement with the Department of Health and Social Services to ensure that the health and welfare needs of the resident are met.

**"Case Manager"** means an individual from an affiliated social agency/program who works with the residents, the family care provider and others to assist the residents in adjusting to and maintaining themselves in the community. This includes planning, organizing, coordinating and/or advocating so that effective services are provided.

**"Department"** means the Delaware Department of Health and Social Services.

**"Family Care Home"** (FCH) means a home (physical structure and necessary equipment) that provides beds and personal care services for 2 or 3 residents who cannot live independently and who need or could benefit from a family living situation. The home provides shelter, housekeeping services, food/meals and personal care for residents.

**"Family Care Provider"** means a person, the holder of the license, who is responsible for providing direct supervision and care for residents. The family care provider is to provide consumer-driven services which maximize independence through individual choice, enable individuals to continue living active and productive lives and protect those who are vulnerable and at risk.

**"Level of Care"** means a written determination of the amount of assistance a resident requires in the areas of, activities of daily living, medication, treatments and therapies, mobility, behavior management and supervision.

The document will also contain the amount of time a resident can be left unsupervised while the FCH provider is out of the residence.

**"Licensed Independent Practitioner"** means a physician; a physician's assistant; or a nurse practitioner licensed under 24 **Del.C.** Chs. 17 or 19.

**"Occupant"** means any person living in a home on a 24 hour continuing basis, in excess of 48 hours per week, or more than 30 days per year. Included are: residents, family care provider and family care provider family members.

**"Physician"** means an individual currently licensed as such by 24 **Del.C.** Ch. 17.

**"Resident"** means an individual residing in a family care home.

**"Supervision"** means direct oversight of a function or activity by a responsible person who is not a resident.

### **3.0 Licensing Requirements and Procedures**

3.1 No person shall establish, conduct or maintain in this State any FCH without first obtaining a license from the Department.

#### 3.1.1 Issuance of Licenses

##### 3.1.1.1 Initial License

3.1.1.1.1 An initial license approval will be granted to those applicants who meet the requirements for licensure.

3.1.1.1.2 Once an initial license approval has been issued the applicant may accept residents.

3.1.1.1.3 An initial license shall be issued when the first resident moves in and shall be for a term of six (6) months, during which a follow-up inspection will be conducted. If the applicant meets the licensing requirement at that time an annual license for the remainder of the licensure year will be issued.

3.1.1.1.4 If the applicant does not meet the requirements but shows the ability to meet the requirements a provisional licensed may be issued for a period of 90 days pending the implementation of the corrective actions.

##### 3.1.1.2 Provisional License:

3.1.1.2.1 A provisional license may be granted for a period of 90 days to an FCH that, after inspection by the Department, is not in substantial compliance with these rules and regulations but has demonstrated the ability and willingness to comply within the 90-day period.

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

3.1.1.2.3 A provisional license may not be renewed unless a Plan for Corrective Action has been approved by the Department and implemented by the FCH.

3.1.1.2.4 A license will not be granted pursuant to 3.1.1.2 after the provisional licensure period to any FCH that is not in substantial compliance with these rules and regulations.

##### 3.1.1.3 Annual License:

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

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

3.1.1.3.3 FCHs must apply for licensure at least 30 days prior to the expiration date of the license.

3.1.1.3.4 A license will not be issued to an FCH which is not in substantial compliance with these regulations and/or whose deficient practices present an immediate threat to the health and safety of its residents.

#### 3.1.2 Suspension or Revocation of Licenses

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

3.1.2.1.1 Violation of any of the provisions of these rules and regulations or 16 **Del.C.** Ch. 11.

3.1.2.1.2 Deficiencies which present a threat to the health and safety of residents.

3.1.2.1.3 Permitting, aiding, or abetting the commission of any illegal act in the FCH.

3.1.2.1.4 Conduct or practices detrimental to the welfare of the resident.

3.1.2.1.5 Refusal to allow the Department access to the FCH to conduct surveys/investigations as deemed necessary by the Department.

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

3.1.2.3 The holder of the license may, within such 10-day period, give written notice of her/his desire to have a hearing. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in 29 **Del.C.** Ch. 101 and in accordance with applicable rules and regulations of the Department.

