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Title 16

Health and Safety

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Part I
Local Boards of Health; Health Programs
Chapter 1
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
Subchapter I
General Provisions

§ 101 Definitions.

As used in this title, unless otherwise provided or the context requires a different meaning:

(1) "County Public Health Administrator" means the Division of Public Health employee responsible for managing the operations of all public health programs within an assigned county.

(2) "Department" means the Department of Health and Social Services.

(3) "Director" means the Director of the Division of Public Health, or such persons as may be designated by the Director.

(4) "Division" means the Division of Public Health.

(5) "Peace Officer" means any public officer authorized by law to make arrests in a criminal case.

(6) "Secretary" means the Secretary of the Department of Health and Social Services or such persons as may be designated by the Secretary.

(16 Del. C. 1953, § 101; 57 Del. Laws, c. 591, § 1; 70 Del. Laws, c. 149, § 17; 70 Del. Laws, c. 186, § 1.)

§ 102 Headquarters.

The Department shall establish headquarters in the City of Dover and if no suitable place shall be provided in the State House or in other state property, the Department shall have authority to select some suitable place for the establishment of such headquarters.

(33 Del. Laws, c. 57, § 3; 34 Del. Laws, c. 69, § 1; Code 1935, § 744; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 104; 70 Del. Laws, c. 544, § 4.)

§ 103 Deputy state health officers — Appointment; term; compensation; removal.

(a) Subject to the approval of the Department, the Secretary shall appoint for each county in the State a deputy state health officer, who shall be a person trained and experienced in public health. Each deputy state health officer shall be appointed for a term of 4 years and shall devote full time to the duties of office. The deputy health officer shall receive such compensation as is fixed by the Department and necessary expenses, which shall be paid monthly out of state funds.

(b) The Department may remove deputy state health officers for cause, upon charges and after a hearing, and may appoint a suitable person to fill any unexpired term.

(33 Del. Laws, c. 57, § 2; 34 Del. Laws, c. 69, § 1; Code 1935, § 744; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 107; 57 Del. Laws, c. 591, § 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, § 5.)

§ 104 Deputy state health officers — Powers and duties.

The deputy state health officers for and under the direction of the Department shall enforce the laws of the State pertaining to the public health, shall enforce all rules, regulations and orders adopted or promulgated by the Department in accordance with law, shall undertake such other duties as may be assigned to them by the Department and shall supervise all public health matters within their respective counties, and in the City of Wilmington, but not in other incorporated cities or towns having duly constituted boards of health. The governing authorities of any incorporated city or town, other than the City of Wilmington, may by resolution duly adopted and approved by the Department designate a deputy state health officer to act as health officer of such incorporated city or town, and the deputy health officer shall then exercise the powers and perform the duties of the local board of health.

(33 Del. Laws, c. 57, § 2; 34 Del. Laws, c. 69, § 1; Code 1935, § 744; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 108; 57 Del. Laws, c. 245; 57 Del. Laws, c. 591, § 4; 70 Del. Laws, c. 149, § 18; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, § 6.)

§ 105 Authorization to receive federal funds; disposition.

(a) The Department may apply for and receive funds made available to the Department by any agency or department of the federal government authorized to make grants-in-aid of any of the present or future health programs undertaken, maintained or proposed by the Department, namely, maternal and child health, aid to crippled children, venereal disease control, public health work under 42 U.S.C. § 246 and other health programs that may be developed.

(b) All moneys received from any federal agency or department, as provided in this section, shall be paid into the State Treasury and shall be for the use of the Department. The moneys so received shall be used solely for the purpose or purposes for which the grant or grants shall have been made and for no other purpose.

(45 Del. Laws, c. 84, §§ 1, 2; 16 Del. C. 1953, § 110; 70 Del. Laws, c. 149, § 19; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, § 7.)

§ 106 Prosecutions and proceedings for violations; disposition of fines.

All prosecutions and proceedings instituted by the Department or Division for the violation of any law or laws to be enforced by the Department or Division, or for the violation of any order or regulation of the Department or Division shall be instituted by the Secretary or the Secretary's designated representative. All laws prescribing the modes of procedure and penalties or judgments applicable to local boards of health shall apply to the Department or Division and the violation of its laws and orders. All fines or judgments collected or received shall be paid over to the State Treasurer, and applied to the General Fund of the State.

(22 Del. Laws, c. 642, § 12; 22 Del. Laws, c. 327, § 7; Code 1915, § 744; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 750; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 112; 57 Del. Laws, c. 591, § 5; 70 Del. Laws, c. 149, §§ 20, 21; 70 Del. Laws, c. 186, § 1.)

§ 107 Neglect of duty; penalty.

(a) Whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department of Health and Social Services, shall be fined not less than $100 and not more than $1000, together with costs, unless otherwise provided by law.

(b) [Deleted.]

(c)(1) [Deleted.]

(2) [Deleted.]

(3) [Deleted.]

(d)(1) Notwithstanding the foregoing, whoever refuses, fails or neglects to perform duties required of trained and certified individuals and firms under § 122(3)(t) of this title, or who violates, neglects or fails to comply with duly adopted regulations or orders of the Department regarding the standards for regulation of lead-based paint, including the training and certification of companies and workers engaged in lead-based paint activities, work practice standards and the accreditation of lead-based paint hazard training programs, shall be subject to a criminal penalty up to $10,000 per day, together with costs, for every day from and after the effective date of an order of the Department specifically directing compliance until such time compliance has been achieved. The Justice of the Peace Courts shall have jurisdiction to adjudicate offenses under this subsection.

(2) In appropriate cases, Department-issued orders concerning lead-based paint activities and duties imposed by law upon such persons engaged in lead-based paint activities governed by this code may be compelled by mandamus or injunction.

(3) At the discretion of the Department, in lieu of criminal action pursuant to paragraph (d)(1) of this section, the Secretary shall be authorized to impose an administrative penalty of up to $10,000 per violation in accordance with the Administrative Procedures Act [Chapter 101 of Title 29] against any person or entity who violates the provisions of this chapter or the regulations promulgated pursuant to it. Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. Under this paragraph, each day a violation continues constitutes a separate violation.

(4) The Department shall have the authority to collect administrative penalties. All fees and penalties assessed by the Department under this subsection are hereby appropriated to the Department to carry out the purposes of § 122(3)t. of this title.

(5) In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for the collection of the administrative penalty, including interest, attorney fees and costs. In a civil action to collect the administrative penalty, the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

(6) In the event of nonpayment of the criminal penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for the collection of the criminal penalty, including interest, attorney fees and costs. In a civil action to collect the criminal penalty, the validity, amount and appropriateness of such criminal penalty shall not be subject to review.

(e) Notwithstanding the foregoing, whoever refuses, fails, or neglects to perform duties required under § 122(3)h. of this title related to non-nurse midwifery or fails to comply with the duly adopted regulations or orders of the Department regarding non-nurse midwifery shall be subject to the following:

(1) An administrative fine imposed by the Secretary of not less than $1,000 nor more than $10,000 per violation, together with costs pursuant to Department regulations and procedures;

(2) The Department may order that such person(s) cease and desist acts that violate the duly adopted regulations; and

(3) If an order issued pursuant to paragraph (e)(2) of this section is violated, such person shall be guilty of a class F felony, with a term of imprisonment not to exceed 3 years.

All fees, fines, costs, and penalties assessed by the Department pursuant to this subsection shall be retained by the Department in order to defray associated costs. Superior Court shall have original jurisdiction to adjudicate criminal offenses under this subsection. Penalties sought or imposed pursuant to this section do not prohibit charges applicable under other titles of the Code, including but not limited to criminal fees, fines, costs, and penalties.

(19 Del. Laws, c. 642, § 9; Code 1915, § 743; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 749; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 113; 63 Del. Laws, c. 126, § 1; 70 Del. Laws, c. 49, § 2; 70 Del. Laws, c. 149, §§ 22, 23; 70 Del. Laws,

c. 186, § 1; 70 Del. Laws, c. 544, § 8; 73 Del. Laws, c. 269, § 1; 74 Del. Laws, c. 78, § 1; 79 Del. Laws, c. 146, § 1; 79 Del. Laws, c. 154, § 1.)

§ 108 Jurisdiction of offenses; justices of the peace.

Justices of the peace shall have jurisdiction of offenses under this part and Part II of this title, except in cases where exclusive jurisdiction of any such offense is expressly vested in another court.

(16 Del. C. 1953, § 114.)

§ 109 Appeals.

From the decision of a justice of the peace exercising jurisdiction conferred by § 108 of this title, an appeal shall be allowed to the Court of Common Pleas of the same county.

(16 Del. C. 1953, § 115; 69 Del. Laws, c. 423, § 18.)

§ 110 Transfer of Wilmington Department of Health personnel to state service.

Any former or present employee of the State Division of Public Health who was employed by the Wilmington Department of Health in the conduct of public health matters within the City of Wilmington and was so employed at the time the responsibility for the conduct of public health matters within the City of Wilmington was transferred to the State Division of Public Health (then State Board of Health) in implementation of Senate Bill No. 133 of the 125th General Assembly shall, subject to merit system maximums:

(1) Be authorized to transfer vacation leave and sick leave then accumulated;

(2) Receive full credit for the time employed by the City of Wilmington in computing seniority for merit system purposes; and

(3) Receive full credit for time so employed and compensated in computing the number of years service required to receive pension benefits and in computing the amount of such pension benefits under Chapter 55 of Title 29.

(59 Del. Laws, c. 386, § 1; 70 Del. Laws, c. 186, § 1.)

§ 111 Retaliation or discrimination against complainants; immunities and other protections.

Notwithstanding any law or regulation to the contrary, any psychiatric nursing or treatment facility owned by or operated by the Department shall be subject to the provisions of §§ 1117, 1135 and 1154 of this title whether or not such facility is licensed as a long term care facility.

(77 Del. Laws, c. 203, § 1.)

Subchapter II
Powers and Duties Generally; Regulations and Orders

§ 121 Successor to powers of abolished health and welfare agencies.

All the rights, powers, duties, obligations and authority belonging to or vested in the Child Welfare Commission, the Tuberculosis Commission or the State Health and Welfare Commission, prior to May 21, 1941, are transferred to and vested in the Department as successor to those commissions. The Department is clothed with all the power and authority necessary for the competent discharge of the duties imposed upon it.

(33 Del. Laws, c. 57, §§ 4, 9; 34 Del. Laws, c. 69, § 1; Code 1935, § 744; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 121; 70 Del. Laws, c. 544, § 9.)

§ 122 Powers and duties of the Department of Health and Social Services [Effective until Mar. 2, 2015 or final publication of the regulations pursuant to 79 Del. Laws, c. 375, § 5, whichever occurs first]

The Department shall have the following general powers and duties:

(1) Supervision of all matters relating to the preservation of the life and health of the people of the State.

(2) Supreme authority in matters of quarantine; it may declare and enforce such quarantine, when necessary and where no quarantine exists, and may modify, relax or abolish it, where it has been established.

(3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all state and local public health officials, to:

a. Prevent and control the spread of all diseases that are dangerous to the public health;

b. Prevent and control nuisances which are or may be detrimental to the public health;

c. Provide for the sanitary protection of all drinking water supplies which are furnished to and used by the public, including the establishment of primary maximum contaminant levels, operational requirements and public notice requirements. Primary maximum contaminant levels mean a maximum contaminant level which involves a biological, chemical or physical characteristic of drinking water that may adversely affect the health of the consumer.

A public water supplier means any person who owns or operates one or more public water systems. A public water system means a water supply system for the provision to the public of water for human consumption through pipes or other constructed conveyances either directly from the user's free flowing outlet or indirectly by the water being used to manufacture ice, foods and beverages or that supplies water for potable or domestic purposes to employees, tenants, members, guests or the public at large in commercial offices, industrial areas, multiple dwellings or semi-public buildings including, but without limitation, rooming and boarding houses, motels,

tourist cabins, mobile home parks, restaurants, hospitals and other institutions, or offers any water for sale for potable domestic purposes. A dwelling unit means 1 or more rooms arranged for the use of 1 or more individuals as a single housekeeping unit, with cooking, living, sanitary and sleeping facilities. A person shall include corporations, companies, associations, firms, municipally owned water utilities, partnerships, societies and joint stock companies, as well as individuals. In addition, the following provisions shall apply:

1. No public water system shall operate without a duly licensed public water supply operator. The Department shall have the authority to exempt the owners of seasonal public water systems, restaurants, hotels and similar businesses from the requirement to operate with a licensed public water supply operator. The Department shall have the exclusive power to grant or deny any such license and shall adopt regulations setting the requirements, including any acceptable performance or an examination for obtaining and retaining any such license. The Department shall assess an annual licensure fee of $50 per operator.

2. The Department shall have the authority to monitor the water quality of public water systems for secondary drinking water quality standards. The Secretary shall have the authority to establish, after public hearing, minimum secondary drinking water quality standards for all public water suppliers serving more than 500 service connections within the state. In determining the total number of service connections, all public water systems operated, managed or owned wholly or in part by the public water supplier within the State shall be added together. Secondary drinking water quality standards involve a biological, chemical or physical characteristic of water that may adversely affect the taste, odor, color or appearance (aesthetics) which may affect public confidence or acceptance of the drinking water. These standards shall include but are not limited to chlorides, copper, iron, manganese, sulfate, total dissolved solids and other standards as determined by the Secretary. Such standards shall be at least as stringent as those adopted by the United States Environmental Protection Agency under the Safe Drinking Water Act [42 U.S.C. § 300f et seq.]. A certificate of noncompliance shall be issued to any public water supplier that serves more than 500 service connections whose public water system violates secondary drinking water quality standards as adopted by the Department. Such certificate shall require the public water supplier to report within 60 days what measures have been or will be taken to bring the public water system into compliance. Should any public water supplier serving more than 500 service connections within the State fail, without good cause, to meet secondary drinking water quality standards pursuant to this section for a period of time greater than 7 consecutive days, or should the public water supplier have a history of a recurring problem, the Secretary shall file a report with the Public Service Commission detailing such failure or such a history of a recurring problem. The Public Service Commission may utilize the report as cause to review the public water supplier's ability to provide adequate service under its present certificate of public convenience and necessity and may also use such report as a factor in considering any application by the water system supplier's for any further certificate. In addition, for public water systems operated by public utilities which are subject to the jurisdiction of the Public Service Commission under § 203C of Title 26, the Commission may utilize such report as cause to review the appropriate rates to be charged by the utility in light of the quality of service being provided.

3. The Department shall ensure that all new community and nontransient noncommunity public water systems commencing operation after October 1, 1999, demonstrate technical, managerial and financial capacity to operate in compliance with state regulations Governing Public Drinking Water Systems and the federal Safe Drinking Water Act [42 U.S.C. § 300f et seq.]. It is the purpose of this subparagraph to ensure that the Department has adequate information about the background of applicants or regulated parties for the purposes of processing permits. This includes the ability to identify applicants or regulated parties with histories of environmental violations or criminal activities and/or associations; or applicants who cannot demonstrate the required responsibility, expertise or competence which is necessary for the proper operation or activity permitted by the Department.

4. Whoever refuses, fails or neglects to perform the duties required of public water suppliers under paragraph (3)c. of this section; or who violates, neglects or fails to comply with duly adopted regulations or orders of the Department of Health and Social Services regarding the duties of public water suppliers, shall be subject to a judicially imposed penalty of up to $10,000 per day, together with costs, for every day from and after the effective date of an order of the Department of Health and Social Services, specifically directing compliance until such compliance has been achieved. Observance of orders of the Department of Health and Social Services concerning public water suppliers may also be compelled by mandamus or injunction, in appropriate cases, or by an action to compel the specific performance of the orders so made, or of the duties imposed by law upon such public water supplier. The Department of Health and Social Services may investigate the financial operations of a public water supplier to the extent necessary to enter an adequate compliance order.

5. In lieu of judicially imposed penalties, the Secretary may impose administrative penalty upon any public water supplier who refuses, fails or neglects to perform the duties required of it under paragraph (3)c. of this section. The administrative penalty shall be as follows:

A. For a system serving a population of more than 10,000 people the administrative penalty shall be not less than $1,000 nor more than $10,000 per day per violation; and

B. For any other system, the administrative penalty shall be not less than $100 nor more than $10,000 per day per violation.

Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation, or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require.

In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in any court of competent jurisdiction, including any Justice of the Peace Court, for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

6. *Drinking water contaminant notification.* —

A. As used in this section, "Drinking water contaminant" means any physical chemical, biological or radiological substance or matter in drinking water, the presence of which is confirmed by 2 or more samples taken at the same location at different times, using recognized practices and procedures, which substance exceeds the minimum drinking water quality standards established in accordance with paragraph (3)c. of this section.

B. Public notification of drinking water contaminants shall be categorized as either an Immediate Notice (Tier 1), Notice as soon as possible (Tier 2) or 90-day Notice (Tier 3). A Tier 1 drinking water contaminant notification is required when there is an acute risk to human health arising from the presence of drinking water contaminants in drinking water provided by a public drinking water supplier. A Tier 2 drinking water contaminant notification is required when a public water system provides drinking water containing levels of a contaminant that exceed federal or state drinking water standards, but does not pose an acute risk to human health or the public drinking water supplier fails to monitor and report water quality information to the Department in accordance with regulations. A Tier 3 drinking water notification is required when a public drinking water system provides water which otherwise does not comply with federal or state drinking water standards, but the noncompliance does not pose a risk to human health.

C. In the event of a Tier 1, Tier 2 or Tier 3 drinking water contaminant incident, the public drinking water supplier shall immediately notify the Department. If the Department deems it necessary, the public drinking water supplier shall also notify its affected customers in accordance with paragraph (3)c.6.D. of this section and Department regulations and such notice shall include, to the maximum extent practicable, the following information: I. A description of the violation or situation, including contaminant levels, if applicable; II. When the violation or situation occurred; III. Recognized potential adverse health effects using standard health effects language as approved by the Division of Public Health; IV. The affected population; V. Whether alternative drinking water supplies should be used; VI. What action consumers should take; VII. What the public drinking water provider is doing to correct the violation or situation; VIII. When the public drinking water provider expects the system to return to compliance or the situation to be resolved; IX. The name, business address and phone number of the public drinking water system owner or operator; and X. A statement encouraging distribution of the notice to others, where applicable.

D. For Tier 1 drinking water contaminant incidents, the information listed in paragraphs (3)c.6.C.I. through X. of this section above, shall be made available to affected customers by the public drinking water supplier, if the Department deems it necessary, as soon as possible but no later than 24 hours after the contamination is reported. For Tier 2 drinking water contaminant incidents, the information listed in paragraphs (3)c.6.C.I. through X. of this section above shall be made available to affected customers by the public drinking water supplier, if the Department deems it necessary, as soon as practical but within 14 calendar days after the contamination is reported. For Tier 3 drinking water contaminant incidents, the information listed in paragraphs (3)c.6.C.I. through X. of this section above shall be made available to affected customers by the public drinking water supplier, if the Department deems it necessary, as soon as practical, but within 90 calendar days after the contamination is reported.

E. In accordance with the public notification timelines established in paragraph (3)c.7.D. of this section, the public drinking water supplier shall also provide the same notification to the elected Council or Levy Court member or members of any municipality and/or county in which the contamination occurred, the State Representative(s) and Senator(s) in whose district the contamination occurred, and any community or civic group or individual that notifies the public drinking water supplier that they desire to receive such information.

F. The public drinking water supplier is not required to report the results of tests for the presence of drinking water contaminants to the Department in cases where the Division of Public Health performs the potable water analyses.

G. In the event the public drinking water supplier is unable to provide public notification of a Tier 1, Tier 2 or Tier 3 drinking water contaminant incident, as required by this section, such public drinking water supplier shall be responsible for paying for the cost of any such advertisements and notices made on its behalf by the Department.

7. Regulatory and compliance information, public drinking water system performance and public information.

A. The Department shall develop a Safe Drinking Water Information System that will include general information about public drinking water systems under the Department's regulatory jurisdiction as defined by this title. The System shall provide the public with information that indicates when a public drinking water system has been inspected, what violations are detected, when the public drinking water system comes back into compliance, and any enforcement action that results from violations. The Department shall also publish on the Department web site all Tier 1, Tier 2 and Tier 3 drinking water contaminant public notifications as soon as possible, but within 1 business day of the release of the notification to the public.

B. Delaware public drinking water systems that are identified as a community water system by the Division of Public Health, shall prepare and issue each year, on or before July 1, an annual water quality report to customers served by their drinking water system. The water quality reports shall be provided by parcel post return receipt requested to the Department and the

Division of the Public Advocate. In addition, the public drinking water supplier shall notify its customers of the availability of the annual water quality report and provide copies of the report to all individuals, health care providers or organizations requesting it. The water quality report shall include such information as may be prescribed by the Division of Public Health, including, but not limited to, any environmental violations or enforcement actions taken against the public drinking water supplier by federal, state or local regulatory authorities and the name and contact information of the public drinking water supplier representative. The reports may also include any voluntary activities undertaken by the drinking water supplier to reduce health risks from identified contaminants, including source water assessments, installation of new treatment processes, or such similar environmental improvements undertaken within the previous year or planned for the next 5 years.

C. Any records, reports or information obtained pursuant to this chapter and any permits, permit applications and related documentation shall be available to the public for inspection and copying in accordance with Chapter 100 of Title 29.

d. Provide for the sanitary control of public swimming pools except that no regulation currently existing or hereafter adopted shall require a life guard to be on duty at any pool of any motel, hotel or private campground facility;

e. Regulate plumbing in the interests of the public health;

f. Provide for the sanitary production, distribution and sale of market milk and dairy products and other foods;

g. Provide for the sanitary control of tourist camps, trailer camps and other public camps;

h. Control the practice of non-nurse midwives including the issuance of permits and protect and promote the health of all mothers and children;

i. Provide for proper sanitation, ventilation and hygiene in schools and for sanitary and health requirements for food handlers in the schools not less stringent than the requirements for food handlers in public eating places;

j. Protect and promote the public health generally in this State, and carry out all other purposes of the laws pertaining to the public health;

k. Provide the mechanism for yearly medical examination of all persons engaged in the preparation and service of food and drink for human consumption in commercial establishments or public and private educational institutions where such persons come in physical contact with the food and drink prepared or served, such examinations to include whatever tests the Director of the Division of Public Health of the State Department of Health and Social Services shall deem necessary;

l. Provide the mechanism for medical examinations of all applicants for food handling employment if such employment involves preparation of food and drink for human consumption in commercial establishments or public and private educational institutions where such persons come in physical contact with the food or drink prepared or served, such examinations to include whatever tests the Director of the Division of Public Health of the State Department of Health and Social Services shall deem necessary;

m. Establish standards for quality assurance in the operation of hospice programs, which shall include, but not be limited to establishing and implementing standardized protocol with respect to the safe disposal of unused prescription medication following the death of an in-home hospice patient, and control the practice of such programs. Upon receipt of an application for license and the application fee of $100, the Department shall issue a license if the hospice meets requirements established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $50. A provisional license, as authorized by the Department, shall be issued when health requirements are not met and a licensure fee of $50 has been submitted. A hospice which has been issued a provisional license shall resubmit the application fee for reinspection prior to the issuance of an annual license;

n. Prevent and control the spread of vaccine-preventable diseases in children, including regulation of nonpublic elementary and secondary schools and daycare and other preschool facilities; provided, however, that nothing in this paragraph shall require medical treatment for the minor child of any person who is a member of a recognized church or religious denomination and whose religious convictions, in accordance with the tenets and practices of the person's church or religious denomination, are against medical treatment for disease;

o. Establish standards for public health quality assurance in the operation of home health agency programs and regulate the public health practice of such programs.

1. A home health agency is any business entity or subdivision thereof, whether public or private, proprietary or not-for-profit, which provides home health care services.

A. Home health care services include but are not limited to the following: (i) Licensed nursing; (ii) Physical therapy; (iii) Speech therapy; (iv) Audiology; (v) Occupational therapy; (vi) Nutrition; (vii) Social Services; or (viii) Home health aides.

B. Home health agencies shall provide: (i) Two or more home health care services, 1 of which must be either licensed nursing services or home health aide services; or (ii) Home health aide services exclusively which shall include, but not be limited to:

(I) Feeding;

(II) Bathing;

(III) Dressing;

(IV) Grooming; and

(V) Incidental household services.

2. For purposes of this definition, the following shall also apply:

A. Home health agency services are provided directly through employees of the agency or through contract arrangements, including those contracts with individuals considered to be independent contractors.

B. Home health agency services are provided to individuals in their home or private residence (excluding residents of hospitals and nursing facilities).

C. All home health agency services must be supervised by a registered nurse.

D. Home health agencies shall utilize written financial agreements between the agency and the consumer. These agreements shall minimally include: (i) Description of services purchased and the associated cost; (ii) Acceptable method of payment or payments for these services; and (iii) Outline of the billing procedures.

All payments by the consumer for services rendered shall be made directly to the agency or its billing representative and no payments shall be made to or in the name of individual employees/contractors/subcontractors of the agency.

3. A home health agency does not include:

A. Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a registered church or religious denomination.

B. An agency which solely provides services as defined in Chapter 94 of this title.

C. An agency which provides staffing exclusively to other agencies (including but not limited to nursing facilities, home health agencies, and hospitals).

4. Upon receipt of an application for licensure and the nonrefundable application fee of $500, the Department shall issue a license if the home health agency meets the requirements established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $300.

5. A provisional license, as authorized by the Department, shall be issued when health requirements are not met and a licensure fee of $300 has been submitted. A home health agency which has been issued a provisional license shall resubmit the application fee ($500) for reinspection prior to the issuance of an annual license.

6. [Repealed.]

7. The Department may request the Superior Court to impose a civil penalty of not more than $10,000 for a violation of this subsection or a regulation adopted pursuant to it. In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty of not more than $10,000 for a violation of this subsection or a regulation adopted pursuant to it. Under this subparagraph, each day a violation continues constitutes a separate violation.

8. In determining the amount of any civil or administrative penalty imposed pursuant to paragraph (3)o.7. of this section, the Court or the Department shall consider the following factors:

A. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health or safety of a consumer or consumers;

B. The history of violations committed by the person or the person's affiliate(s), employee(s), or controlling person(s);

C. The efforts made by the agency to correct the violation or violations;

D. The culpability of the person or persons who committed the violation or violations;

E. Any misrepresentation made to the Department; and

F. Any other matter that affects the health, safety or welfare of a consumer or consumers.

9. The Department shall have the authority to collect administrative penalties. Any fees or civil or administrative penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this section.

10. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorney fees and costs. In a civil action to collect the administrative penalty the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

p. Establish standards for quality assurance in the operation of freestanding birthing centers, freestanding surgical centers and freestanding emergency centers; and to grant permits for the operation of such facilities to persons, associations or organizations meeting those standards and paying the appropriate permit fee established by the Department. Upon receipt of an application for license and the application fee of $150 for freestanding birthing centers, $250 for freestanding surgical centers and $250 for freestanding emergency centers, the Department shall issue a license if the facility meets the requirements established under this chapter. A license unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $75 for freestanding birthing centers, $150 for freestanding surgical centers and $150 for freestanding emergency centers. A provisional license as authorized by the Department shall be issued when health requirements are not met and a licensure fee of $75 for freestanding birthing centers, $150 for freestanding surgical centers and $150 for freestanding emergency centers has been submitted. For each facility which has been issued a provisional license, there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license. When appropriate, the Department should use the established standards for Medicare reimbursement in setting standards; provided, however, that nothing contained in this subparagraph shall be construed

to authorize the Department to expand or limit the scope of practice afforded to professionals under other chapters of this title or other provisions of Delaware law or lawful regulations of the Department. For the purpose of this chapter, the following definitions shall apply to those facilities:

1. "Freestanding birthing center" means a public or private facility, other than a hospital, which is established for the purpose of delivering babies and providing immediate postpartum care.

2. "Freestanding emergency center" means a facility, physically separate from a hospital, which uses in its title or in its advertising, the words "emergency", "urgent care" or parts of those words or other language indicating to the public that immediate medical treatment is available to individuals suffering from a life-threatening medical condition.

3. "Freestanding surgical center" means a place other than a hospital or the office of a physician, dentist or podiatrist or professional association thereof, which is maintained and operated for the purpose of providing surgery and surgical diagnosis and treatment by persons licensed to practice medicine and surgery, dentistry or podiatry in the State, and which shall have an attending staff.

q.1. Establish standards for quality assurance in the operation of prescribed pediatric extended care facilities, and to grant permits for the operation of such facilities to persons, associations or organizations which have been approved in accordance with Chapter 93 of this title and which pay the appropriate permit fee established by the Department. The amount to be charged for the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the Department.

2. Upon receipt of an application for license and the application fee of $100, the Department shall issue a license if the prescribed pediatric extended care center meets the requirement established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $50. A provisional license as authorized by the Department shall be issued when health requirements are not met and a licensure fee of $50 has been submitted. For each home health agency which has been issued a provisional license, there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license.

r. Provide for the sanitary control, specifically addressing drinking water, human waste disposal and control of other vectors of human disease, of mobile/manufactured home parks and other housing of similar usage, which consist of more than 3 dwelling units or lots located on the same or adjacent properties served by a common water and/or sewage disposal system, and which are held out to the public for rent or lease.

s.1. Establish standards for regulation in the operation of adult day care facilities, and grant licenses for the operation of such facilities to persons, associations or organizations which have been approved in accordance with this title and which pay the appropriate permit fee established below.

2. Upon receipt of an application for a license, and the application fee of $100, the Secretary of the Department of Health and Social Services shall issue a license if the prescribed adult day care facility meets the requirements established under this title. The Secretary shall be authorized to issue restricted, provisional and other types of licenses and to revoke or suspend any license in accordance with department regulations. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $50, provided that an applicant meets requirements as outlined in the regulations.

t.1. Establish standards for regulation of lead-based paint hazard control activities, including the training and certification of workers engaged in lead-based paint activities, the establishment of work standards for lead-based paint hazard control and the accreditation of lead-based paint hazard training programs.

2. Individuals meeting the minimum qualifications established by regulation who are engaged in lead-based paint activities shall obtain a license issued by the Department of Health and Social Services upon receipt of an application and an annual license fee of $25 for workers; $50 for supervisors, dust-wipe technicians, renovators, project designers, contractors, inspectors and risk assessors. As of the date of enactment of implementing regulations, renovators and dust-wipe technicians meeting federal certification requirements must become licensed by the Department upon expiration of their current certification period.

3. All courses offered in Delaware by training providers for individuals engaged in lead-based paint activities shall be approved by the State Department of Health and Social Services. The training provider shall pay an annual fee of $200 for each type of course for which training will be provided.

4. *In general.* — Not later than 120 days after the date of enactment of an opt-out provision in Federal regulations in the future, and subject to paragraph (3)t.4.A. of this section, in promulgating any regulation relating to renovation or remodeling activities in target housing in which the owner resides, the State shall include a provision that permits the owner to authorize the renovation or remodeling contractor to forego compliance with that federal regulation.

A. *Restriction.* — The Administrator shall only permit an owner of target housing to forgo compliance with a regulation under this paragraph if: I. No pregnant woman or child under the age of 6 resides in the target housing as of the date on which the renovation or remodeling commences; and II. The owner submits to the renovation or remodeling contractor written certification that: target housing of the owner; target housing as of the date on which the renovation or remodeling commences; and renovation or remodeling contractor will be exempt from employing the work practices required by a regulation promulgated under this paragraph.

B. *Limitation of contractor liability.* — A contractor that receives written certification described in paragraph (3)t.4.A.II. of this section shall be exempt from liability resulting from any misrepresentation of the owner of the target housing.

u.1. Promulgate and enforce standards to regulate food establishments which may include, but are not limited to, restaurants, caterers, temporary food vendors, grocery stores, food vending machines, ice manufacturers and cottage industries that prepare or handle food for human consumption whenever it is determined that said food represents a hazard to the public health.

2. To perform these functions, the Division of Public Health shall have the authority to collect reasonable fees necessary to defray costs of functions identified in paragraph (3)u.1. of this section.

3. For each facility required by regulations to hold a permit, the following fee shall be assessed:

FOOD ESTABLISHMENT PERMIT

Type of Establishment	Fee
Public Eating Place	$100
Retail Food Store	$100
Ice Manufacturers	$30
Commercial Food Processors	$30
Vending Machine Location	$25

4. For each facility required by regulation to have a plan review, the following fee shall be assessed:

FOOD ESTABLISHMENT PLAN REVIEW

Square Footage	Fee
1000 or less	$50
1001-5000	$100
5001-10000	$150
10001-15000	$200
15001-above	$250

5. Churches, schools, fire companies and other nonprofit organizations are exempt from these fees.

v. Establish standards for public health assurance in the practice of cosmetology and barbering and in the operation of beauty salons, schools of cosmetology, schools of electrology, schools of nail technology and schools of barbering, and for the investigation of complaints involving unsanitary or unsafe practices or conditions in such professions or facilities. For purposes of this chapter, the terms "cosmetology," "beauty salon," "school of cosmetology," "school of electrology," "school of nail technology" and "school of barbering" shall have the same meanings as provided in § 5101 of Title 24. Nothing contained in this subparagraph shall be construed to authorize the Department to expand or limit the scope of practice afforded to professionals under other provisions of Delaware law.

w. Establish standards for the sanitary operation of tattoo parlors and body piercing establishments. For purposes of this paragraph, "tattoo parlor" means a person or business that makes permanent marks on human skin by puncturing the skin and inserting an indelible color or by producing scarring. For purposes of this paragraph, "body piercing establishment" means a person or business that perforates any human body part or human tissue and places a foreign object in the perforation for nonmedical purposes except for a person or business that perforates only ears. Upon receipt of an application for a permit and a permit fee of $100, the Department of Health and Social Services shall issue a permit to a tattoo parlor or body piercing establishment if it meets the requirements established under Department regulations. The Secretary shall be authorized to issue restricted, provisional and other types of permits and to revoke or suspend any permit in accordance with Department regulations. A permit, unless sooner suspended or revoked, shall be renewed annually upon filing by the permittee and payment of an annual permit fee of $100, provided that an applicant meets the requirements set forth in Department regulations.

x. Establish standards for regulation of the operation of personal assistance services agencies, and grant licenses for the operation of such Agencies to persons, associations or organizations that have been approved in accordance with this title and that pay the appropriate licensure fee.

1. A "personal assistance services agency" is any business entity or subdivision thereof, whether public or private, proprietary or not-for-profit, which refers direct care workers to provide personal assistance services to individuals primarily in their home or private residence (excluding residents of hospitals and nursing facilities).

2. "Personal assistance services" means the provision of services that do not require the judgment and skills of a licensed nurse or other professional. The services are limited to individual assistance with, or supervision of, activities of daily living, homemaker services, companion services, and those other services as set out in § 1921(a)(19) of Title 24.

3. A personal assistance services agency does not include:

A. An agency providing skilled professional health care services.

B. An agency which provides services as defined in Chapter 94 of this title.

C. An agency which provides staffing exclusively to other agencies (including but not limited to, nursing facilities, home health agencies, and hospitals).

4. Upon receipt of an application for licensure and the nonrefundable application fee of $250, the Department shall issue a license if the personal assistance services agency meets the requirements established under this paragraph. The Department shall be authorized to revoke or suspend any license in accordance with Department regulations. A license is not transferable from person to person or entity to entity.

5. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $100, provided that an applicant meets requirements as outlined in the Department's regulations.

6. The Department shall not issue a license to any applicant, nor shall it renew any previously issued license, unless, together with the proper licensure fee, application, and evidence of compliance with Department regulations, the personal assistance services agency/applicant has included:

A. Evidence that the personal assistance services agency has obtained the following information for each of the direct care workers who may enter the home or private residence of any resident of this State for the purpose of providing them with any of the services herein provided: i. In accordance with § 1145 of this title, a criminal history report from the State Bureau of Identification. The State shall cover all costs associated with obtaining the criminal history reports. ii. Certification from the Department of Health and Social Services that the direct care worker has not been named in the Central Register as a perpetrator of adult abuse. iii. Certification from the Department of Services for Children, Youth, and Their Families that the direct care worker has not been named in the Central Register as the perpetrator of child abuse.

B. Evidence that the personal assistance services agency is complying with the State's drug testing policy as set forth in § 1146 of this title.

C. Evidence that the personal assistance services agency discloses to its consumers the personal assistance services agency's and the direct care worker's status with respect to attendant tax, workers' compensation, and liability insurance obligations.

7. The Department may request the Superior Court to impose a civil penalty not to exceed $5,000 for a violation of this subsection or a regulation adopted pursuant to it. In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty not to exceed $5,000 for a violation of this subsection or a regulation adopted pursuant to it. Under this subparagraph, each day a violation continues constitutes a separate violation.

8. In determining the amount of any civil or administrative penalty imposed pursuant to paragraph (3)x.7. of this section, the Court or the Department shall consider the following factors:

A. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health and safety of a consumer or consumers;

B. The history of violations committed by the person or person's affiliate(s), employee(s), or controlling person(s);

C. The efforts made by the Personal Assistance Services Agency to correct the violation or violations;

D. The culpability of the person or persons whom committed the violation or violations;

E. Any misrepresentation made to the Department; and

F. Any other matter that affects the health, safety, or welfare of a consumer or consumers.

9. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorney fees and costs. In a civil action to collect the administrative penalty the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

10. The Department shall have the authority to collect licensure fees and administrative penalties. Any licensure fees or civil or administrative penalties collected by the Department under this subsection are hereby appropriated to the Department to carry out the purposes of this subsection.

11. The Department shall have the power to promulgate rules and regulations necessary to implement the provisions of this subsection.

y. Establish standards with respect to safety and sanitary conditions of any facility defined in paragraph (3)y.3.C. of this section and investigate and inspect any such facility for unsafe or unsanitary conditions upon receipt of a complaint by a patient or facility employee in accordance with this paragraph, or upon the occurrence of any adverse event in connection with any such facility. The Department may share information hereunder with the Department of State, Division of Professional Regulation in accordance with applicable law.

1. The Department may make and enforce such orders as it deems necessary to protect the health and safety of the public hereunder. Without limitation of the foregoing, if the Department determines during the course of any investigation or inspection that any facility hereunder poses a substantial risk to the health or safety of any person, the Department may order that such facility be closed until such time as it no longer poses a substantial risk.

2. No later than March 31, 2012, the Department shall adopt regulations to strengthen the oversight of facilities hereunder.

3. For purposes of this paragraph:

A. "Adverse event" means: I. The death or serious injury of any patient at a facility; II. A reasonable determination by the Department that death or serious injury may result from any unsafe or unsanitary condition at a facility; or III. The initiation of any criminal investigation arising out of or relating to any diagnosis, treatment or other medical care at a facility.

B. "Complaint" means a complaint filed by a patient or facility employee in writing, in such format as the Department shall require.

C. "Facility" means a location at which any invasive medical procedure is performed, but shall not include any hospital, as defined in § 1001(2) of this title, or any freestanding birthing center, freestanding surgical center or freestanding emergency center, as such terms are defined in paragraph (3)p. of this section.

D. "Invasive medical procedure" means any medical procedure in which the accepted standard of care requires anesthesia, major conduction anesthesia or sedation. Without limitation of the foregoing, the term "medical procedure" shall include dental and podiatric procedures.

E. "Patient" means a person who has received diagnosis, treatment or other medical care at a facility hereunder, or such person's spouse, as well as any parent, legal guardian or legal custodian of such person who is under 18 years of age or any legal guardian or legal custodian of such person who is an adult.

When deemed necessary by the Department, such regulations may provide for the issuance of permits to persons engaged in the occupations or businesses so regulated and the revocation for cause of the permits.

z. *Establish standards for a facility accreditation program.* —

1. To operate in this State, any facility not licensed by the Department where invasive medical procedures are performed must maintain accreditation by an accrediting organization approved by the Department. For an accrediting organization to be approved it must be entirely independent from the facility and there shall be no conflict of interest. For purposes of this section, the terms "facility" and "invasive medical procedure" shall have the meanings set forth in paragraph (3)y. of this section. All such offices or facilities must register with the Department utilizing a form created for this purpose by the Department.

2. All facilities in operation as of July 5, 2011, where invasive medical procedures are performed shall submit proof of the facility's accreditation, or application for same, to the Department within 6 months of the adoption of regulations by the Department hereunder. Any facility where invasive medical procedures are performed which shall become operational following July 5, 2011, shall submit proof of the facility's accreditation to the Department within 12 months of first day of operation of such facility.

3. After each survey of any facility hereunder by an approved accrediting organization, the facility must submit the accrediting organization's survey report to the Department within 30 days in a form satisfactory to the Department.

4. If the facility fails to maintain current accreditation or if the accreditation is revoked or is otherwise no longer valid, the facility shall immediately cease to operate.

5. The Department shall promulgate regulations pursuant to this paragraph, and shall form a stakeholder group for the purposes of advising the Department on the content of the regulations. The stakeholder group shall be chaired by the Director of Public Health or his or her designees, and shall include, but not be limited to, the following: the Director of the Division of Professional Regulations, or his or her designee; the Director of Health Facilities Licensing and Certification, or his or her designee; 4 representatives from the physician community, to be appointed by the Medical Society of Delaware, whose specialties include, but are not limited to: dermatology, plastic surgery, anesthesia and pain management; a representative from the Delaware Podiatric Medical Association; a representative from the Delaware State Dental Society; a representative from the Delaware chapter of the American College of Obstetricians and Gynecologists; a representative from the Delaware chapter of the American College of Surgeons; and 1 or more members of the public who shall represent the interests of patients.

6. No later than March 31, 2012, the Department shall adopt regulations for the accreditation program herein described.

When deemed necessary by the Department, such regulations may provide for the issuance of permits to persons engaged in the occupations or businesses so regulated and the revocation for cause of the permits.

(4) Make careful inquiry as to the cause of disease, especially when contagious, infectious, epidemic or endemic, and take prompt action to control or suppress it.

(5) Make careful study of the reports of births and deaths, the sanitary condition and effects of localities, employments, the personal and business habits of the people and the relation of the diseases of animals and man; make and execute orders necessary to protect the people against diseases of the lower animals; and collect and preserve such information in respect to such matters and kindred subjects as may be useful in the discharge of its duties, and for dissemination among the people.

(6) When requested by public authorities, or when it deems best, advise officers of the state, county or local governments in regard to drainage, and the location, drainage, ventilation and sanitary provisions of any public institution, building or public place.

(7) Promulgation and enforcement of reasonable rules and regulations relating to safety, sanitation and adequate shelter as affecting the welfare and health of railroad trainworkers, engineworkers, yardworkers, maintenance of way employees, highway crossing watches, clerical, platform, freight house and express employees. No rules and regulations shall be issued by the Department under this subdivision unless the Department has held hearings with regard thereto and both the employers and the employees affected have been given a full opportunity to present evidence as to the necessity and reasonableness of the proposed rules and regulations.

(8) *Collection of fees to support the Conrad State 30/J-1 Visa Waiver Program.* — Pursuant to the Department of Health and Social Services authority under this title to assess fees for services, the Bureau of Health Planning and Resources Management, Delaware Division of Public Health, Department of Health and Social Services, shall charge, collect and retain site application and physician application fees to support the Bureau of Health Planning and Resources Management in administering the Conrad State 30/J-1 Visa Waiver Program.