### 3.1.3 Fees

3.1.3.1 Fees shall be in accordance with 16 **Del.C.** Ch. 11.

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

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

### 3.2 Inspection

3.2.1 Every FCH for which a license has been issued under this chapter shall be periodically inspected by a representative of the Department.

### 3.3 Application Process

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

3.3.2 The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department.

3.3.2 Applicants shall submit, to the Department, the names, ages and relationship to the family care provider of each person living in the home.

### 3.4 Financial Requirement

3.4.1 Each family care provider shall submit financial documentation to the Department that will be used solely to determine financial capability.

## 4.0 General Requirements

4.1 Admission to an FCH shall be limited to residents whose needs can be met with the following services: assistance with activities of daily living where the resident needs moderate, standby or "hands on" assistance; assistance with/and or administration of medications, interventions to manage occasional behaviors and; scheduling of and, if necessary, transportation to scheduled treatments or therapies.

4.2 The holder of the license must be living in the home full-time.

4.3 The FCH must meet and maintain compliance with all applicable federal, state, and local laws and regulations.

4.4 The affiliated social agency/program or a licensed independent practitioner with the placement agency will establish a level of care. The level of care determination shall be made in consultation with the resident's personal primary care licensed independent practitioner if any, and will include an assessment of the physical and mental status of the resident prior to admission to the FCH and annually thereafter.

4.4.1 A copy of the level of care must be maintained by the licensee.

4.5 When a licensed independent practitioner with the placement agency determines that a resident requires additional medical services, it is the responsibility of the family care provider to ensure that those services are received by the resident.

4.6 All required records maintained by the FCH shall be open to inspection by authorized representatives of the Department and an affiliated social agency/program.

4.7 A resident who is not sponsored by an affiliated social agency/program will arrange with a licensed independent practitioner to establish a level of care. The level of care will include an assessment of the physical and mental status of the resident prior to placement in the FCH and annually thereafter.

4.7.1 A copy of the level of care must be maintained by the licensee.

4.8 An FCH licensed under these regulations shall not admit any person under the age of 18 years as a resident.

4.8.1 The FCH may request a waiver of this provision, through the Department for residents with specific medical or social needs.

4.8.2 If a waiver is granted and a juvenile resident is to be housed on the same floor as an adult resident, the juvenile's affiliated social service agency/program must also give written approval to the FCH and provide a copy to the Department. The affiliated social service agency/program shall also ensure the placement is appropriate given the physical, emotional and medical conditions of the other residents.

4.9 A resident must be provided a bedroom separate from the family care provider and her/his family members.

4.10 The holder of the license must notify the Department at least 30 days before any change in the family care provider or a change in the FCH ownership.

- 4.11 The family care provider may not leave the FCH when residents are present without delegating care duties to a responsible adult unless the resident's Level of Care documentation contains an amount of time that the resident can be left unsupervised. In any case, the maximum amount of time the provider can be away is 12 hours.
  - 4.11.1 The name and contact information for the alternate responsible adult must be on file with the Department.
- 4.12 The family care provider must notify the Department, in advance when possible, of any absence of 1 week or longer.
- 4.13 Each FCH shall cooperate fully with the state protection and advocacy agency, as defined in 16 Del.C. §1102(7), in fulfilling functions authorized by 16 Del.C. Ch. 11.
- 4.14 A family care provider that provides services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall receive annual dementia specific training that includes: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons.
- 4.15 Family pets must have all necessary yearly updated vaccinations from a veterinarian and there will be no vicious or dangerous animals residing in the home that could pose a risk of harm to a resident.