The Bureau of Health Planning and Resources Management within the Delaware Division of Public Health shall charge a nonrefundable processing fee of $200 to each sponsoring site submitting a site application at the time the application is submitted. A nonrefundable processing fee of $250 shall be charged to each pre-approved site to process the waiver request application for each J-1 physician that the site plans to employ.

(9) No person shall operate any health care agency or facility without a license from the Department of Health and Social Services if such health care agency or facility is required to obtain a license under this title. The Department may make and enforce such orders as it deems necessary to protect the health and safety of the public hereunder. Without limitation of the foregoing, if the Department determines that a health care agency or facility is operating without a required license, the Department may order that such agency or facility be closed.

a. Whoever refuses, fails or neglects to close after notification from the Department regarding the requirement for licensure shall be subject to an administrative penalty of $5,000 per day, together with costs, for every day that they remain open from and after the effective date of notification from the Department.

b. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in any court of competent jurisdiction, including any Justice of the Peace Court, for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

(10) The powers and duties of the Department are subject to the powers and duties granted other entities in Title 20. Provisions of Title 20 which conflict with provisions of this section shall take precedence over this section.

(19 Del. Laws, c. 642, § 3; 22 Del. Laws, c. 327, § 3; Code 1915, § 738; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 745; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 122; 50 Del. Laws, c. 312, § 1; 51 Del. Laws, c. 80, § 1; 52 Del. Laws, c. 103; 56 Del. Laws, c. 284; 56 Del. Laws, c. 383, § 1; 56 Del. Laws, c. 389, §§ 1, 2; 57 Del. Laws, c. 743; 57 Del. Laws, c. 751, § 2; 58 Del. Laws, c. 52, § 1; 63 Del. Laws, c. 332, § 1; 64 Del. Laws, c. 471, § 1; 65 Del. Laws, c. 69, § 1; 65 Del. Laws, c. 301, § 1; 66 Del. Laws, c. 397, § 1; 67 Del. Laws, c. 266, §§ 1, 2, 3, 4; 67 Del. Laws, c. 344, § 6; 68 Del. Laws, c. 200, § 1; 69 Del. Laws, c. 302, § 7; 69 Del. Laws, c. 452, § 1; 70 Del. Laws, c. 150, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 267, § 1; 70 Del. Laws, c. 405, § 1; 70 Del. Laws, c. 470, § 1; 70 Del. Laws, c. 536, § 1; 70 Del. Laws, c. 544, §§ 2, 3, 10-20; 71 Del. Laws, c. 85, §§ 1, 2; 71 Del. Laws, c. 322, § 1; 71 Del. Laws, c. 441, § 1; 72 Del. Laws, c. 124, § 1; 72 Del. Laws, c. 181, § 1; 72 Del. Laws, c. 402, § 4; 73 Del. Laws, c. 10, § 1; 73 Del. Laws, c. 118, §§ 1-5; 73 Del. Laws, c. 193, § 4; 73 Del. Laws, c. 347, § 1; 73 Del. Laws, c. 355, § 2; 74 Del. Laws, c. 78, §§ 2, 3; 75 Del. Laws, c. 286, § 1; 75 Del. Laws, c. 308, § 1; 78 Del. Laws, c. 15, § 1; 78 Del. Laws, c. 80, §§ 1, 2; 78 Del. Laws, c. 303, § 5; 79 Del. Laws, c. 92, § 1; 79 Del. Laws, c. 150, § 1; 79 Del. Laws, c. 153, § 1; 79 Del. Laws, c. 154, § 1.)

§ 122 Powers and duties of the Department of Health and Social Services [Effective upon final publication of the regulations pursuant to 79 Del. Laws, c. 375, § 5, and prior to March 2, 2015]

The Department shall have the following general powers and duties:

(1) Supervision of all matters relating to the preservation of the life and health of the people of the State.

(2) Supreme authority in matters of quarantine; it may declare and enforce such quarantine, when necessary and where no quarantine exists, and may modify, relax or abolish it, where it has been established.

(3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all state and local public health officials, to:

a. Prevent and control the spread of all diseases that are dangerous to the public health;

b. Prevent and control nuisances which are or may be detrimental to the public health;

c. Provide for the sanitary protection of all drinking water supplies which are furnished to and used by the public, including the establishment of primary maximum contaminant levels, operational requirements and public notice requirements. Primary maximum contaminant levels mean a maximum contaminant level which involves a biological, chemical or physical characteristic of drinking water that may adversely affect the health of the consumer.

A public water supplier means any person who owns or operates one or more public water systems. A public water system means a water supply system for the provision to the public of water for human consumption through pipes or other constructed conveyances either directly from the user's free flowing outlet or indirectly by the water being used to manufacture ice, foods and beverages or that supplies water for potable or domestic purposes to employees, tenants, members, guests or the public at large in commercial offices, industrial areas, multiple dwellings or semi-public buildings including, but without limitation, rooming and boarding houses, motels, tourist cabins, mobile home parks, restaurants, hospitals and other institutions, or offers any water for sale for potable domestic purposes. A dwelling unit means 1 or more rooms arranged for the use of 1 or more individuals as a single housekeeping unit, with

cooking, living, sanitary and sleeping facilities. A person shall include corporations, companies, associations, firms, municipally owned water utilities, partnerships, societies and joint stock companies, as well as individuals. In addition, the following provisions shall apply:

1. No public water system shall operate without a duly licensed public water supply operator. The Department shall have the authority to exempt the owners of seasonal public water systems, restaurants, hotels and similar businesses from the requirement to operate with a licensed public water supply operator. The Department shall have the exclusive power to grant or deny any such license and shall adopt regulations setting the requirements, including any acceptable performance or an examination for obtaining and retaining any such license. The Department shall assess an annual licensure fee of $50 per operator.

2. The Department shall have the authority to monitor the water quality of public water systems for secondary drinking water quality standards. The Secretary shall have the authority to establish, after public hearing, minimum secondary drinking water quality standards for all public water suppliers serving more than 500 service connections within the state. In determining the total number of service connections, all public water systems operated, managed or owned wholly or in part by the public water supplier within the State shall be added together. Secondary drinking water quality standards involve a biological, chemical or physical characteristic of water that may adversely affect the taste, odor, color or appearance (aesthetics) which may affect public confidence or acceptance of the drinking water. These standards shall include but are not limited to chlorides, copper, iron, manganese, sulfate, total dissolved solids and other standards as determined by the Secretary. Such standards shall be at least as stringent as those adopted by the United States Environmental Protection Agency under the Safe Drinking Water Act [42 U.S.C. § 300f et seq.]. A certificate of noncompliance shall be issued to any public water supplier that serves more than 500 service connections whose public water system violates secondary drinking water quality standards as adopted by the Department. Such certificate shall require the public water supplier to report within 60 days what measures have been or will be taken to bring the public water system into compliance. Should any public water supplier serving more than 500 service connections within the State fail, without good cause, to meet secondary drinking water quality standards pursuant to this section for a period of time greater than 7 consecutive days, or should the public water supplier have a history of a recurring problem, the Secretary shall file a report with the Public Service Commission detailing such failure or such a history of a recurring problem. The Public Service Commission may utilize the report as cause to review the public water supplier's ability to provide adequate service under its present certificate of public convenience and necessity and may also use such report as a factor in considering any application by the water system supplier's for any further certificate. In addition, for public water systems operated by public utilities which are subject to the jurisdiction of the Public Service Commission under § 203C of Title 26, the Commission may utilize such report as cause to review the appropriate rates to be charged by the utility in light of the quality of service being provided.

3. The Department shall ensure that all new community and nontransient noncommunity public water systems commencing operation after October 1, 1999, demonstrate technical, managerial and financial capacity to operate in compliance with state regulations Governing Public Drinking Water Systems and the federal Safe Drinking Water Act [42 U.S.C. § 300f et seq.]. It is the purpose of this subparagraph to ensure that the Department has adequate information about the background of applicants or regulated parties for the purposes of processing permits. This includes the ability to identify applicants or regulated parties with histories of environmental violations or criminal activities and/or associations; or applicants who cannot demonstrate the required responsibility, expertise or competence which is necessary for the proper operation or activity permitted by the Department.

4. Whoever refuses, fails or neglects to perform the duties required of public water suppliers under paragraph (3)c. of this section; or who violates, neglects or fails to comply with duly adopted regulations or orders of the Department of Health and Social Services regarding the duties of public water suppliers, shall be subject to a judicially imposed penalty of up to $10,000 per day, together with costs, for every day from and after the effective date of an order of the Department of Health and Social Services, specifically directing compliance until such compliance has been achieved. Observance of orders of the Department of Health and Social Services concerning public water suppliers may also be compelled by mandamus or injunction, in appropriate cases, or by an action to compel the specific performance of the orders so made, or of the duties imposed by law upon such public water supplier. The Department of Health and Social Services may investigate the financial operations of a public water supplier to the extent necessary to enter an adequate compliance order.

5. In lieu of judicially imposed penalties, the Secretary may impose administrative penalty upon any public water supplier who refuses, fails or neglects to perform the duties required of it under paragraph (3)c. of this section. The administrative penalty shall be as follows:

A. For a system serving a population of more than 10,000 people the administrative penalty shall be not less than $1,000 nor more than $10,000 per day per violation; and

B. For any other system, the administrative penalty shall be not less than $100 nor more than $10,000 per day per violation.

Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation, or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require.

In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in any court of competent jurisdiction, including any Justice of the Peace Court, for collection of

the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

6. *Drinking water contaminant notification.* —

A. As used in this section, "Drinking water contaminant" means any physical chemical, biological or radiological substance or matter in drinking water, the presence of which is confirmed by 2 or more samples taken at the same location at different times, using recognized practices and procedures, which substance exceeds the minimum drinking water quality standards established in accordance with paragraph (3)c. of this section.

B. Public notification of drinking water contaminants shall be categorized as either an Immediate Notice (Tier 1), Notice as soon as possible (Tier 2) or 90-day Notice (Tier 3). A Tier 1 drinking water contaminant notification is required when there is an acute risk to human health arising from the presence of drinking water contaminants in drinking water provided by a public drinking water supplier. A Tier 2 drinking water contaminant notification is required when a public water system provides drinking water containing levels of a contaminant that exceed federal or state drinking water standards, but does not pose an acute risk to human health or the public drinking water supplier fails to monitor and report water quality information to the Department in accordance with regulations. A Tier 3 drinking water notification is required when a public drinking water system provides water which otherwise does not comply with federal or state drinking water standards, but the noncompliance does not pose a risk to human health.

C. In the event of a Tier 1, Tier 2 or Tier 3 drinking water contaminant incident, the public drinking water supplier shall immediately notify the Department. If the Department deems it necessary, the public drinking water supplier shall also notify its affected customers in accordance with paragraph (3)c.6.D. of this section and Department regulations and such notice shall include, to the maximum extent practicable, the following information: I. A description of the violation or situation, including contaminant levels, if applicable; II. When the violation or situation occurred; III. Recognized potential adverse health effects using standard health effects language as approved by the Division of Public Health; IV. The affected population; V. Whether alternative drinking water supplies should be used; VI. What action consumers should take; VII. What the public drinking water provider is doing to correct the violation or situation; VIII. When the public drinking water provider expects the system to return to compliance or the situation to be resolved; IX. The name, business address and phone number of the public drinking water system owner or operator; and X. A statement encouraging distribution of the notice to others, where applicable.

D. For Tier 1 drinking water contaminant incidents, the information listed in paragraphs (3)c.6.C.I. through X. of this section above, shall be made available to affected customers by the public drinking water supplier, if the Department deems it necessary, as soon as possible but no later than 24 hours after the contamination is reported. For Tier 2 drinking water contaminant incidents, the information listed in paragraphs (3)c.6.C.I. through X. of this section above shall be made available to affected customers by the public drinking water supplier, if the Department deems it necessary, as soon as practical but within 14 calendar days after the contamination is reported. For Tier 3 drinking water contaminant incidents, the information listed in paragraphs (3)c.6.C.I. through X. of this section above shall be made available to affected customers by the public drinking water supplier, if the Department deems it necessary, as soon as practical, but within 90 calendar days after the contamination is reported.

E. In accordance with the public notification timelines established in paragraph (3)c.7.D. of this section, the public drinking water supplier shall also provide the same notification to the elected Council or Levy Court member or members of any municipality and/or county in which the contamination occurred, the State Representative(s) and Senator(s) in whose district the contamination occurred, and any community or civic group or individual that notifies the public drinking water supplier that they desire to receive such information.

F. The public drinking water supplier is not required to report the results of tests for the presence of drinking water contaminants to the Department in cases where the Division of Public Health performs the potable water analyses.

G. In the event the public drinking water supplier is unable to provide public notification of a Tier 1, Tier 2 or Tier 3 drinking water contaminant incident, as required by this section, such public drinking water supplier shall be responsible for paying for the cost of any such advertisements and notices made on its behalf by the Department.

7. Regulatory and compliance information, public drinking water system performance and public information.

A. The Department shall develop a Safe Drinking Water Information System that will include general information about public drinking water systems under the Department's regulatory jurisdiction as defined by this title. The System shall provide the public with information that indicates when a public drinking water system has been inspected, what violations are detected, when the public drinking water system comes back into compliance, and any enforcement action that results from violations. The Department shall also publish on the Department web site all Tier 1, Tier 2 and Tier 3 drinking water contaminant public notifications as soon as possible, but within 1 business day of the release of the notification to the public.

B. Delaware public drinking water systems that are identified as a community water system by the Division of Public Health, shall prepare and issue each year, on or before July 1, an annual water quality report to customers served by their drinking water system. The water quality reports shall be provided by parcel post return receipt requested to the Department and the Division of the Public Advocate. In addition, the public drinking water supplier shall notify its customers of the availability of the annual water quality report and provide copies of the report to all individuals, health care providers or organizations

requesting it. The water quality report shall include such information as may be prescribed by the Division of Public Health, including, but not limited to, any environmental violations or enforcement actions taken against the public drinking water supplier by federal, state or local regulatory authorities and the name and contact information of the public drinking water supplier representative. The reports may also include any voluntary activities undertaken by the drinking water supplier to reduce health risks from identified contaminants, including source water assessments, installation of new treatment processes, or such similar environmental improvements undertaken within the previous year or planned for the next 5 years.

C. Any records, reports or information obtained pursuant to this chapter and any permits, permit applications and related documentation shall be available to the public for inspection and copying in accordance with Chapter 100 of Title 29.

d. Provide for the sanitary control of public swimming pools except that no regulation currently existing or hereafter adopted shall require a life guard to be on duty at any pool of any motel, hotel or private campground facility;

e. Regulate plumbing in the interests of the public health;

f. Provide for the sanitary production, distribution and sale of market milk and dairy products and other foods;

g. Provide for the sanitary control of tourist camps, trailer camps and other public camps;

h. Control the practice of non-nurse midwives including the issuance of permits and protect and promote the health of all mothers and children;

i. Provide for proper sanitation, ventilation and hygiene in schools and for sanitary and health requirements for food handlers in the schools not less stringent than the requirements for food handlers in public eating places;

j. Protect and promote the public health generally in this State, and carry out all other purposes of the laws pertaining to the public health;

k. Provide the mechanism for yearly medical examination of all persons engaged in the preparation and service of food and drink for human consumption in commercial establishments or public and private educational institutions where such persons come in physical contact with the food and drink prepared or served, such examinations to include whatever tests the Director of the Division of Public Health of the State Department of Health and Social Services shall deem necessary;

l. Provide the mechanism for medical examinations of all applicants for food handling employment if such employment involves preparation of food and drink for human consumption in commercial establishments or public and private educational institutions where such persons come in physical contact with the food or drink prepared or served, such examinations to include whatever tests the Director of the Division of Public Health of the State Department of Health and Social Services shall deem necessary;

m. Establish standards for quality assurance in the operation of hospice programs, which shall include, but not be limited to establishing and implementing standardized protocol with respect to the safe disposal of unused prescription medication following the death of an in-home hospice patient, and control the practice of such programs. Upon receipt of an application for license and the application fee of $100, the Department shall issue a license if the hospice meets requirements established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $50. A provisional license, as authorized by the Department, shall be issued when health requirements are not met and a licensure fee of $50 has been submitted. A hospice which has been issued a provisional license shall resubmit the application fee for reinspection prior to the issuance of an annual license;

n. Prevent and control the spread of vaccine-preventable diseases in children, including regulation of nonpublic elementary and secondary schools and daycare and other preschool facilities; provided, however, that nothing in this paragraph shall require medical treatment for the minor child of any person who is a member of a recognized church or religious denomination and whose religious convictions, in accordance with the tenets and practices of the person's church or religious denomination, are against medical treatment for disease;

o. Establish standards for public health quality assurance in the operation of home health agency programs and regulate the public health practice of such programs.

1. A home health agency is any business entity or subdivision thereof, whether public or private, proprietary or not-for-profit, which provides home health care services.

A. Home health care services include but are not limited to the following: (i) Licensed nursing; (ii) Physical therapy; (iii) Speech therapy; (iv) Audiology; (v) Occupational therapy; (vi) Nutrition; (vii) Social Services; or (viii) Home health aides.

B. Home health agencies shall provide: (i) Two or more home health care services, 1 of which must be either licensed nursing services or home health aide services; or (ii) Home health aide services exclusively which shall include, but not be limited to:

(I) Feeding;

(II) Bathing;

(III) Dressing;

(IV) Grooming; and

(V) Incidental household services.

2. For purposes of this definition, the following shall also apply:

A. Home health agency services are provided directly through employees of the agency or through contract arrangements, including those contracts with individuals considered to be independent contractors.

B. Home health agency services are provided to individuals in their home or private residence (excluding residents of hospitals and nursing facilities).

C. All home health agency services must be supervised by a registered nurse.

D. Home health agencies shall utilize written financial agreements between the agency and the consumer. These agreements shall minimally include: (i) Description of services purchased and the associated cost; (ii) Acceptable method of payment or payments for these services; and (iii) Outline of the billing procedures.

All payments by the consumer for services rendered shall be made directly to the agency or its billing representative and no payments shall be made to or in the name of individual employees/contractors/subcontractors of the agency.

3. A home health agency does not include:

A. Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a registered church or religious denomination.

B. An agency which solely provides services as defined in Chapter 94 of this title.

C. An agency which provides staffing exclusively to other agencies (including but not limited to nursing facilities, home health agencies, and hospitals).

4. Upon receipt of an application for licensure and the nonrefundable application fee of $500, the Department shall issue a license if the home health agency meets the requirements established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $300.

5. A provisional license, as authorized by the Department, shall be issued when health requirements are not met and a licensure fee of $300 has been submitted. A home health agency which has been issued a provisional license shall resubmit the application fee ($500) for reinspection prior to the issuance of an annual license.

6. [Repealed.]

7. The Department may request the Superior Court to impose a civil penalty of not more than $10,000 for a violation of this subsection or a regulation adopted pursuant to it. In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty of not more than $10,000 for a violation of this subsection or a regulation adopted pursuant to it. Under this subparagraph, each day a violation continues constitutes a separate violation.

8. In determining the amount of any civil or administrative penalty imposed pursuant to paragraph (3)o.7. of this section, the Court or the Department shall consider the following factors:

A. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health or safety of a consumer or consumers;

B. The history of violations committed by the person or the person's affiliate(s), employee(s), or controlling person(s);

C. The efforts made by the agency to correct the violation or violations;

D. The culpability of the person or persons who committed the violation or violations;

E. Any misrepresentation made to the Department; and

F. Any other matter that affects the health, safety or welfare of a consumer or consumers.

9. The Department shall have the authority to collect administrative penalties. Any fees or civil or administrative penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this section.

10. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorney fees and costs. In a civil action to collect the administrative penalty the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

p. Establish standards for quality assurance in the operation of freestanding birthing centers, freestanding surgical centers and freestanding emergency centers; and to grant permits for the operation of such facilities to persons, associations or organizations meeting those standards and paying the appropriate permit fee established by the Department. Upon receipt of an application for license and the application fee of $150 for freestanding birthing centers, $250 for freestanding surgical centers and $250 for freestanding emergency centers, the Department shall issue a license if the facility meets the requirements established under this chapter. A license unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $75 for freestanding birthing centers, $150 for freestanding surgical centers and $150 for freestanding emergency centers. A provisional license as authorized by the Department shall be issued when health requirements are not met and a licensure fee of $75 for freestanding birthing centers, $150 for freestanding surgical centers and $150 for freestanding emergency centers has been submitted. For each facility which has been issued a provisional license, there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license. When appropriate, the Department should use the established standards for Medicare reimbursement in setting standards; provided, however, that nothing contained in this subparagraph shall be construed to authorize the Department to expand or limit the scope of practice afforded to professionals under other chapters of this title or

other provisions of Delaware law or lawful regulations of the Department. For the purpose of this chapter, the following definitions shall apply to those facilities:

1. "Freestanding birthing center" means a public or private facility, other than a hospital, which is established for the purpose of delivering babies and providing immediate postpartum care.

2. "Freestanding emergency center" means a facility, physically separate from a hospital, which uses in its title or in its advertising, the words "emergency", "urgent care" or parts of those words or other language indicating to the public that immediate medical treatment is available to individuals suffering from a life-threatening medical condition.

3. "Freestanding surgical center" means a place other than a hospital or the office of a physician, dentist or podiatrist or professional association thereof, which is maintained and operated for the purpose of providing surgery and surgical diagnosis and treatment by persons licensed to practice medicine and surgery, dentistry or podiatry in the State, and which shall have an attending staff.

q.1. Establish standards for quality assurance in the operation of prescribed pediatric extended care facilities, and to grant permits for the operation of such facilities to persons, associations or organizations which have been approved in accordance with Chapter 93 of this title and which pay the appropriate permit fee established by the Department. The amount to be charged for the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the Department.

2. Upon receipt of an application for license and the application fee of $100, the Department shall issue a license if the prescribed pediatric extended care center meets the requirement established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $50. A provisional license as authorized by the Department shall be issued when health requirements are not met and a licensure fee of $50 has been submitted. For each home health agency which has been issued a provisional license, there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license.

r. Provide for the sanitary control, specifically addressing drinking water, human waste disposal and control of other vectors of human disease, of mobile/manufactured home parks and other housing of similar usage, which consist of more than 3 dwelling units or lots located on the same or adjacent properties served by a common water and/or sewage disposal system, and which are held out to the public for rent or lease.

s.1. Establish standards for regulation in the operation of adult day care facilities, and grant licenses for the operation of such facilities to persons, associations or organizations which have been approved in accordance with this title and which pay the appropriate permit fee established below.

2. Upon receipt of an application for a license, and the application fee of $100, the Secretary of the Department of Health and Social Services shall issue a license if the prescribed adult day care facility meets the requirements established under this title. The Secretary shall be authorized to issue restricted, provisional and other types of licenses and to revoke or suspend any license in accordance with department regulations. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $50, provided that an applicant meets requirements as outlined in the regulations.

t.1. Establish standards for regulation of lead-based paint hazard control activities, including the training and certification of workers engaged in lead-based paint activities, the establishment of work standards for lead-based paint hazard control and the accreditation of lead-based paint hazard training programs.

2. Individuals meeting the minimum qualifications established by regulation who are engaged in lead-based paint activities shall obtain a license issued by the Department of Health and Social Services upon receipt of an application and an annual license fee of $25 for workers; $50 for supervisors, dust-wipe technicians, renovators, project designers, contractors, inspectors and risk assessors. As of the date of enactment of implementing regulations, renovators and dust-wipe technicians meeting federal certification requirements must become licensed by the Department upon expiration of their current certification period.

3. All courses offered in Delaware by training providers for individuals engaged in lead-based paint activities shall be approved by the State Department of Health and Social Services. The training provider shall pay an annual fee of $200 for each type of course for which training will be provided.

4. *In general.* — Not later than 120 days after the date of enactment of an opt-out provision in Federal regulations in the future, and subject to paragraph (3)t.4.A. of this section, in promulgating any regulation relating to renovation or remodeling activities in target housing in which the owner resides, the State shall include a provision that permits the owner to authorize the renovation or remodeling contractor to forego compliance with that federal regulation.

A. *Restriction.* — The Administrator shall only permit an owner of target housing to forgo compliance with a regulation under this paragraph if: I. No pregnant woman or child under the age of 6 resides in the target housing as of the date on which the renovation or remodeling commences; and II. The owner submits to the renovation or remodeling contractor written certification that: target housing of the owner; target housing as of the date on which the renovation or remodeling commences; and renovation or remodeling contractor will be exempt from employing the work practices required by a regulation promulgated under this paragraph.

B. *Limitation of contractor liability.* — A contractor that receives written certification described in paragraph (3)t.4.A.II. of this section shall be exempt from liability resulting from any misrepresentation of the owner of the target housing.

u.1. Promulgate and enforce standards to regulate food establishments which may include, but are not limited to, restaurants, caterers, temporary food vendors, grocery stores, food vending machines, ice manufacturers and cottage industries that prepare or handle food for human consumption whenever it is determined that said food represents a hazard to the public health.

2. To perform these functions, the Division of Public Health shall have the authority to collect reasonable fees necessary to defray costs of functions identified in paragraph (3)u.1. of this section.

3. For each facility required by regulations to hold a permit, the following fee shall be assessed:

FOOD ESTABLISHMENT PERMIT

Type of Establishment	Fee
Public Eating Place	$100
Retail Food Store	$100
Ice Manufacturers	$30
Commercial Food Processors	$30
Vending Machine Location	$25

4. For each facility required by regulation to have a plan review, the following fee shall be assessed:

FOOD ESTABLISHMENT PLAN REVIEW

Square Footage	Fee
1000 or less	$50
1001-5000	$100
5001-10000	$150
10001-15000	$200
15001-above	$250

5. Churches, schools, fire companies and other nonprofit organizations are exempt from these fees.

v. Establish standards for public health assurance in the practice of cosmetology and barbering and in the operation of beauty salons, schools of cosmetology, schools of electrology, schools of nail technology and schools of barbering, and for the investigation of complaints involving unsanitary or unsafe practices or conditions in such professions or facilities. For purposes of this chapter, the terms "cosmetology," "beauty salon," "school of cosmetology," "school of electrology," "school of nail technology" and "school of barbering" shall have the same meanings as provided in § 5101 of Title 24. Nothing contained in this subparagraph shall be construed to authorize the Department to expand or limit the scope of practice afforded to professionals under other provisions of Delaware law.

w. Establish standards for the sanitary operation of tattoo parlors and body piercing establishments. For purposes of this paragraph, "tattoo parlor" means a person or business that makes permanent marks on human skin by puncturing the skin and inserting an indelible color or by producing scarring. For purposes of this paragraph, "body piercing establishment" means a person or business that perforates any human body part or human tissue and places a foreign object in the perforation for nonmedical purposes except for a person or business that perforates only ears. Upon receipt of an application for a permit and a permit fee of $100, the Department of Health and Social Services shall issue a permit to a tattoo parlor or body piercing establishment if it meets the requirements established under Department regulations. The Secretary shall be authorized to issue restricted, provisional and other types of permits and to revoke or suspend any permit in accordance with Department regulations. A permit, unless sooner suspended or revoked, shall be renewed annually upon filing by the permittee and payment of an annual permit fee of $100, provided that an applicant meets the requirements set forth in Department regulations.

x. Establish standards for regulation of the operation of personal assistance services agencies, and grant licenses for the operation of such Agencies to persons, associations or organizations that have been approved in accordance with this title and that pay the appropriate licensure fee.

1. A "personal assistance services agency" is any business entity or subdivision thereof, whether public or private, proprietary or not-for-profit, which refers direct care workers to provide personal assistance services to individuals primarily in their home or private residence (excluding residents of hospitals and nursing facilities).

2. "Personal assistance services" means the provision of services that do not require the judgment and skills of a licensed nurse or other professional. The services are limited to individual assistance with, or supervision of, activities of daily living, homemaker services, companion services, and those other services as set out in § 1921(a)(19) of Title 24.

3. A personal assistance services agency does not include:

A. An agency providing skilled professional health care services.

B. An agency which provides services as defined in Chapter 94 of this title.

C. An agency which provides staffing exclusively to other agencies (including but not limited to, nursing facilities, home health agencies, and hospitals).

4. Upon receipt of an application for licensure and the nonrefundable application fee of $250, the Department shall issue a license if the personal assistance services agency meets the requirements established under this paragraph. The Department shall be authorized to revoke or suspend any license in accordance with Department regulations. A license is not transferable from person to person or entity to entity.

5. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $100, provided that an applicant meets requirements as outlined in the Department's regulations.

6. The Department shall not issue a license to any applicant, nor shall it renew any previously issued license, unless, together with the proper licensure fee, application, and evidence of compliance with Department regulations, the personal assistance services agency/applicant has included:

A. Evidence that the personal assistance services agency has obtained the following information for each of the direct care workers who may enter the home or private residence of any resident of this State for the purpose of providing them with any of the services herein provided: i. In accordance with § 1145 of this title, a criminal history report from the State Bureau of Identification. The State shall cover all costs associated with obtaining the criminal history reports. ii. Certification from the Department of Health and Social Services that the direct care worker has not been named in the Central Register as a perpetrator of adult abuse. iii. Certification from the Department of Services for Children, Youth, and Their Families that the direct care worker has not been named in the Central Register as the perpetrator of child abuse.

B. Evidence that the personal assistance services agency is complying with the State's drug testing policy as set forth in § 1146 of this title.

C. Evidence that the personal assistance services agency discloses to its consumers the personal assistance services agency's and the direct care worker's status with respect to attendant tax, workers' compensation, and liability insurance obligations.

7. The Department may request the Superior Court to impose a civil penalty not to exceed $5,000 for a violation of this subsection or a regulation adopted pursuant to it. In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty not to exceed $5,000 for a violation of this subsection or a regulation adopted pursuant to it. Under this subparagraph, each day a violation continues constitutes a separate violation.

8. In determining the amount of any civil or administrative penalty imposed pursuant to paragraph (3)x.7. of this section, the Court or the Department shall consider the following factors:

A. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health and safety of a consumer or consumers;

B. The history of violations committed by the person or person's affiliate(s), employee(s), or controlling person(s);

C. The efforts made by the Personal Assistance Services Agency to correct the violation or violations;

D. The culpability of the person or persons whom committed the violation or violations;

E. Any misrepresentation made to the Department; and

F. Any other matter that affects the health, safety, or welfare of a consumer or consumers.

9. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorney fees and costs. In a civil action to collect the administrative penalty the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

10. The Department shall have the authority to collect licensure fees and administrative penalties. Any licensure fees or civil or administrative penalties collected by the Department under this subsection are hereby appropriated to the Department to carry out the purposes of this subsection.

11. The Department shall have the power to promulgate rules and regulations necessary to implement the provisions of this subsection.

y. Establish standards with respect to safety and sanitary conditions of any facility defined in paragraph (3)y.3.C. of this section and investigate and inspect any such facility for unsafe or unsanitary conditions upon receipt of a complaint by a patient or facility employee in accordance with this paragraph, or upon the occurrence of any adverse event in connection with any such facility. The Department may share information hereunder with the Department of State, Division of Professional Regulation in accordance with applicable law.

1. The Department may make and enforce such orders as it deems necessary to protect the health and safety of the public hereunder. Without limitation of the foregoing, if the Department determines during the course of any investigation or inspection that any facility hereunder poses a substantial risk to the health or safety of any person, the Department may order that such facility be closed until such time as it no longer poses a substantial risk.

2. No later than March 31, 2012, the Department shall adopt regulations to strengthen the oversight of facilities hereunder.

3. For purposes of this paragraph:

A. "Adverse event" means: I. The death or serious injury of any patient at a facility; II. A reasonable determination by the Department that death or serious injury may result from any unsafe or unsanitary condition at a facility; or III. The initiation of any criminal investigation arising out of or relating to any diagnosis, treatment or other medical care at a facility.

B. "Complaint" means a complaint filed by a patient or facility employee in writing, in such format as the Department shall require.

C. "Facility" means a location at which any invasive medical procedure is performed, but shall not include any hospital, as defined in § 1001(2) of this title, or any freestanding birthing center, freestanding surgical center or freestanding emergency center, as such terms are defined in paragraph (3)p. of this section.

D. "Invasive medical procedure" means any medical procedure in which the accepted standard of care requires anesthesia, major conduction anesthesia or sedation. Without limitation of the foregoing, the term "medical procedure" shall include dental and podiatric procedures.

E. "Patient" means a person who has received diagnosis, treatment or other medical care at a facility hereunder, or such person's spouse, as well as any parent, legal guardian or legal custodian of such person who is under 18 years of age or any legal guardian or legal custodian of such person who is an adult.

When deemed necessary by the Department, such regulations may provide for the issuance of permits to persons engaged in the occupations or businesses so regulated and the revocation for cause of the permits.

z. *Establish standards for a facility accreditation program.* —

1. To operate in this State, any facility not licensed by the Department where invasive medical procedures are performed must maintain accreditation by an accrediting organization approved by the Department. For an accrediting organization to be approved it must be entirely independent from the facility and there shall be no conflict of interest. For purposes of this section, the terms "facility" and "invasive medical procedure" shall have the meanings set forth in paragraph (3)y. of this section. All such offices or facilities must register with the Department utilizing a form created for this purpose by the Department.

2. All facilities in operation as of July 5, 2011, where invasive medical procedures are performed shall submit proof of the facility's accreditation, or application for same, to the Department within 6 months of the adoption of regulations by the Department hereunder. Any facility where invasive medical procedures are performed which shall become operational following July 5, 2011, shall submit proof of the facility's accreditation to the Department within 12 months of first day of operation of such facility.

3. After each survey of any facility hereunder by an approved accrediting organization, the facility must submit the accrediting organization's survey report to the Department within 30 days in a form satisfactory to the Department.

4. If the facility fails to maintain current accreditation or if the accreditation is revoked or is otherwise no longer valid, the facility shall immediately cease to operate.

5. The Department shall promulgate regulations pursuant to this paragraph, and shall form a stakeholder group for the purposes of advising the Department on the content of the regulations. The stakeholder group shall be chaired by the Director of Public Health or his or her designees, and shall include, but not be limited to, the following: the Director of the Division of Professional Regulations, or his or her designee; the Director of Health Facilities Licensing and Certification, or his or her designee; 4 representatives from the physician community, to be appointed by the Medical Society of Delaware, whose specialties include, but are not limited to: dermatology, plastic surgery, anesthesia and pain management; a representative from the Delaware Podiatric Medical Association; a representative from the Delaware State Dental Society; a representative from the Delaware chapter of the American College of Obstetricians and Gynecologists; a representative from the Delaware chapter of the American College of Surgeons; and 1 or more members of the public who shall represent the interests of patients.

6. No later than March 31, 2012, the Department shall adopt regulations for the accreditation program herein described.

aa. Regulate the training and educational qualifications for the certification of animal control constables, animal control officers, animal cruelty agents, dog control agents, and dog wardens. The Department shall:

1. Develop requirements for certification and curricula preparing a person for certification;

2. Develop criteria and standards for evaluating educational programs preparing a person for training and certification; including in conjunction with the Delaware Department of Agriculture and the Delaware Department of Natural Resources and Environmental Control concerning livestock, poultry, and wildlife for animal cruelty agents;

3. Approve such programs that meet the requirements of this chapter and of the Department;

4. Deny or withdraw approval from educational programs for failure to meet approved curricula or other criteria;

5. Certify and renew certification of duly qualified applicants;

6. Keep current a registry of all persons certified as animal control constables, animal control officers, animal cruelty agents, dog control agents, and dog wardens in the State;

7. Establish requirements for mandatory continuing education and certification renewal; and

8. Impose disciplinary sanctions and conduct hearings upon charges that may result in disciplinary sanctions outlined in this chapter in conformance with the Administrative Procedures Act, Chapter 101 of Title 29, and the Freedom of Information Act [Chapter 100 of Title 29].

When deemed necessary by the Department, such regulations may provide for the issuance of permits to persons engaged in the occupations or businesses so regulated and the revocation for cause of the permits.

(4) Make careful inquiry as to the cause of disease, especially when contagious, infectious, epidemic or endemic, and take prompt action to control or suppress it.

(5) Make careful study of the reports of births and deaths, the sanitary condition and effects of localities, employments, the personal and business habits of the people and the relation of the diseases of animals and man; make and execute orders necessary to protect the people against diseases of the lower animals; and collect and preserve such information in respect to such matters and kindred subjects as may be useful in the discharge of its duties, and for dissemination among the people.

(6) When requested by public authorities, or when it deems best, advise officers of the state, county or local governments in regard to drainage, and the location, drainage, ventilation and sanitary provisions of any public institution, building or public place.

(7) Promulgation and enforcement of reasonable rules and regulations relating to safety, sanitation and adequate shelter as affecting the welfare and health of railroad trainworkers, engineworkers, yardworkers, maintenance of way employees, highway crossing watches, clerical, platform, freight house and express employees. No rules and regulations shall be issued by the Department under this subdivision unless the Department has held hearings with regard thereto and both the employers and the employees affected have been given a full opportunity to present evidence as to the necessity and reasonableness of the proposed rules and regulations.

(8) *Collection of fees to support the Conrad State 30/J-1 Visa Waiver Program.* — Pursuant to the Department of Health and Social Services authority under this title to assess fees for services, the Bureau of Health Planning and Resources Management, Delaware Division of Public Health, Department of Health and Social Services, shall charge, collect and retain site application and physician application fees to support the Bureau of Health Planning and Resources Management in administering the Conrad State 30/J-1 Visa Waiver Program.

The Bureau of Health Planning and Resources Management within the Delaware Division of Public Health shall charge a nonrefundable processing fee of $200 to each sponsoring site submitting a site application at the time the application is submitted. A nonrefundable processing fee of $250 shall be charged to each pre-approved site to process the waiver request application for each J-1 physician that the site plans to employ.

(9) No person shall operate any health care agency or facility without a license from the Department of Health and Social Services if such health care agency or facility is required to obtain a license under this title. The Department may make and enforce such orders as it deems necessary to protect the health and safety of the public hereunder. Without limitation of the foregoing, if the Department determines that a health care agency or facility is operating without a required license, the Department may order that such agency or facility be closed.

a. Whoever refuses, fails or neglects to close after notification from the Department regarding the requirement for licensure shall be subject to an administrative penalty of $5,000 per day, together with costs, for every day that they remain open from and after the effective date of notification from the Department.

b. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in any court of competent jurisdiction, including any Justice of the Peace Court, for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

(10) The powers and duties of the Department are subject to the powers and duties granted other entities in Title 20. Provisions of Title 20 which conflict with provisions of this section shall take precedence over this section.

(19 Del. Laws, c. 642, § 3; 22 Del. Laws, c. 327, § 3; Code 1915, § 738; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 745; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 122; 50 Del. Laws, c. 312, § 1; 51 Del. Laws, c. 80, § 1; 52 Del. Laws, c. 103; 56 Del. Laws, c. 284; 56 Del. Laws, c. 383, § 1; 56 Del. Laws, c. 389, §§ 1, 2; 57 Del. Laws, c. 743; 57 Del. Laws, c. 751, § 2; 58 Del. Laws, c. 52, § 1; 63 Del. Laws, c. 332, § 1; 64 Del. Laws, c. 471, § 1; 65 Del. Laws, c. 69, § 1; 65 Del. Laws, c. 301, § 1; 66 Del. Laws, c. 397, § 1; 67 Del. Laws, c. 266, §§ 1, 2, 3, 4; 67 Del. Laws, c. 344, § 6; 68 Del. Laws, c. 200, § 1; 69 Del. Laws, c. 302, § 7; 69 Del. Laws, c. 452, § 1; 70 Del. Laws, c. 150, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 267, § 1; 70 Del. Laws, c. 405, § 1; 70 Del. Laws, c. 470, § 1; 70 Del. Laws, c. 536, § 1; 70 Del. Laws, c. 544, §§ 2, 3, 10-20; 71 Del. Laws, c. 85, §§ 1, 2; 71 Del. Laws, c. 322, § 1; 71 Del. Laws, c. 441, § 1; 72 Del. Laws, c. 124, § 1; 72 Del. Laws, c. 181, § 1; 72 Del. Laws, c. 402, § 4; 73 Del. Laws, c. 10, § 1; 73 Del. Laws, c. 118, §§ 1-5; 73 Del. Laws, c. 193, § 4; 73 Del. Laws, c. 347, § 1; 73 Del. Laws, c. 355, § 2; 74 Del. Laws, c. 78, §§ 2, 3; 75 Del. Laws, c. 286, § 1; 75 Del. Laws, c. 308, § 1; 78 Del. Laws, c. 15, § 1; 78 Del. Laws, c. 80, §§ 1, 2; 78 Del. Laws, c. 303, § 5; 79 Del. Laws, c. 92, § 1; 79 Del. Laws, c. 150, § 1; 79 Del. Laws, c. 153, § 1; 79 Del. Laws, c. 154, § 1; 79 Del. Laws, c. 375, § 2.)

§ 122 Powers and duties of the Department of Health and Social Services [Effective Mar. 2, 2015 and until final publication of the regulations pursuant to 79 Del. Laws, c. 375, § 5]

The Department shall have the following general powers and duties:

(1) Supervision of all matters relating to the preservation of the life and health of the people of the State.

(2) Supreme authority in matters of quarantine; it may declare and enforce such quarantine, when necessary and where no quarantine exists, and may modify, relax or abolish it, where it has been established.

(3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all state and local public health officials, to:

a. Prevent and control the spread of all diseases that are dangerous to the public health;

b. Prevent and control nuisances which are or may be detrimental to the public health;

c. Provide for the sanitary protection of all drinking water supplies which are furnished to and used by the public, including the establishment of primary maximum contaminant levels, operational requirements and public notice requirements. Primary maximum contaminant levels mean a maximum contaminant level which involves a biological, chemical or physical characteristic of drinking water that may adversely affect the health of the consumer.

A public water supplier means any person who owns or operates one or more public water systems. A public water system means a water supply system for the provision to the public of water for human consumption through pipes or other constructed conveyances either directly from the user's free flowing outlet or indirectly by the water being used to manufacture ice, foods and beverages or that supplies water for potable or domestic purposes to employees, tenants, members, guests or the public at large in commercial offices, industrial areas, multiple dwellings or semi-public buildings including, but without limitation, rooming and boarding houses, motels, tourist cabins, mobile home parks, restaurants, hospitals and other institutions, or offers any water for sale for potable domestic purposes. A dwelling unit means 1 or more rooms arranged for the use of 1 or more individuals as a single housekeeping unit, with cooking, living, sanitary and sleeping facilities. A person shall include corporations, companies, associations, firms, municipally owned water utilities, partnerships, societies and joint stock companies, as well as individuals. In addition, the following provisions shall apply:

1. No public water system shall operate without a duly licensed public water supply operator. The Department shall have the authority to exempt the owners of seasonal public water systems, restaurants, hotels and similar businesses from the requirement to operate with a licensed public water supply operator. The Department shall have the exclusive power to grant or deny any such license and shall adopt regulations setting the requirements, including any acceptable performance or an examination for obtaining and retaining any such license. The Department shall assess an annual licensure fee of $50 per operator.

2. The Department shall have the authority to monitor the water quality of public water systems for secondary drinking water quality standards. The Secretary shall have the authority to establish, after public hearing, minimum secondary drinking water quality standards for all public water suppliers serving more than 500 service connections within the state. In determining the total number of service connections, all public water systems operated, managed or owned wholly or in part by the public water supplier within the State shall be added together. Secondary drinking water quality standards involve a biological, chemical or physical characteristic of water that may adversely affect the taste, odor, color or appearance (aesthetics) which may affect public confidence or acceptance of the drinking water. These standards shall include but are not limited to chlorides, copper, iron, manganese, sulfate, total dissolved solids and other standards as determined by the Secretary. Such standards shall be at least as stringent as those adopted by the United States Environmental Protection Agency under the Safe Drinking Water Act [42 U.S.C. § 300f et seq.]. A certificate of noncompliance shall be issued to any public water supplier that serves more than 500 service connections whose public water system violates secondary drinking water quality standards as adopted by the Department. Such certificate shall require the public water supplier to report within 60 days what measures have been or will be taken to bring the public water system into compliance. Should any public water supplier serving more than 500 service connections within the State fail, without good cause, to meet secondary drinking water quality standards pursuant to this section for a period of time greater than 7 consecutive days, or should the public water supplier have a history of a recurring problem, the Secretary shall file a report with the Public Service Commission detailing such failure or such a history of a recurring problem. The Public Service Commission may utilize the report as cause to review the public water supplier's ability to provide adequate service under its present certificate of public convenience and necessity and may also use such report as a factor in considering any application by the water system supplier's for any further certificate. In addition, for public water systems operated by public utilities which are subject to the jurisdiction of the Public Service Commission under § 203C of Title 26, the Commission may utilize such report as cause to review the appropriate rates to be charged by the utility in light of the quality of service being provided.

3. The Department shall ensure that all new community and nontransient noncommunity public water systems commencing operation after October 1, 1999, demonstrate technical, managerial and financial capacity to operate in compliance with state regulations Governing Public Drinking Water Systems and the federal Safe Drinking Water Act [42 U.S.C. § 300f et seq.]. It is the purpose of this subparagraph to ensure that the Department has adequate information about the background of applicants or regulated parties for the purposes of processing permits. This includes the ability to identify applicants or regulated parties with histories of environmental violations or criminal activities and/or associations; or applicants who cannot demonstrate the required responsibility, expertise or competence which is necessary for the proper operation or activity permitted by the Department.

4. Whoever refuses, fails or neglects to perform the duties required of public water suppliers under paragraph (3)c. of this section; or who violates, neglects or fails to comply with duly adopted regulations or orders of the Department of Health and Social Services regarding the duties of public water suppliers, shall be subject to a judicially imposed penalty of up to $10,000 per day, together with costs, for every day from and after the effective date of an order of the Department of Health and Social Services, specifically directing compliance until such compliance has been achieved. Observance of orders of the Department of

Health and Social Services concerning public water suppliers may also be compelled by mandamus or injunction, in appropriate cases, or by an action to compel the specific performance of the orders so made, or of the duties imposed by law upon such public water supplier. The Department of Health and Social Services may investigate the financial operations of a public water supplier to the extent necessary to enter an adequate compliance order.

5. In lieu of judicially imposed penalties, the Secretary may impose administrative penalty upon any public water supplier who refuses, fails or neglects to perform the duties required of it under paragraph (3)c. of this section. The administrative penalty shall be as follows:

A. For a system serving a population of more than 10,000 people the administrative penalty shall be not less than $1,000 nor more than $10,000 per day per violation; and

B. For any other system, the administrative penalty shall be not less than $100 nor more than $10,000 per day per violation.

Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation, or violations, ability of the violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require.

In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in any court of competent jurisdiction, including any Justice of the Peace Court, for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

6. *Drinking water contaminant notification.* —

A. As used in this section, "Drinking water contaminant" means any physical chemical, biological or radiological substance or matter in drinking water, the presence of which is confirmed by 2 or more samples taken at the same location at different times, using recognized practices and procedures, which substance exceeds the minimum drinking water quality standards established in accordance with paragraph (3)c. of this section.

B. Public notification of drinking water contaminants shall be categorized as either an Immediate Notice (Tier 1), Notice as soon as possible (Tier 2) or 90-day Notice (Tier 3). A Tier 1 drinking water contaminant notification is required when there is an acute risk to human health arising from the presence of drinking water contaminants in drinking water provided by a public drinking water supplier. A Tier 2 drinking water contaminant notification is required when a public water system provides drinking water containing levels of a contaminant that exceed federal or state drinking water standards, but does not pose an acute risk to human health or the public drinking water supplier fails to monitor and report water quality information to the Department in accordance with regulations. A Tier 3 drinking water notification is required when a public drinking water system provides water which otherwise does not comply with federal or state drinking water standards, but the noncompliance does not pose a risk to human health.

C. In the event of a Tier 1, Tier 2 or Tier 3 drinking water contaminant incident, the public drinking water supplier shall immediately notify the Department. If the Department deems it necessary, the public drinking water supplier shall also notify its affected customers in accordance with paragraph (3)c.6.D. of this section and Department regulations and such notice shall include, to the maximum extent practicable, the following information: I. A description of the violation or situation, including contaminant levels, if applicable; II. When the violation or situation occurred; III. Recognized potential adverse health effects using standard health effects language as approved by the Division of Public Health; IV. The affected population; V. Whether alternative drinking water supplies should be used; VI. What action consumers should take; VII. What the public drinking water provider is doing to correct the violation or situation; VIII. When the public drinking water provider expects the system to return to compliance or the situation to be resolved; IX. The name, business address and phone number of the public drinking water system owner or operator; and X. A statement encouraging distribution of the notice to others, where applicable.

D. For Tier 1 drinking water contaminant incidents, the information listed in paragraphs (3)c.6.C.I. through X. of this section above, shall be made available to affected customers by the public drinking water supplier, if the Department deems it necessary, as soon as possible but no later than 24 hours after the contamination is reported. For Tier 2 drinking water contaminant incidents, the information listed in paragraphs (3)c.6.C.I. through X. of this section above shall be made available to affected customers by the public drinking water supplier, if the Department deems it necessary, as soon as practical but within 14 calendar days after the contamination is reported. For Tier 3 drinking water contaminant incidents, the information listed in paragraphs (3)c.6.C.I. through X. of this section above shall be made available to affected customers by the public drinking water supplier, if the Department deems it necessary, as soon as practical, but within 90 calendar days after the contamination is reported.

E. In accordance with the public notification timelines established in paragraph (3)c.7.D. of this section, the public drinking water supplier shall also provide the same notification to the elected Council or Levy Court member or members of any municipality and/or county in which the contamination occurred, the State Representative(s) and Senator(s) in whose district the contamination occurred, and any community or civic group or individual that notifies the public drinking water supplier that they desire to receive such information.

F. The public drinking water supplier is not required to report the results of tests for the presence of drinking water contaminants to the Department in cases where the Division of Public Health performs the potable water analyses.

G. In the event the public drinking water supplier is unable to provide public notification of a Tier 1, Tier 2 or Tier 3 drinking water contaminant incident, as required by this section, such public drinking water supplier shall be responsible for paying for the cost of any such advertisements and notices made on its behalf by the Department.

7. Regulatory and compliance information, public drinking water system performance and public information.

A. The Department shall develop a Safe Drinking Water Information System that will include general information about public drinking water systems under the Department's regulatory jurisdiction as defined by this title. The System shall provide the public with information that indicates when a public drinking water system has been inspected, what violations are detected, when the public drinking water system comes back into compliance, and any enforcement action that results from violations. The Department shall also publish on the Department web site all Tier 1, Tier 2 and Tier 3 drinking water contaminant public notifications as soon as possible, but within 1 business day of the release of the notification to the public.

B. Delaware public drinking water systems that are identified as a community water system by the Division of Public Health, shall prepare and issue each year, on or before July 1, an annual water quality report to customers served by their drinking water system. The water quality reports shall be provided by parcel post return receipt requested to the Department and the Division of the Public Advocate. In addition, the public drinking water supplier shall notify its customers of the availability of the annual water quality report and provide copies of the report to all individuals, health care providers or organizations requesting it. The water quality report shall include such information as may be prescribed by the Division of Public Health, including, but not limited to, any environmental violations or enforcement actions taken against the public drinking water supplier by federal, state or local regulatory authorities and the name and contact information of the public drinking water supplier representative. The reports may also include any voluntary activities undertaken by the drinking water supplier to reduce health risks from identified contaminants, including source water assessments, installation of new treatment processes, or such similar environmental improvements undertaken within the previous year or planned for the next 5 years.

C. Any records, reports or information obtained pursuant to this chapter and any permits, permit applications and related documentation shall be available to the public for inspection and copying in accordance with Chapter 100 of Title 29.

d. Provide for the sanitary control of public swimming pools except that no regulation currently existing or hereafter adopted shall require a life guard to be on duty at any pool of any motel, hotel or private campground facility;

e. Regulate plumbing in the interests of the public health;

f. Provide for the sanitary production, distribution and sale of market milk and dairy products and other foods;

g. Provide for the sanitary control of tourist camps, trailer camps and other public camps;

h. Control the practice of non-nurse midwives including the issuance of permits and protect and promote the health of all mothers and children;

i. Provide for proper sanitation, ventilation and hygiene in schools and for sanitary and health requirements for food handlers in the schools not less stringent than the requirements for food handlers in public eating places;

j. Protect and promote the public health generally in this State, and carry out all other purposes of the laws pertaining to the public health;

k. Provide the mechanism for yearly medical examination of all persons engaged in the preparation and service of food and drink for human consumption in commercial establishments or public and private educational institutions where such persons come in physical contact with the food and drink prepared or served, such examinations to include whatever tests the Director of the Division of Public Health of the State Department of Health and Social Services shall deem necessary;

l. Provide the mechanism for medical examinations of all applicants for food handling employment if such employment involves preparation of food and drink for human consumption in commercial establishments or public and private educational institutions where such persons come in physical contact with the food or drink prepared or served, such examinations to include whatever tests the Director of the Division of Public Health of the State Department of Health and Social Services shall deem necessary;

m. Establish standards for quality assurance in the operation of hospice programs, which shall include, but not be limited to establishing and implementing standardized protocol with respect to the safe disposal of unused prescription medication following the death of an in-home hospice patient, and control the practice of such programs. Upon receipt of an application for license and the application fee of $100, the Department shall issue a license if the hospice meets requirements established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $50. A provisional license, as authorized by the Department, shall be issued when health requirements are not met and a licensure fee of $50 has been submitted. A hospice which has been issued a provisional license shall resubmit the application fee for reinspection prior to the issuance of an annual license;

n. Prevent and control the spread of vaccine-preventable diseases in children, including regulation of nonpublic elementary and secondary schools and daycare and other preschool facilities; provided, however, that nothing in this paragraph shall require medical treatment for the minor child of any person who is a member of a recognized church or religious denomination and whose religious convictions, in accordance with the tenets and practices of the person's church or religious denomination, are against medical treatment for disease;

o. Establish standards for public health quality assurance in the operation of home health agency programs and regulate the public health practice of such programs.

1. A home health agency is any business entity or subdivision thereof, whether public or private, proprietary or not-for-profit, which provides home health care services.

A. Home health care services include but are not limited to the following: (i) Licensed nursing; (ii) Physical therapy; (iii) Speech therapy; (iv) Audiology; (v) Occupational therapy; (vi) Nutrition; (vii) Social Services; or (viii) Home health aides.

B. Home health agencies shall provide: (i) Two or more home health care services, 1 of which must be either licensed nursing services or home health aide services; or (ii) Home health aide services exclusively which shall include, but not be limited to:

(I) Feeding;

(II) Bathing;

(III) Dressing;

(IV) Grooming; and

(V) Incidental household services.

2. For purposes of this definition, the following shall also apply:

A. Home health agency services are provided directly through employees of the agency or through contract arrangements, including those contracts with individuals considered to be independent contractors.

B. Home health agency services are provided to individuals in their home or private residence (excluding residents of hospitals and nursing facilities).

C. All home health agency services must be supervised by a registered nurse.

D. Home health agencies shall utilize written financial agreements between the agency and the consumer. These agreements shall minimally include: (i) Description of services purchased and the associated cost; (ii) Acceptable method of payment or payments for these services; and (iii) Outline of the billing procedures.

All payments by the consumer for services rendered shall be made directly to the agency or its billing representative and no payments shall be made to or in the name of individual employees/contractors/subcontractors of the agency.

3. A home health agency does not include:

A. Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a registered church or religious denomination.

B. An agency which solely provides services as defined in Chapter 94 of this title.

C. An agency which provides staffing exclusively to other agencies (including but not limited to nursing facilities, home health agencies, and hospitals).

4. Upon receipt of an application for licensure and the nonrefundable application fee of $500, the Department shall issue a license if the home health agency meets the requirements established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $300.

5. A provisional license, as authorized by the Department, shall be issued when health requirements are not met and a licensure fee of $300 has been submitted. A home health agency which has been issued a provisional license shall resubmit the application fee ($500) for reinspection prior to the issuance of an annual license.

6. [Repealed.]

7. The Department may request the Superior Court to impose a civil penalty of not more than $10,000 for a violation of this subsection or a regulation adopted pursuant to it. In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty of not more than $10,000 for a violation of this subsection or a regulation adopted pursuant to it. Under this subparagraph, each day a violation continues constitutes a separate violation.

8. In determining the amount of any civil or administrative penalty imposed pursuant to paragraph (3)o.7. of this section, the Court or the Department shall consider the following factors:

A. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health or safety of a consumer or consumers;

B. The history of violations committed by the person or the person's affiliate(s), employee(s), or controlling person(s);

C. The efforts made by the agency to correct the violation or violations;

D. The culpability of the person or persons who committed the violation or violations;

E. Any misrepresentation made to the Department; and

F. Any other matter that affects the health, safety or welfare of a consumer or consumers.

9. The Department shall have the authority to collect administrative penalties. Any fees or civil or administrative penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this section.

10. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorney fees and costs. In a civil action to collect the administrative penalty the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

p. Establish standards for quality assurance in the operation of freestanding birthing centers, freestanding surgical centers and freestanding emergency centers; and to grant permits for the operation of such facilities to persons, associations or organizations meeting those standards and paying the appropriate permit fee established by the Department. Upon receipt of an application for license and the application fee of $150 for freestanding birthing centers, $250 for freestanding surgical centers and $250 for freestanding emergency centers, the Department shall issue a license if the facility meets the requirements established under this chapter. A license unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $75 for freestanding birthing centers, $150 for freestanding surgical centers and $150 for freestanding emergency centers. A provisional license as authorized by the Department shall be issued when health requirements are not met and a licensure fee of $75 for freestanding birthing centers, $150 for freestanding surgical centers and $150 for freestanding emergency centers has been submitted. For each facility which has been issued a provisional license, there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license. When appropriate, the Department should use the established standards for Medicare reimbursement in setting standards; provided, however, that nothing contained in this subparagraph shall be construed to authorize the Department to expand or limit the scope of practice afforded to professionals under other chapters of this title or other provisions of Delaware law or lawful regulations of the Department. For the purpose of this chapter, the following definitions shall apply to those facilities:

1. "Freestanding birthing center" means a public or private facility, other than a hospital, which is established for the purpose of delivering babies and providing immediate postpartum care.

2. "Freestanding emergency center" means a facility, physically separate from a hospital, which uses in its title or in its advertising, the words "emergency", "urgent care" or parts of those words or other language indicating to the public that immediate medical treatment is available to individuals suffering from a life-threatening medical condition.

3. "Freestanding surgical center" means a place other than a hospital or the office of a physician, dentist or podiatrist or professional association thereof, which is maintained and operated for the purpose of providing surgery and surgical diagnosis and treatment by persons licensed to practice medicine and surgery, dentistry or podiatry in the State, and which shall have an attending staff.

q.1. Establish standards for quality assurance in the operation of prescribed pediatric extended care facilities, and to grant permits for the operation of such facilities to persons, associations or organizations which have been approved in accordance with Chapter 93 of this title and which pay the appropriate permit fee established by the Department. The amount to be charged for the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the Department.

2. Upon receipt of an application for license and the application fee of $100, the Department shall issue a license if the prescribed pediatric extended care center meets the requirement established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $50. A provisional license as authorized by the Department shall be issued when health requirements are not met and a licensure fee of $50 has been submitted. For each home health agency which has been issued a provisional license, there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license.

r. Provide for the sanitary control, specifically addressing drinking water, human waste disposal and control of other vectors of human disease, of mobile/manufactured home parks and other housing of similar usage, which consist of more than 3 dwelling units or lots located on the same or adjacent properties served by a common water and/or sewage disposal system, and which are held out to the public for rent or lease.

s.1. Establish standards for regulation in the operation of adult day care facilities, and grant licenses for the operation of such facilities to persons, associations or organizations which have been approved in accordance with this title and which pay the appropriate permit fee established below.

2. Upon receipt of an application for a license, and the application fee of $100, the Secretary of the Department of Health and Social Services shall issue a license if the prescribed adult day care facility meets the requirements established under this title. The Secretary shall be authorized to issue restricted, provisional and other types of licenses and to revoke or suspend any license in accordance with department regulations. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $50, provided that an applicant meets requirements as outlined in the regulations.

t.1. Establish standards for regulation of lead-based paint hazard control activities, including the training and certification of workers engaged in lead-based paint activities, the establishment of work standards for lead-based paint hazard control and the accreditation of lead-based paint hazard training programs.

2. Individuals meeting the minimum qualifications established by regulation who are engaged in lead-based paint activities shall obtain a license issued by the Department of Health and Social Services upon receipt of an application and an annual license

fee of $25 for workers; $50 for supervisors, dust-wipe technicians, renovators, project designers, contractors, inspectors and risk assessors. As of the date of enactment of implementing regulations, renovators and dust-wipe technicians meeting federal certification requirements must become licensed by the Department upon expiration of their current certification period.

3. All courses offered in Delaware by training providers for individuals engaged in lead-based paint activities shall be approved by the State Department of Health and Social Services. The training provider shall pay an annual fee of $200 for each type of course for which training will be provided.

4. *In general.* — Not later than 120 days after the date of enactment of an opt-out provision in Federal regulations in the future, and subject to paragraph (3)t.4.A. of this section, in promulgating any regulation relating to renovation or remodeling activities in target housing in which the owner resides, the State shall include a provision that permits the owner to authorize the renovation or remodeling contractor to forego compliance with that federal regulation.

A. *Restriction.* — The Administrator shall only permit an owner of target housing to forgo compliance with a regulation under this paragraph if: I. No pregnant woman or child under the age of 6 resides in the target housing as of the date on which the renovation or remodeling commences; and II. The owner submits to the renovation or remodeling contractor written certification that: target housing of the owner; target housing as of the date on which the renovation or remodeling commences; and renovation or remodeling contractor will be exempt from employing the work practices required by a regulation promulgated under this paragraph.

B. *Limitation of contractor liability.* — A contractor that receives written certification described in paragraph (3)t.4.A.II. of this section shall be exempt from liability resulting from any misrepresentation of the owner of the target housing.

u.1. Promulgate and enforce standards to regulate food establishments which may include, but are not limited to, restaurants, caterers, temporary food vendors, grocery stores, food vending machines, ice manufacturers and cottage industries that prepare or handle food for human consumption whenever it is determined that said food represents a hazard to the public health.

2. To perform these functions, the Division of Public Health shall have the authority to collect reasonable fees necessary to defray costs of functions identified in paragraph (3)u.1. of this section.

3. For each facility required by regulations to hold a permit, the following fee shall be assessed:

FOOD ESTABLISHMENT PERMIT

Type of Establishment	Fee
Public Eating Place	$100
Retail Food Store	$100
Ice Manufacturers	$30
Commercial Food Processors	$30
Vending Machine Location	$25

4. For each facility required by regulation to have a plan review, the following fee shall be assessed:

FOOD ESTABLISHMENT PLAN REVIEW

Square Footage	Fee
1000 or less	$50
1001-5000	$100
5001-10000	$150
10001-15000	$200
15001-above	$250

5. Churches, schools, fire companies and other nonprofit organizations are exempt from these fees.

v. Establish standards for public health assurance in the practice of cosmetology and barbering and in the operation of beauty salons, schools of cosmetology, schools of electrology, schools of nail technology and schools of barbering, and for the investigation of complaints involving unsanitary or unsafe practices or conditions in such professions or facilities. For purposes of this chapter, the terms "cosmetology," "beauty salon," "school of cosmetology," "school of electrology," "school of nail technology" and "school of barbering" shall have the same meanings as provided in § 5101 of Title 24. Nothing contained in this subparagraph shall be construed to authorize the Department to expand or limit the scope of practice afforded to professionals under other provisions of Delaware law.

w. Establish standards for the sanitary operation of tattoo parlors and body piercing establishments. For purposes of this paragraph, "tattoo parlor" means a person or business that makes permanent marks on human skin by puncturing the skin and inserting an indelible color or by producing scarring. For purposes of this paragraph, "body piercing establishment" means a person or business that perforates any human body part or human tissue and places a foreign object in the perforation for nonmedical purposes except for a person or business that perforates only ears. Upon receipt of an application for a permit and a permit fee of $100, the Department

of Health and Social Services shall issue a permit to a tattoo parlor or body piercing establishment if it meets the requirements established under Department regulations. The Secretary shall be authorized to issue restricted, provisional and other types of permits and to revoke or suspend any permit in accordance with Department regulations. A permit, unless sooner suspended or revoked, shall be renewed annually upon filing by the permittee and payment of an annual permit fee of $100, provided that an applicant meets the requirements set forth in Department regulations.

x. Establish standards for regulation of the operation of personal assistance services agencies, and grant licenses for the operation of such Agencies to persons, associations or organizations that have been approved in accordance with this title and that pay the appropriate licensure fee.

1. A "personal assistance services agency" is any business entity or subdivision thereof, whether public or private, proprietary or not-for-profit, which refers direct care workers to provide personal assistance services to individuals primarily in their home or private residence (excluding residents of hospitals and nursing facilities).

2. "Personal assistance services" means the provision of services that do not require the judgment and skills of a licensed nurse or other professional. The services are limited to individual assistance with, or supervision of, activities of daily living, homemaker services, companion services, and those other services as set out in § 1921(a)(19) of Title 24.

3. A personal assistance services agency does not include:

A. An agency providing skilled professional health care services.

B. An agency which provides services as defined in Chapter 94 of this title.

C. An agency which provides staffing exclusively to other agencies (including but not limited to, nursing facilities, home health agencies, and hospitals).

4. Upon receipt of an application for licensure and the nonrefundable application fee of $250, the Department shall issue a license if the personal assistance services agency meets the requirements established under this paragraph. The Department shall be authorized to revoke or suspend any license in accordance with Department regulations. A license is not transferable from person to person or entity to entity.

5. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $100, provided that an applicant meets requirements as outlined in the Department's regulations.

6. The Department shall not issue a license to any applicant, nor shall it renew any previously issued license, unless, together with the proper licensure fee, application, and evidence of compliance with Department regulations, the personal assistance services agency/applicant has included:

A. Evidence that the personal assistance services agency has obtained the following information for each of the direct care workers who may enter the home or private residence of any resident of this State for the purpose of providing them with any of the services herein provided: i. In accordance with § 1145 of this title, a criminal history report from the State Bureau of Identification. The State shall cover all costs associated with obtaining the criminal history reports. ii. Certification from the Department of Health and Social Services that the direct care worker has not been named in the Central Register as a perpetrator of adult abuse. iii. Certification from the Department of Services for Children, Youth, and Their Families that the direct care worker has not been named in the Central Register as the perpetrator of child abuse.

B. Evidence that the personal assistance services agency is complying with the State's drug testing policy as set forth in § 1146 of this title.

C. Evidence that the personal assistance services agency discloses to its consumers the personal assistance services agency's and the direct care worker's status with respect to attendant tax, workers' compensation, and liability insurance obligations.

7. The Department may request the Superior Court to impose a civil penalty not to exceed $5,000 for a violation of this subsection or a regulation adopted pursuant to it. In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty not to exceed $5,000 for a violation of this subsection or a regulation adopted pursuant to it. Under this subparagraph, each day a violation continues constitutes a separate violation.

8. In determining the amount of any civil or administrative penalty imposed pursuant to paragraph (3)x.7. of this section, the Court or the Department shall consider the following factors:

A. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health and safety of a consumer or consumers;

B. The history of violations committed by the person or person's affiliate(s), employee(s), or controlling person(s);

C. The efforts made by the Personal Assistance Services Agency to correct the violation or violations;

D. The culpability of the person or persons whom committed the violation or violations;

E. Any misrepresentation made to the Department; and

F. Any other matter that affects the health, safety, or welfare of a consumer or consumers.

9. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorney fees and costs.

In a civil action to collect the administrative penalty the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

10. The Department shall have the authority to collect licensure fees and administrative penalties. Any licensure fees or civil or administrative penalties collected by the Department under this subsection are hereby appropriated to the Department to carry out the purposes of this subsection.

11. The Department shall have the power to promulgate rules and regulations necessary to implement the provisions of this subsection.

y. Establish standards with respect to safety and sanitary conditions of any facility defined in paragraph (3)y.3.C. of this section and investigate and inspect any such facility for unsafe or unsanitary conditions upon receipt of a complaint by a patient or facility employee in accordance with this paragraph, or upon the occurrence of any adverse event in connection with any such facility. The Department may share information hereunder with the Department of State, Division of Professional Regulation in accordance with applicable law.

1. The Department may make and enforce such orders as it deems necessary to protect the health and safety of the public hereunder. Without limitation of the foregoing, if the Department determines during the course of any investigation or inspection that any facility hereunder poses a substantial risk to the health or safety of any person, the Department may order that such facility be closed until such time as it no longer poses a substantial risk.

2. No later than March 31, 2012, the Department shall adopt regulations to strengthen the oversight of facilities hereunder.

3. For purposes of this paragraph:

A. "Adverse event" means: I. The death or serious injury of any patient at a facility; II. A reasonable determination by the Department that death or serious injury may result from any unsafe or unsanitary condition at a facility; or III. The initiation of any criminal investigation arising out of or relating to any diagnosis, treatment or other medical care at a facility.

B. "Complaint" means a complaint filed by a patient or facility employee in writing, in such format as the Department shall require.

C. "Facility" means a location at which any invasive medical procedure is performed, but shall not include any hospital, as defined in § 1001(2) of this title, or any freestanding birthing center, freestanding surgical center or freestanding emergency center, as such terms are defined in paragraph (3)p. of this section.

D. "Invasive medical procedure" means any medical procedure in which the accepted standard of care requires anesthesia, major conduction anesthesia or sedation. Without limitation of the foregoing, the term "medical procedure" shall include dental and podiatric procedures.

E. "Patient" means a person who has received diagnosis, treatment or other medical care at a facility hereunder, or such person's spouse, as well as any parent, legal guardian or legal custodian of such person who is under 18 years of age or any legal guardian or legal custodian of such person who is an adult.

When deemed necessary by the Department, such regulations may provide for the issuance of permits to persons engaged in the occupations or businesses so regulated and the revocation for cause of the permits.

z. *Establish standards for a facility accreditation program.* —

1. To operate in this State, any facility not licensed by the Department where invasive medical procedures are performed must maintain accreditation by an accrediting organization approved by the Department. For an accrediting organization to be approved it must be entirely independent from the facility and there shall be no conflict of interest. For purposes of this section, the terms "facility" and "invasive medical procedure" shall have the meanings set forth in paragraph (3)y. of this section. All such offices or facilities must register with the Department utilizing a form created for this purpose by the Department.

2. All facilities in operation as of July 5, 2011, where invasive medical procedures are performed shall submit proof of the facility's accreditation, or application for same, to the Department within 6 months of the adoption of regulations by the Department hereunder. Any facility where invasive medical procedures are performed which shall become operational following July 5, 2011, shall submit proof of the facility's accreditation to the Department within 12 months of first day of operation of such facility.

3. After each survey of any facility hereunder by an approved accrediting organization, the facility must submit the accrediting organization's survey report to the Department within 30 days in a form satisfactory to the Department.

4. If the facility fails to maintain current accreditation or if the accreditation is revoked or is otherwise no longer valid, the facility shall immediately cease to operate.

5. The Department shall promulgate regulations pursuant to this paragraph, and shall form a stakeholder group for the purposes of advising the Department on the content of the regulations. The stakeholder group shall be chaired by the Director of Public Health or his or her designees, and shall include, but not be limited to, the following: the Director of the Division of Professional Regulations, or his or her designee; the Director of Health Facilities Licensing and Certification, or his or her designee; 4 representatives from the physician community, to be appointed by the Medical Society of Delaware, whose specialties include, but are not limited to: dermatology, plastic surgery, anesthesia and pain management; a representative from the Delaware Podiatric Medical Association; a representative from the Delaware State Dental Society; a representative from the Delaware chapter of the

American College of Obstetricians and Gynecologists; a representative from the Delaware chapter of the American College of Surgeons; and 1 or more members of the public who shall represent the interests of patients.

6. No later than March 31, 2012, the Department shall adopt regulations for the accreditation program herein described.

aa. Establish standards for public health quality assurance in the operation of dialysis centers and regulate the public health practice of such programs, which shall include but not be limited to a standard requirement for appropriate emergency energy sources capable of use for at least 48 hours and at least a monthly test of those emergency sources. For purposes of this section, a "dialysis center" means a facility approved to furnish outpatient dialysis services directly to end stage renal disease (ESRD) patients. Outpatient dialysis includes staff-assisted dialysis (dialysis performed by the staff of the facility) and self-dialysis (dialysis performed with little or no professional assistance by an ESRD patient who has completed an appropriate course of training). ESRD is that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life. To perform these functions, the Division of Public Health shall have the authority to collect and retain reasonable fees necessary to defray costs of these functions.

1. The amount charged for each fee imposed under this section shall approximate and reasonably reflect all costs necessary to defray the expenses incurred by the Division of Public Health. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of Public Health, or any other state agency acting on its behalf, shall compute for each separate service or activity the appropriate fees for the coming year.

2. Upon receipt of an application for licensure and the nonrefundable application fee, the Department shall issue a license if the dialysis center meets the requirements established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee.

3. A provisional license, as authorized by the Department, shall be issued when health requirements are not met and a licensure fee has been submitted. A dialysis center which has been issued a provisional license shall resubmit the application fee for reinspection prior to the issuance of an annual license.

4. The Department may impose sanctions singly or in combination when it finds a licensee or former licensee has:

A. Violated any of these regulations;

B. Failed to submit a reasonable timetable for correction of deficiencies;

C. Failed to correct deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the Department;

D. Exhibited a pattern of cyclical deficiencies which extends over a period of 2 or more years;

E. Engaged in any conduct or practices detrimental to the welfare of the patients;

F. Exhibited incompetence, negligence or misconduct in operating the dialysis center or in providing services to patients;

G. Mistreated or abused patients cared for by the dialysis center;

H. Violated any statutes relating to medical assistance or Medicare reimbursement for those facilities who participate in those programs; or

I. Refused to allow the Department access to the dialysis center or records for the purpose of conducting inspections/surveys/investigations as deemed necessary by the Department.

5. Disciplinary sanctions include any of the following:

A. Permanent revocation of a license which extends to: I. The dialysis center; II. Any owner; III. Officers/directors, partners, managing members or members of a governing body who have a financial interest of 5% or more in the dialysis center; and IV. Corporation officers.

B. Suspension of a license;

C. A letter of reprimand;

D. Placement on provisional status with the following requirements: I. Report regularly to the Department upon the matters which are the basis of the provisional status; II. Limit practice to those areas prescribed by the Department; III. Suspend operations;

E. Refusal of a license;

F. Refusal to renew a license; and/or

G. Other disciplinary action as appropriate.

6. The Department may request the Superior Court to impose a civil penalty of not more than $10,000 for a violation of these regulations. Each day a violation continues constitutes a separate violation.

A. In lieu of seeking a civil penalty, the Department, in its discretion, may impose an administrative penalty of not more than $10,000 for a violation of these regulations. Each day a violation continues constitutes a separate violation.

B. In determining the amount of any civil or administrative penalty imposed, the Court or the Department shall consider the following factors: I. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation

and the threat or potential threat to the health or safety of a patient; II. The history of violations committed by the person or the person's affiliate, agent, employee or controlling person; III. The efforts made by the dialysis center to correct the violation(s); IV. Any misrepresentation made to the Department; and V. Any other matter that affects the health, safety or welfare of a patient.

7. *Imposition of disciplinary action.* — Before any disciplinary action is taken the following shall occur:

A. The Department shall give 20 calendar days written notice to the holder of the license, setting forth the reasons for the determination.

B. The disciplinary action shall become final 20 calendar days after the mailing of the notice unless the licensee, within such 20-calendar-day period, shall give written notice of the dialysis center's desire for a hearing.

C. If the licensee gives such notice, the dialysis center shall be given a hearing before the Secretary of the Department or her or his designee and may present such evidence as may be proper.

D. The Secretary of the Department or her or his designee shall make a determination based upon the evidence presented.

E. A written copy of the determination and the reasons upon which it is based shall be sent to the dialysis center.

F. The decision shall become final 20 calendar days after the mailing of the determination letter unless the licensee, within the 20-calendar-day period, appeals the decision to the appropriate court of the State.

8. *Order to immediately suspend a license.* —

A. In the event the Department identifies activities which the Department determines present an immediate jeopardy or imminent danger to the public health, welfare or safety requiring emergency action, the Department may issue an order temporarily suspending the licensee's license, pending a final hearing on the complaint. No order temporarily suspending a license shall be issued by the Department, with less than 24 hours prior written or oral notice to the licensee or the licensee's attorney so that the licensee may be heard in opposition to the proposed suspension. An order of temporary suspension under this section shall remain in effect for a period not longer than 60 calendar days from the date of the issuance of said order, unless the suspended licensee requests a continuance of the date for the final hearing before the Department. If a continuance is requested, the order of temporary suspension shall remain in effect until the Department has rendered a decision after the final hearing.

B. The licensee, whose license has been temporarily suspended, shall be notified forthwith in writing. Notification shall consist of a copy of the deficiency report and the order of temporary suspension pending a hearing and shall be personally served upon the licensee or sent by mail, return receipt requested, to the licensee's last known address.

C. A licensee whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Department shall schedule the hearing on an expedited basis provided that the Department receives the licensee's written request for an expedited hearing within 5 calendar days from the date on which the licensee received notification of the Department's decision to temporarily suspend the licensee's license.

D. As soon as possible, but in no event later than 60 calendar days after the issuance of the order of temporary suspension, the Department shall convene for a hearing on the reasons for suspension. In the event that a licensee, in a timely manner, requests an expedited hearing, the Department shall convene within 15 calendar days of the receipt by the Department of such a request and shall render a decision within 30 calendar days.

E. In no event shall an order of temporary suspension remain in effect for longer than 60 calendar days unless the suspended licensee requests an extension of the order of temporary suspension pending a final decision of the Department. Upon a final decision of the Department, the order of temporary suspension may be vacated in favor of the disciplinary action ordered by the Department.

9. *Application for licensure after revocation or voluntary surrender of a license in avoidance of revocation action.* —

A. The application for license after termination of rights to provide services shall follow the procedure for initial licensure application.

B. In addition to the licensure application, the dialysis center must also submit and obtain approval of a detailed plan of correction regarding how the dialysis center intends to correct the deficient practices that led to the original termination action. Submission of evidence supporting compliance with the plan and cooperation with Department monitoring during probationary and provisional licensure status is required for reinstatement to full licensure status.

C. Upon successful completion of the probationary period, the dialysis center will be granted a provisional license for a period no less than 1 year but no greater than 2 years. The provisional period will be identified by the Department after having considered the circumstances that created the original action for license revocation.

D. A license will be granted to the dialysis center after the provisional licensure period if: I. The dialysis center has remained in substantial compliance with these rules and regulations; and II. The dialysis center fulfilled the expectations of the detailed plan of correction that was created to address the deficient practices that gave rise to the license termination action.

E. A license will not be granted after the probationary or provisional licensure period to any dialysis center that is not in substantial compliance with these rules and regulations.

When deemed necessary by the Department, such regulations may provide for the issuance of permits to persons engaged in the occupations or businesses so regulated and the revocation for cause of the permits.

(4) Make careful inquiry as to the cause of disease, especially when contagious, infectious, epidemic or endemic, and take prompt action to control or suppress it.

(5) Make careful study of the reports of births and deaths, the sanitary condition and effects of localities, employments, the personal and business habits of the people and the relation of the diseases of animals and man; make and execute orders necessary to protect the people against diseases of the lower animals; and collect and preserve such information in respect to such matters and kindred subjects as may be useful in the discharge of its duties, and for dissemination among the people.

(6) When requested by public authorities, or when it deems best, advise officers of the state, county or local governments in regard to drainage, and the location, drainage, ventilation and sanitary provisions of any public institution, building or public place.

(7) Promulgation and enforcement of reasonable rules and regulations relating to safety, sanitation and adequate shelter as affecting the welfare and health of railroad trainworkers, engineworkers, yardworkers, maintenance of way employees, highway crossing watches, clerical, platform, freight house and express employees. No rules and regulations shall be issued by the Department under this subdivision unless the Department has held hearings with regard thereto and both the employers and the employees affected have been given a full opportunity to present evidence as to the necessity and reasonableness of the proposed rules and regulations.

(8) *Collection of fees to support the Conrad State 30/J-1 Visa Waiver Program.* — Pursuant to the Department of Health and Social Services authority under this title to assess fees for services, the Bureau of Health Planning and Resources Management, Delaware Division of Public Health, Department of Health and Social Services, shall charge, collect and retain site application and physician application fees to support the Bureau of Health Planning and Resources Management in administering the Conrad State 30/J-1 Visa Waiver Program.

The Bureau of Health Planning and Resources Management within the Delaware Division of Public Health shall charge a nonrefundable processing fee of $200 to each sponsoring site submitting a site application at the time the application is submitted. A nonrefundable processing fee of $250 shall be charged to each pre-approved site to process the waiver request application for each J-1 physician that the site plans to employ.

(9) No person shall operate any health care agency or facility without a license from the Department of Health and Social Services if such health care agency or facility is required to obtain a license under this title. The Department may make and enforce such orders as it deems necessary to protect the health and safety of the public hereunder. Without limitation of the foregoing, if the Department determines that a health care agency or facility is operating without a required license, the Department may order that such agency or facility be closed.

a. Whoever refuses, fails or neglects to close after notification from the Department regarding the requirement for licensure shall be subject to an administrative penalty of $5,000 per day, together with costs, for every day that they remain open from and after the effective date of notification from the Department.

b. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in any court of competent jurisdiction, including any Justice of the Peace Court, for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

(10) The powers and duties of the Department are subject to the powers and duties granted other entities in Title 20. Provisions of Title 20 which conflict with provisions of this section shall take precedence over this section.

(19 Del. Laws, c. 642, § 3; 22 Del. Laws, c. 327, § 3; Code 1915, § 738; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 745; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 122; 50 Del. Laws, c. 312, § 1; 51 Del. Laws, c. 80, § 1; 52 Del. Laws, c. 103; 56 Del. Laws, c. 284; 56 Del. Laws, c. 383, § 1; 56 Del. Laws, c. 389, §§ 1, 2; 57 Del. Laws, c. 743; 57 Del. Laws, c. 751, § 2; 58 Del. Laws, c. 52, § 1; 63 Del. Laws, c. 332, § 1; 64 Del. Laws, c. 471, § 1; 65 Del. Laws, c. 69, § 1; 65 Del. Laws, c. 301, § 1; 66 Del. Laws, c. 397, § 1; 67 Del. Laws, c. 266, §§ 1, 2, 3, 4; 67 Del. Laws, c. 344, § 6; 68 Del. Laws, c. 200, § 1; 69 Del. Laws, c. 302, § 7; 69 Del. Laws, c. 452, § 1; 70 Del. Laws, c. 150, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 267, § 1; 70 Del. Laws, c. 405, § 1; 70 Del. Laws, c. 470, § 1; 70 Del. Laws, c. 536, § 1; 70 Del. Laws, c. 544, §§ 2, 3, 10-20; 71 Del. Laws, c. 85, §§ 1, 2; 71 Del. Laws, c. 322, § 1; 71 Del. Laws, c. 441, § 1; 72 Del. Laws, c. 124, § 1; 72 Del. Laws, c. 181, § 1; 72 Del. Laws, c. 402, § 4; 73 Del. Laws, c. 10, § 1; 73 Del. Laws, c. 118, §§ 1-5; 73 Del. Laws, c. 193, § 4; 73 Del. Laws, c. 347, § 1; 73 Del. Laws, c. 355, § 2; 74 Del. Laws, c. 78, §§ 2, 3; 75 Del. Laws, c. 286, § 1; 75 Del. Laws, c. 308, § 1; 78 Del. Laws, c. 15, § 1; 78 Del. Laws, c. 80, §§ 1, 2; 78 Del. Laws, c. 303, § 5; 79 Del. Laws, c. 92, § 1; 79 Del. Laws, c. 150, § 1; 79 Del. Laws, c. 153, § 1; 79 Del. Laws, c. 154, § 1; 79 Del. Laws, c. 424, § 1.)

§ 123 Reports from public institutions, Division of Professional Regulation and resorts; penalties.

(a) The Department of Health and Social Services may require reports and information from all public dispensaries, asylums, prisons and schools and from the managers, principals and officers thereof, and from all other public institutions, their officers and managers, and from the proprietors, managers, lessees and occupants of all places of public resort in the State but such reports and information shall only be required concerning matters and particulars in respect of which the Department of Health and Social Services may need information for the proper discharge of its duties.

(b) If any proprietor, manager, principal, superintendent, officer or physician in charge refuses and neglects to make a report when requested to do so by the Department of Health and Social Services, that person shall be fined not less than $5 nor more than $25, together with costs.

(c) The Delaware Division of Public Health and the Delaware Health Care Commission shall be authorized to request and receive licensing data (including, but not limited to, names, addresses, and license type) to the extent that the data is collected and electronically stored for the purpose of issuing and maintaining professional licenses by the Division of Professional Regulation. Licensing data shall only be used for the purpose of conducting official state business, which may include measuring and tracking the supply of licensed health care professionals in the State. The Delaware Division of Public Health and the Delaware Health Care Commission may share licensing data with their contractors to carry out the purpose of this subsection. The boards affected shall include but not be limited to:

(1) Delaware State Board of Medical Licensure and Discipline;

(2) Delaware State Board of Dentistry and Dental Hygiene;

(3) Delaware State Board of Nursing;

(4) Delaware State Board of Professional Counselors;

(5) Delaware State Board of Examiners of Psychologists;

(6) Delaware State Board of Clinical Social Work Examiners;

(7) Delaware State Board of Podiatry;

(8) Delaware State Board of Chiropractic;

(9) Delaware State Board of Occupational Therapy Practice;

(10) Delaware State Board of Examiners in Optometry;

(11) Delaware State Board of Pharmacy;

(12) Delaware State Examining Board of Physical Therapists and Athletic Trainers;

(13) Delaware State Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers;

(14) Delaware State Board of Examiners of Nursing Home Administrators; and

(15) Delaware State Committee of Dietetics/Nutrition.