## 5.0 Environment

- 5.1 Site Provisions
  - 5.1.1 Each FCH shall be located on a site which is considered suitable by the Department.
  - 5.1.2 The site must be safe, easily drained, must be suitable for disposal of sewage and furnishing a potable water supply.
  - 5.1.3 The exterior of the site shall be free from hazards and also from the accumulation of waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other litter.
- 5.2 The FCH must have a safe and sanitary environment, properly constructed, equipped, and maintained to protect the health and safety of residents.
- 5.3 The FCH shall comply with all local and state building codes and ordinances as pertain to this occupancy.
- 5.4 Physical Plant
  - 5.4.1 All construction - new, renovations, or remodeling - must conform to the local building codes, current at the time of construction.
  - 5.4.2 When an FCH plans to construct, renovate or extensively remodel, the holder of the license must submit a copy of properly prepared plans and specifications to the Department for approval.
    - 5.4.2.1 The Department must issue an approval in writing before any work is done.
    - 5.4.2.2 The Department must visit the site upon completion of the work to ensure that the work was completed according to plans submitted.
  - 5.4.3 Windows
    - 5.4.3.1 Window space shall not be less than one tenth (1/10) of the floor space.
      - 5.4.3.1.1 Up to 25% reduction may be allowed when approved mechanical ventilation is utilized in multi-bed rooms.
    - 5.4.3.2 All windows in rooms to be used by residents are to be constructed to eliminate drafts and to provide adequate light and ventilation.
  - 5.4.4 The building shall be constructed and maintained to prevent the entrance, and control the existence, of rodents and insects.
    - 5.4.4.1 All exterior openings shall be effectively screened.
    - 5.4.4.2 Screen doors shall open outward and shall be equipped with self-closing devices.
    - 5.4.4.3 All screening shall have at least 16 mesh per inch.
  - 5.4.5 Resident bedrooms shall open directly into a corridor.
  - 5.4.6 FCHs accommodating residents who regularly require wheelchairs shall be equipped with ramps.
    - 5.4.6.1 Egress ramps must be located at the primary means of egress.
      - 5.4.6.1.1 A secondary means of egress that is independent and remotely located from the primary means of egress must be provided to the outside of the dwelling at street/ground level or open to an exterior balcony.
    - 5.4.6.2 A ramp must be compliant with the standards outlined in Americans with Disabilities Act (ADA).
  - 5.4.7 The physical dimensions of the home will provide, as a minimum, 150 square feet of common living space for the first occupant and 100 square feet of living space for each additional occupant.

- 5.4.8 FCHs with below grade accommodations must have a direct means of egress to the outside from that level.
- 5.4.9 The roof, exterior walls, doors, skylights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.
- 5.5 Water supply and sewage disposal
  - 5.5.1 Non-public water systems must be approved by the Department.
  - 5.5.2 Non-public sewage disposal systems must be approved by the Department of Natural Resources and Environmental Control.
  - 5.5.3 The water system must supply adequate hot and cold water, under pressure, at all times.
  - 5.5.4 The plumbing shall meet the requirements of all municipal or county codes. Where there are no local codes, the provisions of the Department Sanitary Plumbing Code shall prevail.
  - 5.5.5 Hot water at shower, bathing and hand washing facilities shall not exceed 110°F (43°C).
- 5.6 A licensee must ensure that the facility's or program's premises and equipment accessible to or used by residents are free from any danger to their health, safety and well-being.
- 5.7 Electric shall meet all municipal, county and State requirements and laws.
- 5.8 Each room and access way shall be suitably lighted at all times for maximum safety, comfort, sanitation and efficiency of operation particularly in areas that present safety hazards. Careful attention shall be given to avoid glare.
- 5.9 Safety equipment
  - 5.9.1 Stairways shall have non-slip surfaces and sturdy handrails to prevent slipping. Stairways over six (6) feet in width shall have handrails on both sides.
  - 5.9.2 Working electric switches shall be located at the top and the bottom of stairways.
  - 5.9.3 Hallways shall be equipped with working night-lights.
  - 5.9.4 Floor surfaces shall be durable, yet non-abrasive and slip-resistant. Floor surfaces shall be kept in good repair. Area rugs on hard finished floors shall have a non-skid backing. Carpeting shall be maintained in a clean condition.
  - 5.9.5 All interior doors in areas used by residents shall be capable of being opened from either side at all times.
  - 5.9.6 Cameras or monitoring devices are not permitted in resident bedrooms or bathrooms unless written permission by resident(s), resident guardian(s) is on file.
- 5.10 Resident bedrooms
  - 5.10.1 Each bedroom shall be well-ventilated.
  - 5.10.2 Each bedroom shall be an outside room with at least one (1) window opening directly to the outside. The window sill shall be at least three (3) feet above the floor and above grade.
  - 5.10.3 A one (1) person bedroom shall be at least seventy (70) square feet.
  - 5.10.4 Multi-person bedrooms shall:
    - 5.10.4.1 Provide at least fifty (50) square feet of floor space per person.
    - 5.10.4.2 Be adequately spaced for comfort.
    - 5.10.4.3 Have the beds spaced at least three (3) feet apart. Bunk beds are prohibited.
  - 5.10.5 The ceiling height shall be not less than seven (7) feet from the floor on average. Areas where the height of the ceiling is less than five (5) feet shall not be counted in the determination of the room size.
  - 5.10.6 Walls must extend from the floor to the ceiling.
  - 5.10.7 Doors must be closable.
  - 5.10.8 Each bedroom must have adequate electrical outlets which are conveniently located.
  - 5.10.9 At least one (1) light fixture shall be switched at the entrance of each bedroom.
  - 5.10.10 Walls shall be cleanable.
  - 5.10.11 Each bedroom shall ensure adequate privacy.
  - 5.10.12 No more than two (2) residents may share a bedroom.
- 5.11 Bedroom furnishings for each resident must include:
  - 5.11.1 A reading light.
  - 5.11.2 A bed in good repair with a frame.
  - 5.11.3 A comfortable well constructed mattress.
    - 5.11.3.1 The mattress shall be covered or protected with non porous material.
    - 5.11.3.2 A resident may choose to provide an individual mattress to be used only by that resident.