(d) All data must be submitted in a standardized electronic format as determined by the Division of Public Health in consultation with the Division of Professional Regulation and the Delaware Health Care Commission. Data must be submitted within 20 business days of a request.

(e) For the purposes of measuring, tracking and projecting supply and demand of health care professionals, the requesting entity shall provide to the Division of Professional Regulation any health workforce report developed from the data.

(f) Any individual data provided pursuant to this section shall be confidential. No public employee, commission member, or contractor acting on behalf of a state agency or employee of such a contractor may:

(1) Use any data provided pursuant to this section for any purpose other than the statistical, forecasting, and program purposes for which the data is furnished.

(2) Make public any of the data provided pursuant to this section that would allow the identity of any individual to be inferred by either direct or indirect means.

(3) Retain any personal data as provided in this section that is received by the Delaware Division of Public Health, the Delaware Health Care Commission or any contractor acting on behalf of these entities. Any personal data must be destroyed within 30 days of completion of its intended purpose as described in this section.

(g) An intentional violation of subsection (f) of this section shall result in the imposition of a fine of not less than $1,000 nor more than $20,000 or imprisonment of not less than 30 days nor more than 6 months, or both. Justices of the Peace shall have jurisdiction of offenses under this section.

(19 Del. Laws, c. 642, § 3; 22 Del. Laws, c. 327, § 3; Code 1915, § 738; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 745; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 123; 70 Del. Laws, c. 149, §§ 24-26; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, §§ 21, 22; 75 Del. Laws, c. 228, §§ 1-5; 77 Del. Laws, c. 319, § 1; 77 Del. Laws, c. 463, § 3.)

§ 124 Fluoridation of a water supply.

(a) In order to protect the dental health of all citizens, especially children, the Department of Health and Social Services shall promulgate rules to provide for the addition of fluoride to all municipal water supplies by the owners or official custodians thereof. Such rules shall provide for the addition of fluoride to the water supplies so as to maintain a fluoride content of not less than that currently specified by the Department's regulations.

(1) By November 15, 1998, each municipal water system shall provide to the Department an estimate of the total capital costs to install the required fluoridation treatment and additional operating costs for the ongoing operation for fluoridation treatment.

(2) Subsection (b) of this section shall not apply to those municipalities which are required to comply with the mandates of subsection (a) of this section.

(b) The Division of Public Health shall not require any water supply to be fluoridated which has not been fluoridated before March 26, 1974, until approval of such fluoridation is first obtained in the following manner by the users of such water supply:

(1) When the Division determines that it is in the best interest of the users of a given water supply that such supply shall be fluoridated, it shall notify the administrator, owner or person who controls the water supply and the local government which it serves. Within 60 days from the receipt of such notice, the governing body of the majority of people involved shall conduct a referendum among the people served by the water supply to determine whether or not such fluoridation shall take place. Prior to any such referendum the Division shall conduct an educational program in the community affected on the fluoridation process. The costs of the referendum shall be borne by the said governing body.

(2) Notice of the referendum shall be by the publication of a formal notice embodying the notice received from the Division. Such notice shall be published at least 3 times in a newspaper of general circulation in the area served by the water supply, the last publication to be at least 3 days before the referendum. Such notice shall also include the time and place of voting for the various voting districts involved.

(3) Eligible voters at such referendum shall be any natural person who uses the water supply daily and who is 18 years of age or older. Each such person shall be entitled to 1 vote.

(4) If the area serviced by the water supply has an established local government such government shall conduct the referendum. If 2 or more towns or municipalities are served by the water supply, the referendum shall be conducted simultaneously in each town or municipality by the governing body of that town or municipality. If the governing body is a county and not a town or municipality, the county shall be responsible for all costs of the referendum. The Department of Elections shall conduct the referendum. The referendum shall be by secret ballot and the choice for each voter shall be "For Fluoridation" and "Against Fluoridation." The water supply shall not be fluoridated if the majority of the ballots cast are against fluoridation.

(5) After a referendum is held, the matter shall be deemed to have been conclusively decided for a period of 3 years from the date of the referendum.

(6) This section shall apply to any municipality within this State that has held a referendum on the question of fluoridation within the last 3 years commencing from March 26, 1974. Those municipalities that have voted not to fluoridate shall not be required to do so, except as provided by this section.

(59 Del. Laws, c. 276, § 2; 70 Del. Laws, c. 150, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 361, § 1.)

§ 125 Preservation of public health within incorporated towns; local sanitation matters; expenses.

(a) The Department of Health and Social Services, in addition to other powers possessed by it, may preserve the public health within all incorporated towns and within 1 mile of the water supply thereof.

(b) The Department of Health and Social Services may also make and enforce orders in local sanitation matters, when in the judgment of the Department of Health and Social Services such action is necessary for the protection of the public health and the local boards of health have neglected or refused to act with sufficient promptness or efficiency, or when or where such local board has not been established. All expenses so incurred shall be paid by the city, or town or county for which services are rendered upon bill presented to the treasurer of such city, town or county by the Department of Health and Social Services.

(19 Del. Laws, c. 642, § 3; 22 Del. Laws, c. 327, § 3; Code 1915, § 738; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 66, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, §§ 745, 858; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 124; 57 Del. Laws, c. 591, §§ 6, 7; 59 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 149, §§ 28, 29, 30; 70 Del. Laws, c. 186, § 1.)

§ 126 Regulations and orders of Department and Secretary — Effect; distribution.

(a) Regulations and orders promulgated or issued by the Department of Health and Social Services in accordance with authority conferred upon it have the force and effect of law and supersede all local ordinances and regulations which are inconsistent therewith.

(b) Municipalities and local public health officials may with the consent and approval of the Secretary of the Department of Health and Social Services or the Secretary's designee adopt such ordinances or regulations in addition to the regulations or orders of the Secretary of the Department of Health and Social Services or the Secretary's designee as are consistent with the law and the purposes set forth in this chapter.

(c) A copy of every regulation or order of the Department of Health and Social Services, giving the date that it takes effect, shall be filed with the Secretary of State, and copies of such regulations or orders shall be issued by the Department of Health and Social Services in pamphlet form for general distribution.

(19 Del. Laws, c. 642, § 3; 22 Del. Laws, c. 327, § 3; Code 1915, § 738; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 745; 43 Del. Laws, c. 91, § 1; 46 Del. Laws, c. 312, § 1; 16 Del. C. 1953, § 125; 59 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 149, §§ 31, 32, 33; 70 Del. Laws, c. 186, § 1.)

§ 127 Regulations and orders of Department and Secretary — Duty of enforcement; penalty.

(a) All local boards of health, health authorities and officials, officers of the State and county institutions, police officers, sheriffs, constables and all other officers and employees of the State, or of any county, city or town thereof, shall enforce such quarantine orders, and such rules, regulations and orders as are adopted by the Department of Health and Social Services.

(b) In the event of failure or refusal on the part of any member of the local boards or other official or person mentioned in this section so to act, the member shall be fined not more than $50 for the first offense and not more than $100 for the second and each succeeding offense.

(19 Del. Laws, c. 642, § 3; 22 Del. Laws, c. 327, § 3; Code 1915, § 738; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 745; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 126; 59 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 149, § 34; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, § 23.)

§ 128 Powers as advisory board; investigations; abatement of nuisances.

(a) The Department of Health and Social Services shall be an advisor to the authorities of the State in all matters pertaining to public hygiene. It may make special inspections of hospitals, prisons, asylums, almshouses and other public institutions, and may investigate the cause of any special disease or mortality in any part of the State, and may make such regulations and may adopt such measures, including quarantine, vaccination, etc., as it deems most efficient to eradicate all infectious diseases.

(b) In localities where there are no local boards of health, or where the same shall refuse or neglect to act, the Department may investigate all complaints made in writing, and if it shall find a nuisance to exist it shall order the same to be abated in a reasonable time. In such cases the Secretary of the Department of Health and Social Services or the Secretary's designee shall have all power and remedies given by law to local boards.

(19 Del. Laws, c. 642, § 4; 22 Del. Laws, c. 98, § 1; Code 1915, § 739; 29 Del. Laws, c. 49, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 746; 16 Del. C. 1953, § 127; 57 Del. Laws, c. 591, §§ 8-11; 59 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 149, §§ 35-37; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, § 24.)

§ 129 Threatened epidemics; appointment of officers to enforce regulations and orders.

With the exception of circumstances encompassed by Title 20, when any contagious or infectious disease shall become or threaten to become epidemic, and the local authorities shall neglect or refuse to enforce efficient measures for its prevention, the Secretary or the Secretary's designee may appoint a medical officer and such assistants as the Department or Division may require and authorize such medical officer to enforce such orders or regulations as the Secretary deems necessary. Provisions of Title 20 which conflict with provisions of this section shall take precedence over this section.

(19 Del. Laws, c. 642, § 11; 22 Del. Laws, c. 327, § 6; Code 1915, § 742; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 748; 16 Del. C. 1953, § 128; 57 Del. Laws, c. 591, § 12; 59 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 149, §§ 38-40; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, § 25; 73 Del. Laws, c. 355, § 3.)

§ 130 Reporting of potential or existing public health emergencies.

(a) Except as otherwise indicated in this chapter or Title 20, the Secretary of Health and Social Services or the Secretary's designee shall be responsible for implementing all measures designed to address potential contagious diseases or infectious diseases in this State.

(b) A health care provider shall report all cases of persons who harbor any illness or health condition that may be potential causes of a public health emergency. Reportable illnesses and health conditions include, but are not limited to, the diseases caused by the biological agents listed in 42 C.F.R. § 72.3 and symptoms of those diseases, and any illnesses or health conditions identified by the Division of Public Health as notifiable diseases.

(c) In addition to the foregoing requirements, a pharmacist shall report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be potential causes of a public health emergency. Prescription-related events that require a report include, but are not limited to:

(1) An unusual increase in the number of prescriptions to treat fever, respiratory or gastrointestinal complaints;

(2) An unusual increase in the number of prescriptions for antibiotics; and

(3) Any prescription that treats a disease that is relatively uncommon or may be associated with bioterrorism.

(d) Reports pursuant to subsections (b) and (c) of this section shall be made electronically or in writing within 24 hours to the Division of Public Health, or within such time less than 24 hours as may be established by the Division of Public Health by regulation. The report shall include as much of the following information as is available: the patient's name, date of birth, sex and current address (including city and county); the name and address of the health care provider or medical examiner and of the reporting individual, if different; and any other information needed to locate the patient for follow-up. For cases related to animal or insect bites, the suspected locating information of the biting animal or insect and the name and address of any known owner shall be reported

(e) Every veterinarian, livestock owner, veterinary diagnostic laboratory director or other person having a vocation that primarily involves the care of animals shall report animals having or suspected of having any disease that may be potential causes of a public health emergency. The report shall be made within 24 hours to the Department of Agriculture and shall include as much of the following information as is available: the suspected locating information of the animal, the name and address of any known owner, and the name and address of the reporting individual. The Department of Agriculture shall promulgate regulations implementing this subsection. The Department of Agriculture shall provide written or electronic notice to the Division of Public Health of any reports received pursuant to this subsection within 24 hours of receipt of said report, and such notice shall contain all information provided in the report.

(f) For the purposes of this section, the definition of "health care provider" shall include out-of-state medical laboratories, provided that such laboratories have agreed to the reporting requirements of this State. Results must be reported by the laboratory that performs the test, but an in-state laboratory that sends specimens to an out-of-state laboratory is also responsible for reporting results.

(g) Definitions from § 3132 of Title 20 shall apply to this section.

(73 Del. Laws, c. 355, § 5; 70 Del. Laws, c. 186, § 1.)

§ 131 Survey of hospitals and health centers — Required.

(a) The Secretary or the Secretary's designee shall:

(1) Make a survey of the location, size and character of all existing public and private (proprietary as well as nonprofit) hospitals and health centers in the State;

(2) Evaluate the sufficiency of such hospitals and health centers to supply the necessary physical facilities for furnishing adequate hospital, clinical and similar services to all the people of the State; and

(3) Compile such data and conclusions, together with a statement of the additional facilities necessary, in conjunction with existing structures to supply such services.

(b) The Secretary or the Secretary's designee shall utilize, so far as practicable, any appropriate reports, surveys and plans prepared by other state agencies.

(45 Del. Laws, c. 88, § 1; 16 Del. C. 1953, § 130; 59 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 149, §§ 43, 44; 70 Del. Laws, c. 186, § 1.)

§ 132 Acceptance of federal grants.

The Secretary or the Secretary's designee may apply for and accept on behalf of the State, may deposit with the State Treasurer and may expend for the purposes for which granted or advanced, any grant or advance made by the United States or by any agency or officer thereof to assist in meeting the cost of carrying out the purposes of § 131 of this title.

(45 Del. Laws, c. 88, § 2; 16 Del. C. 1953, § 131; 59 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 149, § 45; 70 Del. Laws, c. 186, § 1.)

§ 133 Cancer; Delaware Cancer Consortium.

(a) The Division of Public Health may use any money appropriated to it for the purpose of the detection of cancer, for research in cancer and for other purposes related to cancer prevention and control.

(b) The Delaware Cancer Consortium ("Consortium") shall coordinate cancer prevention and control activities in the State of Delaware. The Consortium will:

(1) Provide advice and support to state agencies, cancer centers, cancer control organizations and health care practitioners regarding their role in reducing mortality and morbidity from cancer.

(2) Facilitate collaborative partnerships among public health agencies, cancer centers and all other interested agencies and organizations to carry out recommended cancer control strategies.

(3) On at least a biennial basis, analyze the burden of cancer in Delaware and progress toward reducing cancer incidence and mortality.

(c) The Consortium's priorities and advocacy agenda shall be dictated by the recommendations contained in "Turning Commitment Into Action — Recommendations of the Advisory Council on Cancer Incidence and Mortality," published in April, 2002.

(d) The Consortium's permanent membership shall be as follows:

(1) Two representatives of the Delaware House of Representatives and two representatives of the Delaware State Senate (1 selected by each caucus);

(2) One representative of the Governor's office;

(3) The Secretary of the Department of Health and Social Services or the Secretary's designee;

(4) One representative of the Department of Natural Resources and Environmental Control;

(5) One representative of the Medical Society of Delaware to be appointed by the Governor;

(6) One professor from Delaware State University or the University of Delaware, to be appointed by the Governor;

(7) Two physicians with relevant medical knowledge, to be appointed by the Governor;

(8) One representative of a Delaware hospital cancer center to be appointed by the Governor;

(9) Three public members with relevant professional experience and knowledge, to be appointed by the Governor.

(e) Appointees to the Consortium shall serve at the pleasure of the person or entity that appointed them.

(f) The Consortium's permanent members may enact procedures to appoint additional persons to the Consortium.

(g) The Consortium shall have a chair and a vice-chair, to be appointed from among the permanent members by the Governor and to serve at the pleasure of the Governor. Staff support for the Consortium shall be provided by the Delaware Division of Public Health.

(47 Del. Laws, c. 194, §§ 1, 3; 16 Del. C. 1953, § 132; 59 Del. Laws, c. 276, § 1; 70 Del. Laws, c. 149, §§ 46, 47; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, §§ 26, 27; 74 Del. Laws, c. 191, §§ 1, 2.)

§ 134 Sanitary facilities of public eating places; permits; approval of construction; inspection; fee.

(a) No person shall operate any public eating place unless the Department of Health and Social Services shall approve the sanitary facilities thereof and issue a permit therefor.

(b) Any person who proposes to erect or construct a building to be used as a public eating place or to alter, enlarge, reconstruct or convert an existing building for such purpose shall submit plans and specifications for such work, including a plot of the land detailing the sanitary facilities to be provided to the Department of Health and Social Services and no work shall be undertaken until the said Department of Health and Social Services shall approve the sanitary arrangements and facilities proposed in such plans and specifications.

(c) The Department of Health and Social Services shall initiate a procedure for the inspection of public eating places prior to the issuance of the permit required under this section. There shall be no fee required for inspection; however, in the event that re-inspection must be initiated in any given year, the Department shall establish a restaurant inspection fee, payable upon or prior to inspection, in the following manner:

(1) The sum of $50 shall be required for a 2nd inspection;

(2) The sum of $100 shall be required for a 3rd inspection;

(3) The sum of $150 shall be required for each subsequent inspection.

(d) Notwithstanding the provisions of § 6102 of Title 29, the Division shall be allowed to retain and expend the portion of these fees up to the level authorized to fund the cost of the Department of Health and Social Services in connection with its duties hereunder.

(e) The restaurant permit shall not be issued prior to the public eating place receiving a satisfactory rating in inspection as defined in the State of Delaware regulations governing public eating places.

(f) The following entities shall be exempt from the restaurant inspection fee established in subsection (c) of this section:

(1) Churches;

(2) Fire halls;

(3) Schools;

(4) Government agencies;

(5) Health care institutions; or

(6) Any nonprofit organization.

(16 Del. C. 1953, § 133; 56 Del. Laws, c. 382, § 1; 59 Del. Laws, c. 276, § 1; 67 Del. Laws, c. 272, § 1; 70 Del. Laws, c. 149, §§ 48, 49, 226; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, §§ 28-30.)

§ 135 Services to public water systems.

(a) The Department will provide services to public water as follows:

(1) Analyze drinking water for chemical and microbiological content.

(2) Inspect public water systems.

(3) Review plans for new systems and major improvements to existing systems.

(4) Provide technical assistance to public water system as needed.

(5) Provide a program to approve the qualifications and competency of laboratories conducting chemical and microbiological testing of potable water.

(6) Provide a program to approve the qualifications and competence of potable water distribution and treatment plant operators in charge of operating public water systems.

(b) The Department of Health and Social Services shall initiate the following fees for the above services. The fees imposed under this section reasonably and approximately reflect the costs necessary to defray the expenses of the Department:

(1) COMMUNITY WATER SUPPLIES

Service Connections	Fee
1-49 connections	$50
50-199 connections	$100
200-499 connections	$250
500-999 connections	$400
1000-1999 connections	$500
2000-4999 connections	$1000
5000-9999 connections	$1500
10,000-29,999 connections	$2000
30,000 and above	$3000

(2) NON-COMMUNITY SUPPLIES $25

(3) NON-TRANSIENT NON-COMMUNITY SUPPLIES $50

(67 Del. Laws, c. 269, § 1; 70 Del. Laws, c. 149, § 50; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, § 31.)

§ 136 Healthy Lifestyles and Tobacco-Related Disease Prevention Fund.

(a) A Healthy Lifestyles and Tobacco-Related Disease Prevention Fund (hereinafter in this section, the "Fund") is established within the Division of Public Health of the Department of Health and Social Services.

(b) The Fund shall be used by the Public Health Director to encourage Delawareans to seek preventative health care, live healthy lifestyles, and to avoid unhealthy behavior, in particular, tobacco use. To that end, the Director shall: develop and implement programs to encourage healthy lifestyles and to promote avoidance of tobacco, alcohol and drug abuse; and provide Delawareans with accurate and understandable information regarding their health, including, but not limited to, information regarding the dangers of tobacco, alcohol and drug use; the preventive care Delawareans should seek to avoid and/or detect adverse health conditions, in particular cancer; and the effects of diet and physical exercise on health.

(c) The Director shall prepare an annual plan for use of the Fund, which shall be approved or modified by the Secretary of the Department.

(d) The Fund shall operate within the limits of general fund appropriations made to it. The Fund may retain any unexpended funds on a fiscal year-to-year basis; provided however, that any funds in excess of $250,000 in the Fund at the end of any fiscal year shall be reverted to the general fund absent specific legislation authorization to the contrary.

(71 Del. Laws, c. 421, § 1.)

§ 137 Delaware Health Fund.

(a) This section shall be referred to as the Delaware Health Act of 1999.

(b) A special fund of the State is hereby created in the Department of Finance to be known as the "The Delaware Health Fund". All annual payments received pursuant to the master settlement agreement entered into by the State and the participating tobacco manufacturers shall be deposited or transferred into the Delaware Health Fund. All other moneys, including gifts, bequests, grants or other funds from private or public sources specifically designated for the Delaware Health Fund shall be deposited or transferred to the Delaware Health Fund. Moneys in the Delaware Health Fund may be saved and deposited in an interest bearing savings or investment account. Interest or other income earned on the moneys in the Delaware Health Fund shall be deposited or transferred into the Delaware Health Fund. The Delaware Health Fund shall not lapse or revert to the General Fund.

(c) Moneys from the Delaware Health Fund shall be expended for Delaware citizens in accordance with any 1 or more of the following:

(1) Expanding access to health care and health insurance for citizens of Delaware that lack affordable health care due to being uninsured or under insured;

(2) Making long-term investments to enhance health care infrastructure which meets a public purpose;

(3) Promoting healthy lifestyles, including the prevention and cessation of the use of tobacco, alcohol and other drugs by the citizens of Delaware;

(4) Promoting preventive care for Delawareans in order to detect and avoid adverse health conditions, particularly cancer and other tobacco-related diseases;

(5) Working with the medical community by providing funding for innovative and/or cost effective testing regimens to detect and identify lesser-known but devastating and costly illnesses, such as sarcoidosis and hemochromatosis, fibromyalgia, lupus, Lyme disease and chronic fatigue immune deficiency syndrome;

(6) Promoting a payment assistance program for prescription drugs to Delaware's low income senior and disabled citizens who are ineligible for, or do not have, prescription drug benefits or coverage through federal state or private sources;

(7) Promoting a payment assistance program to Delaware's citizens who suffer from debilitating chronic illnesses, such as diabetes and kidney disease which are characterized by onerous recurring costs for equipment, tests and therapy; and/or

(8) Such other expenditures as are deemed necessary in the best interests of the citizens of Delaware provided they shall be made for health related purposes.

(d) No moneys shall be expended from the Delaware Health Fund except pursuant to an appropriation incorporated in the State's annual appropriations act.

(e) Expenditures from the Delaware Health Fund shall not be used to supplant any State expenditures appropriated in Fiscal Year 1999 for purposes consistent with those outlined in subsection (c) of this section.

(f) The transfer of funds appropriated from the Delaware Health Fund shall be administered as approved in the annual appropriation act or bond bill.

(g) There is hereby established The Delaware Health Fund Advisory Committee comprised of the Secretary of the Department of Health and Social Services, 2 members of the Senate designated by the President Pro Tem, 2 members of the House of Representatives designated by the Speaker of the House of Representatives, the Chair of the Health Care Commission or the Chair may designate a board member or staff person of the Health Care Commission, 3 members of the public to be appointed and to serve at the pleasure of the Governor, 1 member of the public appointed by the President Pro Tem of the Senate to serve at the pleasure of the President Pro Tem of the Senate, 1 member of the public appointed by the Speaker of the House of Representatives to serve at the pleasure of the Speaker of the House of Representatives and 1 member of the Technical Advisory Office of Legislative Council designated by the

Director of the Division of Research of Legislative Council. No public member appointed to this Advisory Committee shall be directly associated with or represent any organization or entity that will be a recipient or beneficiary of the Delaware Health Fund. The Secretary of the Department of Health and Social Services shall serve as the Chairperson of the Committee. Each year, the Committee will make recommendations, consistent with the purposes outlined in subsection (c) of this section, to the Governor and the General Assembly by November 15th for appropriating moneys expected to be received in the next fiscal year. The Committee shall, in the process of developing these recommendations, seek input from the public and private agencies concerned with the intended purposes of the Delaware Health Fund as described in subsection (c) of this section and conduct public hearings as necessary to provide an opportunity for public comment. The Committee shall also utilize the Delaware Health Care Commission to provide research relating to future health care needs of Delaware citizens and data relating to past health care programs in Delaware.

(h) The Secretary of the Department of Health and Social Services shall report to the Governor and the General Assembly on the second Tuesday of every January concerning expenditures, savings and investment accounts under the Delaware Health Fund for the previous fiscal year and to what extent those expenditures accomplished their intended purpose.

(72 Del. Laws, c. 198, § 1.)

§ 138 Community-based Naloxone access program.

The Department shall:

(1) Promote the safe use of Naloxone to reduce deaths from opioid overdoses.

(2) Make education and training programs on the safe use of Naloxone available to people who hold doses of Naloxone for friends and family members who have an addiction to opioids.

(3) Establish a community-based Naloxone access program after researching best practices and obtaining grant funding. At a minimum, a community-based Naloxone access program will require participants to complete an approved training and education program prior to receiving doses of Naloxone and/or administering Naloxone. Naloxone may be distributed to people who complete the requirements set forth for this program.

(79 Del. Laws, c. 266, § 1.)

§ 139 Certification and procedures for animal control constables, animal control officers, animal cruelty agents, dog control agents, and dog wardens [Effective upon final publication of the regulations pursuant to 79 Del. Laws, c. 375, § 5]

(a) A person who acts as a certified animal control constable, animal control officer, animal cruelty agent, dog control agent, or dog warden without certification from the Department is subject to penalties pursuant to § 107 of this title. For purposes of this subchapter, "animal cruelty agent" means any person qualified to act pursuant to § 1325 of Title 11.

(b) The Department may, by endorsement, without written examination, certify an animal control constable, animal control officer, animal cruelty agent, dog control agent, or dog warden who has completed a training program that meets the educational requirements for certification defined by the Department and if, in the opinion of the Department or its designee, the applicant meets the qualifications specified by this chapter for an animal control constable, animal control officer, dog control agent animal cruelty, or dog warden.

(c) *Dog control and animal cruelty educational programs. —*

(1) Any organization or institution desiring to conduct a dog control or animal cruelty education program shall apply to the Department and submit satisfactory evidence that it is ready and qualified to instruct students in the prescribed basic curriculum for certifying animal control constables, dog control agents, animal control officers, animal cruelty agents, or dog wardens, and that is prepared to meet other standards which may be established by the Department.

(2) If the Department determines that any approved educational program is not maintaining the standards required by this chapter and by the Department, written notice thereof, specifying the deficiency and the time within which the same shall be corrected, shall immediately be issued to the program. The Department shall withdraw such programs approval if it fails to correct the deficiency. The organization or institution may reapply for approval to the Department once the program meets standards established by the Department.

(d) The Department may impose sanctions defined in this chapter singly or in combination when it finds a certified or former certified animal control constable, animal control officer, animal cruelty agent, dog control agent, or dog warden committed any offense described below:

(1) Engages in fraud or deceit in procuring or attempting to procure a certification/license;

(2) Is guilty of a crime against person or property;

(3) Has been found by an employer to be unfit or incompetent;

(4) Has had a certification or license to serve as a dog control or animal cruelty agent suspended or revoked in any jurisdiction; or

(5) Has wilfully or negligently violated this chapter.

(e) The Department shall establish procedures for documenting all complaints, and conducting investigations of complaints filed against animal control constables, animal control officers, animal cruelty agents, dog control agents, or dog wardens that may result in sanctions.

(f) Disciplinary sanctions are as follows:

(1) Permanently revoke a certification or license to be an animal control constable, animal control officer, dog control animal cruelty agent, or dog warden;

(2) Refuse a certification or certification renewal;

(3) Suspend a certification or license;

(4) Place a certification or license on probationary status and require licensee to: report regularly to the Department upon the matters which are the basis of probation; limit practice to those areas prescribed by the Department; or continue or renew professional education until satisfactory degree of skill has been attained in those areas which are the basis of the probation;

(5) Issue a letter of reprimand; and

(6) Require additional training.

(79 Del. Laws, c. 375, § 3.)

Subchapter III

Pathological and Bacteriological Laboratory

§ 141 Establishment and supervision.

The Secretary or the Secretary's designee may establish and supervise a pathological and bacteriological laboratory and equip it with any appliances necessary to make it safe and reliable. It shall be used to accomplish any or all means of protecting the citizens of the State against the spread of disease.

(21 Del. Laws, c. 240, §§ 1, 2; Code 1915, §§ 782, 783; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 808; 16 Del. C. 1953, § 141; 70 Del. Laws, c. 149, § 51; 70 Del. Laws, c. 186, § 1.)

§ 142 Election of Pathologist and Bacteriologist.

The Pathologist and Bacteriologist shall be employed by the Department of Health and Social Services.

(21 Del. Laws, c. 240, § 5; Code 1915, § 786; 29 Del. Laws, c. 49, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 811; 16 Del. C. 1953, § 142; 70 Del. Laws, c. 544, § 32.)

§ 143 Duties of Pathologist and Bacteriologist.

The Pathologist and Bacteriologist shall conduct the routine work of the laboratory and shall make all examinations and analyses, etc., that may be necessary under the direction of the Secretary or the Secretary's designee for all the purposes that may be required to fully execute the intent of this chapter. This section shall not be so construed as to interrupt or limit the power of full control and management of the laboratory by the Secretary or the Secretary's designee.

(21 Del. Laws, c. 240, § 3; 22 Del. Laws, c. 135, § 1; Code 1915, § 784; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 809; 16 Del. C. 1953, § 143; 70 Del. Laws, c. 149, § 52; 70 Del. Laws, c. 186, § 1.)

§ 144 Medical practitioners to report contagious diseases; use of laboratory for examination and diagnosis; other uses.

(a) All physicians, dentists, veterinary surgeons or others practicing medicine or surgery or any branch thereof under the laws of this State shall be required to give prompt notice to the local or Division of Public Health of any and all cases of contagious or infectious disease that may come under their professional notice and shall have free access to the work of the laboratory for the determination of the diagnosis of any doubtful or suspicious case, by forwarding (prepaid) a sufficient sample of urine, blood, sputum or other substance of such case to the Pathologist and Bacteriologist for examination. The Pathologist and Bacteriologist shall examine the substance so sent and report to the physician, dentist or others sending the same the result of the examination without any unnecessary delay and without further charge. The physician, dentist or others shall report the result immediately as required by this subsection.

(b) The Department of Health and Social Services may also make full provisions for the free use of the laboratory for the examination of any matter or substance so as to determine the diagnosis of diseases neither contagious nor infectious, and either local or constitutional and for the examination of water or food supply for any citizen of the State.

(21 Del. Laws, c. 240, § 4; Code 1915, § 785; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 810; 16 Del. C. 1953, § 144; 70 Del. Laws, c. 147, §§ 2, 3; 70 Del. Laws, c. 149, § 53; 70 Del. Laws, c. 186, § 1.)

§ 145 Examinations to determine cause of death.

The Pathologist and Bacteriologist, whenever requested by the Attorney General, shall make any and all examinations of any person or persons or any organ or organs or any part or parts of any person or persons with the view of determining the cause or causes of death and make a prompt report without charge to the State or any county thereof.

(22 Del. Laws, c. 135, § 3; Code 1915, § 787; Code 1935, § 812; 16 Del. C. 1953, § 145.)

Subchapter IV
Emily P. Bissell Hospital

§ 151 Powers and duties of Department of Health and Social Services.

The Department of Health and Social Services may:

(1) Promote a careful study of conditions regarding tuberculosis throughout the State;

(2) Educate public opinion as to the causes and prevention of tuberculosis;

(3) Arouse general interest in securing adequate provision for the proper care of tuberculosis patients in their homes and by means of sanatoria; and

(4) Send such tuberculosis patients as require treatment to Emily P. Bissell Hospital for such treatment.

(25 Del. Laws, c. 74, § 4; Code 1915, § 828; 29 Del. Laws, c. 53, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 820; 16 Del. C. 1953, § 151; 51 Del. Laws, c. 136; 70 Del. Laws, c. 149, § 54; 70 Del. Laws, c. 186, § 1.)

§ 152 Payment of costs of maintenance.

The Division of Public Health shall pay for the care, treatment and maintenance of all hospitalized patients who enter the Emily P. Bissell Hospital for the diagnosis, treatment and cure of tuberculosis and other chronic diseases amenable to treatment, rehabilitation, or both who, in the discretion of the Secretary of the Department of Health and Social Services need financial support. Those patients who are required to pay for such care, treatment and maintenance shall make direct payment to the Emily P. Bissell Hospital. Direct payment shall be made to the Emily P. Bissell Hospital by health insurance companies or health benefit payment plans by which any patient has health coverage.

(25 Del. Laws, c. 74, § 4; Code 1915, § 828; 29 Del. Laws, c. 53, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 820; 16 Del. C. 1953, § 152; 51 Del. Laws, c. 136; 58 Del. Laws, c. 444; 70 Del. Laws, c. 150, § 3; 70 Del. Laws, c. 186, § 1.)

§ 153 County clinics.

The Secretary of the Department of Health and Social Services shall establish throughout the State, at least 1 clinic in each county for the diagnosis and treatment of tuberculosis and other chronic pulmonary diseases, such as fungus disease, sarcoidosis, bronchiectasis and bronchial asthma and for the purpose of maintaining such clinics shall employ such qualified persons as may be necessary to take charge thereof and pay them such reasonable compensation as may be necessary.

(25 Del. Laws, c. 74, § 5; Code 1915, § 829; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 821; 16 Del. C. 1953, § 153; 51 Del. Laws, c. 136; 70 Del. Laws, c. 149, § 55; 70 Del. Laws, c. 186, § 1.)

§ 154 Admittance to Emily P. Bissell Hospital.

The Division of Public Health may admit such persons to the institution known as the Emily P. Bissell Hospital for the prevention and treatment of tuberculosis and other chronic diseases which are amenable to treatment, rehabilitation or both, as in the judgment of the Division may be proper and may provide for the care, treatment and support of such persons under such rules and regulations as may be from time to time established by the Division.

(33 Del. Laws, c. 57, § 12; 34 Del. Laws, c. 67, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, § 823; 16 Del. C. 1953, § 154; 49 Del. Laws, c. 65, § 3; 51 Del. Laws, c. 136; 58 Del. Laws, c. 444; 70 Del. Laws, c. 150, § 4; 70 Del. Laws, c. 186, § 1.)

§ 155 Accounting of all funds received by the hospital.

The Secretary of the Department of Health and Social Services, administrator of the Emily P. Bissell Hospital, shall keep or have kept true and accurate account of all moneys received for board, care and attention of patients by the hospital and all moneys arising from any source other than the annual appropriation made to the hospital by the State. All such funds shall be considered as revenue to the State and shall be paid to the State Treasurer for deposit into the General Fund, except as provided in § 6102(a) of Title 29.

(16 Del. C. 1953, § 155; 51 Del. Laws, c. 136; 55 Del. Laws, c. 320; 70 Del. Laws, c. 149, § 56; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 544, § 33.)

§ 156 Annual account and report to Governor.

The Secretary of the Department of Health and Social Services shall furnish annually to the Governor a full account of its expenditures and disbursements under this subchapter. It shall also at the same time report to the Governor the work of the Secretary of the Department of Health and Social Services for the year, including the number of persons treated, the results of treatment, as nearly as can be ascertained and such other information as may be of public interest and value. Such report shall at all times be open to the inspection of the citizens of the State in the office of the Secretary of State.

(25 Del. Laws, c. 74, § 6; Code 1915, § 830; 29 Del. Laws, c. 53, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 822; 16 Del. C. 1953, § 156; 51 Del. Laws, c. 136; 70 Del. Laws, c. 149, § 57; 70 Del. Laws, c. 186, § 1.)

§ 157 Rights of patients.

Each patient of the Hospital shall be entitled to all the patient rights set forth in subchapter II of Chapter 11 of this title, and all sections in said subchapter II shall apply to the patients of the Emily P. Bissell Hospital.

(61 Del. Laws, c. 373, § 4.)

Subchapter V

Child Welfare Services; Indigent Children With Physical Disabilities

§ 161 Powers and duties of Department.

The Department of Health and Social Services shall develop the child welfare activities conducted by the Child Welfare Commission before its abolition and maintain a traveling child health center to serve the sparsely settled sections of the State. The Department of Health and Social Services shall cooperate with state, county and local officials bodies in the development of such child welfare work as the Department of Health and Social Services may believe will materially advance the best interests of the children of the State. The Department of Health and Social Services shall make a study of the needs of children a definite part of its work and shall make recommendations for executive and legislative action in matters relating to children.

(32 Del. Laws, c. 63, § 3; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 813; 16 Del. C. 1953, § 161; 70 Del. Laws, c. 149, § 58; 70 Del. Laws, c. 186, § 1.)

§ 162 Cooperation of departments and officers.

Every official department and public officer in the State, excepting the members of the General Assembly and the judiciary, in possession of information relating to the purposes of this subchapter shall, upon request of the Department of Health and Social Services, cooperate with it in carrying out the purposes of this subchapter.

(32 Del. Laws, c. 63, § 4; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 814; 16 Del. C. 1953, § 162; 70 Del. Laws, c. 149, § 59; 70 Del. Laws, c. 186, § 1.)

§ 163 Employment of personnel and registered trained nurse.

(a) The Department of Health and Social Services may employ such agents, assistants, clerical force and specially qualified persons as it finds necessary or expedient for carrying out the purposes of this subchapter.

(b) The Department of Health and Social Services may employ a registered trained nurse to educate and supervise the midwives of the State. Such nurse shall devote the entire time, under the general direction of the Department of Health and Social Services, to an investigation of the methods employed by the midwives, to instructing the midwives so that they will not be a menace to the life and health of either mother or infant, to an investigation of deaths following midwife cases, to an investigation of all violations of the laws by midwives and to an investigation of the reports of births throughout the State.

(32 Del. Laws, c. 43, § 1; 32 Del. Laws, c. 63, § 6; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 816; 16 Del. C. 1953, § 163; 70 Del. Laws, c. 149, §§ 60, 61; 70 Del. Laws, c. 186, § 1.)

§ 164 Federal aid; authority to expend appropriation.

If any bill shall be enacted by the United States appropriating moneys to assist the states in protecting the health of mothers and children, and if the Department of Health and Social Services is doing such work at the time the federal aid becomes available, the Department of Health and Social Services shall designate and authorize to be spent such portion of its appropriation as may be necessary to meet the offer of the federal government, if the Department of Health and Social Services shall be recognized by the federal body administering the act as the state body with which it will cooperate. Only such an amount of the Department of Health and Social Services' appropriation may be designated and spent for the purposes described in this section as will leave at least $15,000 annually for the execution of the duties of the Department of Health and Social Services under this subchapter, other than those which conform with such a federal act which may be enacted.

(32 Del. Laws, c. 63, § 5; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 815; 16 Del. C. 1953, § 164; 70 Del. Laws, c. 149, §§ 62, 63; 70 Del. Laws, c. 186, § 1.)

§ 165 Indigent children with physical disabilities program.

The Department of Health and Social Services is designated as the agency for and on behalf of this State to administer a program of services for indigent children with physical disabilities or who are suffering from conditions which lead to physical disabilities, and to supervise the administration of such services included in the program not administered directly by it. The purpose of such program shall be to develop, extend and improve services for locating such children and for providing for medical, surgical, corrective and for such other services and care, and for facilities for diagnosis, hospitalization and after-care.

(Code 1935, § 819A; 41 Del. Laws, c. 85, § 1; 16 Del. C. 1953, § 165; 70 Del. Laws, c. 149, § 64; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 147-149.)

§ 166 Indigent children with physical disabilities program — Powers and duties of Secretary.

In carrying out § 165 of this title the Secretary or the Secretary's designee may:

(1) Formulate and administer a detailed plan or plans for the purposes specified in § 165 of this title, and make such rules and regulations as may be necessary or desirable for the administration of such plans and this subchapter. Any such plan shall make provision for:

a. Financial participation by the State subject to § 164 of this title;

b. Administration of the plan by the Secretary or the Secretary's designee may, and supervision by the Secretary or the Secretary's designee of the administration of those services included in the state program which are not administered directly by it;

c. Maintenance of records and preparation of reports of services rendered;

d. Cooperation with medical, health, nursing and welfare groups and organizations and with any agency of the State charged with the administration of laws providing for vocational rehabilitation of children with physical disabilities;

e. Carrying out the purposes specified in § 165 of this title.

(2) Receive and expend in accordance with such plans all funds made available to the Secretary or the Secretary's designee by the federal government, the State or its political subdivisions, or from other sources, for such purposes.

(3) Cooperate with the federal government, through its appropriate agency, or instrumentality, in developing, extending and improving such services, and in the administration of such plans.

(4) Cooperate with any individual or organization which may have been or shall be formed in the State for the purpose of improving services for children with physical disabilities.

(5) Expend such portions of its funds as may be necessary for carrying out the state plan in such a way as to meet the matching requirements of the federal government or any organization which may have been or shall be formed for the purpose of improving services for children with physical disabilities of the State.

(Code 1935, § 819A; 41 Del. Laws, c. 85, § 1; 16 Del. C. 1953, § 166; 70 Del. Laws, c. 149, § 65; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 150-152.)

§ 167 Indigent children with physical disabilities program — Duties of State Treasurer upon receipt of federal funds.

In the event of the receipt of funds from the federal government or from other sources for the purposes of § 165 or 166 of this title the State Treasurer shall:

(1) Receive such funds;

(2) Act as custodian of such funds;

(3) Keep them in a special account to be known as the "Fund for Children With Physical Disabilities"; and

(4) Disburse these funds upon orders signed by the Secretary or the Secretary's designee.

(Code 1935, § 819A; 41 Del. Laws, c. 85, § 1; 16 Del. C. 1953, § 167; 70 Del. Laws, c. 149, § 66; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 153, 154.)

Subchapter VI

Oral Hygienists

§ 171 Establishment of Corps of Oral Hygienists.

(37 Del. Laws, c. 62, § 1; Code 1935, § 827; 16 Del. C. 1953, § 171; 70 Del. Laws, c. 149, § 67; 70 Del. Laws, c. 186, § 1; repealed by 78 Del. Laws, c. 229, § 2, eff. Apr. 19, 2012.)

§ 172 Composition; qualifications; compensation.

(37 Del. Laws, c. 62, § 2; Code 1935, § 828; 16 Del. C. 1953, § 172; 70 Del. Laws, c. 149, § 68; 70 Del. Laws, c. 186, § 1; repealed by 78 Del. Laws, c. 229, § 2, eff. Apr. 19, 2012.)

§ 173 Duties of Corps members.

(37 Del. Laws, c. 62, § 3; Code 1935, § 829; 16 Del. C. 1953, § 173; 70 Del. Laws, c. 149, § 69; 70 Del. Laws, c. 186, § 1; repealed by 78 Del. Laws, c. 229, § 2, eff. Apr. 19, 2012.)

Subchapter VII

Optometric Clinics

§ 181 Establishment of optometric clinics.

The Department of Health and Social Services shall establish 1 optometric clinic in Sussex County, 1 in Kent County and 1 in New Castle County.

(16 Del. C. 1953, § 181; 50 Del. Laws, c. 388, § 1; 70 Del. Laws, c. 149, § 70; 70 Del. Laws, c. 186, § 1.)

§ 182 Appointment of optometrists.

Each optometric clinic shall be supervised and directed by 1 optometrist or 1 eye physician, duly licensed to practice optometry under the laws of this State, to be appointed by the Secretary or the Secretary's designee to carry out this subchapter and shall serve during the

pleasure of the Secretary or the Secretary's designee and receive such compensation for services rendered as shall be determined by the Secretary or the Secretary's designee.