- 5.11.4 A sturdy bedside stand and chair.
- 5.11.5 A chest of drawers with at least 2 drawers.
- 5.11.6 At least two (2) linear feet in a closet for hanging clothes.
- 5.12 Bathrooms
  - 5.12.1 Floor and wall surfaces shall be constructed and maintained to be impervious to water and to permit the floor and walls to be easily kept in a clean condition.
  - 5.12.2 At least one (1) window or mechanical ventilation to the outside shall be provided.
  - 5.12.3 Floor surfaces shall be durable, yet non-abrasive and slip-resistant. Floor surfaces shall be kept in good repair.
  - 5.12.4 There shall be one (1) bathtub or shower for every six (6) occupants.
    - 5.12.4.1 Each bathtub or shower shall be in an individual room or enclosure which provides private space for bathing, drying and dressing.
    - 5.12.4.2 Each bathtub or shower shall be equipped with grab bars and slip-resistant surfaces.
  - 5.12.5 There shall be at least one (1) toilet for every eight (8) occupants which shall be located on the same level as the resident's bedroom(s).
    - 5.12.5.1 When more than one (1) toilet is located in the same room, provisions for private use shall be made.
    - 5.12.5.2 Each toilet shall be equipped with a substantial grab bar.
  - 5.12.6 There shall be at least one (1) hand washing sink for every eight (8) occupants which shall be located on the same level as the resident's bedroom(s).
    - 5.12.6.1 The hand washing sink shall have hot and cold water.
- 5.13 Kitchen
  - 5.13.1 Floor, wall and counter surfaces shall be constructed and maintained to be impervious to water (to the level of splash) and to permit the floor and walls to be easily kept in a clean condition.
  - 5.13.2 There shall be:
    - 5.13.2.1 At least one (1) refrigerator and one (1) freezing unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 42°F, or below, as determined in the warmest part of the refrigerator.
      - 5.13.2.1.1 Each refrigerator shall be equipped with a refrigerator thermometer.
    - 5.13.2.2 At least one (1) four-burner range and one (1) oven in proper working order.
    - 5.13.2.3 A dishwasher that has a sanitizing cycle or the provider must use a dish-washing detergent containing bleach.
    - 5.13.2.4 At least one (1) clean trash receptacle.
    - 5.13.2.5 At least one (1) operable window or suitable exhaust system for removal of smoke, odors and fumes.
    - 5.13.2.6 Adequate cleaning/disinfecting agents and supplies.
    - 5.13.2.7 Storage areas with separate storage for:
      - 5.13.2.7.1 Food, which must be stored off of the floor.
      - 5.13.2.7.2 Cleaning agents, disinfectants and polishes.
      - 5.13.2.7.3 Poisons, pesticides or other toxic chemicals which must be stored in locked cabinets/storage areas.
      - 5.13.2.7.4 Eating and serving utensils, pots, pans and cooking utensils which must be stored off of the floor.
  - 5.13.3 All food items shall be stored in closed or sealed containers or wrapping.
  - 5.13.4 Food storage areas shall be free of food particles, dust and dirt.
  - 5.13.5 Food preparation areas, utensils and appliances shall be cleaned following each meal prepared.
- 5.14 Dining and dayroom area
  - 5.14.1 There shall be provided one (1) or more areas that are adequate in size and furnished for resident dining, recreational and social activities.
  - 5.14.2 The furniture shall be of such condition so as not to pose a safety hazard and arranged and located as to provide convenient access to the residents.
  - 5.14.3 When a multi-purpose room is used, it shall have sufficient space to accommodate activities in order to prevent interference of one (1) activity with another.
- 5.15 Sanitation and housekeeping