(16 Del. C. 1953, § 182; 50 Del. Laws, c. 388, § 1; 55 Del. Laws, c. 284, § 1; 70 Del. Laws, c. 149, § 71; 70 Del. Laws, c. 186, § 1.)

§ 183 Services performed by clinics.

The clinics shall render and perform, free of charge, optometric services as shall be ordered and directed by the Secretary or the Secretary's designee for those persons who upon application to the Secretary or the Secretary's designee are found to be unable to pay for such services either in whole or in part.

(16 Del. C. 1953, § 183; 50 Del. Laws, c. 388, § 1; 70 Del. Laws, c. 149, § 72; 70 Del. Laws, c. 186, § 1.)

Subchapter VIII

Warnings to Pregnant Women

§ 190 Required warning of possible use effects of alcohol, cocaine, marijuana, heroin or other narcotics.

(a) The Director of the Division of Public Health shall require any and all persons under its jurisdiction who treat, advise or counsel pregnant women to post and give written and verbal warnings to said pregnant women as to the possible problems, complications and injuries which may result to themselves and/or to the fetus from their consumption or use of alcohol, cocaine, marijuana, heroin or other narcotics during their pregnancy.

(b) The form and content of such warnings will be as prescribed by the Division of Public Health.

(68 Del. Laws, c. 78, § 1; 70 Del. Laws, c. 147, §§ 4, 5; 70 Del. Laws, c. 186, § 1.)

Subchapter IX

Healthy Mothers and Children

§ 195 Division of Public Health; use of funds.

The Division of Public Health may use any money appropriated to it for the purpose of improving the health of mothers, expectant mothers and infants, for related research, and for other purposes related to the prevention and improvement of the health of mothers, expectant mothers and infants.

(75 Del. Laws, c. 224, § 1; 70 Del. Laws, c. 186, § 1.)

§ 196 Delaware Healthy Mother and Infant Consortium.

(a) The Delaware Healthy Mother and Infant Consortium ("Consortium") is hereby established and shall coordinate efforts to prevent infant mortality and improve the health of women of childbearing age and infants in the State.

(b) The Consortium's initial priorities and agenda shall be the recommendations contained in the report entitled "Reducing Infant Mortality in Delaware — Recommendations of the Infant Mortality Task Force," released in May 2005, or its successor.

(c) The Consortium will:

(1) Provide advice and support to state agencies, hospitals and health care practitioners regarding their roles in reducing infant mortality and improving the health of women of childbearing age and infants.

(2) Facilitate collaborative partnerships among public health agencies, hospitals, health care practitioners and all other interested agencies and organizations to carry out recommended infant mortality improvement strategies.

(3) Recommend standards of care to ensure healthy women of childbearing age and infants.

(4) Coordinate efforts to address health disparities related to the health of women of childbearing age and infants.

(5) Oversee development and implementation of research activities to better understand causes of infant mortality.

(6) Coordinate efforts to prevent conditions and behaviors that lead to unhealthy women of childbearing age and infants.

(7) Meet semi-annually with the Secretary of Health and Social Services to review progress, priorities, and barriers related to the Consortium's purpose.

(8) Recommend legislation and regulations that will enhance the health of women of childbearing age and infants.

(9) On an annual basis issue a report to the Governor on the status of the health of women of childbearing age and infants and progress in implementing recommendations of the Infant Mortality Task Force.

(d) The Consortium's permanent membership shall be as follows:

(1) Two representatives of the Delaware House of Representatives and 2 representatives of the Delaware State Senate (1 selected by each caucus);

(2) One representative of the Governor's office;

(3) The Secretary of the Department of Children, Youth, and Their Families, or the Secretary's designee;

(4) The Secretary of the Department of Health and Social Services or the Secretary's designee; and

(5) Fifteen additional members approved by the Governor who shall represent the medical, social service and professional communities as well as the general public.

(e) The Consortium's permanent members may enact procedures to appoint additional persons to the Consortium. The Consortium, by rule and regulation, shall establish categories of membership, specify voting rights for each category, designate the number needed for a quorum to transact business, provide for election of officers, and adopt such procedures as are necessary to carry out the business of the Consortium.

(f) Appointees to the Consortium shall serve at the pleasure of the individual or entity that appointed them.

(g) The Consortium shall have a chair and a vice chair, to be designated from among permanent members by the Governor and who shall serve as president and vice-president at the pleasure of the Governor. Staff support for the Consortium shall be provided by the Delaware Division of Public Health.

(75 Del. Laws, c. 224, § 1; 70 Del. Laws, c. 186, § 1.)

Part I
Local Boards of Health; Health Programs
Chapter 2
CONGENITAL DISABILITIES PROGRAM AND EARLY INTERVENTION SERVICES
Subchapter I
Congenital Disabilities Surveillance, Registration and Treatment Program

§ 201 Purpose.

The intent of the General Assembly is to provide financial assistance for the treatment of children with congenital disabilities and to require the establishment and maintenance of a congenital disabilities surveillance system and registry for the State.

(1) *Surveillance system and registry.* — Responsibility for establishing and maintaining the system and registry is delegated to the Department of Health and Social Services, along with the authority to exercise certain powers to implement the system and registry. To ensure an accurate and continuing source of data concerning congenital disabilities, the General Assembly by this subchapter requires certain health care practitioners and all hospitals and clinical laboratories to make available to the Department of Health and Social Services information contained in the medical records of patients who have a suspected or confirmed congenital disability diagnosis. All confirmed congenital disabilities shall be classified and coded using the medically recognized system of International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), as well as the 6-digit modified British Pediatric Association system (BPA/ICD-9), and all subsequent revisions to these publications which are used by the Centers for Disease Control and Prevention. It is intended that the product of these efforts will be a central data bank of accurate, precise and current information regarding all congenital disabilities diagnosed or treated, or both, in this State.

(2) *Treatment.* — The cost of treating children for congenital disabilities can be prohibitive and impose a substantial burden upon the children's families beyond the resources of those families and beyond the resources of state, federal or private agencies. The treatment of such children is in the best interest and welfare of the people and the State. It is the intent of this subchapter to provide assistance with the cost of treatment for children so afflicted.

Treatment paid for under this Program shall be provided, insofar as possible, within the State. The Secretary of the Department of Health and Social Services shall establish rules and regulations for the eligibility of persons requesting services under this subchapter, including the ability of those persons to pay for services, and for the disbursement of funds appropriated for this Program. However, this subchapter will in no way affect the rights, liabilities or duties of the Secretary of the Department of Health and Social Services or of persons or guardians of persons requesting services under this subchapter from operation of laws or prior existing laws and, in particular, § 7940 of Title 29.

(60 Del. Laws, c. 63, § 1; 71 Del. Laws, c. 86, § 1; 71 Del. Laws, c. 286, § 3; 78 Del. Laws, c. 179, § 157.)

§ 202 Definitions.

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

(1) "Department" means the Department of Health and Social Services.

(2) "Congenital disability" means any structural or biochemical abnormality, regardless of cause, diagnosed at any time before or after birth, that requires medical or surgical intervention or that interferes with normal growth or development.

(3) "Surveillance" means the process of identifying and investigating congenital disabilities in children under age 5.

(4) "Registry" means a central data bank containing collected, classified, coded and stored data relating to congenital disabilities in children under age 5.

(71 Del. Laws, c. 86, § 1; 71 Del. Laws, c. 286, § 3; 78 Del. Laws, c. 179, § 158.)

§ 203 Congenital Disabilities Surveillance and Registry Program.

(a) The Department may adopt, promulgate, amend and repeal any rules and regulations necessary to accomplish the purpose of this subchapter. These rules and regulations may include provisions for:

(1) The establishment and maintenance of an up-to-date registry that shall document every diagnosis or treatment, or both, of any congenital disability in any child under age 5 in this State;

(2)a. The establishment of a procedure for reporting to the Department, within 30 days of initial diagnosis or treatment, every occurrence of a congenital disability in any child under age 5 in this State. The procedure shall include the reporting of specified information, through a combined system of active and passive surveillance, on every child under age 5 with 1 or more congenital disabilities. Specified information shall be deemed necessary and appropriate to accomplish the purpose of this subchapter and in accordance with the recommendations from the Centers for Disease Control and Prevention, for the following reasons:

1. To identify risk factors for congenital disabilities;
2. To investigate the causes and prevalence of congenital disabilities;
3. To develop preventive strategies to decrease occurrences of congenital disabilities;
4. To analyze incidences, prevalence and trends of congenital disabilities through epidemiological studies; or
5. To investigate the morbidity and mortality rates resulting from congenital disabilities;

b. Those required to report to the Department occurrences of congenital disabilities shall include:

1. Any physician, surgeon, dentist, podiatrist or other health care practitioner who diagnoses or provides treatment, or both, for children under age 5 with congenital disabilities;

2. The designated representative of any hospital, dispensary or other similar public or private institution that diagnoses or provides treatment, or both, for children under age 5 with congenital disabilities; and

3. The designated representative of any clinical laboratory that performs any test which identifies children under age 5 with congenital disabilities;

(3) The establishment of a procedure for the publication and distribution of forms, instructions and notices required by this subchapter or necessary to accomplish the purpose of this subchapter; and

(4) The establishment of a procedure to obtain follow-up information from those required to report occurrences of congenital disabilities pursuant to this subchapter. Any follow-up information, including family, physician, hospital or laboratory contact deemed necessary by the Department, shall be submitted to the Department at least 1 time each year by those required to report occurrences of congenital disabilities.

(b) The provisions of this subchapter and any rules or regulations issued pursuant to this subchapter shall not apply to any person or private institution that, as an exercise of religious freedom, treats the sick or suffering by spiritual means through prayer alone.

(c) A parent, custodian or guardian of an infant having any congenital disability may refuse disclosure to the surveillance system and registry of the infant's name and identifying information on the grounds that such congenital disability identification is contrary to the religious tenets and practices of the infant's parent, custodian or guardian.

(71 Del. Laws, c. 86, § 1; 71 Del. Laws, c. 286, § 3; 78 Del. Laws, c. 179, §§ 159, 160.)

§ 204 Confidentiality of reports.

(a) Any report of the diagnosis or treatment, or both, of a congenital disability made pursuant to this subchapter shall not be divulged nor made public in any way that might tend to disclose the identity of the person or family of the person to whom it relates. However, patient-identifying information may be exchanged among authorized agencies as approved by the Department and upon receipt by the Department of satisfactory assurances by those agencies of the preservation of the confidentiality of such information.

(b) No individual or organization providing information to the Department in accordance with this subchapter shall be deemed to be liable for or held liable for divulging confidential information.

(71 Del. Laws, c. 86, § 1; 71 Del. Laws, c. 286, § 3; 78 Del. Laws, c. 179, § 161.)

§ 205 Compulsion prohibited.

Nothing in this subchapter shall be construed to compel any person to submit to any medical or public health examination, treatment or supervision.

(71 Del. Laws, c. 86, § 1; 71 Del. Laws, c. 286, § 3.)

§ 206 Violations.

Any person or entity who is required to report the diagnosis or treatment, or both, of any congenital disability in any child under age 5 and who violates any provision of this subchapter shall be fined up to $100 for each violation. Justices of the Peace Courts shall have jurisdiction of any offense under this subchapter.

(71 Del. Laws, c. 86, § 1; 71 Del. Laws, c. 286, § 3; 78 Del. Laws, c. 179, § 162.)

Subchapter II

Infants And Toddlers Early Intervention Program

§ 210 Short title.

This subchapter may be cited as the Infants and Toddlers Early Intervention Act.

(71 Del. Laws, c. 286, § 4.)

§ 211 Purpose.

The purposes of this subchapter are as follows:

(1) To enhance the development and minimize the potential for developmental delay of infants and toddlers with disabilities;

(2) To reduce the educational costs to society by minimizing the need for special education and related services after infants and toddlers reach school age;

(3) To minimize the likelihood of institutionalization and maximize the potential for independent living of individuals with disabilities;

(4) To enhance the capacity of families to meet the special needs of infants and toddlers with disabilities; and

(5) To fully implement the infants and toddlers program established by the Individuals with Disabilities Education Act, codified at 20 U.S.C. §§ 1431-1445, or any amendment or reenactment thereof.

(71 Del. Laws, c. 286, § 4.)

§ 212 Definitions.

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

(1) "Department" means the Department of Health and Social Services.

(2) "Early intervention services" means developmental services that:

a. Are provided under public supervision;

b. Are provided at no cost except where federal or State law provides for a system of payments by families, including a schedule of sliding fees;

c. Are designed to meet the developmental needs of eligible children in at least 1 of the domains identified in subdivision (3)a. of this section;

d. Meet State program standards;

e. Are provided by qualified personnel consistent with Department regulations;

f. Are provided in conformity with an individualized family service plan adopted pursuant to § 215 of this title;

g. Are provided in conformity with a strong policy promoting service provision in natural environments; and

h. Include the following:

1. Family training, counseling, and home visits;

2. Special instruction;

3. Speech language pathology and audiology services;

4. Occupational therapy;

5. Physical therapy;

6. Psychological services;

7. Service coordination services;

8. Diagnostic or evaluative medical services;

9. Early identification, screening, and assessment services;

10. Health services necessary to enable an eligible child to benefit from the other early intervention services;

11. Social work services;

12. Vision services;

13. Assistive technology devices and services;

14. Transportation and related costs that are necessary to enable an eligible child or family to receive another service described in this paragraph; and

15. Such other supportive services identified by the Department through regulation.

(3) "Eligible children" means infants and toddlers from birth through 36 months of age who need early intervention services because they are:

a. Experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, including informed clinical opinion, in one or more of the following domains:

1. Cognitive development;

2. Physical development, including vision or hearing;

3. Communication development;

4. Social or emotional development; and

5. Adaptive development; or

b. Diagnosed as having a physical or mental condition which has a high probability of resulting in developmental delay; or

c. At risk of developing substantial developmental delay in the absence of early intervention services, to the extent affirmatively authorized by regulations adopted pursuant to § 218 of this title.

(4) "Federal infants and toddlers program" means the program established by the Individuals with Disabilities Education Act, codified in pertinent part at 20 U.S.C. §§ 1431-1445, or any amendment or reenactment thereof.

(71 Del. Laws, c. 286, § 4.)

§ 213 Powers and duties.

In furtherance of the purposes of this subchapter, the Department shall have the following powers and duties:

(1) Develop and implement a statewide, comprehensive, coordinated, multi-disciplinary, interagency system which ensures that appropriate early intervention services are available to all eligible children and families;

(2) Clarify system eligibility consistent with § 212(3) of this title, including adoption of regulatory guidelines defining "developmental delay";

(3) Promote public awareness and ensure prompt identification and evaluation of eligible children and their families;

(4) Develop and implement individualized family service plans for eligible children and their families in accordance with § 215 of this title;

(5) Serve as a clearinghouse for information on early intervention services, resources, experts and research and demonstration projects in the State;

(6) Adopt and implement a comprehensive system of personnel development and qualifications;

(7) Serve as the State's lead agency to implement the federal infants and toddlers program, including providing a single line of responsibility to carry out the following:

a. The general administration and supervision of programs and activities receiving assistance under the Act;

b. The monitoring of programs and activities used to implement this State system;

c. The assignment of financial responsibility among applicable agencies; and

d. The development and adoption of interagency agreements that define financial responsibility for each agency, procedures to resolve disputes, and procedures to ensure timely provision of early intervention services pending resolution of disputes among public agencies or service providers; and

(8) Otherwise meet and implement funding and eligibility requirements of the federal infants and toddlers program.

(71 Del. Laws, c. 286, § 4.)

§ 214 Cooperation of participating agencies.

All State agencies and contractors participating in the provision of early intervention services under this subchapter shall cooperate with the Department and Interagency Coordinating Council to ensure effective system implementation, coordination and nonduplication of activities. In furtherance of this duty, the individualized family service plan shall serve as the primary comprehensive service plan for all such agencies and contractors and be accorded deference in determining the developmental, educational and medical necessity of included early intervention services.

(71 Del. Laws, c. 286, § 4.)

§ 215 Individualized family service plan.

The Department's system shall ensure that eligible children and their families receive the following in a timely manner:

(1) A multi-disciplinary assessment of the unique strengths and needs of each eligible child and identification of services appropriate to meet such needs;

(2) A family-directed assessment of the resources, priorities and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the eligible child; and

(3) A written individualized family service plan, whose format shall be specifically prescribed by regulation, developed and approved as follows:

a. The plan shall be prepared by a multi-disciplinary team which includes the child's parents;

b. The contents of the individualized family service plan shall be fully explained to the parents and informed written consent obtained prior to the provision of services described in the plan; and

c. If parental consent to a particular service is withheld, then the early intervention services to which consent is obtained shall be provided.

(71 Del. Laws, c. 286, § 4.)

§ 216 Procedural safeguards.

The Department's system shall include procedural safeguards which include, at a minimum, the following:

(1) Availability of mediation and an impartial, timely administrative hearing, in which hearing the burden of proof and persuasion rests with the respondent agency, to resolve parental complaints;

(2) Confidentiality of personally identifiable information;

(3) Parental option to accept or decline early intervention services without jeopardizing eligibility for other early intervention services;

(4) Parental opportunity to examine and obtain copies of relevant records either without charge, or, if authorized by departmental regulation, at a fee not to exceed actual cost;

(5) Procedures to ensure the appointment of a surrogate decision-maker if an eligible child is the ward of the State or the child's parents cannot be identified or located;

(6) Prior written parental notice whenever a participating agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation or placement of an eligible child or the provision of early intervention services;

(7) Procedures to ensure that notice required under subdivision (6) of this section fully and effectively informs parents of the procedural safeguards identified in this section; and

(8) Procedures to ensure, in the absence of contrary agreement, the continuation of early intervention services during the pendency of any proceeding or action involving a parental complaint or, in the context of initial application, provision of services not in dispute.

(71 Del. Laws, c. 286, § 4.)

§ 217 Interagency Coordinating Council.

(a) There is hereby established the Interagency Coordinating Council whose members shall be appointed by the Governor.

(b) The Council shall advise and assist the Department with implementation of this subchapter and otherwise fulfill any requirements of an advisory council under the federal infants and toddlers program. The Department shall ensure that the Council is provided with sufficient staff and other supports to effectively meet its obligations.

(c) The Council shall be composed of 23 members who shall be appointed for 3-year terms. Members shall be eligible to serve more than 1 term. Appointments shall be made to ensure that membership reasonably represents the geographical diversity of the State and meets composition requirements of the advisory council under the federal infants and toddlers program.

(d) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(e) Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term shall be filled for the remainder of the term.

(71 Del. Laws, c. 286, § 4.)

§ 218 Regulations.

(a) The Department shall prescribe such regulations as may be necessary to carry out this subchapter and to ensure full funding eligibility and compliance with the federal infants and toddlers program.

(b) Regulations prepared by the Department under this subchapter shall be subject to review and comment by the Council and shall otherwise be promulgated in conformity with the Administrative Procedures Act, Chapter 101 of Title 29.

(71 Del. Laws, c. 286, § 4.)

Subchapter III

Autism Surveillance and Registration

§ 221 Purpose.

The intent of the General Assembly is to establish and maintain an autism surveillance system and registry for the State.

Responsibility for establishing and maintaining the system and registry is delegated to the Department of Health and Social Services, along with the authority to exercise certain powers to implement the system and registry. To ensure an accurate and continuing source of data concerning autism, the General Assembly by this subchapter requires certain health care practitioners and all hospitals and clinical laboratories to make available to the Department of Health and Social services information contained in the medical records of patients who have a suspected or confirmed autism diagnosis. All confirmed autism shall be classified and coded using the medically recognized system of International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), as well as the 6-digit modified British Pediatric Association system (BPA/ICD-9), and all subsequent revisions to these publications which are used by the Centers for Disease Control and Prevention. It is intended that the product of these efforts will be a central data bank of accurate, precise and current information regarding all autism diagnosed or treated, or both, in this State.

(74 Del. Laws, c. 387, § 1.)

§ 222 Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the content clearly indicates a different meaning:

(1) "Autism" means any structural or biochemical abnormality, regardless of cause, diagnosed at any time before or after birth, that requires medical or surgical intervention or that interferes with normal growth or development.

(2) "Department" means the Department of Health and Social Services.

(3) "Registry" means a central data bank containing collected, classified, coded and stored data relating to autism in children.

(4) "Surveillance" means the process of identifying and investigating autism in children.

(74 Del. Laws, c. 387, § 1.)

§ 223 Autism Surveillance and Registry Program.

(a) The Department may adopt, promulgate, amend and repeal any rules and regulations necessary to accomplish the purpose of this subchapter. These rules and regulations may include provisions for:

(1) The establishment and maintenance of an up-to-date registry that shall document every diagnosis or treatment, or both, of autism in any child in this State;

(2)a. The establishment of a procedure for reporting to the Department, within 30 days of initial diagnosis of every occurrence of autism in any child in this State. The procedure shall include the reporting of specified information, through a combined system of active and passive surveillance, on every child under 18 years of age with autism. Specified information shall be deemed necessary and appropriate to accomplish the purpose of this subchapter and in accordance with the recommendations from the Centers for Disease Control and Prevention, for the following reasons:

1. To identify risk factors for autism;
2. To investigate the causes and prevalence of autism;
3. To develop preventive strategies to decrease occurrences of autism;
4. To analyze incidences, prevalence and trends of autism through epidemiological studies; or
5. To investigate the morbidity and mortality rates resulting from autism;

b. Those required to report to the Department occurrences of autism shall include:

1. Any physician, surgeon, dentist, podiatrist or other health care practitioner who diagnoses a child with autism;
2. The designated representative of any hospital, dispensary or other similar public or private institution that diagnoses or provides treatment, or both, for children with autism;

(3) The establishment of a procedure for the publication and distribution of forms, instructions and notices required by this subchapter or necessary to accomplish the purpose of this subchapter; and

(4) The establishment of a procedure to obtain follow-up information from those required to report occurrences of autism pursuant to this subchapter. Any follow-up information, including family, physician, hospital or laboratory contact deemed necessary by the Department, shall be submitted to the Department at least 1 time each year by those required to report occurrences of autism.

(b) The provisions of this subchapter and any rules or regulations issued pursuant to this subchapter shall not apply to any person or private institution that, as an exercise of religious freedom, treats the sick or suffering by spiritual means through prayer alone.

(c) A parent, custodian or guardian of an infant having any autism may refuse disclosure to the surveillance system and registry of the infant's name and identifying information on the grounds that such autism identification is contrary to the religious tenets and practices of the infant's parent, custodian or guardian.

(74 Del. Laws, c. 387, § 1.)

§ 224 Confidentiality of reports.

(a) Any report of the diagnosis of autism made pursuant to this subchapter shall not be divulged nor made public in any way that might tend to disclose the identity of the person or family of the person to whom it relates. However, patient-identifying information may be exchanged among authorized agencies as approved by the Department and upon receipt by the Department of satisfactory assurances by those agencies of the preservation of the confidentiality of such information.

(b) No individual or organization providing information to the Department in accordance with this subchapter shall be deemed to be liable for or held liable for divulging confidential information.

(74 Del. Laws, c. 387, § 1.)

§ 225 Compulsion prohibited.

Nothing in this subchapter shall be construed to compel any person to submit to any medical or public health examination, treatment or supervision.

(74 Del. Laws, c. 387, § 1.)

§ 226 Violations.

Any person or entity who is required to report the diagnosis or treatment, or both, of autism in any child and who violates any provision of this subchapter shall be fined up to $100 for each violation. Justices of the Peace Courts shall have jurisdiction of any offense under this subchapter.

(74 Del. Laws, c. 387, § 1.)

Part I
Local Boards of Health; Health Programs
Chapter 3
LOCAL BOARDS OF HEALTH

§ 301 Appointment and membership outside Wilmington; vacancies and removal.

(a) The common council of every city and the commissioners of every incorporated town in the State, except in the City of Wilmington, shall appoint in January of each year, a local board of health for such city or town to consist of not less than 3 nor more than 7 persons of whom at least 1 should be a physician duly authorized to practice medicine and who shall hold office until their successors are appointed. In case there be a port physician appointed by the Governor, the port physician shall be a member of the local board ex officio.

(b) In case the common council or the commissioners are unsuccessful in securing persons to act on the local board, then the common council or the commissioners are and shall be the local board of health for such city or town and shall perform all duties and offices the local board should perform, and be subject to all laws applicable to local boards of health.

(c) All vacancies occurring in any local board by death or otherwise shall be filled by the city council or town commissioners as the case may be. The same authorities may remove for sufficient cause any member of the local board in their respective jurisdictions.

(16 Del. Laws, c. 345, §§ 1, 2, 15; Code 1915, §§ 745, 763; 29 Del. Laws, c. 49, § 1; Code 1935, §§ 753, 769; 16 Del. C. 1953, § 301; 70 Del. Laws, c. 186, § 1.)

§ 302 Officers; meetings; quorum; secretary.

(a) The local boards of health shall elect annually from among their own members a president and a secretary. The local board shall meet not less than once in every 3 months. A majority of the local board shall form a quorum to do business; a less number may adjourn.

(b) The secretary of the local board shall keep the minutes of the meetings of the local board, and shall perform all such duties as shall be assigned to the Secretary by the local board, for which services he shall receive such compensation as the city council or commissioners of the respective cities or towns may determine.

(16 Del. Laws, c. 345, §§ 1, 2, 14; Code 1915, §§ 745, 762; 29 Del. Laws, c. 49, § 1; Code 1935, §§ 753, 768; 16 Del. C. 1953, § 302; 70 Del. Laws, c. 186, § 1.)

§ 303 General powers; quarantine regulations.

Each local board of health may make orders and regulations concerning:

(1) The place and mode of quarantine;

(2) The examination and purification of vessels, boats and other craft not under quarantine;

(3) The treatment of vessels, articles or persons thereof;

(4) The regulation of intercourse with infected places;

(5) The apprehension, separation and treatment of emigrants and other persons who shall have been exposed to any infectious or contagious disease; and

(6) Regulating and prohibiting or preventing all communication or intercourse with all houses, tenements and places and the persons occupying the same in which there shall be any person who shall have been exposed to such contagious or infectious disease.

(16 Del. Laws, c. 345, § 12; Code 1915, § 754; Code 1935, § 762; 16 Del. C. 1953, § 303.)

§ 304 Public laundries and washhouses; supervision, inspection and regulation; violations and penalties.

(a) The local boards of health of the respective towns and cities of this State (where such towns and cities have local boards of health) shall supervise all public laundries and public washhouses within such towns and cities and shall not permit the employment by any public laundry or public washhouse of any person suffering with an infectious or contagious disease. The local board shall not allow any person to sleep in such public laundry or public washhouse, or in any room adjoining and opening into such public laundry or public washhouse. Every room in such laundry or washhouse that is used for the purpose of washing or drying clothes shall be properly ventilated and drained and shall be used for no purposes other than those specified. The floors of all rooms in public laundries or public washhouses used for the purpose of washing clothes, shall be made of cement or other mineral substance, and shall be so arranged as to be easily drained.

(b) The local board of any town or city within the State shall upon request of any citizen in such town or city inspect or cause to be inspected any public laundry or public washhouse, and if the same is found in an unsanitary condition shall direct the owner thereof to make the same in a sanitary condition. Upon the owner's failure to do so, the local board shall cause the place to be closed and shall post a notice upon the front door thereof and the place shall not be reopened until the owner or manager thereof receives a certificate from the local board certifying that the place has been put in a sanitary condition.

(c) A public laundry or public washhouse within the meaning of this section shall be any place within any town or city of this State now or hereafter required by the laws of the State to be licensed for the conduct of its business or any branch thereof. Nothing in this section shall apply to the laundering or washing of clothes in any private residence or hotel.

(d) Whoever violates this section shall for each offense be fined not less than $50 nor more than $100. Every day during which such violation shall be persisted in after notice from the local board in any town or city of the State shall constitute a separate offense.

(16 Del. Laws, c. 345, § 3; 18 Del. Laws, c. 33, § 1; 22 Del. Laws, c. 328, §§ 1, 2; Code 1915, § 746; 28 Del. Laws, c. 59, § 1; Code 1935, § 754; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 304; 70 Del. Laws, c. 186, § 1.)

§ 305 Cleansing or closing unfit dwellings; recovery of expenses.

(a) Any local board of health when satisfied after an examination that any cellar, room, tenement or building within its jurisdiction occupied as a dwelling place has become, by reason of the number of occupants or want of cleanliness or other cause, unfit for such purpose, and a cause of nuisance or sickness to the occupants or the public may direct the owner or owners, or occupants thereof, to have the premises properly cleansed, or if it see fit, may require the occupants to remove or quit the premises within such time as the local board deems reasonable.

(b) If the person or persons so notified neglect or refuse to comply with the direction of the local board, it may cause the premises to be properly cleansed at the expense of the owners or may remove the occupants forcibly and close up the premises. The premises shall not again be occupied as a dwelling place without permission, in writing, of the local board. If such owner or owners refuse to pay the expenses incident to the execution of such orders, the treasurer of the local board, or the city council, or town commissioners, shall recover the same with interest and costs from the person who ought to have paid the same, as debts of like amount are recoverable.

(16 Del. Laws, c. 345, § 4; Code 1915, § 747; Code 1935, § 755; 16 Del. C. 1953, § 305.)

§ 306 Cleansing diseased places; recovery of expenses.

Each local board of health may in case of the prevalence or of reasonable ground to apprehend the prevalence of malignant disease within its jurisdiction direct especially the cleaning of houses, cellars, yards, docks or other such places as the local board shall consider requisite or prudent for the preservation of the public health or for the mitigation of disease. If such direction shall not be observed and fulfilled within the time prescribed, by the person or persons to whom the directions were given, the local board shall order an officer of the local board, or some other person or persons to carry the same into effect, and the expense thereof shall be paid by the person or persons to whom the direction was given unless the local board shall otherwise order. If payment of the expense shall not be made on demand, the treasurer of the local board, city council or town commissioners shall pay the same and shall recover the same with interest and costs from the person who ought to have paid the same, as debts of like amount are recoverable.

(16 Del. Laws, c. 345, § 8; Code 1915, § 750; Code 1935, § 758; 16 Del. C. 1953, § 306.)

§ 307 Neglected privy well; penalty.

If any owner, agent or tenant of any property in any town or city suffers the privy well thereon to be so full that any 2 members of the local board of health declare the same to be a nuisance, such owner, the owner's agent and tenant in possession or any of them shall be responsible and after notice unless such privy is cleansed within one week after such notice shall for every offense be fined not less than $1 nor more than $20, with costs of suit, and stand committed to the county jail until the same be paid or until discharged by law.

(16 Del. Laws, c. 345, § 10; 18 Del. Laws, c. 33, § 3; Code 1915, § 752; Code 1935, § 760; 16 Del. C. 1953, § 307; 70 Del. Laws, c. 186, § 1.)

§ 308 Slaughterhouse; use as nuisance; penalty.

Whoever uses a slaughterhouse or place belonging thereto within a city or town limits, after the local board of health has pronounced the same noisome or having used such slaughterhouse shall not on the requirement of the local board immediately and effectually cleanse the same shall be fined not less than $15 nor more than $25, with costs of suit, and stand committed to the county jail till the same be paid or until discharged by law.

(16 Del. Laws, c. 345, § 11; 18 Del. Laws, c. 33, § 4; Code 1915, § 753; Code 1935, § 761; 16 Del. C. 1953, § 308.)

§ 309 Placing or maintaining offensive matters in public places; penalty.

Whoever casts into any street, lane or alley or suffers to run or be washed from any slaughterhouse, stable, privy, yard or place in his or her possession into any street, lane or alley of any city or town having a local board of health any blood, garbage, carrion, dead animal, dung, filth or noisome or offensive matter, or whoever suffers any skins, rags or other matter to be in a noisome or offensive state within or upon property in the person's possession within the city or town limits or deposits in any of its lots, streets, lanes or alleys or near any dwelling house any contents of any slaughterhouse or stable or any matter in a noisome state, or having deposited or put such offensive substances in such places shall not immediately remove the same on the requirement of the local board shall be fined not less than $5 nor more than $20, with costs of suit, and stand committed to the county jail till the same be paid or until discharged by law.

(16 Del. Laws, c. 345, § 9; 18 Del. Laws, c. 33, § 2; Code 1915, § 751; Code 1935, § 759; 16 Del. C. 1953, § 309; 70 Del. Laws, c. 186, § 1.)

§ 310 Abatement of nuisances.

(a) Each local board of health may direct:

(1) That any noisome matter whether vegetable, animal or otherwise within the boundaries of its respective city or town or within 1 mile thereof or any vessel then having or having recently had any contagious disease on board which according to the opinion of the local board may be the occasion of sickness or ill health be removed or remedied by the person to whom the same belongs, or in whose possession, or upon whose property it is;

(2) That any place in such city or town or within 1 mile of the boundaries thereof being in such filthy or noxious state that according to the opinion of the local board it may be the occasion of sickness or ill health be cleansed by such persons to whom the same belongs, or in whose possession it is;

(3) That any reservoir of stagnant water or other nuisance or unwholesome thing in such city or town, or within 1 mile of the boundaries thereof which according to the opinion of the local board may be the occasion of sickness or ill health, be abated, removed or remedied by the person to whom the same belongs or in whose possession or on whose property it is; and

(4) It may remove any hogpens in such city or town which in the opinion of the local board it is deemed necessary or conducive to public health to remove.

(b) If it appears to the local board that any of the nuisances mentioned in this section are caused or produced by any person or persons other than those on whose premises the nuisances exist or that the nuisance or nuisances are caused or produced by water or filthy noisome or unwholesome matter flowing or running from the premises of any other person or persons or from premises which may be in that person's or those persons' occupation, the local board shall then give directions to cleanse, remove, abate or remedy the same to the person or persons causing or producing such nuisance or nuisances or to the person or persons from whose premises or from premises which may be in that person's or those persons' occupation the same shall flow or run.

(c) Where the Secretary of Health and Social Services determines, in accordance with Subchapter II of Chapter 16 of Title 24, that a public nuisance exists, the Secretary shall have all the powers granted by this chapter to local boards of health. The Secretary may also apply to a court under §§ 311, 312 and any other sections of this title to enter the premise and remove health hazards, and to do any other act permitted a local board of health, so long as such act is consonant with the provisions and intent of said Subchapter II of Chapter 16 of Title 24.

(16 Del. Laws, c. 345, § 3; 18 Del. Laws, c. 33, § 1; 22 Del. Laws, c. 328, §§ 1, 2; Code 1915, § 746; 28 Del. Laws, c. 59, § 1; Code 1935, § 754; 16 Del. C. 1953, § 310; 68 Del. Laws, c. 134, § 2; 70 Del Laws, c. 186, § 1.)

§ 311 Entry for destruction or removal of nuisances.

Whenever a local board of health thinks it necessary for the preservation of the lives and health of the citizens to enter a place, building or vessel within its jurisdiction for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness and is refused such entry, any member of the local board may make complaint, under oath, to any justice of the peace of the county, stating the facts of the case as far as the board member has knowledge thereof. Such justice of the peace shall thereupon issue a warrant directed to the sheriff or any constable of the county commanding the sheriff or constable to take sufficient aid and being accompanied by 2 or more members of the local board, between the hours of sunrise and sunset, repair to the place where such nuisance, source of filth or cause of disease may exist and destroy, remove or prevent the same, under the direction of such members of the local board.

(16 Del. Laws, c. 345, § 6; Code 1915, § 748; Code 1935, § 756; 16 Del. C. 1953, § 311; 70 Del Laws, c. 186, § 1.)

§ 312 Removal of infected persons; taking possession of condemned premises.

Any justice of the peace, on application under oath, showing cause therefore by a local board of health or any authorized member thereof shall issue a warrant, under the justice of the peace's own hand, directed to the sheriff or any constable of the sheriff's or constable's own county requiring the sheriff or constable, under the direction of the local board, to remove any person or persons infected with contagious disease or to take possession of condemned houses or lodgings.

(16 Del. Laws, c. 345, § 7; Code 1915, § 749; Code 1935, § 757; 16 Del. C. 1953, § 312; 70 Del Laws, c. 186, § 1.)

§ 313 Care of persons having infectious or contagious disease.

The local board of health may procure suitable places for the reception of persons under quarantine and persons sick with the Asiatic or malignant cholera or any other malignant of infectious or contagious disease. In all cases where sick persons cannot otherwise be provided for, the local board may procure for them proper medical and other attendance and necessaries.

(16 Del. Laws, c. 345, § 13; Code 1915, § 755; Code 1935, § 763; 16 Del. C. 1953, § 313.)

§ 314 Common carriers; submission to regulations and examination of health officers; penalty for false statements.

(a) Whenever quarantine is declared, all railroads, steamboats or other common carriers and the owners, consignees or assignees of any railroad, steamboat or other vehicle used for the transportation of passengers, baggage or freight, shall submit to:

(1) Any rules or regulations imposed by any board of health or health officer;

(2) Any examination required by the board of health or health officer;

(3) Any examination required by the health authorities respecting any circumstance or event touching the health of the crew, operatives or passengers, and the sanitary condition of the baggage and freight.

(b) Any owner, consignee or assignee or other person interested, who makes any unfounded statement or declaration respecting the points under examination shall be subject to the penalties provided in § 317 of this title.

(16 Del. Laws, c. 345, § 19; 22 Del. Laws, c. 328, § 5; Code 1915, § 758; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 764; 16 Del. C. 1953, § 314.)

§ 315 Temporary structures for isolation purposes; disinfection of property.

The State Board of Health or any local board of health may erect any temporary wooden buildings or field hospitals necessary for the isolation or protection of persons or freight supposed to be infected and may employ nurses, physicians and laborers sufficient to operate the same properly and sufficient police to guard the same. The board of health may cause the disinfection, renovation or complete destruction of bedding, clothing or other property belonging to corporations or individuals, when such action seems to the board necessary or a reasonable precaution against the spread of contagious or infectious diseases.

(16 Del. Laws, c. 345, § 20; 22 Del. Laws, c. 328, § 6; Code 1915, § 759; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 765; 16 Del. C. 1953, § 315.)

§ 316 Venue; continuance of nuisance as offense.

An offense charged under this chapter shall be construed and held to have been committed in any county whose inhabitants are or have been injured or aggrieved thereby. The continuance of any offense for 5 days after prosecution commenced therefor shall be deemed an additional offense.

(16 Del. Laws, c. 345, § 21; 22 Del. Laws, c. 328, § 7; Code 1915, § 760; Code 1935, § 766; 16 Del. C. 1953, § 316.)

§ 317 Penalties; corporations.

(a) Whoever violates this chapter, except as otherwise therein prescribed or any regulation of the board of health made in pursuance thereof, or obstructs or interferes with the execution of any such order, or wilfully or illegally omits to obey any such order, or neglects or refuses to comply with any requirements of this chapter, except as otherwise therein prescribed shall be fined not more than $100 or imprisoned not more than 30 days, or both.

(b) No person shall be imprisoned under this section for the first offense and the prosecution shall always be as for a first offense, unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a second or a repeated offense.

(c) If such violation, obstruction, interference or omission be by a corporation, the corporation shall be subject to the fine, and any officer of such corporation having authority over the matter, and permitting such violation shall be subject to fine and imprisonment or both, as heretofore provided.

(16 Del. Laws, c. 345, § 3; 18 Del. Laws, c. 33, § 1; 22 Del. Laws, c. 328, §§ 1, 2; Code 1915, § 746; 28 Del. Laws, c. 59, § 1; Code 1935, § 754; 16 Del. C. 1953, § 317.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 5
CONTAGIOUS DISEASES GENERALLY
Subchapter I
General Guidelines

§ 501 Report of contagious diseases — To Department.

(a) Local boards of health authorities and physicians in rural districts or other localities where there are no health officials shall report to the Department of Health and Social Services the existence of any case of contagious or infectious diseases which may come under their observation.

(b) Whoever violates this section shall be subject to the penalties provided in § 107 of this title.

(19 Del. Laws, c. 642, § 11; 22 Del. Laws, c. 327, § 6; Code 1915, § 742; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 748; 16 Del. C. 1953, § 501; 70 Del. Laws, c. 149, § 73; 70 Del. Laws, c. 186, § 1.)

§ 502 Report of contagious diseases — To local boards.

Every physician or other person having knowledge of any person who is suffering from any disease dangerous to the public health, which the Department of Health and Social Services may require to be reported shall report the same to the local health board or official nearest his place of residence, giving the name, age, sex and color of the patient and the house or place where the patient may be found.

(16 Del. Laws, c. 345, § 17; 22 Del. Laws, c. 328, § 3; Code 1915, § 756; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; 37 Del. Laws, c. 60, § 1; Code 1935, § 751; 16 Del. C. 1953, § 502; 70 Del. Laws, c. 149, § 74; 70 Del Laws, c. 186, § 1.)

§ 503 Unreported contagious disease.

When complaint is made or there is a reasonable belief of the existence of an infectious or contagious disease in a building or facility which has not been reported as required by § 502 of this title, the Secretary of Health and Social Services or the Secretary's designee shall inspect or cause the relevant building or facility to be inspected and, on discovering that such disease exists, shall immediately make a report as described in § 130 of this title.

(16 Del. Laws, c. 345, § 17; 22 Del. Laws, c. 328, § 3; Code 1915, § 756; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; 37 Del. Laws, c. 60, § 1; Code 1935, § 751; 16 Del. C. 1953, § 503; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 355, § 6.)

§ 504 Notifiable diseases.

The Division of Public Health may by regulation declare any disease to be a notifiable disease, as that term is used in § 130(b) of this title.

(16 Del. Laws, c. 345, § 17; 22 Del. Laws, c. 328, § 3; Code 1915, § 756; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; 37 Del. Laws, c. 60, § 1; Code 1935, § 751; 16 Del. C. 1953, § 504; 70 Del. Laws, c. 149, § 76; 70 Del Laws, c. 186, § 1; 73 Del. Laws, c. 355, § 7.)

§ 505 Communicable diseases; regulations; quarantine.

(a) From the list of notifiable diseases referred to in § 504 of this title, the Director of the Division of Public Health or the Director's designee may at any time declare certain diseases to be communicable and may by regulation lay down the procedure which is to be followed by the patient or person suffering therefrom, the parents of the patient, the householder, by the physician attending on the patient or any individual brought into contact with or responsible for the care or maintenance of the patient in order that the transference of the disease to other individual or individuals may be prevented.

(b) The regulation respecting the communicable diseases shall provide for:

(1) Quarantine or isolation of the patient, of any person or persons who have been exposed to the patient and therefore liable to have contracted the disease or of any carrier of the disease;

(2) Placarding by a suitable sign intended to be recognizable by the public, the premises, house, tenement or room in which the person ill of or exposed to the disease, may be;

(3) Any other matter relating to the care of and due to the illness of the patient from such a communicable disease while the patient is living and ill from the disease or to the disposal of his body when dead;

(4) Removal of the patient from and the patient's return to school; and

(5) Any other matter or procedure of interest in the protection of the public.

(c) The powers and duties of the Division under this section are subject to the powers and duties granted other entities in Title 20. Provisions of Title 20 which conflict with provisions of this section shall take precedence over this section.

(16 Del. Laws, c. 345, § 18; 22 Del. Laws, c. 328, § 4; Code 1915, § 757; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; 37 Del. Laws, c. 60, § 2; Code 1935, § 752; 43 Del. Laws, c. 91, § 1; 16 Del. C. 1953, § 505; 70 Del. Laws, c. 147, § 6; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 355, § 8.)

§ 506 Due process rights of quarantined individuals.

The Division of Public Health shall afford persons who are quarantined pursuant to § 505 of this title the same due process rights as those afforded to persons who are quarantined pursuant to § 3138 of Title 20.

(73 Del. Laws, c. 355, § 9.)

§ 507 Diphtheria antitoxin and immunizing materials; distribution; regulations; penalty for false certification.

(a) The State Board of Health may procure and distribute free to any physician for use in this State diphtheria antitoxin and all necessary material for immunizing persons against diphtheria. No such antitoxin shall be furnished until after certification by the physician of the name and address of the person for whom the antitoxin is desired. The name and address of all persons immunized shall be filed with the State Board by the physician who performs the immunization.

(b) The State Board may make such rules and regulations as it deems necessary for the carrying into effect of this section and such rules shall have the force of law.

(c) Whoever makes false certification in order to procure any of the antitoxin referred to in subsection (a) of this section or sells or attempts to sell such antitoxin or immunizing materials shall be fined not less than $5 nor more than $50.

(d) The Division of Public Health may contract for hepatitis B vaccinations for immunizing individuals who volunteer for ambulance companies and/or volunteer fire companies. No such vaccination shall be furnished until after certification as to the person for whom the vaccination is desired, including the individual's name, address and that the individual is a member in good standing of a volunteer fire company or of a volunteer ambulance company. The name and address of all persons immunized shall be filed with the Division of Public Health. The Division of Public Health may promulgate reasonable rules and regulations regarding the immunization of volunteer firefighters and individuals who volunteer for ambulance companies.

(26 Del. Laws, c. 74; 27 Del. Laws, c. 86; Code 1915, § 769; 32 Del. Laws, c. 40, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 775; 16 Del. C. 1953, § 507; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 562, § 1.)

§ 508 Tracking of potential or existing public health emergencies.

The Division of Public Health shall ascertain the existence of cases of an illness or health condition which may be potential causes of a public health emergency; shall investigate all such cases for sources of infection and shall ensure that they are subject to proper control measures; and shall define the distribution of the illness or health condition. To fulfill these duties, the Division of Public Health shall perform the following:

(a) Acting on information developed in accordance with § 130 of this title or other reliable information, the Division shall identify all individuals thought to have been exposed to an illness or health condition which may be a potential cause of a public health emergency.

(b) The Division shall counsel and interview such individuals as appropriate to assist in the positive identification of exposed individuals and develop information relating to the source and spread of the illness or health condition. Such information includes the name and address (including city and county) of any person from whom the illness or health condition may have been contracted and to whom the illness or health condition may have spread.

(c) The Division may close, evacuate or decontaminate any facility or decontaminate or destroy any material when the Division reasonably believes that it is more likely than not that such facility or material may seriously endanger the public health. However, to the extent practicable and consistent with the protection of public health, prior to the destruction of any material pursuant to this subsection, the Division shall institute appropriate civil proceedings against the material to be destroyed in accordance with the existing laws and rules of the Superior Court or any rules that may be developed by the Superior Court. Additionally, a person whose property is destroyed pursuant to this subsection is entitled to seek compensation pursuant to the procedures and restrictions of § 3145 of Title 20.

(d) An order of the Division given to effectuate the purposes of this section shall be enforceable immediately.

(e) Whenever any agency of the State learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event, it shall immediately notify the Division.

(f) Whenever the Division learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to be caused by bioterrorism, it must immediately notify the public safety authority and federal health and public safety authorities.

(g) Definitions from § 3132 of Title 20 shall apply to this section.

(73 Del. Laws, c. 355, § 10.)

§ 509 Vaccination for meningococcal disease.

Beginning in January 2002, each 4-year public or private institution of higher education in this State shall provide information about meningitis to all students who have accepted admission after paying an initial deposit toward tuition, and include with that information notice of the availability and benefits of a meningitis vaccination, and develop procedures for facilitating, receiving and recording student responses to the information provided about meningitis and the meningitis vaccination, including a student's decision to receive the

vaccination. Any student choosing not to receive a meningitis vaccination must notify in writing the student health office of his or her institution of higher education of his or her decision not to be vaccinated.

(73 Del. Laws, c. 72, § 1.)

§ 510 Immunizations containing mercury.

(a) A vaccine containing mercury may not be made available to a medical provider in this State for administration to children under 8 years of age or to pregnant women, or to both. A vaccine containing mercury may not be administered to a child who is under 8 years of age or to a pregnant woman, or to both, notwithstanding the expiration date of the vaccine.

(b) Subsection (a) of this section does not apply if:

(1) The Director is informed by a person authorized to sell or to administer a vaccine that a mercury-free vaccine against a specific disease is not available to a child under 8 years of age or to a pregnant woman, or to both, in a medically necessary period of time, and the Director determines that an FDA-approved, mercury-free vaccine is not manufactured or cannot be obtained from other medical providers, manufacturers, distributors, agencies, jurisdictions, or by any other means within the medically necessary period of time; or

(2) The Director determines that an emergency or epidemic exists necessitating the vaccination of groups of individuals within the State, including children under 8 years of age or pregnant women, or both, and an FDA-approved mercury-free vaccine is not manufactured, or the quantity is insufficient and additional mercury-free vaccine cannot be obtained from other medical providers, manufacturers, distributors, agencies, jurisdictions, or by any other means within the medically necessary period of time; or

(3) The Director determines that a shortage of vaccine exists which could threaten the health of groups of individuals within the State, including children under 8 years of age or pregnant women, or both, and additional mercury-free vaccine cannot be obtained from other medical providers, manufacturers, distributors, agencies, jurisdictions, or by any other means within the medically necessary period of time.

(c) A determination made pursuant to subsection (b) of this section is enforceable for a time-period specified by the Director. The Director shall rescind the time-period when the Director determines that a sufficient amount of the FDA-approved, mercury-free vaccine is available.

(d)(1) If the Director determines that subsection (a) of this section does not apply pursuant to subsection (b) of this section, the Division shall report the determination within 72 hours by a posting on the Division of Public Health website. If paragraph (b)(1) of this section applies, the Division shall report the specific disease, the vaccine, the time-period for which the vaccine containing mercury is approved, and the number of individuals under 8 years of age or pregnant receiving the vaccine containing mercury.

(2) If paragraph (b)(2) or (b)(3) of this section applies, the Division shall report the specific disease, the vaccine, and the time-period for which the vaccine containing mercury is approved.

(3) The Division shall issue and disseminate for public review an annual report listing all determinations made pursuant to this section, without revealing the identity of any persons denied or given a vaccine.

(e) A vaccine containing mercury may not be administered to a child under 8 years of age until a parent or legal guardian of the child has been informed by the person administering the vaccine that the vaccine contains mercury, that the person administering the vaccine believes the vaccine to be medically necessary, and that the Director of Public Health or the Director's designee has made a formal determination that the vaccine may be administered due to the existence of any of the circumstances described in subsection (b) of this section. If the parent or legal guardian of a child cannot be reached in the period of time deemed medically necessary by the person administering the vaccine, the parent or guardian must be notified in writing at the earliest possible time that the vaccine administered contained mercury, that the person administering the vaccine believed the vaccine to be medically necessary, and that the Director of Public Health or the Director's designee made a formal determination that the vaccine may be administered due to the existence of any of the circumstances described in subsection (b) of this section.

(f) A vaccine containing mercury may not be administered to a pregnant woman until she has been informed by the person administering the vaccine that it contains mercury, that the person administering the vaccine believes the vaccine to be medically necessary, and that the Director of Public Health or the Director's designee has made a formal determination that the vaccine may be administered due to the existence of any of the circumstances described in subsection (b) of this section.

(75 Del. Laws, c. 144, §§ 1-3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 132, § 1; 76 Del. Laws, c. 229, § 1.)

Subchapter II

Tuberculosis Control

§ 520 Definitions.

As used in this title, unless otherwise provided or the context requires a different meaning:

(1) "County Public Health Administrator" means the Division of Public Health employee responsible for managing the operations of all public health programs within an assigned county.

(2) "Designated transport personnel" means such personnel as designated by the Director to transport persons with tuberculosis to and from treatment and/or detention facilities, and other sites as ordered by the Director.

(3) "Directly Observed Therapy (DOT)" means treatment in which health care providers or other designated persons observe patients ingesting anti-TB medications.

(4) "Director" means the Director of the Division of Public Health, or such persons as may be designated by the Director.

(5) "Division" means the Division of Public Health or its authorized representatives, which includes therein all of the responsibilities afforded the State Board of Health as it appears elsewhere in this title.

(6) "Peace officer" means any public officer authorized by law to make arrests in a criminal case.

(7) "Tuberculosis (TB)" means a disease caused by Mycobacterium tuberculosis that is in the active stage as demonstrated by clinical, bacteriologic and/or radiographic evidence. Such persons who have not completed a course of anti-TB treatment are considered to have active TB and might be infectious.

(8) "Voluntary treatment" means a person voluntarily taking medications as prescribed and following the recommendations of the attending physician or the Division for the management of tuberculosis.

(69 Del. Laws, c. 305, § 1.)

§ 521 Reporting by health care providers.

(a) Physicians, pharmacists, nurses, hospital administrators, medical examiners, morticians, laboratory administrators and others who provide health care services to persons with tuberculosis or suspected tuberculosis shall report the following to the Division within 2 working days of its occurrence:

(1) Confirmed or suspected tuberculosis;

(2) The results for any person whose sputa, gastric contents or other specimens submitted for examination reveal the presence of tubercle bacilli;

(3) The occurrence of drug-resistant tuberculosis, even if the confirmed or suspected tuberculosis had been previously reported;

(4) Persons with tuberculosis who have demonstrated an inability to or an unwillingness to adhere to a prescribed treatment regimen, who refuse medication or who show other evidence of not taking medications as prescribed.

(b) Physicians, pharmacists, nurses, hospital administrators, medical examiners, morticians, laboratory administrators and others who provide health care services to tuberculosis patients shall make their records available to the inspection of the Division when so requested in order to carry out the provisions of this title.

(69 Del. Laws, c. 305, § 1.)

§ 522 Division investigates reported cases of tuberculosis.

Whenever the Division shall discover, as a result of its own investigation or as a result of any report required by this chapter that any person may have tuberculosis, the Division shall investigate or further investigate the circumstances and if, after investigation, the Division is of the opinion that a case of tuberculosis has been found, the Division shall interview, or cause to be interviewed, said person in order to investigate the source and spread of the disease and in order to require said person to submit to examination and treatment as necessary. The Division shall keep record of all interventions with said persons.

(69 Del. Laws, c. 305, § 1.)

§ 523 Voluntary treatment.

Whenever the Division shall discover as a result of its own investigation or as a result of any report required by this chapter that any person has tuberculosis, the Division shall encourage the person to take voluntary treatment to meet the minimum requirements prescribed by the Division.

(69 Del. Laws, c. 305, § 1.)

§ 524 Public health power to examine and order treatment.

(a) Subject to the provisions of § 526 of this title, a person with tuberculosis or a person reasonably suspected of being diseased with or exposed to tuberculosis shall report for a complete examination or treatment, as appropriate, to a physician licensed under Title 24, or shall submit to an examination or treatment, as appropriate, at a public health facility. When a person has been diagnosed as having tuberculosis or has been determined to have been exposed to tuberculosis, said person shall continue to be prescribed treatment until such time as that treatment is no longer required as determined by the Director.

(b) Subject to the provisions of § 526 of this title, the Division shall examine or cause to be examined, or treat or cause to be treated, any person who will not respond to voluntary treatment for tuberculosis. The County Public Health Administrator shall go before the Director for a Director's order for involuntary examination and/or treatment of said person.

(69 Del. Laws, c. 305, § 1.)

§ 525 Types of involuntary treatment: Outpatient examination and treatment, directly observed therapy, hospitalization and residential isolation.

(a) Subject to the provisions of § 526 of this title, the Director shall order, as medically appropriate, a person with tuberculosis to undergo outpatient examination and treatment, directly observed therapy, hospitalization or isolation from the general public in the home,

as a result of the threat of harm to the person and the probable spread of tuberculosis, until such time as the disease is cured or the risk of infection to the general public is eliminated or reduced in such a manner that a substantial threat to the public's health and welfare no longer exists.

(b) Subject to the provisions of § 526 of this title, a person who is infected with tuberculosis but is not infectious to others, and is a danger to himself or herself by resistance to treatment, and who refuses to adhere to a treatment regimen or to complete treatment, may be ordered by the Director to undergo outpatient examination and treatment, directly observed therapy, hospitalization or isolation from the general public in the home, as a result of the increased risk that said persons will develop drug-resistant tuberculosis, which may pose a serious threat to the person and the general public.

(69 Del. Laws, c. 305, § 1.)

§ 526 Conditions under which orders can be issued by Director.

(a) No person may be ordered to undergo outpatient examination and treatment, directly observed therapy, hospitalization or isolation from the general public in the home, except upon the order of the Director following a hearing where it is proven by clear and convincing evidence:

(1) That there is a danger to the health of the person or that the public health and welfare are substantially endangered by the person;

(2) That the person has been counseled about tuberculosis, the significant threat tuberculosis poses to the public and methods to minimize the risk to the public, and, despite said counseling, indicates an intent by words or action to endanger himself or herself and/or expose the public to infection from tuberculosis; and

(3) That all other reasonable means of achieving voluntary compliance with the treatment have been exhausted and no less restrictive alternative exists.

(b) The hearing required under subsection (a) of this section shall provide the person with the rights to present evidence, to cross-examine witnesses and to be represented by legal counsel. If the person is unable to employ counsel, the Division shall petition the Superior Court to forthwith appoint legal counsel for representation in proceedings authorized by this subchapter. Further, the person shall be given at least 5 working days prior written notification of the time and place of hearing, a copy of documentary evidence to be presented, a list of the proposed actions to be taken and the reasons for each said action; and shall be given a verbatim transcript of the hearing on request for appeal purposes.

(c) The Director shall order isolation in an alternative facility, if in the Director's judgment isolation in the person's usual residence is inappropriate because of the possible infection of other persons living in or around that residence.

(d) The Division, as appropriate, shall consult with legal counsel, designated transport personnel and peace officers concerning any necessary infection control procedures to be taken during any interviews, hearings, transports or detention.

(e) An order requiring outpatient examination and treatment, directly observed therapy, hospitalization or isolation from the public in the home shall be maintained until, in the opinion of the attending physician or the County Public Health Administrator, the person is cured or said person is no longer a substantial threat to him or herself or to the public health. Once the County Public Health Administrator finds the person no longer needs treatment, the County Public Health Administrator will petition the Director to dismiss the order. Once the matter is dismissed, said order cannot be reinstated unless the person is afforded all of the rights conferred in subsection (a) of this section.

(f) Any person who undergoes outpatient examination and treatment, directly observed therapy, hospitalization or isolation from the public in the home, or confinement, as a result of an order entered under this subchapter, may at any time petition the Director for immediate release and termination of the order.

(g) Any person petitioning the Director for immediate release and termination of the order entered under the authority of this subchapter shall show that the person is entitled to relief from the original order, or that:

(1) The person no longer poses an imminent and substantial threat to himself or herself or the public's health and welfare; and

(2) The person will voluntarily continue with prescribed medications and treatment, if medically necessary, to reduce the risk of infection to the public.

(h) When considering a petition for imminent and substantial threat and prior to making any said release, the Director shall consult the County Public Health Administrator and the patient's physician, if any, concerning the patient's medical condition and other related factors that may affect the present and future danger to the patient or the public that may be caused by the release of the patient.

(i) Upon granting a petition for immediate release, the Director shall advise the County Public Health Administrator and other persons as may be appropriate about those conditions the Director believes reasonably necessary to protect the patient or public from tuberculosis infection and disease.

(j) The Director shall, for a period not exceeding 3 months, review the patient's medical status provided to the Director by written report of the health care provider and determine whether a further hearing should be held for additional involuntary treatment within 14 working days of receipt of a written report of the medical status, and all rights pursuant to § 526(b) of this title will apply.

(k) No peace officer, public health employee or medical doctor shall be subject to civil damages or criminal penalties for any harm resulting from that person's functions under this section unless such harm was intentional or the result of willful and wanton misconduct on the person's part.

(69 Del. Laws, c. 305, § 1; 70 Del Laws, c. 186, § 1.)

§ 527 Order for emergency treatment.

(a) The County Public Health Administrator shall file a petition before the Director requesting that emergency treatment be ordered for a person infected with, or reasonably suspected of having, tuberculosis when the County Public Health Administrator has clear and convincing evidence, documented as facts in the petition, that:

(1) The person has tuberculosis or is reasonably suspected of having tuberculosis;

(2) The person poses an imminent and substantial threat to that person's own self or the public health and welfare; and

(3) The person is unable, for whatever reason, to sufficiently protect that person's own health or that of the public or there is evidence that a person will act in such a way as to recklessly disregard the person's own health or the public's health; and

(4) The person is not likely to appear at a hearing scheduled pursuant to § 526 of this title; or

(5) The person provides evidence by words or action that the person is likely to leave the jurisdiction prior to the hearing date; or

(6) The person is likely to continue to expose the public to the risk of tuberculosis and, therefore, a hearing pursuant to § 526 of this title does not protect the public.

(b) No emergency treatment order shall be issued unless the Director finds that:

(1) The County Public Health Administrator has also requested in the emergency treatment petition a hearing pursuant to § 526 of this subchapter, as well as its subparts, to consider the examination, treatment or placement of the person with tuberculosis or reasonably suspected to have tuberculosis, providing all due process rights as stated in § 526 of this title;

(2) The County Public Health Administrator presents clear and convincing evidence that a substantial threat to the person or the public's health and welfare exists unless the emergency treatment order is issued;

(3) The County Public Health Administrator has no other reasonable alternative means of reducing the threat to the individual or public's health and welfare.

(c) When issuing an emergency treatment order, the Director shall direct a peace officer or other designated transport personnel to immediately transport the person with tuberculosis as so ordered by the Director. The peace officer shall take into custody and isolate the person in such a manner as required by the Director. The Division will notify the peace officer or other designated transport personnel concerning any necessary infection control procedures to be taken.

(d) In no case shall an emergency treatment order continue for more than 5 working days.

(69 Del. Laws, c. 305, § 1; 70 Del Laws, c. 186, § 1.)

§ 528 Service of notice and processes; duties of the peace officer.

(a) All notices required to be given, warrants, petitions, processes issued and orders entered pursuant to this subchapter shall be served by a peace officer of proper jurisdiction.

(b) The Director, in ordering directly observed therapy, hospitalization or isolation pursuant to this subchapter, shall when necessary direct the peace officer to take the person into their custody and immediately deliver them to the director of the facility named on the order. The Division shall consult with the peace officer concerning any necessary infection control procedures to be taken.

(69 Del. Laws, c. 305, § 1.)

§ 529 Right to appeal.

Any person who is aggrieved by the entry of an order pursuant to this subchapter shall have 15 days within which to appeal the order to Superior Court. The Court shall convene a hearing as soon as practicable, but no later than 15 working days from the filing of the appeal. The Court shall receive the records of the administrative hearing, hear additional evidence at the request of either party and conduct a de novo review of the order. An appeal does not stay treatment.

(69 Del. Laws, c. 305, § 1.)

§ 530 Exercise of religious freedom.

Nothing in this subchapter shall be construed to authorize or empower the medical treatment of any person who desires treatment by prayer or spiritual means, in the exercise of religious freedom; provided however, that said person shall be isolated or quarantined, or both, at the patient's expense, and while so quarantined or so isolated, or both, shall comply with all applicable sanitary rules, laws and regulations.

(69 Del. Laws, c. 305, § 1.)

§ 531 Confidentiality.

All information held by the Division relating to known or suspected cases of tuberculosis or exposure to tuberculosis shall be strictly confidential. Said information shall not be released or made public upon subpoena or otherwise, except that release may be made under the following circumstances:

(1) Release is made of medical or epidemiological information for statistical purposes so that no person can be identified; or

(2) Release is made of medical or epidemiological information with the consent of all persons identified in the information released; or

(3) Release is made of medical or epidemiological information to medical personnel, appropriate state agencies or state courts to the extent required to enforce the provisions of this chapter and related rules and regulations concerning the control and treatment of tuberculosis; or

(4) Release is made of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party or group of persons; or

(5) Release is made during the course of civil or criminal litigation to a person allowed access to said records by a court order which is issued in compliance with the following provisions:

a. No court of this State shall issue such order unless the court finds that the person seeking the records and information has demonstrated a compelling need for such records which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the subject and the public interest which may be disserved by disclosure which deters future testing and treatment or which may lead to discrimination.

b. Pleadings pertaining to disclosure of such records shall substitute a pseudonym for the true name of the subject of the records. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court.

c. Before granting any such order, the court shall provide the subject whose records are in question with notice and a reasonable opportunity to participate in the proceedings if the subject is not already a party.

d. Court proceedings as to disclosure of such records shall be conducted in camera unless the subject agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

e. Upon issuance of an order to disclose such records, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used and appropriate prohibition on future disclosures.

(69 Del. Laws, c. 305, § 1; 70 Del. Laws, c. 186, § 1.)

§ 532 Health emergencies.

The provisions of this subchapter are subject to the provisions of Title 20. Provisions of Title 20 which conflict with provisions of this subchapter shall take precedence over this subchapter.

(73 Del. Laws, c. 355, § 11.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 6
STREPTOCOCCAL DETECTION PROGRAM

§ 601 Enumeration of streptococcal infections.

Streptococcal infections are declared to be contagious, infectious, communicable and dangerous to the public health.

(60 Del. Laws, c. 491, § 1.)

§ 602 General powers of Secretary.

(a) The Secretary of the Department of Health and Social Services shall make such rules and regulations as in his judgment are necessary for the detection of the disease and for the care, control and treatment of persons infected therewith, as the Secretary from time to time deems advisable.

(b) The Secretary may operate the program through the Infectious Disease Laboratory of the Wilmington Medical Center and shall make it available to the general public through cooperating physicians and public school systems in the State.

(60 Del. Laws, c. 491, § 1; 70 Del. Laws, c. 186, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 7
SEXUALLY TRANSMITTED DISEASES
Subchapter I
Sexually Transmitted Disease Prevention and Control

§ 701 Definitions.

(a) "Director" shall mean the Director of the Division of Public Health or the Director's authorized deputies within their respective jurisdictions.

(b) "Health care professional" shall mean any physician, nurse, laboratory or blood bank technologist or technician, and any others whose professions involve the diagnosis, care or treatment of persons or the testing of bodily specimens for the purpose of finding evidence of disease.

(c) "Health facility" shall mean a hospital, nursing home, clinic, blood bank, blood center, sperm bank, laboratory or other health care institution whether public or private.

(d) "Invasive medical procedures" shall mean surgical entry into tissues, cavities or organs.

(e) "Sexually transmitted diseases" (formerly referred to as "venereal diseases"), abbreviated STD, shall be designated by the Department of Health and Social Services as reportable through rules and regulations published by the Department of Health and Social Services pursuant to § 706 of this title upon finding that such diseases:

(1) Cause significant morbidity and mortality; and

(2) Can be screened, diagnosed and treated in a public health control program, or if not, are a major public health concern such that surveillance of disease occurrence is in the public interest.

(f) Any person falling into 1 or more of the following categories is designated as a "suspect":

(1) A person having positive laboratory or clinical findings of an STD;

(2) A person in whom epidemiologic evidence indicates an STD may exist; and

(3) A person identified as a sexual contact of an STD case.

(66 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 149, § 78; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

§ 702 Reporting of STDs.

(a) A physician or any other health care professional who diagnoses, suspects or treats a reportable STD and every administrator of a health facility or state, county or city prison in which there is a case of a reportable STD shall report such case to the Division of Public Health specifying the infected person's name, address, age, sex and race as well as the date of onset, name and stage of disease, type and amount of treatment given and the name and address of the submitting health professional within 1 working day. Certain STDs, which shall be identified by the Department of Health and Social Services, shall be reported in number only and in a manner determined by the Department of Health and Social Services.

(b) Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological or other evidence suggestive of a reportable STD shall notify the Division of Public Health of its findings within 1 working day. The Department of Health and Social Services may require the notification to contain any information necessary to achieve the purposes of this chapter including the tests performed and the results, the name, age, race, sex and address of the persons from whom the specimen was obtained, the reason why the test was performed and the name and address of the physician and that of the processing clinical laboratory. Certain STDs, which shall be identified by the Department of Health and Social Services, shall be reported in number only and in a manner determined by the Department of Health and Social Services.

(c) The Department of Health and Social Services shall prescribe the form and method of reporting to the Division of Public Health which may be in writing, by telephone, by electronic data transmission or by other means.

(d) All reports and notifications made pursuant to this section are confidential and protected from release except under the provisions of §§ 710 and 711 of this title. From information received from laboratory notifications, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person from whom a specimen was obtained. However, if delays resulting from informing the physician may enhance the spread of the STD, or otherwise endanger the health of either individuals or the public, the Division of Health may contact the person without first informing the attending physician.

(e) Any laboratory which examines specimens for the purpose of finding evidence of an STD shall permit the Division of Public Health to examine the records of said laboratory in order to evaluate compliance with this section.

(f) Any health care professional or other person making the reports required by this section shall be free of any liability or any cause of action arising out of the making of such report if such health care professional or other person acts without malice and has made a reasonable effort to obtain the facts upon which the report is based.

(Code 1915, § 740A; 30 Del. Laws, c. 53, §§ 1-6; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 778; 16 Del. C. 1953, § 702; 66 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 149, §§ 79, 80; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

§ 703 Examination, investigation and treatment of suspected persons.

The Director shall, when in the Director's own judgment it is necessary to protect the public health, make examinations of persons reasonably suspected of being infected with an STD of a communicable nature; examine medical records of suspect or diagnosed cases which may be maintained by a health facility or health care professional; require persons infected with an STD of a communicable nature to report for treatment to a health care professional, public or private, qualified to provide treatment and continue treatment until cured, if possible, and also, when in the Director's own judgment it is necessary to protect the public health, may issue an order seeking to examine, isolate or quarantine persons infected with an STD of a communicable nature or persons suspected of being infected with an STD.

(Code 1915, § 740A; 30 Del. Laws, c. 53, §§ 1-6; Code 1935, § 778; 16 Del. C. 1953, § 703; 66 Del. Laws, c. 334, § 1; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

§ 704 Procedure for apprehension, commitment, treatment and quarantine of an infected person.

(a) Orders directed to persons with an STD of a communicable nature or restrictive measures on individuals with a communicable STD, as described in this section and in § 705 of this title shall be used when other measures to protect the public health have failed, including reasonable efforts, which shall be documented, to obtain the voluntary cooperation of the individual who may be subject to such an order.

(b) When the Director knows or has reason to believe, because of medical or epidemiological information, that a person has an STD of a communicable nature and is a danger to the public health, the Director may issue an order to:

(1) Require the person to be examined and tested to determine whether the person has an STD of a communicable nature;

(2) Require the person with an STD of a communicable nature to report to a qualified health care professional for counseling on the disease and for information on how to avoid infecting others;

(3) Direct a person with an STD of a communicable nature to cease and desist from specified conduct which endangers the health of others when the Director has determined that reliable information exists to believe that such person has been ordered to report for counseling as provided in paragraph (2) of this subsection and continues to demonstrate behavior which endangers the health of others.

(c) If a person violates a cease and desist order issued pursuant to paragraph (3) of subsection (b) of this section and it is shown that the person is a danger to others, the Director may enforce the cease and desist order by imposing such restrictions upon the person as are necessary to prevent the specific conduct which endangers the health of others. Any restriction shall be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed 3 months, during which the order shall remain effective, the terms of the restrictions and such other conditions as may be necessary to protect the public health. The Director shall review appeals for reconsideration from the subject of the order issued pursuant to this subsection.

(d)(1) Any order by the Director pursuant to subsection (b) or (c) of this section shall indicate to the subject of the order the grounds and provisions of the order and notify such person that if the person refuses to comply with the order the person has a right to be present at a judicial hearing in the Justice of the Peace Court to review the order and that the person may have an attorney appear on the person's behalf in said hearing. Notice of any order by the Director shall either be by personal service or by prepaid certified mail, return receipt requested, at the subject's last known address.

(2) If the subject of the order refuses to comply with the order the Director may petition the Justice of the Peace Court for an order of compliance with such order. If an order of compliance is requested, the Court shall hear the matter within 10 days after the request. Notice of the place, date and time of the court hearing shall be made by personal service or, if the person is not available, shall be mailed to the subject of the order by prepaid certified mail, return receipt requested, at the person's last known address. The burden of proof shall be on the Director to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed are necessary to protect the public health. Upon conclusion of the hearing, the Court shall issue appropriate orders affirming, modifying or dismissing the order.

(3) If the Director does not petition the Justice of the Peace Court for an order of compliance within 30 days after the subject of the order refuses to comply, the Director's order shall expire automatically and upon application to the Director by the subject of the order, the fact that the order was issued shall be expunged from the records of the Division of Public Health.

(e) Any hearing conducted pursuant to this section shall be closed and confidential, and any transcripts or records relating thereto shall also be confidential.

(Code 1915, § 740A; 30 Del. Laws, c. 53, §§ 1-6; Code 1935, § 778; 45 Del. Laws, c. 86, § 1; 16 Del. C. 1953, § 704; 66 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

§ 705 Emergency public health procedures.

(a) When the procedures of § 704 of this title have been exhausted or cannot be satisfied as a result of threatened criminal behavior and the Director knows or has reason to believe, because of medical or epidemiological information, that a person has an STD of a

communicable nature and that such person presents an imminent danger to the public health, he may bring an action in the Justice of the Peace Court, seeking the following relief:

(1) An injunction prohibiting such person from engaging in or continuing to engage in specific conduct which endangers the public health;

(2) Other appropriate court orders including, but not limited to, an order to take such person into custody, for a period not to exceed 72 hours, and place him in a facility designated or approved by the Director.

(b) A custody order issued pursuant to subsection (a) of this section for the purpose of counseling and testing to determine whether such person has an STD of a communicable nature shall provide for the immediate release from custody and from the facility of any person who tests negative and may provide for counseling or other appropriate measures to be imposed on any person who tests positive. The subject of the order shall be given notice of the order promptly, personally and confidentially, stating the grounds and provisions of the order and notifying such person that if that person refuses to comply with such order that person has a right to be present at a hearing to review the order and that he may have an attorney appear on that person's own behalf at the hearing. If such person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (c) of this section. Nothing in this section shall be construed to deny a person, as an exercise of religious freedom, the right to rely solely on spiritual means through prayer to prevent or cure disease, provided that the person complies with all control measures, other than treatment, imposed by the health authority or the department that are reasonable and necessary to prevent the introduction, transmission and spread of the disease.

(c) Any order issued by the Justice of the Peace Court pursuant to subsection (a) or (b) of this section shall be subject to review in a court hearing. Notice of the place, date and time of the court hearing shall be given promptly, personally and confidentially to the subject of the court order by the sheriff of the appropriate county or by special process server appointed by the Court. Such hearing shall be conducted by the Court no later than 48 hours after the issuance of the order. Such person has a right to be present at the hearing and may have an attorney appear on that person's own behalf at the hearing. Upon conclusion of the hearing, the Court shall issue appropriate orders affirming, modifying or dismissing the order.

(d) The burden of proof shall be on the Director to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (a), (b) or (c) of this section.

(e) Any hearing conducted by the Justice of the Peace Court pursuant to subsection (a), (b) or (c) of this section shall be closed and confidential, and any transcripts or records relating thereto shall also be confidential.

(f) Any order entered by the Justice of the Peace Court pursuant to subsection (a), (b) or (c) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health.

(66 Del. Laws, c. 334, § 1; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

§ 706 Examination and treatment of prisoners.

(a) Prison authorities of any state, county or city prison shall ensure that all persons confined or imprisoned in their respective prisons are provided services for the examination, treatment and cure, if possible, of STDs as may be required according to accepted medical practice. Prison medical staff shall adhere to current STD medical protocols established by the Division of Public Health for persons confined or imprisoned; shall inform the Division of Public Health when a person(s) infected with or suspected to have an STD is released from prison without appropriate treatment, counseling or examination; and shall allow the Division of Public Health to examine medical records or other medical information to ensure that appropriate STD medical practices are followed.

(b) Prison authorities of any state, county or city prison shall make available to the Division of Public Health such portion of any state, county or city prison as may be necessary to isolate or quarantine persons known or suspected to have an STD of a communicable nature under the provisions of §§ 703, 704 and 705 of this title, provided that no other suitable place for such isolation or quarantine is available, and shall cooperate with the Division of Public Health in the provision of care and treatment to such persons.

(Code 1915, § 740A; 30 Del. Laws, c. 53, §§ 1-6; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 778; 16 Del. C. 1953, § 705; 66 Del. Laws, c. 334, § 1; 78 Del. Laws, c. 277, § 1.)

§ 707 Rules and regulations of Department.

(a) The Department of Health and Social Services shall make such rules and regulations as may in its judgment be necessary to carry out the provisions of this chapter, including rules and regulations designating STDs to be reported, providing for the control and treatment of persons isolated or quarantined, and such other rules and regulations, not in conflict with the provisions of this chapter, concerning the control of STDs, and concerning the care, treatment and quarantine of persons infected therewith, as it may from time to time deem advisable.

(b) All rules and regulations made pursuant to this chapter shall have the force and effect of law.

(Code 1915, § 740A; 30 Del. Laws, c. 53, §§ 1-6; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 778; 16 Del. C. 1953, § 706; 66 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 149, § 81; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

§ 708 Prenatal standard tests for syphilis, gonorrhea, chlamydia and other STDs.

(a) Every health care professional qualified to attend a pregnant woman in this State during gestation shall take or cause to be taken suitable specimens of such woman and submit such specimens to an approved laboratory for standard tests for syphilis and gonorrhea,

chlamydia and other such tests for STDs as may be designated by the Department of Health and Social Services. Every other person permitted by law to attend upon pregnant women in the State but not permitted by law to take such specimens shall cause such specimens of such pregnant woman to be taken by a qualified health care professional and submitted to an approved laboratory for standard tests for gonorrhea, syphilis and chlamydia and other such tests for STDs as may be designated by the Department of Health and Social Services. The specimens shall be taken at the time of the 1st examination relating to the current pregnancy and a 2nd specimen during the 3rd trimester of pregnancy which is in addition to or exclusive of the test taken at delivery. Every pregnant woman shall permit the specimens to be taken by a qualified health care professional as herein provided. However, the Director or the Director's authorized deputy within the county wherein any person affected by this section resides may waive the requirements of this section if the Director or deputy is satisfied by written affidavit or other notarized written proof that the tests required by this section are contrary to the tenets and practices of the religious teachings of which the applicant is an adherent, and that the public health and welfare would not be injuriously affected by such waiver.

(b) The term "approved laboratory" means a laboratory approved for this purpose by the Department of Health and Social Services. Standard tests for syphilis, chlamydia and gonorrhea are ones recognized as such by the Department of Health and Social Services.

(c) The laboratory tests required by this section shall be made on request without charge by the Department of Health and Social Services.

(42 Del. Laws, c. 87, § 2; 16 Del. C. 1953, § 707; 66 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 149, §§ 82, 83; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

§ 709 Authority to perform venipuncture.

Notwithstanding any other provision of law, a person employed by or detailed to the Division of Public Health as an STD case investigator may perform venipuncture or skin puncture for the purpose of withdrawing blood for test purposes, even though the STD case investigator is not otherwise licensed to withdraw blood; provided that such person meets all the following requirements:

(1) The person works under the direction of licensed physician.

(2) The person has been trained by a licensed physician in the proper procedures to be employed when withdrawing blood, in accordance with training requirements established by the Division of Public Health, and has a statement signed by the instructing physician that such training has been completed.

(66 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

§ 710 Minors — Treatment, consent, and liability for payment for care.

Any health facility or health care professional may examine and provide treatment for an STD for any minor if such facility or professional is qualified to provide such examination or treatment. Consent to examination and treatment by a minor shall be controlled by §§ 707 and 708 of Title 13. The health care professional in charge or other appropriate authority of the health facility or the health care professional concerned shall prescribe an appropriate course of treatment for such minor. The fact of consultation, examination and treatment of such minor shall be strictly confidential and shall not be divulged by the facility or the health care professional, including sending of a bill for such services to any persons other than the minor, except as follows:

(1) To persons providing consent pursuant to § 707 of Title 13 or persons informed of the minor's testing and treatment under § 708 of Title 13;

(2) As is necessary to comply with the requirements of Chapter 9 of this title relating to child abuse investigations; or

(3) As is necessary to comply with the requirements of this chapter concerning the control and treatment of STDs, as well as the permitted dissemination of records and information under § 711 of this title.

(66 Del. Laws, c. 334, § 1; 78 Del. Laws, c. 277, § 1.)

§ 711 Confidentiality of records and information.

All information and records held by the Division of Public Health relating to known or suspected causes of STD, including infection with human immunodeficiency virus (HIV), the virus causing Acquired Immunodeficiency Syndrome (AIDS), shall be strictly confidential. Such information shall not be released or made public upon subpoena or otherwise, except that release may be made under the following circumstances:

(1) Release is made of medical or epidemiological information for statistical purposes so that no person can be identified;

(2) Release is made of medical or epidemiological information with the consent of all persons identified in the information released;

(3) Release is made of medical or epidemiological information to medical personnel, appropriate state agencies, including the Child Death, Near Death and Still Birth Commission, or state courts to the extent required to enforce the provisions of this chapter and related rules and regulations concerning the control and treatment of STDs, or as related to child abuse investigations pursuant to Chapter 9 of this title, or as related to Child Death, Near Death or Still Birth Commission investigations pursuant to subchapter II of Chapter 3 of Title 31;

(4) Release is made of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party; or

(5) Release is made during the course of civil or criminal litigation to a person allowed access to said records by a court order which is issued in compliance with the following provisions:

a. No court of this State shall issue such order unless the court finds that the person seeking the records and information has demonstrated a compelling need for such records which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the subject and the public interest which may be disserved by disclosure which deters future testing and treatment or which may lead to discrimination.

b. Pleadings pertaining to disclosure of such records shall substitute a pseudonym for the true name of the subject of the records. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court.

c. Before granting any such order, the court shall provide the subject whose records are in question with notice and a reasonable opportunity to participate in the proceedings if the subject is not already a party.

d. Court proceedings as to disclosure of such records shall be conducted in camera unless the subject agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

e. Upon the issuance of an order to disclose such records, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosures.

(66 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 361, §§ 1, 2; 78 Del. Laws, c. 277, § 1.)

§ 712 Custodian of records.

No Department of Public Health and Social Services or local health department officer or employee shall be examined in a civil, criminal, special or other proceeding as to the existence or contents of pertinent records for a person examined or treated for an STD or HIV infection by the Division of Public Health, or of the existence of contents of such reports received from a private health care professional or private health facility, without the consent of the person examined and treated for such diseases, except where the information in such records is disclosed pursuant to § 710 or § 711(2), (3) or (5) of this title.

(66 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 149, § 84; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

§ 713 Penalties; jurisdiction.

(a) Except for § 702 of this title, whoever violates this chapter or any lawful rule or regulations made by the Department of Health and Social Services under § 707 of this title, or fails to obey any lawful order issued by the Director under this chapter shall be fined not less than $100 nor more than $1,000.

(b) Whoever violates § 702 of this title shall be fined not less than $25 and not more than $200 for each offense.

(c) Each separate day that a violation of this chapter as defined under subsections (a) and (b) of this section continues shall be deemed a separate offense for penalty purposes.

(d) Justices of the peace shall have jurisdiction of offenses under this chapter.

(Code 1915, § 740A; 30 Del. Laws, c. 53, §§ 1-6; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 778; 16 Del. C. 1953, § 709; 66 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 149, § 85; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 277, § 1.)

Subchapter II

HIV Testing and Counseling

§ 714 Definitions.

For purposes of this subchapter the following definitions shall apply:

(1) "AIDS" shall mean Acquired Immunodeficiency Syndrome, a stage of HIV illness.

(2) "Approved laboratory" shall mean a laboratory approved by the Department for the purpose of performing standard tests for HIV as recognized as such by the Department.

(3) "Clinical setting" shall mean prenatal clinics, hospital emergency departments, urgent care clinics, inpatient services, substance abuse treatment clinics, public health clinics, nursing homes, community clinics, correctional healthcare facilities, blood banks, blood centers, sperm banks, primary care settings, and other public or private settings as defined by the Division.

(4) "Healthcare provider" shall mean any nurse, physician, dentist or other dental worker, optometrist, podiatrist, chiropractor, laboratory or blood bank technologist or technician, phlebotomist, dialysis personnel, emergency healthcare provider (including any paramedic, emergency medical technician, law-enforcement personnel or firefighter), others whose activities involve contact with patients, their blood or corpses, and other public or private providers as defined by the Division.

(5) "Health facility" shall mean a hospital, nursing home, clinic, blood bank, blood center, sperm bank, laboratory, or other healthcare institution.

(6) "HIV" shall mean the Human Immunodeficiency Virus, a virus that can be transmitted sexually and that is identified as the causative agent of AIDS.

(7) "HIV-related tests" shall mean HIV tests, CD4 cell count tests, viral load tests, or any other tests related to HIV.

(8) "HIV test" shall mean a test to detect HIV infection.

(9) "Informed consent" means consent of the subject of the test or subject's legal guardian to the performance of HIV testing by a healthcare provider who has informed the subject or the subject's legal guardian both verbally and in writing, to an extent reasonably comprehensive to general lay understanding, of the nature of the proposed testing and of the risks and alternatives to testing which a reasonable person would consider material to the decision whether or not to undergo testing.

(10) "Invasive medical procedure" shall mean any procedure involving surgical entry into tissues, cavities, or organs.

(11) "Legal guardian" shall mean a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the minor.

(12) "Manner known to transmit HIV" shall mean parenteral exposure to blood or blood products including but not limited to injection through the skin, sexual exposure, or exposure as otherwise determined by the Division.

(13) "Nonclinical setting" shall mean community-based organizations (CBO), outreach and education settings, mobile vans, and other settings as defined by the Division.

(14) "Person" shall mean any natural person, partnership, association, joint venture, trust, public, or private corporation, or health facility.

(15) "Prevention counseling" shall mean an interactive process of assessing risk, recognizing specific behaviors that increase the risk for acquiring or transmitting HIV, and developing a plan to take specific steps to reduce risks.

(16) "Release of test results" shall mean a written authorization for disclosure of test results, which is signed, dated and specifies to whom disclosure is authorized and the time period during which the release is to be effective.

(17) "Routine/opt-out testing" shall mean that the general consent for medical care shall encompass testing for HIV and that testing may be performed as a part of routine care unless it is declined and that declination is noted in the medical record. A separate consent for HIV testing is not required.