- 5.15.1 All rooms and every part of the building shall be kept clean, orderly, in good repair and free of offensive odors.
- 5.15.2 Waste material, obsolete and unnecessary articles, tin cans, rubbish and other litter shall not be permitted to accumulate in the home.
- 5.15.3 Sharps shall be stored in sanitary containers and disposed of in a sanitary manner.
- 5.15.4 When a separate sink is not provided for janitorial or laundry duties, the sink shall be sanitized with bleach after each use.
- 5.15.5 No laundry may be done in the food service area during the preparation or serving of food.
- 5.15.6 Laundry
  - 5.15.6.1 Bed linens and towels must be changed at least weekly or more often as necessary.
  - 5.15.6.2 If linen chutes are used, they will maintained in a sanitary condition.
  - 5.15.6.3 If the clothes washing machine is in the kitchen, soiled laundry shall not be taken into the kitchen until it is ready to be washed.
  - 5.15.6.4 The family care provider will complete laundry for residents who are incapable of doing so on their own.

## **6.0 Fire Safety**

- 6.1 There must be a functioning UL approved smoke detector on each level of the residence and in the hall adjacent to the resident bedrooms.
- 6.2 There shall be at least one functional fire extinguisher, that is readily accessible, on each floor of living space in the home.
- 6.3 Written notification to the Department by the State Fire Marshal of the existence of a fire hazard in the FCH may be grounds for revocation of a license.
- 6.4 The Department may require an inspection by a certified electrician at any time for good cause.

## **7.0 Resident Services**

- 7.1 Healthcare
  - 7.1.1 Each resident shall have a physical/medical examination within 90 days prior to placement.
  - 7.1.2 Each resident shall have a physical/medical examination annually or more frequently as required by a physician or the affiliated social agency/program.
  - 7.1.3 Medications
    - 7.1.3.1 Medications prescribed for residents shall be kept locked in a cabinet or a lock box set aside for that exclusive purpose.
    - 7.1.3.2 Medications requiring refrigeration shall be kept locked in a separate box within the refrigerator.
    - 7.1.3.3 Medications shall be self-administered or distributed directly to the resident from the prescription container in strict accordance with the prescription directions.
    - 7.1.3.4 The family care provider shall ensure that prescription medication is not used by other than the resident for whom the medication was prescribed.
  - 7.1.4 The family care provider shall maintain a list of each resident's licensed independent practitioner(s), the contact information for each and all medications taken by the resident.
  - 7.1.5 Communicable disease
    - 7.1.5.1 A person with an active communicable disease may not be admitted to an FCH until the individual is no longer contagious.
    - 7.1.5.2 A resident with an active communicable disease must receive prompt medical treatment and supervision.
    - 7.1.5.3 The family care provider shall assume responsibility for seeing that necessary precautions are taken and that there is a minimum danger of transmission of a communicable disease to any occupant of the home.
    - 7.1.5.4 Minimum requirements for tuberculosis (TB) testing require all occupants to have a base line two step tuberculin skin test.
      - 7.1.5.4.1 Original home occupants must complete the baseline PPD testing prior to acceptance of any resident.
      - 7.1.5.4.2 Potential residents must have baseline testing within the six (6) month period prior to admission.