(18) "Test counseling" shall include information that includes an explanation of the testing process/procedure, the meaning of possible test results, and provision of resources for additional information about relevant infections. The information may be provided orally or in writing and the subject of the counseling given the opportunity to ask questions.

(66 Del. Laws, c. 336, § 1; 71 Del. Laws, c. 458, § 1; 78 Del. Laws, c. 277, § 2.)

§ 715 Consent for HIV testing.

(a) A healthcare provider or other person who performs HIV testing services in a clinical setting may provide routine/opt-out testing provided that the following occurs:

(1) The subject is informed, orally or in writing, that routine/opt-out HIV testing is encompassed by the general consent for medical services.

(2) The subject is given the opportunity to refuse consent to HIV testing at each instance of testing. Documentation of such refusal shall be noted in the subject's medical record.

(3) The subject is provided HIV test counseling, orally or in writing, at the first instance of testing and by request thereafter.

(b) The healthcare provider or other person who performs HIV testing services in a nonclinical setting must obtain written documentation of informed consent at each instance of HIV screening.

(1) Informed consent to an HIV test in a nonclinical setting shall consist of a voluntary agreement executed by the subject of the test or the subject's legal guardian.

(2) At each instance of testing, the subject of the test must be offered HIV test counseling and prevention counseling prior to consent for HIV testing.

(c) Notwithstanding any other provision of law, a minor 12 years of age or older may consent or refuse consent to be a subject of HIV-related testing and to counseling relevant to the test. The consent or refusal of the minor shall be valid and binding as if the minor had achieved majority, and shall not be voidable, nor subject to later disaffirmance, because of minority.

(d) Notwithstanding subsection (a) of this section the provisions of subsections (b), (c) and of this section do not apply when:

(1) Knowledge of such test results is necessary for medical diagnostic purposes to provide appropriate emergency care or treatment and the subject of the test is unable to grant or withhold consent.

(2) The testing is done for the purposes of research; provided that the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(3) A healthcare provider or healthcare facility procures, processes, distributes or uses:

a. Blood;

b. A human body part donated for a purpose specified under the Uniform Anatomical Gift Act (Chapter 27 of this title); or

c. Semen provided prior to July 11, 1988, for the purpose of artificial insemination, and such test is necessary to assure the medical acceptability of such gift or semen for the purposes intended.

(4) The health of a healthcare worker has been threatened during the course of a healthcare worker's duties, as a result of exposure to blood or body fluids of the patient in a manner known to transmit HIV.

(5) It is necessary to control the transmission of HIV infection as may be allowed pursuant to this chapter as it relates to sexually transmitted diseases, or § 6523(b) of Title 11 as it relates to the Department of Correction.

(6) Testing is ordered by a court of competent jurisdiction within the confines of civil or criminal litigation where the results of an HIV-related test of a party, or a person in the custody or under the legal control of another party, is relevant to the ultimate issue of culpability and/or liability. Said order must be issued in compliance with the following provisions:

a. No court of this State shall issue such order unless the court finds that there is a compelling need for such test results, which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure of the test results against the privacy interest of the test subject and the public interest, which may be disserved, by disclosure which deters future testing or which may lead to discrimination.

b. Pleadings pertaining to ordering of an HIV-related test shall substitute a pseudonym for the true name of the subject of the test. The true name shall be communicated confidentially, in documents not filed with the court.

c. Before granting any such order, the court shall provide the subject of the test with notice and a reasonable opportunity to participate in the proceedings if the individual is not already a party.

d. Court proceedings as to disclosure of test results so ordered shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(e) Any person on whom an HIV-related test was performed without first having obtained informed consent pursuant to paragraphs (d)(1), (4) and (5) of this section shall be given notice promptly, personally and confidentially that a test sample was taken and the results of such test may be obtained upon request.

(f) At the time of learning the test result, the subject of the test or the subject's legal guardian shall be provided with counseling for coping with the emotional consequences of learning the result, for understanding the interpretation of the test result, for understanding measures for preventing infection to others, to urge the voluntary notification of sexual and needle-sharing partners of the risk of infection and the availability of any appropriate healthcare services, including mental healthcare and appropriate social and supportive services.

(66 Del. Laws, c. 336, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 109, § 1; 78 Del. Laws, c. 277, § 2.)

§ 716 HIV testing of pregnant women.

(a) A perinatal care provider may provide routine/opt-out testing pursuant to § 715(a) of this title.

(1) In addition to the provisions of this subsection, a licensed healthcare provider who renders the primary prenatal care for a pregnant woman must offer HIV testing upon intake to perinatal services, during the third trimester, and at intake into labor and delivery if the result of previous test are not available or documented in the patient's chart.

(2) In addition to the provisions this subsection, a licensed healthcare provider who renders the primary prenatal care for a pregnant woman must also counsel a pregnant woman that is found to be HIV-infected, orally or in writing, about the dangers to her fetus and about the treatment options for maintaining her health and reducing chances of transmission of HIV to her fetus.

(b) A pregnant woman shall have the right to refuse consent to testing HIV infection at any instance of testing and to refuse any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record. All other provisions of this subchapter shall apply to such counseling, testing, and disclosure, which take place pursuant to this section.

(70 Del. Laws, c. 520, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 458, § 1; 75 Del. Laws, c. 434, § 1; 77 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 277, § 2.)

§ 717 Confidentiality.

(a) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of such test in a manner which permits identification of the subject of the test, except to the following person:

(1) The subject of the test or the subject's legal guardian.

(2) Any person who secures a legally effective release of test results executed by the subject of the test or the subject's legal guardian.

(3) An authorized agent or employee of a health facility or healthcare provider if the health facility or healthcare provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a medical need to know such information to provide healthcare to the patient.

(4) Healthcare providers providing medical care to the subject of the test, when knowledge of the test results is necessary to provide appropriate emergency care or treatment.

(5) When part of an official report to the Division as may be required by law or regulation.

(6) A health facility or healthcare provider which procures, processes, distributes or uses:

a. Blood;

b. A human body part from a deceased person donated for a purpose specified under the Uniform Anatomical Gift Act [Chapter 27 of this title]; or

c. Semen provided prior to July 11, 1988, for the purpose of artificial insemination.

(7) Health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews, including the Child Death, Near Death and Still Birth Commission conducting reviews pursuant to Title 31.

(8) Pursuant to Chapter 9 of this title as it relates to investigation of child abuse.

(9) Pursuant to subchapter I of this chapter as it relates to sexually transmitted diseases and their control.

(10) A person allowed access to said record by a court order which is issued in compliance with § 715(d)(6) of this title. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used and appropriate prohibitions on future disclosures.

(11) Pursuant to Chapter 12A of this title as it relates to notification of emergency medical care providers.

(b) No person to whom the results of an HIV-related test have been disclosed pursuant to subsection (a) of this section shall disclose the test results to another person except as authorized by subsection (a) of this section.

(c) The provisions in this section shall not interfere with the transmission of information as may be necessary to obtain third-party payment for medical care related to HIV infection or with the documentation of cause of death on death certificates.

(66 Del. Laws, c. 336, § 1; 68 Del. Laws, c. 415, § 2; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 361, § 3; 78 Del. Laws, c. 277, § 2.)

§ 718 Enforcement of subchapter.

(a) Any person aggrieved by a violation of this subchapter shall have a right of action in the Superior Court and may recover for each violation:

(1) Against any person who negligently violates a provision of this subchapter, damages of $1,000 or actual damages, whichever is greater.

(2) Against any person who intentionally or recklessly violates a provision of this subchapter, damages of $5,000 or actual damages, whichever is greater.

(3) Reasonable attorneys' fees.

(4) Such other relief, including an injunction, as a Court may deem appropriate.

(b) Any action under this subchapter is barred unless the action is commenced within 3 years after the cause of action accrues. A cause of action will accrue when the injured party becomes aware of an unauthorized disclosure pursuant to § 717 of this title, or that an HIV-related test has been conducted without informed consent pursuant to § 715 of this title.

(c) The Attorney General may maintain a civil action to enforce this subchapter in which a Court may order any relief authorized by subsection (a) of this section.

(d) Nothing in this subchapter shall be construed to impose civil liability or criminal sanction for disclosure of an HIV-related test result in accordance with any reporting requirement by the Division.

(66 Del. Laws, c. 336, § 1; 70 Del. Laws, c. 520, § 1; 71 Del. Laws, c. 458, § 1; 78 Del. Laws, c. 277, § 2.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 8
INFLAMMATION OF EYES OF NEWBORN

§ 801 Definition of inflammation of eyes of newborn.

Any inflammation, swelling, or redness in either 1 or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of such infant, independent of the nature of the infection, if any, occurring any time within 2 weeks after the birth of such infant, shall be known as inflammation of the eyes of the newborn.

(29 Del. Laws, c. 51, § 1; Code 1935, § 779; 16 Del. C. 1953, § 901.)

§ 802 Reporting existence of disease; investigation.

Any physician, surgeon, obstetrician, midwife, nurse, maternity home or hospital of any nature, parent, relative and any persons attendant on or assisting in any way whatsoever, any infant or the mother of an infant at childbirth, or any time within 2 weeks after childbirth, knowing the condition defined in § 801 of this title to exist, within 6 hours thereafter shall report such fact to the local health officer of the city, town, village or whatever other political division there may be, within which the infant or the mother of any such infant may reside. The local health officer shall investigate or have investigated, each case as filed with the officer in pursuance with the law and any other such case as may come to the local health officer's attention.

(29 Del. Laws, c. 51, § 2; Code 1935, § 779; 16 Del. C. 1953, § 902; 70 Del Laws, c. 186, § 1.)

§ 803 Treatment of eyes on birth.

(a) The Department of Health and Social Services shall regulate the type of prophylactic treatment to be employed against inflammation of the eye(s) of the newborn, the conditions under which such prophylaxis will be employed and the diseases for which reporting is required. Such regulation shall conform with standards promulgated by the United States Center for Disease Control, United States Public Health Service. A record of the prophylactic used and details thereof shall be recorded on the birth certificate.

(b) Nothing in this section shall require medical treatment for the minor child of any person who is a member of a recognized church or religious denomination and whose religious convictions, in accordance with the tenets and practices of the person's church or religious denomination, are against medical treatment for disease.

(29 Del. Laws, c. 51, § 3; 32 Del. Laws, c. 42; 40 Del. Laws, c. 97, § 1; Code 1935, § 779; 16 Del. C. 1953, § 903; 64 Del. Laws, c. 119, § 1; 70 Del. Laws, c. 149, § 86; 70 Del. Laws, c. 186, § 1.)

§ 804 Penalties.

Whoever being a physician, surgeon, midwife, obstetrician, nurse, parent, relative or person attendant upon or assisting at the birth of any infant, violates this chapter, shall be fined not less than $5 nor more than $100.

(29 Del. Laws, c. 51, § 4; Code 1935, § 779; 16 Del. C. 1953, § 904.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 8A
UNIVERSAL NEWBORN AND INFANT HEARING SCREENING, TRACKING AND INTERVENTION

§ 801A Short title.

This chapter shall be known and may be cited as the "Universal Newborn and Infant Hearing Screening, Tracking, and Intervention Act."

(75 Del. Laws, c. 116, § 1; 78 Del. Laws, c. 389, § 1.)

§ 802A Legislative findings and purpose.

The General Assembly hereby finds and declares that:

(1) Significant hearing loss is 1 of the most common major abnormalities present at birth and, if undetected, will impede the child's speech, language, and cognitive development.

(2) Screening by high-risk characteristics alone (e.g., family history of deafness) only identifies approximately 50% of newborns with significant hearing loss.

(3) Reliance solely on physician and/or parental observation fails to identify many cases of significant hearing loss in newborns and infants.

(4) There is evidence that children with hearing loss, who are identified at birth and receive intervention services shortly thereafter, have significantly better learning capacity than children who are identified with hearing loss later than 6 months after birth.

(5) Legislation is needed to provide for the early detection of hearing loss in newborns and infants and to prevent or mitigate the developmental delays associated with late identification of hearing loss.

(75 Del. Laws, c. 116, § 1; 78 Del. Laws, c. 389, § 1.)

§ 803A Definitions.

For the purposes of this chapter:

(1) "Child" means a person up to 21 years of age.

(2) "Early intervention" and/or "follow-up care" means the early intervention services described in Part C and Part B of the Individuals with Disabilities Education Act (IDEA) [20 U.S.C. § 1431 et seq. and 20 U.S.C. § 1411 et seq.], as well as any necessary hearing and medical services for the diagnosis and management of newborn, infant, or child hearing loss.

(3) "False negative rate" means the proportion of infants not identified as having a significant hearing loss by the screening process who are ultimately found to have a significant hearing loss.

(4) "False positive rate" means the proportion of infants identified as having a significant hearing loss by the screening process who are ultimately found to not have a significant hearing loss.

(5) "Family" or "families" means a birth parent(s), stepparent(s), adoptive parent(s), legal guardian(s), or other legal custodian of a newborn, infant, or child.

(6) "Family-centered" means the beliefs, values, and practices that emphasize the essential role of the family in all aspects of the decision-making and intervention process regarding the young child.

(7) "Health care insurer" means any entity regulated by the Insurance Commissioner, including, but not limited to, health care insurers; health, hospital or medical service plan corporations; or health maintenance organizations. Health care insurer does not include self-insured plans or groups regulated by the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.), to the extent that state regulation of such plans is preempted by ERISA.

(8) "Health insurance policy" means any health insurance policy, contract, plan, or evidence of coverage issued by a health care insurer, which provides medical coverage on an expense incurred, service or prepaid basis.

(9) "Hearing screening test" means automated auditory brain stem response, otoacoustic emissions, or another appropriate screening test approved by the Department of Health and Social Services.

(10) "Hospital" means a health care facility or birthing center licensed in this State that provides obstetrical services, or provides inpatient newborn services.

(11) "Infant" means a child who is not a newborn and has not attained the age of 1 year.

(12) "Lead agency" means the Department of Health and Social Services.

(13) "Newborn" means a child up to 28 days old.

(14) "Parent" means a natural parent, stepparent, adoptive parents, guardian, or custodian of a newborn or infant.

(15) "Significant hearing loss" means a hearing loss equivalent to or greater than a 35-decibel hearing loss (35-dB HL) in the better ear.

(16) "Surveillance and tracking system" means a monitoring and referral system and procedures designed for the collection and transmission of information and data necessary to implement timely and appropriate follow-up of infants identified through hearing screening programs.

(75 Del. Laws, c. 116, § 1; 78 Del. Laws, c. 389, § 1.)

§ 804A Newborn and infant hearing screening programs.

(a) As a condition of its licensure, each hospital shall establish a Universal Newborn Hearing Screening (UNHS) program. Each UNHS program shall:

(1) Provide a hearing screening test for every newborn born in the hospital, for identification of hearing loss, regardless of whether or not the newborn has known risk factors suggesting hearing loss.

(2) Develop screening protocols and select screening method or methods designed to detect newborns and infants with a significant hearing loss.

(3) Provide for appropriate training and monitoring of the performance of individuals responsible for performing hearing screening tests. These individuals shall be trained properly in:

a. The performance of the tests;

b. The risks of the tests, including psychological stress for the parent or parents;

c. Infection control practices; and

d. The general care and handling of newborns and infants in hospital settings.

e. Perform the hearing testing prior to the newborn's discharge; provided, however, that if the newborn is expected to remain in the hospital for a prolonged period, testing shall be performed prior to the date on which the child attains the age of 3 months.

(4) Perform the hearing testing prior to the newborn's discharge; if the newborn is expected to remain in the hospital for a prolonged period, testing shall be performed prior to the date on which the child attains the age of 3 months.

(5) Develop and implement procedures for documenting the results of all hearing screening tests and the scheduling of follow-up appointments to help reduce loss to follow-up.

(6) Inform the newborn's or infant's parents and primary care physician, if 1 is designated, of the results of the hearing screening test, or if the newborn or infant was not successfully tested. Whenever possible, such notification shall occur prior to discharge; if this is not possible, notification shall occur no later than 10 days following the date of testing. Notification shall include information regarding appropriate follow-up for a screening failure or a missed screening, and referral information for confirmatory testing. If a hearing screening test indicates the possibility of a significant hearing loss, the hospital shall ensure that the physician or other person attending the newborn or infant is made aware of the community resources available for confirmatory testing and process of referral to early intervention services.

(7) Collect performance data specified by the Division of Public Health to ensure that each UNHS program is in compliance with this section, including the number of infants born, the proportion of all infants screened, the referral rate, the follow-up rate, the false-positive rate, and the false-negative rate.

a. *Testing performance standards.* —

1. Each UNHS program should have a false-positive rate of 5% or less.

2. Each UNHS program should have a false-negative rate of 5% or less.

b. *Oversight responsibility.* — The Division of Public Health shall exercise oversight responsibility for UNHS programs, including establishing a performance data set and reviewing performance data collected pursuant thereto by each hospital.

(b) Audiologists shall report all results of newborn, infant, and child hearing screenings and/or testing to the state EHDI program at the Division of Public Health. Reporting of results must be the same day as testing if at all possible. If this is not possible, results must be reported no later than 10 days following the testing date. Notification shall include information regarding appropriate follow-up for a screening failure or a missed screening, and referral information for confirmatory testing if not already complete.

(75 Del. Laws, c. 116, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 389, § 1.)

§ 805A Surveillance and tracking system.

It is recognized that is necessary to provide surveillance, tracking and monitoring of newborns, infants, and children identified through newborn hearing screening in order to make referrals, render appropriate follow-up care and better establish linkages between hearing screening programs, audiological services, and early intervention programs. To facilitate the reporting, tracking, and monitoring of newborns, infants, and children who have or are suspected to have hearing loss, a state EHDI surveillance and tracking system tracks, monitors, and refers newborns, infants, and children through diagnostic and early intervention. The system shall be utilized by qualified professionals, including those at other State agencies, involved in the detection, treatment, diagnosis, and/or referral of newborns, infants, or children with or suspected of having hearing loss. The reporting requirements shall be designed to be as simple as possible and easily completed by nonprofessional persons when necessary.

The following persons who act in compliance with this section are not civilly or criminally liable for furnishing information required by this section: a hospital, clinical laboratory or other health care facility; an audiologist; an administrator; officer or employee of a hospital or other health care facility; and physician or employee of a physician.

(78 Del. Laws, c. 389, § 1.)

§ 806A Provision of early intervention services and follow-up care.

The lead agency or its designee shall ensure that hearing loss is diagnosed by 3 months of age, or earlier, and infants with confirmed hearing loss receive comprehensive early intervention services by 6 months of age, or earlier.

(1) The lead agency shall refer all children with any degree of diagnosed hearing loss, whether a measurable delay is present, to determine if they are eligible under Part C of the Individuals with Disabilities Education Act (IDEA) [20 U.S.C. § 1431 et seq.] by virtue of their diagnosis.

(2) Professionals involved in the care and treatment of the newborns, infants, and children must document all early intervention, follow-up, and treatment services, including but not limited to further diagnoses, recommendations, observations, test results, and referrals, in order to reduce the number of newborns, infants, and children lost to follow-up.

(3) Early intervention services shall be provided by individuals with the knowledge, skills, and experience to address the ongoing assessment, implementation, and evaluation of services that support families and promote child development.

(4) Family-centered services may be provided in a variety of different settings, including the home, school, community centers, daycare center, hospital or clinic, depending on the needs of the child, family, and availability of resources in the community.

(5) Lack of resources may not be the basis for denial of services.

(78 Del. Laws, c. 389, § 1.)

§ 807A Family resources.

Families shall be provided with unbiased information in a family-centered, culturally competent manner and offered the full range of early intervention services and treatment options available for hearing loss. Opportunities for early intervention shall be consistent with the child's needs, family's goals, and preferences, and be provided in a seamless, unambiguous manner to ensure informed transitions through services.

Appropriate early intervention opportunities may include information regarding amplification options, such as hearing aids or cochlear implants, aural habilitation and communication options (manual language, spoken language, total communication), and family support.

(78 Del. Laws, c. 389, § 1.)

§ 808A Early Hearing Detection and Intervention (EHDI) Advisory Board.

There shall be established an Early Hearing Detection and Intervention Advisory Board ("Board") that will advise the Secretary on issues relating to the newborn hearing evaluation, intervention, treatment, and follow-up care for infants and children with hearing loss. Members shall be appointed by the Governor and serve 3-year terms that are renewable. The Board shall have 12 members.

(1) The Department shall provide administrative support services required for the Board. Members shall receive no compensation for their services as members.

(2) The Board shall act by majority vote and as required by this State's Administrative Procedures Act [Chapter 101 of Title 29]. The Board shall have the authority to adopt rules to implement this chapter.

(3) The Board membership shall consist of 1 of each the following:

Audiologist;

Speech-language pathologist;

Pediatrician/neonatologist;

Otolaryngologist;

Neonatal nurse;

The Secretary of the Department of Health and Social Services or designee;

An adult who is deaf or hard of hearing;

Parent of a child with a hearing loss;

Teacher of children with hearing loss;

A representative from the designated agency responsible for the Individuals with Disabilities Education Act (IDEA) Part C [20 U.S.C. § 1431 et seq.];

A representative from the Department of Education Early Childhood Workgroup; and

A representative from the Statewide Programs for Deaf and Hard of Hearing.

(78 Del. Laws, c. 389, § 1.)

§ 809A Civil and criminal immunity and penalties.

(a) No physician shall be civilly or criminally liable for failure to conduct hearing screening testing.

(b) No physician or hospital acting in compliance with this chapter shall be civilly or criminally liable for any acts taken in conformity herewith, including without limitation furnishing information required to be furnished hereunder.

(c) A hospital that has not established or implemented an UNHS program in accordance with this chapter shall be subject to sanction by the Division of Public Health as provided by law for licensure violations.

(75 Del. Laws, c. 116, § 1; 78 Del. Laws, c. 389, § 1.)

§ 810A Confidentiality.

The Division of Public Health and all other persons to whom data is submitted in accordance with this chapter shall keep such information confidential. No publication or disclosure of information shall be made except in the form of statistical or other studies which do not identify individuals, except as specifically consented to in writing the by the parent or parents of a tested child.

(75 Del. Laws, c. 116, § 1; 78 Del. Laws, c. 389, § 1.)

§ 811A Delivery of policy.

If a health insurance policy provides coverage or benefits to a resident of this State, it shall be deemed to be delivered in this State within the meaning of this chapter, regardless of whether the health care insurer issuing or delivering said policy is located inside or outside of the State.

(75 Del. Laws, c. 116, § 1; 78 Del. Laws, c. 389, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 8B
DOWN SYNDROME INFORMATION

§ 801B Provision of information relating to Down Syndrome.

(a) For the purposes of this section, the term "Down Syndrome" shall mean a chromosomal condition caused by an error in cell division that results in the presence of an extra whole or partial copy of chromosome 21. A hospital, as that term is defined in § 803A of this title, physician, health care provider, nurse midwife or genetic counselor who renders prenatal care, postnatal care or genetic counseling shall, upon receipt of a positive test result from a test for Down Syndrome, provide the expectant or new parent with information provided by the department under subsection (b) of this section.

(b) The Department shall make available to a person who renders prenatal care, postnatal care or genetic counseling to parents who receive a prenatal or postnatal diagnosis of Down Syndrome the following:

(1) Up-to-date evidence-based, written information about Down Syndrome that has been reviewed by medical experts and national Down Syndrome organizations; provided, however, that the written information provided shall include physical, developmental, educational and psychosocial outcomes, life expectancy, clinical course and intellectual and functional development and treatment options; and

(2) Contact information regarding first call programs and support services, including information hotlines specific to Down Syndrome, resource centers or clearinghouses, national and local Down Syndrome organizations, and other educational and support programs.

The Department may also make such information available to any other person who has received a positive test result from a test for Down Syndrome.

(c) The Department shall meet annually with representatives of the Down Syndrome Association of Delaware to ensure the information made available by the department is up to date.

(d) The Department shall submit a report by January 31 of each year to the Co-Chairs of the Joint Finance Committee detailing the persons to whom the information required by subsection (b) of this section has been distributed.

(79 Del. Laws, c. 218, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 9
ABUSE OF CHILDREN
Subchapter I
Reports and Investigations of Abuse and Neglect; Child Protection Accountability Commission

§ 901 Purpose.

The child welfare policy of this State shall serve to advance the best interests and secure the safety of the child, while preserving the family unit whenever the safety of the child is not jeopardized. The child welfare policy of this State extends to all child victims, whether victims of intra-familial or extra-familial abuse and neglect. To that end this chapter, among other things:

(1) Provides for comprehensive and protective services for abused and neglected children;

(2) Mandates that reports of child abuse or neglect be made to the appropriate authorities; and

(3) Requires various agencies in Delaware's child protection system to work together to ensure the safety of children who are the subject of reports of abuse or neglect by conducting coordinated investigations, judicial proceedings and family assessments, and by providing necessary services.

This chapter also provides for the protection of children in facilities or organizations primarily concerned with child welfare and care that are required to be licensed under Delaware law by requiring the Delaware Department of Justice to notify any such facility where an employee of, or other person associated with, the facility has been charged with or convicted of an offense involving child sexual abuse.

(16 Del. C. 1953, § 1001; 58 Del. Laws, c. 154; 60 Del. Laws, c. 494, § 1; 68 Del. Laws, c. 440, § 1; 71 Del. Laws, c. 199, § 2; 78 Del. Laws, c. 403, § 1.)

§ 902 Definitions.

As used in this chapter, the following terms mean:

(1) "Abuse" or "abused child" as defined in § 901 of Title 10.

(2) "Baby" shall mean a child not more than 14 days old, except that for hospitals and their employees and volunteers, "baby" shall mean a child reasonably believed to be not more than 14 days old.

(3) "Child" shall mean any person who has not reached that person's own 18th birthday.

(4) "Child Protection Registry" or "Registry" means a collection of information as described in subchapter II of this chapter about persons who have been substantiated for abuse or neglect as provided in subchapter II of this chapter or who were substantiated between August 1, 1994, and February 1, 2003.

(5) "Child welfare proceeding" means any Family Court proceeding and subsequent appeal therefrom involving custody, visitation, guardianship, termination of parental rights, adoption or other related petitions that involve a dependent, neglected or abused child or a child at risk of same as determined by the Family Court.

(6) "Conviction" or "convicted" means entry of a plea of guilty or nolo contendere, regardless of whether the plea was subsequently discharged or dismissed under the first offenders domestic violence diversion program pursuant to § 1024 of Title 10, or under the first offenders controlled substances diversion program pursuant to § 4767 of this title, or of a Robinson plea, or of a probation before judgment discharge without judgment of conviction notwithstanding the provisions of § 4218(f) of Title 11, or a finding of guilt after trial, or a finding of not guilty after trial as a result of the defense of mental disease or defect pursuant to Title 11, or adjudication of delinquency for conduct which if committed by an adult, would constitute a crime; or "conviction" or "convicted" under similar proceedings of another state, territory or jurisdiction.

(7) "Department" shall mean the Department of Services for Children, Youth and Their Families.

(8) "Director" shall mean the Director of the Division of Family Services of the Department of Services for Children, Youth and Their Families.

(9) "Division" shall mean the Division of Family Services of the Department of Services for Children, Youth and Their Families.

(10) "Family assessment and services" shall mean a case management approach by the Division of Family Services that provides for a prompt assessment of a child and the child's family and the circumstances of the reported incident (including the known history of the child and/or the alleged perpetrator) when there has been a report to the Division that the child was a victim of abuse or neglect, or at risk of maltreatment by a person responsible for that child's care, custody or control. Family assessment and services shall be used in conjunction with the investigation approach defined in paragraph (13) of this section but may not supplant it in circumstances which require an investigation. The family assessment response shall focus on the integrity and preservation of the family and shall assess the status of the child and the family in terms of the risk of abuse and neglect and, if necessary, plan and provide for the provision of community-based services to reduce the risk and to otherwise support the family.

(11) "Good faith" shall be presumed in the absence of evidence of malice or wilful misconduct.

(12) "Internal information system" shall mean a system of maintaining information related to all reports of abuse, neglect, investigations, family assessments, services and other relevant information.

(13) "Investigation" shall mean the collection of evidence in response to a report of abuse, neglect, or risk of maltreatment by a person responsible for that child's care, custody or control in order to determine if a child has been abused, neglected, or is at risk of maltreatment. The Division shall develop protocols for its investigations that focus on ensuring the well-being and safety of the child. The Division may conduct an investigation in response to any report of abuse, neglect, or risk of maltreatment but shall conduct an investigation as enumerated under § 906(e)(3) of this title.

(14) "Investigation Coordinator" shall mean a Department employee, appointed by the Secretary, who is authorized to independently track each reported case of alleged child abuse or neglect within the Department's internal information system and who is responsible for monitoring each reported case involving the death of, serious physical injury to, or allegations of sexual abuse of a child from inception to final criminal and civil disposition.

(15) "Multidisciplinary tracking system" shall mean an electronic system which the Investigation Coordinator utilizes to track and monitor each case involving the death of, or serious injury to, a child, or allegations of sexual abuse of a child, from inception to final criminal and civil disposition.

(16) "Neglect" as defined in § 901 of Title 10.

(17) "Physical injury" as defined in § 222 of Title 11.

(18) "Report" shall mean the communication of an allegation of child abuse or neglect to the Division pursuant to § 903 or § 905 of this title;

(19) "Serious physical injury" as defined in § 222 of Title 11.

(20) "Sexual abuse" as defined in § 901 of Title 10.

(21) "Special Investigator" shall mean a Division employee, appointed by the Secretary, who performs abuse and neglect investigations and possesses additional qualifications and authority as defined by § 9016 of Title 29.

(22) "Substantiation" means a finding by a preponderance of the evidence that abuse or neglect has occurred.

(23) "Those responsible for the care, custody and control of the child" or "care, custody and control" as defined in § 901 of Title 10.

(60 Del. Laws, c. 494, § 1; 64 Del. Laws, c. 213, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 199, § 3; 72 Del. Laws, c. 179, § 3; 72 Del. Laws, c. 469, § 4; 73 Del. Laws, c. 187, §§ 2, 8; 73 Del. Laws, c. 412, §§ 2-5; 75 Del. Laws, c. 376, § 1; 76 Del. Laws, c. 136, §§ 14-16; 78 Del. Laws, c. 13, § 60; 78 Del. Laws, c. 403, § 2; 79 Del. Laws, c. 336, § 1.)

§ 902A Registration; procedure; notice.

Repealed by 73 Del. Laws, c. 412, § 6, effective February 1, 2003.

§ 903 Reports required.

Any person, agency, organization or entity who knows or in good faith suspects child abuse or neglect shall make a report in accordance with § 904 of this title. For purposes of this section, "person" shall include, but shall not be limited to, any physician, any other person in the healing arts including any person licensed to render services in medicine, osteopathy or dentistry, any intern, resident, nurse, school employee, social worker, psychologist, medical examiner, hospital, health care institution, the Medical Society of Delaware or law-enforcement agency. In addition to and not in lieu of reporting to the Division of Family Services, any such person may also give oral or written notification of said knowledge or suspicion to any police officer who is in the presence of such person for the purpose of rendering assistance to the child in question or investigating the cause of the child's injuries or condition.

(16 Del. C. 1953, § 1002; 58 Del. Laws, c. 154; 60 Del. Laws, c. 494, § 1; 72 Del. Laws, c. 179, § 4; 77 Del. Laws, c. 320, § 1.)

§ 904 Nature and content of report; to whom made.

Any report of child abuse or neglect required to be made under this chapter shall be made to the Department of Services for Children, Youth and Their Families. An immediate oral report shall be made by telephone or otherwise. Reports and the contents thereof including a written report, if requested, shall be made in accordance with the rules and regulations of the Division, or in accordance with the rules and regulations adopted by the Division.

(16 Del. C. 1953, § 1003; 58 Del. Laws, c. 154; 60 Del. Laws, c. 494, § 1; 64 Del. Laws, c. 108, §§ 4, 11; 77 Del. Laws, c. 320, § 2.)

§ 905 Telephone reports, Child Protection Registry and information.

(a) The Division shall establish and maintain a 24-hour statewide toll-free telephone report line operating at all times and capable of receiving all reports of alleged abuse and neglect as defined in § 901 of Title 10.

(b) The Division shall maintain a Child Protection Registry and an internal information system as defined by § 902 of this title. Reports unsubstantiated shall be kept in the internal information system by the Division.

(c) Every report of child abuse or neglect made to the Division shall be entered in the Division's internal information system and each such report involving the death of, serious physical injury to, or allegations of sexual abuse of a child shall also be entered in the Department's multi-disciplinary tracking system.

(d) Although reports may be made anonymously, the Division shall in all cases, after obtaining relevant information regarding alleged abuse or neglect, request the name and address of any person making a report.

(e) Upon receipt of a report, the Division shall immediately communicate such report to its appropriate Division staff, after a check has been made with the internal information system to determine whether previous reports have been made regarding actual or suspected abuse or neglect of the subject child, or any reports regarding any siblings, family members or the alleged perpetrator, and such information as may be contained from such previous reports. Such relevant information as may be contained in the internal information system shall also be forwarded to the appropriate Division staff.

(f) Upon receipt of a report of child abuse or neglect, the Division shall immediately notify the Investigation Coordinator of the report, in sufficient detail to permit the Investigation Coordinator to undertake the Investigation Coordinator's duties, as specified in § 906 of this title.

(16 Del. C. 1953, § 1004; 58 Del. Laws, c. 154; 60 Del. Laws, c. 494, § 1; 64 Del. Laws, c. 108, § 4; 68 Del. Laws, c. 440, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 199, § 4; 73 Del. Laws, c. 412, §§ 26, 27; 77 Del. Laws, c. 320, § 3; 78 Del. Laws, c. 403, § 3.)

§ 906 State response to reports of abuse or neglect.

(a) The State's child protection system shall seek to promote the safety of children and the integrity and preservation of their families by conducting investigations and/or family assessments in response to reports of child abuse or neglect. The system shall endeavor to coordinate community resources and provide assistance or services to children and families identified to be at risk, and to prevent and remedy child abuse and neglect.

(b) It is the policy of this State that the investigation and disposition of cases involving child abuse or neglect shall be conducted in a comprehensive, integrated, multi-disciplinary manner that:

(1) Provides civil and criminal protections to the child and the community;

(2) Encourages the use of collaborative decision-making and case management to reduce the number of times a child is interviewed and examined to minimize further trauma to the child; and

(3) Provides safety and treatment for a child and his or her family by coordinating a therapeutic services system.

(c)(1) In implementing the Investigation Coordinator's role in the child protection system, the Investigation Coordinator, or the Investigation Coordinator's designee, shall:

a. Have the authority to track within the Department's internal information system each reported case of alleged child abuse or neglect;

b. Monitor each case involving the death of, serious physical injury to, or allegations of sexual abuse of a child from inception to final criminal and civil disposition, and provide information every 60 days on the status of each case to the Division, the Department, the Delaware Department of Justice, the Children's Advocacy Center, and the Office of Child Advocate;

c. Within 5 business days of the receipt of a report concerning allegations of child abuse or neglect by a person known to be licensed or certified by a Delaware agency or professional regulatory organization, forward a report of such allegations to the appropriate Delaware agency or professional regulatory organization;

d. Report every case involving the death or near death of a child due to abuse or neglect to the Child Death, Near Death and Stillbirth Commission pursuant to § 323(e) of Title 31; and

e. Provide information to the Child Protection Accountability Commission ("CPAC"), as requested by CPAC, regarding the status, trends, and outcomes of any case or cases of child abuse or neglect that are reported to the Division. Reports to CPAC shall not disclose the identities of the child, alleged perpetrators, or others involved in the case or cases.

(2) All information and records received, prepared, or maintained by the Investigation Coordinator, or the Investigation Coordinator's designee, are confidential and shall be exempt from the provisions of the Freedom of Information Act, Chapter 100 of Title 29. However, the disclosure of case specific data and information to the multidisciplinary team is authorized to ensure a comprehensive, integrated, multidisciplinary response to child abuse cases.

(3) The Investigation Coordinator, and the Investigation Coordinator's designee, as state employees, are entitled to immunity in accordance with § 4001 of Title 10.

(d) In implementing law enforcement's role in the child protection system, the law-enforcement agency investigating a report of child abuse shall:

(1) Report every case of child abuse to the Division as required by § 903 of this title; and

(2) Provide information as necessary to the Investigation Coordinator to permit case tracking, monitoring and reporting by the Investigation Coordinator.

(e) In implementing the Division's role in the child protection system, the Division shall:

(1) Receive and maintain reports pursuant to the provisions of §§ 903 and 905 of this title;

(2) Forward reports to the appropriate Division staff, who shall determine, through the use of protocols developed by the Division, whether an investigation or the family assessment and services approach should be used to respond to the allegation. The protocols for making this determination shall be developed by the Division and shall give priority to ensuring the well-being and safety of the child;

(3) The Division may investigate any report, but shall conduct an investigation involving all reports, which if true, would constitute violations against a child by a person responsible for the care, custody and control of the child of any of the following provisions of § 603, § 604, § 611, § 612, § 613, § 621, § 625, § 626, § 631, § 632, § 633, § 634, § 635, § 636, § 645, § 763, § 765, § 766, § 767, § 768, § 769, § 770, § 771, § 772, § 773, § 774, § 775, § 776, § 777, § 780, § 782, § 783, § 783A, § 791, § 1100A, § 1101, § 1102, § 1107, § 1108, § 1109, § 1110, § 1111, or § 1259 of Title 11, or an attempt to commit any such crimes. The Division staff shall also contact the Delaware Department of Justice and the appropriate law-enforcement agency upon receipt of any report under this section and shall provide such agency with a detailed description of the report received. The appropriate law-enforcement agency shall assist the Division in the investigation or provide the Division, within a reasonable time, an explanation detailing the reasons why it is unable to assist. Notwithstanding any provision of the Delaware Code to the contrary, to the extent the law-enforcement agency with jurisdiction over the case is unable to assist, the Division may request that the Delaware State Police exercise jurisdiction over the case and upon such request the Delaware State police may exercise such jurisdiction;

(4) The assisting law-enforcement agency shall promptly conduct its own criminal investigation, and keep the Division regularly apprised of the status and findings of its investigation. Law-enforcement agencies and the Division shall develop protocols to ensure compliance with this subsection;

(5) Ensure that every case of child death, and every case of near death due to abuse or neglect, is reported to the Child Death, Near Death and Stillbirth Commission pursuant to § 323(e) of Title 31;

(6) Ensure that all cases involving allegations of child abuse or neglect by a person known to be licensed or certified by a Delaware agency or professional regulatory organization, have been reported to the appropriate Delaware agency or professional regulatory organization and the Investigation Coordinator in accordance with the provisions of this section;

(7) The Division shall have authority to secure a medical examination of a child, without the consent of those responsible for the care, custody and control of the child, if the child has been reported to be a victim of abuse or neglect; provided, that such case is classified as an investigation pursuant to paragraph (e)(3) of this section and the Director or the Director's designee gives prior authorization for such examination upon finding that such examination is necessary to protect the health and safety of the child;

(8) The investigation shall include, but need not be limited to, the nature, extent and cause of the abuse or neglect, collection of evidence, the identity of the alleged perpetrator, the names and condition of other children and adults in the home, the home environment, the relationship of the subject child to the parents or other persons responsible for the child's care, any indication of incidents of physical violence against any other household or family member, background checks on all adults in the home, and the gathering of other pertinent information;

(9) In the family assessment and services approach, assess service needs of the family from information gathered from the family and other sources. The Division shall identify and provide for services for families where it is determined that the child is at risk of abuse or neglect. The Division shall document its attempt to provide voluntary services and the reasons these services are important to reduce the risk of future abuse or neglect. If the family refuses to accept or avoids the proffered services, the Division may refer the case for investigation or terminate services;

(10) Commence an immediate investigation if at any time during the family assessment and services approach the Division determines that an investigation as delineated in paragraph (e)(3) of this section is required or is otherwise appropriate. The Division staff who have conducted the assessment may remain involved in the provision of services to the child and family;

(11) Conduct a family assessment and services approach on reports initially referred for an investigation, if it is determined that a complete investigation is not required. The reason for the termination of the investigative process shall be documented;

(12) Assist the child and family in obtaining services, if at any time during the investigation it is determined that the child or any member of the family needs services;

(13) Identify local services and assist with access to those services for children and families where there is risk of abuse or neglect;

(14) Update the internal information system at regular intervals during the course of the investigation. At the conclusion of the investigation or family assessment, the internal information system shall be updated to include a case finding;

(15) When a written report is made by a person required to report under § 903 of this title, the Division shall contact the person who made such report within 48 hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information or medical records, or both, which may be pertinent;

(16) Upon completion of an investigation or family assessment and services approach, if the Division suspects that the report was made maliciously or for the purpose of harassment, the Division shall refer the report and any evidence of malice or harassment to the appropriate law enforcement agency;

(17) Multidisciplinary services shall be used whenever possible in conducting the investigation or family assessment and services approach, including the services of law-enforcement agencies, the medical community, and other agencies, both public and private;

(18) A person required to report under § 903 of this title to the Division shall be informed by the Division of the person's right to obtain information concerning the disposition of the report. Such person shall receive, from the local office, if requested, information on the general disposition of the report at the conclusion of the investigation;

(19) In any judicial proceeding involving the custody of child, the fact that a report has been made pursuant to § 903 or § 905 of this title shall not be admissible unless offered by the Division as a party or as a friend of the Court or if the Division is a party. However,

nothing herein shall prohibit the introduction of evidence from independent sources to support the allegations that may have caused a report to have been made;

(20) To protect the privacy of the family and the child named in a report, the Division shall establish guidelines concerning the disclosure of information concerning the abuse and neglect involving a child. The Division may require persons to make written requests for access to records maintained by the Division. The Division shall only release information to persons who have a legitimate public safety need for such information or a need based on the health and safety of a child subject to abuse, neglect or the risk of maltreatment, and such information shall be used only for the purpose for which the information is released; and

(21) Upon the receipt of a report concerning allegations of abuse or neglect against a person known by the Division to be licensed by 1 of the boards listed in § 8735 of Title 29, forward reports to the Division of Professional Regulation.

(f) In implementing the Delaware Department of Justice's role in the child protection system, it shall:

(1) Report every case of child abuse to the Division pursuant to § 903 of this title;

(2) Ensure that every case of child death and every case of near death due to abuse or neglect has been reported to the Child Death, Near Death and Stillbirth Commission pursuant to § 323(e) of Title 31;

(3) Provide information as necessary to the Investigation Coordinator to permit case tracking, monitoring and reporting by the Investigation Coordinator; and

(4) Ensure that all cases involving allegations of child abuse or neglect by a person known to be licensed or certified by a Delaware agency or professional regulatory organization, have been reported to the appropriate Delaware agency or professional regulatory organization and the Investigation Coordinator in accordance with provisions of this section.

(g) In the event that a criminal prosecution for child sexual abuse or exploitation is initiated by the Delaware Department of Justice against a person employed by or associated with a facility or organization required to be licensed or whose staff personnel are required to be licensed under Delaware law whose primary concern is that of child welfare and care, the Delaware Department of Justice shall notify such employer within 48 hours.