7.1.5.5 All homes shall have on file evidence of an annual vaccination against influenza for all residents unless refused or medically contraindicated.

## 7.2 Food service

- 7.2.1 A minimum of three (3) meals shall be available and/or served in each twenty-four (24) hour period.
- 7.2.2 There shall not be more than a 14 hour span between the evening and breakfast meals unless suitable nourishment is provided in the interim.
- 7.2.3 The food served shall be suitably prepared and of sufficient quantity and quality to meet the nutritional needs of the residents.
- 7.2.4 Special diets shall be served on the written prescription of the resident's physician.
- 7.2.5 A three (3) day supply of food and water for emergency feeding shall be on the premises.

## 8.0 Resident Rights

- 8.1 Every resident shall have the right to receive considerate, respectful, and appropriate care, treatment and services, recognizing each person's basic personal and property rights which include dignity and individuality.
- 8.2 Prior to the admission of a resident, the family care provider shall provide to the resident a complete statement enumerating all charges for services, materials and equipment which may be furnished during the period of residence.
  - 8.2.1 Each resident or legal representative shall be made aware of these charges and sign a statement of agreement prior to admission.
  - 8.2.2 The care provider will not engage in financial transactions with a resident other than the agreed upon rate and approved incidental expenses.
  - 8.2.3 Any revocation and/or change in any part of the financial agreement shall be coordinated with the Affiliated Social Agency/Program, placement agency, or State Long Care Ombudsman.
- 8.3 Every resident shall receive respect and privacy in the resident's own medical care program.
- 8.4 Every resident shall be free from chemical and physical restraints imposed for purposes of discipline and convenience.
- 8.5 Every resident shall receive from the family care provider a courteous, timely and reasonable response to requests, and the family care provider shall make prompt efforts to resolve grievances. Responses to requests and grievances shall be made in writing upon written request by the resident.
- 8.6 Every resident may associate and communicate, including visits and visitation, privately and without restriction with persons and groups of the resident's own choice at any reasonable hour.
- 8.7 Every resident may send and shall receive mail promptly and unopened.
- 8.8 Every resident shall have access at any reasonable hour to a telephone where the resident may speak privately.
- 8.9 Every resident shall have access to writing instruments, stationery and postage.
- 8.10 Every resident has the right to manage her/his financial affairs.
  - 8.10.1 If, by written request signed by the resident or the legal representative, the family care provider manages the resident's financial affairs, the family care provider shall:
    - 8.10.1.1 Have a monthly accounting of expenditures available for inspection; and,
    - 8.10.1.2 Shall furnish the resident or resident's legal representative with a quarterly statement of the resident's account.
    - 8.10.1.3 The resident shall have unrestricted access to such account at reasonable hours.
- 8.11 If married, every resident shall enjoy privacy in visits by the resident's spouse.
- 8.12 Every resident has the right of privacy in the resident's own room and the family care provider shall respect this right by knocking on the door before entering the resident's room.
- 8.13 A resident shall not be required to perform services for the FCH.
- 8.14 Every resident shall have the right to retain and use the resident's own personal clothing and possessions where reasonable, and shall have the right to security in the storage and use of such clothing and possessions.
- 8.15 Every resident shall be fully informed, in language the resident can understand, of the resident's rights and all rules and regulations governing resident conduct and the resident's responsibilities during the stay at the FCH.
- 8.16 Every resident shall have the right to choose a personal attending physician.
- 8.17 Every resident shall have the right to examine the results of the most recent survey of the FCH.
- 8.18 Every resident shall have the right to receive information from the protection and advocacy agency and agencies acting as client advocates and be afforded the opportunity to contact those agencies.

- 8.19 Every resident shall be free from verbal, physical or mental abuse, cruel and unusual punishment, involuntary seclusion, withholding of monetary allowance, withholding of food and deprivation of sleep.
- 8.20 Every resident shall be free to make choices regarding activities, roommates, schedules, health care and other aspects of the resident's life that are significant to the resident, as long as such choices do not compromise the health or safety of the resident or other residents within the FCH.
- 8.21 Every resident has the right to participate in an ongoing program of activities designed to meet the resident's interests and physical, mental and psychosocial well-being.
- 8.22 Every resident shall have the right to participate in social, religious and community activities that do not interfere with the rights of other residents.
- 8.23 Every resident shall receive notice before the resident's room or roommate is changed, except in emergencies.
- 8.24 Every resident shall be encouraged to exercise the resident's own rights as a citizen of the State and the United States of America.
- 8.25 Each resident will be encouraged to be out of bed during the day unless ill.

## **9.0 Records and Reports**

- 9.1 The family care provider must maintain the following records for each resident:
  - 9.1.1 Resident's name, social security number and other appropriate information;
  - 9.1.2 Date of admission to the FCH;
  - 9.1.3 Physician(s) name(s) and contact information;
  - 9.1.4 Next of kin's name and contact information;
  - 9.1.5 A list of all medications taken by the resident;
  - 9.1.6 Certificate as to required level of care; and,
  - 9.1.7 Burial plans.

## **10.0 Disciplinary Actions**

- 10.1 Any person who fails to comply with these regulations shall be fined not less than \$100 and not more than \$1000, together with costs, unless otherwise provided by law.
- 10.2 Before any disciplinary action is taken:
  - 10.2.1 The Department shall give ten calendar days written notice to the holder of the license, setting forth the reasons for the determination.
  - 10.2.2 The disciplinary action shall become final ten calendar days after the mailing of the notice unless the licensee, within such ten calendar day period, shall give written notice of the desire for a hearing.
    - 10.2.2.1 If the licensee gives such notice, the licensee shall be given a hearing before the Secretary of the Department or her/his designee and may present such evidence as may be proper.
    - 10.2.2.2 The Secretary of the Department or her/his designee shall make a determination based upon the evidence presented.
    - 10.2.2.3 A written copy of the determination and the reasons upon which it is based shall be sent to the licensee.
    - 10.2.2.4 The decision shall become final ten calendar days after the mailing of the determination letter unless the licensee, within the ten calendar day period, appeals the decision to the appropriate court of the State.

## **11.0 Infection Prevention and Control**

- 11.1 The FCH shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.
  - 11.1.1 The infection prevention and control program must cover all services and all areas of the FCH including provision of the appropriate personal protective equipment for all occupants of the FCH and visitors.
  - 11.1.2 The individual designated to lead the FCH's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the FCH's infection control outcomes.
- 11.2 Specific Requirements for COVID-19
  - 11.2.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

- 11.2.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.
- 11.2.3 The licensee must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 11.3 The licensee shall amend their policies and procedures to include:
  - 11.3.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
  - 11.3.2 Staff refusals to participate in COVID-19 testing:
  - 11.3.3 Staff refusals to authorize release of testing results or vaccination status to the licensee.
  - 11.3.4 Procedures to obtain staff authorizations for release of laboratory test results to the licensee to inform infection control and prevention strategies; and
  - 11.3.5 Plans to address staffing shortages and licensee demands should a COVID-19 outbreak occur.

## **12.0 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.

State Board of Health Regulations adopted pursuant to 16 **Del.C.** 1109 July 1, 1956. Amended March 13, 1962. December 18, 1969, November 24, 1971, February 17, 1972, December 27, 1972, May 23, 1973, August -21, 1975, August 8, 1977, January 25, 1978, September 19, 1978, October 17, 1978, October 14, 1980, April 14, 1981, March 3, 1983, to be effective April 1, 1983, February 1, 1989, and March 3, 1993, to be effective March 4, 1993.

**14 DE Reg. 1360 (06/01/11)**

**15 DE Reg. 192 (08/01/11)**

**18 DE Reg. 569 (01/01/15)**

**25 DE Reg. 328 (10/01/21) (Emer.)**