Any violations of this subsection shall be dealt with administratively by the Attorney General and the penalty provisions of § 914 of this title shall not apply hereto.

(h) In the event that a criminal prosecution for abuse or neglect is initiated by the Delaware Department of Justice pursuant to a report under this chapter and incarceration of the person who is the subject of the report is ordered by the court, the Delaware Department of Justice shall keep the Division informed of actions taken by the courts which result in the release of any such individual.

(71 Del. Laws, c. 199, § 5; 71 Del. Laws, c. 424, § 8; 72 Del. Laws, c. 173, § 5; 73 Del. Laws, c. 412, § 28; 77 Del. Laws, c. 318, § 6; 77 Del. Laws, c. 320, §§ 4, 5; 78 Del. Laws, c. 403, § 4; 78 Del. Laws, c. 406, § 1; 79 Del. Laws, c. 336, § 2.)

§ 907 Temporary emergency protective custody.

(a) A police officer or a physician who reasonably suspects that a child is in imminent danger of suffering serious physical harm or a threat to life as a result of abuse or neglect and who reasonably suspects the harm or threat to life may occur before the Family Court can issue a temporary protective custody order may take or retain temporary emergency protective custody of the child without the consent of the child's parents, guardian or others legally responsible for the child's care.

(b) Any person taking a child into temporary emergency protective custody under this section shall immediately notify the Division, in the county in which the child is located, of the person's actions and make a reasonable attempt to advise the parents, guardians, or others legally responsible for the child's care. Such person shall also file, as soon as practicable but no later than 12 hours thereafter, a written statement with the Division which sets forth the identity of the child and the facts and circumstances which gave such person reasonable cause to believe that there was imminent danger of serious physical harm or threat to the life of the child. Upon notification that a child has been taken into temporary emergency protective custody, the Division shall immediately respond in accordance with § 906 of this title to secure the safety of the child which may include ex parte custody relief from the Family Court if appropriate.

(c) Temporary emergency protective custody for purposes of this section shall not exceed 4 hours and shall cease upon the Division's response pursuant to subsection (b).

(d) For the purposes of this section, temporary emergency protective custody shall mean temporary placement within a hospital, medical facility or such other suitable placement; provided, however, that an abused or neglected child may not be detained in temporary custody in a secure detention facility.

(e) A Division investigator conducting an investigation pursuant to § 906 of this title shall have the same authority as that granted to a police officer or physician in paragraph (a) of this section, subject to all the same conditions as those listed in paragraphs (a) through (d) of this section, provided that the child in question is located at a school, day care facility or child care facility at the time that the authority is initially exercised. In no other case shall an employee of the Division exercise custody under this section.

(71 Del. Laws, c. 199, § 5; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 173, § 7.)

§ 907A Safe Arms for Babies.

(a) The General Assembly finds and declares that the abandonment of a baby is an irresponsible act by parent or parents and places the baby at risk of injury or death from exposure, actions by other individuals, and harm from animals. However, the General Assembly

does recognize that delivering a live baby to a safe place is far preferable to a baby killed or abandoned by the parent or parents. The General Assembly further finds and declares that the purpose of this section is not to circumvent the responsible action of parent or parents who adhere to the current process of placing the baby for adoption, but to prevent the unnecessary risk of harm to or death of that baby by desperate parent or parents who would otherwise abandon or cause the death of that baby. The General Assembly further finds and declares that medical information about the baby and the baby's parent or parents is critical for the adoptive parents and that every effort should be made, without risking the safe placement of the baby, to obtain that medical information and provide counseling information to those parent or parents. The General Assembly further finds and declares that if this section does not result in the safe placement of such babies or is abused by parent or parents attempting to circumvent the current process of adoption, it should be repealed.

(b) A person may voluntarily surrender a baby directly to an employee or volunteer of the emergency department of a Delaware hospital inside of the emergency department, provided that said baby is surrendered alive, unharmed and in a safe place therein.

(c) A Delaware hospital shall be authorized to take temporary emergency protective custody of the baby who is surrendered pursuant to this section. The person who surrenders the baby shall not be required to provide any information pertaining to his or her identity, nor shall the hospital inquire as to same. If the identity of the person is known to the hospital, the hospital shall keep the identity confidential. However, the hospital shall either make reasonable efforts to directly obtain pertinent medical history information pertaining to the baby and the baby's family or attempt to provide the person with a postage paid medical history information questionnaire.

(d) The hospital shall attempt to provide the person leaving the baby with the following:

(1) Information about the Safe Arms program;

(2) Information about adoption and counseling services, including information that confidential adoption services are available and information about the benefits of engaging in a regular, voluntary adoption process; and

(3) Brochures with telephone numbers for public or private agencies that provide counseling or adoption services.

(e) The hospital shall attempt to provide the person surrendering the baby with the number of the baby's identification bracelet to aid in linking the person to the baby at a later date, if reunification is sought. Such an identification number is an identification aid only and does not permit the person possessing the identification number to take custody of the baby on demand.

(f) If a person possesses an identification number linking the person to a baby surrendered at a hospital under this section and parental rights have not already been terminated, possession of the identification number creates a presumption that the person has standing to participate in an action. Possession of the identification number does not create a presumption of maternity, paternity or custody.

(g) Any hospital taking a baby into temporary emergency protective custody pursuant to this section shall immediately notify the Division and the State Police of its actions. The Division shall obtain ex parte custody and physically appear at the hospital within 4 hours of notification under this subsection unless there are exigent circumstances. Immediately after being notified of the surrender, the State Police shall submit an inquiry to the Delaware Missing Children Information Clearinghouse.

(h) The Division shall notify the community that a baby has been abandoned and taken into temporary emergency protective custody by publishing notice to that effect in a newspaper of statewide circulation. The notice must be published at least 3 times over a 3-week period immediately following the surrender of the baby unless the Division has relinquished custody. The notice, at a minimum, shall contain the place, date and time where the baby was surrendered, the baby's sex, race, approximate age, identifying marks, any other information the Division deems necessary for the baby's identification, and a statement that such abandonment shall be:

(1) The surrendering person's irrevocable consent to the termination of all parental rights, if any, of such person on the ground of abandonment; and

(2) The surrendering person's irrevocable waiver of any right to notice of or opportunity to participate in any termination of parental rights proceeding involving such child, unless such surrendering person manifests an intent to exercise parental rights and responsibilities within 30 days of such abandonment.

(i) When the person who surrenders a baby pursuant to this section manifests a desire to remain anonymous, the Division shall neither initiate nor conduct an investigation to determine the identity of such person, and no court shall order such an investigation unless there is good cause to suspect child abuse or neglect other than the act of surrendering such baby.

(73 Del. Laws, c. 187, §§ 3, 8; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 376, § 1.)

§ 908 Immunity from liability, and special reimbursement to hospitals for expenses related to certain babies.

(a) Anyone participating in good faith in the making of a report or notifying police officers pursuant to this chapter, performing a medical examination without the consent of those responsible for the care, custody and control of a child pursuant to § 906(e)(7) of this title, or exercising emergency protective custody in compliance with § 907 of this title, shall have immunity from any liability, civil or criminal, that might otherwise exist, and such immunity shall extend to participation in any judicial proceeding resulting from the above actions taken in good faith. This section shall not limit the liability of any health care provider for personal injury claims due to medical negligence that occurs as a result of any examination performed pursuant to § 906(e)(3) of this title.

(b) A hospital, hospital employee or hospital volunteer which accepts temporary emergency protective custody of a baby pursuant to § 907A of this title is absolutely immune from civil and administrative liability for any act of commission or omission in connection with the acceptance of that temporary emergency protective custody or the provision of care for the baby when left at the hospital while said

baby is in the hospital's temporary emergency protective custody except for negligence or intentional acts. If a hospital accepts temporary emergency protective custody of a baby pursuant to § 907A of this title, the State shall reimburse the hospital for eligible, medically necessary costs under the Medicaid Fee for Service Program.

(16 Del. C. 1953, § 1005; 58 Del. Laws, c. 154; 60 Del. Laws, c. 494, § 1; 71 Del. Laws, c. 199, § 5; 72 Del. Laws, c. 179, § 5; 73 Del. Laws, c. 187, §§ 4, 5, 8; 75 Del. Laws, c. 376, § 1; 78 Del. Laws, c. 403, § 4.)

§ 909 Privileged communication not recognized.

No legally recognized privilege, except that between attorney and client and that between priest and penitent in a sacramental confession, shall apply to situations involving known or suspected child abuse, neglect, exploitation or abandonment and shall not constitute grounds for failure to report as required by § 903 of this title or to give or accept evidence in any judicial proceeding relating to child abuse or neglect.

(16 Del. C. 1953, § 1007; 58 Del. Laws, c. 154; 60 Del. Laws, c. 494, § 1; 71 Del. Laws, c. 199, § 5.)

§ 910 Court orders to compel.

(a) Whenever an investigation has been opened with the Division pursuant to § 906 of this title for potential abuse or neglect of a child, the Division shall have the authority to request an order from the Family Court:

(1) To obtain access to the child, or children, and the residence of child, or children;

(2) To compel the appearance of a person at an office of the Division in furtherance of the investigation; or

(3) To compel compliance with a treatment plan previously agreed to by a child's parent or guardian, if non-compliance with the plan endangers a child's safety.

The Family Court shall issue such an order upon the showing of "need" by the Division and shall enforce noncompliance with such an order pursuant to § 925(3) of Title 10. Formal notice of a request under this section shall be provided to the respondent prior to the filing of the request with the Family Court provided that orders pursuant to this section may be granted on an ex parte basis if the child, or children, at issue are at risk of imminent physical danger. The Family Court shall consider all requests pursuant to this section within 2 business days of the request being made.

(b) For purposes of this section, "need" shall mean:

(1) That the Division has in good faith attempted on at least 2 separate prior occasions, at least 1 of which was by written communication sent by certified mail, return receipt requested, to contact the person in question without success; or

(2) That a child is in danger of imminent physical injury due to the Division's inability to communicate with the person or see the child or the child's residence.

(71 Del. Laws, c. 199, § 6; 72 Del. Laws, c. 173, § 6.)

§ 911 Training and information.

(a) The Division shall, on a continuing basis, undertake and maintain programs to inform all persons required to report abuse or neglect pursuant to § 903 of this title and the public of the nature, problem and extent of abuse and neglect, and of the remedial and therapeutic services available to children and their families and to encourage self-reporting and the voluntary acceptance of such services.

(b) The Division shall conduct ongoing training programs to advance the purpose of this section.

(c) The Division shall continuously publicize the existence of the 24-hour report-line to those required to report abuse or neglect pursuant to § 903 of this title of their responsibilities and to the public the existence of the 24-hour statewide toll-free telephone number to receive reports of abuse or neglect.

(71 Del. Laws, c. 199, § 6.)

§ 912 The Child Protection Accountability Commission.

(a) The Delaware Child Protection Accountability Commission is hereby established. The Commission shall consist of 24 members with the at-large members and the Chair appointed by the Governor, and shall be staffed by the Office of the Child Advocate. Members of the Commission serving by virtue of position may appoint a designee to serve in their stead. The Commission shall be comprised of the following:

(1) The Secretary of the Department of Services for Children, Youth and Their Families;

(2) The Director of the Division of Family Services;

(3) Two representatives from the Attorney's General Office, appointed by the Attorney General;

(4) Two members of the Family Court, appointed by the Chief Judge of the Family Court;

(5) One member of the House of Representatives, appointed by the Speaker of the House;

(6) One member of the Senate, appointed by the President Pro Tempore of the Senate;

(7) The Chair of the Child Placement Review Board;

(8) The Secretary of the Department of Education;

(9) The Director of the Division of Prevention and Behavioral Health Services;

(10) The Chair of the Domestic Violence Coordinating Council;

(11) The Superintendent of the Delaware State Police;

(12) The Chair of the Child Death, Near Death and Stillbirth Commission;

(13) The Investigation Coordinator, as defined in § 902 of this title;

(14) One youth or young adult who has experienced foster care in Delaware, appointed by the Secretary of the Department;

(15) One representative from the Public Defender's Office, appointed by the Public Defender;

(16) Seven at-large members appointed by the Governor with 1 person from the medical community, 1 person from the Interagency Committee on Adoption who works with youth engaged in the foster care system, 1 person from a law-enforcement agency other than the State Police, and 4 persons from the child protection community. The law-enforcement representative may designate a proxy as needed.

(b) The Child Advocate shall serve as the Executive Director of the Commission to effectuate its purposes pursuant to Chapter 90A of Title 29. It shall be the purpose of the Commission to monitor Delaware's child protection system to best ensure the health, safety and well-being of Delaware's abused, neglected and dependent children. To that end, the Commission shall meet on a quarterly basis and shall:

(1) Examine and evaluate the policies, procedures and effectiveness of the child protection system and make recommendations for changes therein, focusing specifically on the respective roles in the child protection system of the Division of Family Services, the Division of Prevention and Behavioral Health Services, the Office of the Attorney General, the Family Court, the medical community, and law-enforcement agencies;

(2) Recommend changes in the policies and procedures for investigating and overseeing the welfare of abused, neglected and dependent children;

(3) Advocate for legislation and make legislative recommendations to the Governor and General Assembly;

(4) Access, develop and provide quality training to staff of the Division of Family Services, Deputy Attorneys General, Family Court, law enforcement officers, the medical community, educators, day-care providers, and others on child protection issues;

(5) Review and make recommendations concerning the well-being of Delaware's abused, neglected and dependent children including, but not limited to, issues relating to foster care, adoption, mental health services, victim services, education, rehabilitation, substance abuse and independent living; and

(6) Provide the following reports to the Governor:

a. An annual summary of the Commission's work and recommendations, including work of the Office of the Child Advocate, with copies thereof sent to the General Assembly; and

b. A quarterly written report of the Commission's activities and findings, in the form of minutes, made available also to the General Assembly and the public.

(71 Del. Laws, c. 199, § 6; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 116, §§ 1-3, 5[4]; 76 Del. Laws, c. 97; 77 Del. Laws, c. 327, § 210(a); 77 Del. Laws, c. 383, §§ 1-3; 79 Del. Laws, c. 322, § 1.)

§ 913 Child under treatment by spiritual means not neglected.

No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for that reason alone be considered a neglected child for the purposes of this chapter.

(16 Del. C. 1953, § 1006; 58 Del. Laws, c. 154; 60 Del. Laws, c. 494, § 1.)

§ 914 Penalty for violation.

(a) Whoever violates § 903 of this title shall be liable for a civil penalty not to exceed $10,000 for the first violation, and not to exceed $50,000 for any subsequent violation.

(b) In any action brought under this section, if the court finds a violation, the court may award costs and attorneys' fees.

(16 Del. C. 1953, § 1008; 58 Del. Laws, c. 154; 60 Del. Laws, c. 494, § 1; 77 Del. Laws, c. 121, § 1; 77 Del. Laws, c. 320, § 6.)

Subchapter II

Child Protection Registry

§ 921 Child Protection Registry; purpose.

The Division shall maintain a Child Protection Registry which contains information about persons who have been substantiated for abuse or neglect as provided in this subchapter or who were substantiated between August 1, 1994, and February 1, 2003. The primary purpose of the Child Protection Registry is to protect children and to ensure the safety of children in child care, health care and public educational facilities. This subchapter must be liberally construed so that these purposes may be realized.

(73 Del. Laws, c. 412, § 7.)

§ 922 Entry on the Child Protection Registry [Effective until Jan. 11, 2015]

The Child Protection Registry must indicate "substantiated for abuse" or "substantiated for neglect" and the Child Protection Level as designated in § 923 of this subchapter for any person who:

(1) Based on the same incident of abuse or neglect on which the substantiation proceeding is premised, has been convicted of any criminal offense set out in § 923 of this subchapter or any offense specified in the laws of another state, the United States or any territory of the United States which is the same as or equivalent to any of the offenses set out in § 923 of this title;

(2) Has been found by the Family Court, in a child welfare proceeding brought by the Division or in which the Division is a party, by a preponderance of the evidence to have abused or neglected a child;

(3) Fails to make a timely written request for a hearing as provided in § 924(a)(2) of this title after being given notice by the Division of its intent to substantiate the person for abuse or neglect and enter the person on the Registry;

(4) Is entered on the Registry by order of the Family Court in a proceeding on a Petition for Substantiation as described in § 925 of this title; or

(5) Was substantiated for abuse or neglect between August 1, 1994, and February 1, 2003.

(73 Del. Laws, c. 412, § 7.)

§ 922 Entry on the Child Protection Registry [Effective Jan. 11, 2015]

The Child Protection Registry must indicate "substantiated for abuse" or "substantiated for neglect" and the Child Protection Level as designated in § 923 of this subchapter for any person who:

(1) Based on the same incident of abuse or neglect on which the substantiation proceeding is premised, has been convicted of any criminal offense set out in § 923 of this subchapter or any offense specified in the laws of another state, the United States or any territory of the United States which is the same as or equivalent to any of the offenses set out in § 923 of this title;

(2) Has been found by the Family Court, in a child welfare proceeding brought by the Division or in which the Division is a party, by a preponderance of the evidence to have abused or neglected a child;

(3) Fails to make a timely written request for a hearing as provided in § 924(a)(2) of this title after being given notice by the Division of its intent to substantiate the person for abuse or neglect and enter the person on the Registry;

(4) Is entered on the Registry by order of the Family Court in a proceeding on a Petition for Substantiation as described in § 925 or § 925A of this title; or

(5) Was substantiated for abuse or neglect between August 1, 1994, and February 1, 2003.

(73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.)

§ 923 Child Protection Levels [Effective until Jan. 11, 2015]

(a) A person who has been substantiated for abuse or neglect must be entered on the Child Protection Registry at a designated Child Protection Level related to the risk of future harm to children as designated in subsection (b) of this section. The Division shall develop regulations that assess the risk of future harm to children from acts of abuse or neglect and designate Child Protection Levels.

(b) The following paragraphs describe the 4 child protection levels:

(1) *Child Protection Level I.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level I:

a. An incident of abuse or neglect, including emotional neglect, presenting a low risk of future harm to children; or

b. Conviction of a violation of compulsory school attendance requirements or truancy when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title.

A person who is substantiated for abuse or neglect at Child Protection Level I must not be entered on the Child Protection Registry and must not be reported in response to a Child Protection Registry check made pursuant to § 8563 of Title 11 for that incident or conviction. The person is eligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 of Title 11.

(2) *Child Protection Level II.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level II:

a. An incident of abuse or neglect, including severe emotional neglect, presenting a moderate risk of future harm to children; or

b. Conviction of interference with custody when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this subchapter.

A person who is substantiated for abuse or neglect at Child Protection Level II must be reported for a period of 3 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to § 8563 of Title 11. The person must remain on the Registry for a period of 3 years, but the person is eligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 of Title 11, while the person is on the Registry at Child Protection Level II; and a prospective employer making a Child Protection Registry check must be so informed. If the person

is not substantiated for abuse or neglect while on the Registry, the person on the Registry at Child Protection Level II is automatically removed from the Registry after 3 years and must not be reported in a Child Protection Registry check for that incident or conviction.

(3) *Child Protection Level III.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level III:

a. An incident of abuse or neglect presenting a high risk of future harm to children, including but not limited to: physical injury, nonorganic failure to thrive, malnutrition, or abandonment of a child 13 to 17 years of age; or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: offensive touching, menacing, reckless endangering, assault in the third degree, terroristic threatening, unlawful administration of drugs or controlled substances, indecent exposure in the first or second degree, sexual harassment, unlawful imprisonment, abandonment of a child, or misdemeanor endangering the welfare of a child.

A person who is substantiated for abuse or neglect at Child Protection Level III must be reported for a period of 7 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to § 8563 of Title 11. The person is ineligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 of Title 11, while the person is on the Child Protection Registry at Child Protection Level III. If the person is not substantiated for a different incident of abuse or neglect while on the Registry, the person entered on the Registry at Child Protection Level III is automatically removed from the Registry after 7 years and is, thereafter, eligible for employment in a child care facility, health care facility or public school, and must not be reported in a Child Protection Registry check for that incident or conviction.

(4) *Child Protection Level IV.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level IV:

a. An incident of abuse or neglect presenting the highest risk of future harm to children, including but not limited to serious physical injury, sexual abuse, torture, criminally negligent treatment, or abandonment of a child 12 years of age or younger (but not including the voluntary surrender of a baby pursuant to the Safe Arms for Babies program as provided in § 907A of this title); or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: vehicular assault, vehicular homicide, criminally negligent homicide, assault in the first degree, assault in the second degree, murder, manslaughter, murder by abuse or neglect, incest, rape, unlawful sexual contact, sexual extortion, sexual solicitation of a child, bestiality, continuous sexual abuse of a child, possession of child pornography, unlawfully dealing in child pornography, felony endangering the welfare of a child, dangerous crime against a child, kidnapping, coercion, dealing in children, unlawful dealing with a child, sexual exploitation of a child, or promoting suicide.

A person who is substantiated for abuse or neglect at Child Protection Level IV must be reported as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to § 8563 of Title 11. The person is ineligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 of Title 11. In addition, the person may not be removed from the Registry and must be reported in a Registry check for the incident or conviction.

(c) A person who is substantiated for an incident of abuse or neglect while on the Child Protection Registry is ineligible for automatic removal from the Registry, but may be removed from the Registry by order of the Family Court as provided in § 929 of this title. If a person is substantiated for abuse or neglect while on the Registry, the imposed conditions for each incident must be completed consecutively, with the conditions for the most restrictive Child Protection Level or Levels being completed before those for the less restrictive level or levels. A person who has partially completed a level when assigned to a more restrictive level is given credit for that partial completion when that person has completed the conditions for the more restrictive level or levels.

(73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1.)

§ 923 Child Protection Levels [Effective Jan. 11, 2015]

(a) A person who has been substantiated for abuse or neglect pursuant to this subchapter must be entered on the Child Protection Registry. The Division shall develop regulations that assess the risk of future harm to children from acts of abuse or neglect and designate Child Protection Levels.

(b) The following paragraphs describe the 4 child protection levels:

(1) *Child Protection Level I.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level I:

a. An incident of abuse or neglect, including emotional neglect, presenting a low risk of future harm to children; or

b. Conviction of a violation of compulsory school attendance requirements or truancy when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title.

A person who is substantiated for abuse or neglect at Child Protection Level I must not be reported in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11 for that incident or conviction. The person is eligible for employment in a child care facility, health-care facility or public school, as those terms are defined in § 8563 of Title 11.

(2) *Child Protection Level II.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level II:

a. An incident of abuse or neglect, including severe emotional neglect, presenting a moderate risk of future harm to children; or

b. Conviction of interference with custody when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this subchapter.

A person who is substantiated for abuse or neglect at Child Protection Level II must be reported for a period of 3 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11. The person must remain on the Registry for a period of 3 years, but the person is eligible for employment in a child care facility, health-care facility or public school, as those terms are defined in Chapter 85 of Title 11, while the person is on the Registry at Child Protection Level II; and a prospective employer making a Child Protection Registry check must be so informed. If the person is not substantiated for abuse or neglect while on the Registry, the person on the Registry at Child Protection Level II is automatically removed from the Registry after 3 years and must not be reported in a Child Protection Registry check for that incident or conviction.

(3) *Child Protection Level III.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level III:

a. An incident of abuse or neglect presenting a high risk of future harm to children, including but not limited to: physical injury, nonorganic failure to thrive, malnutrition, or abandonment of a child 13 to 17 years of age; or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: offensive touching, menacing, reckless endangering in the second degree, assault in the third degree, child abuse in the third degree, terroristic threatening, unlawful administration of drugs or controlled substances, indecent exposure in the first or second degree, sexual harassment, unlawful imprisonment in the second degree, abandonment of a child, or misdemeanor endangering the welfare of a child.

A person who is substantiated for abuse or neglect at Child Protection Level III must be reported for a period of 7 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11. The person is ineligible for employment in a child care facility, health-care facility or public school, as those terms are defined in Chapter 85 of Title 11, while the person is on the Child Protection Registry at Child Protection Level III. If the person is not substantiated for a different incident of abuse or neglect while on the Registry, the person entered on the Registry at Child Protection Level III is automatically removed from the Registry after 7 years and is, thereafter, eligible for employment in a child care facility, health-care facility or public school, and must not be reported in a Child Protection Registry check for that incident or conviction.

(4) *Child Protection Level IV.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level IV:

a. An incident of abuse or neglect presenting the highest risk of future harm to children, including but not limited to serious physical injury, sexual abuse, torture, criminally negligent treatment, or abandonment of a child 12 years of age or younger (but not including the voluntary surrender of a baby pursuant to the Safe Arms for Babies program as provided in § 907A of this title); or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: vehicular assault, vehicular homicide, criminally negligent homicide, assault in the first degree, assault in the second degree, reckless endangering in the first degree, unlawful imprisonment in the first degree, child abuse in the first degree, child abuse in the second degree, murder, manslaughter, murder by abuse or neglect, incest, rape, unlawful sexual contact, sexual extortion, sexual solicitation of a child, felony sex offender unlawful sexual conduct against a child, felony sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree or second degree, trafficking of persons and involuntary servitude, bestiality, continuous sexual abuse of a child, possession of child pornography, unlawfully dealing in child pornography, felony endangering the welfare of a child, dangerous crime against a child, kidnapping, coercion, dealing in children, unlawful dealing with a child, sexual exploitation of a child, or promoting suicide.

A person who is substantiated for abuse or neglect at Child Protection Level IV must be reported as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11. The person is ineligible for employment in a child care facility, health-care facility or public school, as those terms are defined in Chapter 85 of Title 11. In addition, the person may not be removed from the Registry and must be reported in a Registry check for the incident or conviction, except as provided in § 929(c) of this title.

(c) A person who is substantiated for an incident of abuse or neglect while on the Child Protection Registry is ineligible for automatic removal from the Registry, but may be removed from the Registry by order of the Family Court as provided in § 929 of this title. If a person is substantiated for abuse or neglect while on the Registry, the imposed conditions for each incident must be completed consecutively, with the conditions for the most restrictive Child Protection Level or Levels being completed before those for the less restrictive level or levels. A person who has partially completed a level when assigned to a more restrictive level is given credit for that partial completion when that person has completed the conditions for the more restrictive level or levels.

(73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 314, § 1.)

§ 924 Notice of Intent to Substantiate; process [Effective until Jan. 11, 2015]

(a) In response to a report where abuse or neglect is alleged, the Division shall conduct an investigation into the facts and circumstances of the alleged abuse or neglect as required by § 906 of this title.

(1) If the Division determines from its investigation not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing. The Division shall develop regulations for classifying unsubstantiated cases in its internal information system.

(2) If the Division determines from its investigation that it intends to substantiate the person for abuse or neglect and enter the person on the Child Protection Registry, it shall give written notice to the person by certified mail, return receipt requested, at that person's last known address. The written notice must:

a. Briefly describe the alleged incident of abuse or neglect;

b. Advise the person that the Division intends to substantiate the allegations and enter the person on the Child Protection Registry for the incident of abuse or neglect at a designated Child Protection Level;

c. State the consequences of being entered on the Registry at the designated level, including whether the person will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to § 8563 of Title 11;

d. Inform the person of that person's own right to request a hearing in the Family Court before the person is entered on the Child Protection Registry;

e. Further advise that the person will be entered on the Registry for the incident at the designated Child Protection Level unless, within 30 days of the date of mailing of the notice, the person responds to the Division in writing, requesting a hearing in the Family Court on the Division's intent to substantiate the person for abuse or neglect and enter the person on the Registry;

f. Contain a written form for the person to return to the Division to request a hearing.

(b) A person who fails to request a hearing as provided in subsection (a) of this section must, at the expiration of 30 days from the date of mailing of the notice of intent to substantiate the allegations of abuse or neglect and enter the person on the Registry, be entered on the Child Protection Registry at the Child Protection Level designated in the notice.

(73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1.)

§ 924 Notice of Intent to Substantiate; process [Effective Jan. 11, 2015]

(a) In response to a report where abuse or neglect is alleged, the Division shall conduct an investigation into the facts and circumstances of the alleged abuse or neglect as required by § 906 of this title.

(1) If the Division determines from its investigation not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing. The Division shall develop regulations for classifying unsubstantiated cases in its internal information system.

(2) If the Division determines from its investigation that it intends to substantiate the person for abuse or neglect and enter an adult person on the Child Protection Registry, it shall give written notice to the person by certified mail, return receipt requested, at that person's last known address. The written notice must:

a. Briefly describe the alleged incident of abuse or neglect;

b. Advise the person that the Division intends to substantiate the allegations and enter the person on the Child Protection Registry for the incident of abuse or neglect at a designated Child Protection Level;

c. State the consequences of being entered on the Registry at the designated level, including whether the person will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11;

d. Inform the person of that person's own right to request a hearing in the Family Court before the person is entered on the Child Protection Registry;

e. Further advise that the person will be entered on the Registry for the incident at the designated Child Protection Level unless, within 30 days of the date of mailing of the notice, the person responds to the Division in writing, requesting a hearing in the Family Court on the Division's intent to substantiate the person for abuse or neglect and enter the person on the Registry;

f. Contain a written form for the person to return to the Division to request a hearing.

(3) If the Division determines from its investigation that it intends to substantiate a child and enter the child on the Child Protection Registry, it shall give written notice to the child and the child's parent, guardian, and legal custodian by certified mail, return receipt requested, at the child's last known address. The written notice must:

a. Briefly describe the alleged incident of abuse or neglect;

b. Advise the child that the Division intends to substantiate the allegations and enter the child on the Child Protection Registry for the incident of abuse or neglect at a designated Child Protection Level;

c. State the consequences of being entered on the Registry at the designated level, including whether the child will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11;

d. Inform the child that a hearing will be held in the Family Court before the child is entered on the Child Protection Registry.

e. Provide notice to the child's guardian ad litem or attorney if the child is in DSCYF custody.

(4) If the Division determines from its investigation that it intends to enter a person on the Child Protection Registry as a result of a conviction of an enumerated offense set forth in § 923 of this title, the Division shall send a Notice of Substantiation to the person informing them of the substantiation and notifying them of the right to file a Petition for Limited Purpose Hearing. The Petition for Limited Purpose Hearing shall be filed by the person in Family Court within 30 days of the Notice of Substantiation, shall include a copy of the Notice of Substantiation, and shall set forth why the person alleges the conviction does not meet the requirements set forth in § 922(1) of this title. A Limited Purpose Hearing shall be limited to determining whether the conviction meets the requirements of § 922(1) of this title. If a Petition for Limited Purpose Hearing is not filed within 30 days of the Notice of Substantiation, the person shall remain automatically placed on the registry pursuant to § 922(1) of this title.

(b) A person, other than a child, who fails to request a hearing as provided in subsection (a) of this section must, at the expiration of 30 days from the date of mailing of the notice of intent to substantiate the allegations of abuse or neglect and enter the person on the Registry, be entered on the Child Protection Registry at the Child Protection Level designated in the notice.

(c) The Division shall file a Petition for Substantiation before any child is entered on the Child Protection Registry, regardless of the written request of the child.

(73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 314, § 1.)

§ 925 Petition for Substantiation [Effective until Jan. 11, 2015]

(a) If a person responds to the Division and requests a hearing in the Family Court before being entered on the Registry, as provided in § 924 of this title, the Division shall, unless the automatic stay provisions of § 927 of this title apply, file in the Family Court no later than 20 days after receipt of the written request a Petition for Substantiation which requests that the Court substantiate the abuse or neglect and enter the person on the Child Protection Registry at a Child Protection Level designated by the Court. The Petition for Substantiation must be filed in the county in which the alleged incident leading to the Petition occurred. The Family Court may, upon motion by the Division or sua sponte, enter an order that places the person on the Registry at a designated Child Protection Level pending a final order on the Petition for Substantiation. The Family Court shall make a written finding in the proceedings on the Petition for Substantiation as to whether the person committed abuse or neglect. If the Family Court finds that the person committed abuse or neglect, it shall, pursuant to § 923 of this title, designate the Child Protection Level at which the person must be entered on the Registry. An order of substantiation may not be stayed pending appeal. If the Family Court finds that the person has not committed an act of abuse or neglect, the person may not be entered on the Registry for that incident, and the Division shall indicate in its internal information system that the incident is unsubstantiated.

(b) If a child welfare proceeding is pending in which the Division has requested a finding of abuse or neglect against a party and entry on the Registry for the same incident, the Family Court shall decide the issues of substantiation and entry on the Registry as provided in § 926 of this title without the necessity of a response to the notice of intent to substantiate or a separate Petition for Substantiation.

(c) If the Division fails to file a Petition for Substantiation within 20 days of receipt of a person's written request for a hearing as provided in § 924 of this title and a child welfare proceeding based on the same incident of abuse or neglect is not pending, the person may not be entered on the Child Protection Registry for the incident of abuse or neglect indicated in the notice of intent to substantiate.

(73 Del. Laws, c. 412, § 7.)

§ 925 Petition for Substantiation [Effective Jan. 11, 2015]

(a) If a person responds to the Division and requests a hearing in the Family Court before being entered on the Registry, as provided in § 924 of this title, the Division shall, unless the automatic stay provisions of § 927 of this title apply, file in the Family Court no later than 45 days after receipt of the written request, or in the case of a child, no later than 45 days after the notice of intent to substantiate was sent to the child, a Petition for Substantiation which requests that the Court substantiate the abuse or neglect and enter the person on the Child Protection Registry at a Child Protection Level designated by the Court.

(b) The Petition for Substantiation must be filed in the county in which the alleged incident leading to the Petition occurred.

(c) The Family Court may, upon motion by the Division or sua sponte, enter an order that places the person on the Registry at a designated Child Protection Level pending a final order on the Petition for Substantiation.

(d) The Family Court shall appoint counsel for any unrepresented child against whom a Petition for Substantiation has been filed.

(73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.)

§ 925A Grounds for substantiation [Effective Jan. 11, 2015]

(a) Unless otherwise provided in this subchapter, no person shall be placed on the registry unless the Court finds by a preponderance of the evidence after a hearing on the merits, or accepts the agreement of the parties, that:

(1) The person committed an act of abuse or neglect; and

(2) The act of abuse or neglect was based on the same incident as alleged in the Notice of Intent to Substantiate.

(b) Should the elements of subsection (a) of this section be met, the Court shall also determine by a preponderance of the evidence after a hearing on the merits or accept the agreement of the parties, the risk of future harm the person poses to children and designate the person to the appropriate Child Protection Level set forth in § 923 of this title. If the person is convicted of an enumerated crime when

based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate, the person is automatically entered on the Child Protection Registry at the level designated by § 923 of this title.

(c) An order of substantiation may not be stayed pending appeal.

(d) If the Family Court finds that the person has not committed an act of abuse or neglect based on the same incident as alleged in the Notice of Intent to Substantiate, the person may not be entered on the Registry for that incident, and the Division shall indicate in its internal information system that the incident is unsubstantiated.

(e) If a child welfare proceeding is pending in which the Division has requested a finding of abuse or neglect against a party and entry on the Registry for the same incident, the Family Court shall decide the issues of substantiation and entry on the Registry as provided in § 926 of this title without the necessity of a response to the notice of intent to substantiate or a separate Petition for Substantiation.

(f) If the Division fails to file a Petition for Substantiation within 45 days of receipt of a person's written request for a hearing as provided in § 924 of this title and a child welfare proceeding based on the same incident of abuse or neglect is not pending, the person may not be entered on the Child Protection Registry for the incident of abuse or neglect indicated in the notice of intent to substantiate.

(79 Del. Laws, c. 314, § 1.)

§ 926 Finding of abuse of neglect in child welfare proceeding; binding effect [Effective until Jan. 11, 2015]

In every child welfare proceeding brought by the Division or in which the Division is a party and in which the Division has requested a finding of abuse or neglect and entry on the Registry, the Family Court shall make a finding, by a preponderance of the evidence, as to whether a parent or other party has abused or neglected the child. If the Court finds that a parent or party has abused or neglected the child, it shall order the parent or party to be entered on the Child Protection Registry at the Child Protection Level designated by the Court, as provided in § 923 of this title. An order of substantiation may not be stayed pending appeal. The findings of the Family Court are final and binding, and work as issue or claim preclusion for the same incident of abuse or neglect in substantiation proceedings.

(73 Del. Laws, c. 412, § 7.)

§ 926 Finding of abuse or neglect in child welfare proceeding; binding effect [Effective Jan. 11, 2015]

In every child welfare proceeding brought by the Division or in which the Division is a party and in which the Division has requested a finding of abuse or neglect and entry on the Registry, the Family Court shall make findings pursuant to §/ 925A of this title. The findings of the Family Court are final and binding, and work as issue or claim preclusion for the same incident of abuse or neglect in substantiation proceedings.

(73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.)

§ 927 Automatic stay of substantiation proceedings [Effective until Jan. 11, 2015]

(a) Proceedings under § 925 of this title, including the duty to file a Petition for Substantiation, are automatically stayed in any matter in which a criminal or delinquency proceeding involving the same incident of abuse or neglect is pending.

(b) Conviction of a crime involving the same incident of abuse or neglect is final, binding and determinative of the issue of abuse or neglect and of the person's entry on the Registry at the Child Protection Level designated for such offense.

(c) Upon conclusion of a criminal or delinquency proceeding involving the same allegations or facts as those alleged in the incident of abuse or neglect, if the accused is acquitted of the charge or the charge is dismissed and the Division intends to pursue substantiation, the acquittal or dismissal does not automatically work as issue or claim preclusion against a civil finding of abuse or neglect, nor does it prevent the taking of evidence, notwithstanding any other law to the contrary.

(73 Del. Laws, c. 412, § 7.)

§ 927 Automatic stay of substantiation proceedings [Effective Jan. 11, 2015]

(a) Proceedings under §§ 925 and 925A of this title, including the duty to file a Petition for Substantiation, are automatically stayed in any matter in which a criminal or delinquency proceeding involving the same incident of abuse or neglect is pending. The time to file a Petition for Substantiation under § 925 of this title shall begin upon conclusion of the criminal or delinquency proceeding.

(b) Conviction of a crime involving the same incident of abuse or neglect is final, binding and determinative of the issue of abuse or neglect and of the person's entry on the Registry at the Child Protection Level designated for such offense.

(c) Upon conclusion of a criminal or delinquency proceeding involving the same allegations or facts as those alleged in the incident of abuse or neglect, if the accused is acquitted of the charge or the charge is dismissed and the Division intends to pursue substantiation, the acquittal or dismissal does not automatically work as issue or claim preclusion against a civil finding of abuse or neglect, nor does it prevent the taking of evidence, notwithstanding any other law to the contrary.

(73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.)

§ 928 Persons entered on the Registry between August 1, 1994, and February 1, 2003 [Effective until Jan. 11, 2015]

(a) The Division shall review each case substantiated for abuse or neglect that was placed on the Central Registry (also known as the Central Child Abuse Registry, the Child Abuse Registry and the Central Abuse Registry) between August 1, 1994, and the effective

date of this subchapter and designate each case to a Child Protection Level in accordance with the regulations developed pursuant to § 923 of this title.

(b) A person who has been entered on the Child Protection Registry for the time prescribed in the designated Child Protection Level for the person's incident of abuse or neglect must be automatically removed from the Child Protection Registry, provided that the person has not been substantiated for an incident of abuse or neglect while on the Child Protection Registry. The Division shall notify the person of the removal.

(c) The Division shall notify a person who does not qualify for automatic removal from the Child Protection Registry of the Child Protection Level to which the person has been designated and of the consequences of designation to that level, including whether the person will be reported as substantiated for abuse or neglect in a Child Protection Registry check pursuant to § 8563 of Title 11.

(73 Del. Laws, c. 412, § 7.)

§ 928 Persons entered on the Registry between August 1, 1994, and February 1, 2003 [Effective Jan. 11, 2015]

(a) The Division shall review each case substantiated for abuse or neglect that was placed on the Central Registry (also known as the Central Child Abuse Registry, the Child Abuse Registry and the Central Abuse Registry) between August 1, 1994, and the effective date of this subchapter and designate each case to a Child Protection Level in accordance with the regulations developed pursuant to § 923 of this title.

(b) A person who has been entered on the Child Protection Registry for the time prescribed in the designated Child Protection Level for the person's incident of abuse or neglect must be automatically removed from the Child Protection Registry, provided that the person has not been substantiated for an incident of abuse or neglect while on the Child Protection Registry. The Division shall notify the person of the removal.

(c) The Division shall notify a person who does not qualify for automatic removal from the Child Protection Registry of the Child Protection Level to which the person has been designated and of the consequences of designation to that level, including whether the person will be reported as substantiated for abuse or neglect in a Child Protection Registry check pursuant to Chapter 85 of Title 11.

(73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.)

§ 929 Removal of name from the Child Protection Registry [Effective until Jan. 11, 2015]

(a) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III will be automatically removed from the Registry under § 923 of this title, provided that the person has not been substantiated for an incident of abuse or neglect while on the Registry.

(b) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III and who has successfully completed a Division-recommended or Family Court-ordered case plan, may file a Petition for Removal in the Family Court prior to the expiration of the time designated for the level. Only a person who has successfully completed that person's own case plan is eligible to petition for an early removal.

(c) A Petition for Removal from the Registry must be filed in the Family Court in the county in which the substantiation occurred. A copy of the petition must be served on the Division, which may file an objection or answer to the petition within 30 days after being served. In every case, the Division shall inform the Court whether or not the person applying for removal has been substantiated for abuse or neglect while on the Child Protection Registry. The Family Court may, in its discretion, dispose of a Petition for Removal without a hearing.

(d) Removal from the Child Protection Registry means only that the person's name has been removed from the Registry and may no longer be reported to employers pursuant to § 8563 of Title 11. Notwithstanding removal from the Registry, the person's name and other case information remains in the Division's internal information system as substantiated for all other purposes, including, but not limited to, the Division's use of the information for historical, treatment and investigative purposes, child care licensing decisions, foster and adoptive parent decisions, reporting pursuant to § 309 of Title 31, reporting to law enforcement authorities, or any other purpose set forth in § 906(e) of this title.

(73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 403, § 4.)

§ 929 Removal of name from the Child Protection Registry [Effective Jan. 11, 2015]

(a) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III will be automatically removed from the Registry under § 923 of this title, provided that the person has not been substantiated for an incident of abuse or neglect while on the Registry.

(b) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III may file a Petition for Removal in the Family Court prior to the expiration of the time designated for the level. The Family Court shall have the discretion to remove the person from the registry. In making this determination, the Court shall consider all relevant factors, including:

(1) The nature and circumstances of the original substantiated incident;

(2) Any substantiated incidents of abuse or neglect while on the Registry;

(3) The criminal history of the person, including whether the person's criminal record of arrest or conviction of the incident leading to placement on the Registry was expunged;

(4) Compliance with the terms of probation, if applicable;

(5) The risk, if any, the registrant poses to the victim, the community and to other potential victims;

(6) The impact of registration and employer notification on the victim, community and other potential victims;

(7) The rehabilitation, if any, of the person, or successful completion of a program of evaluation and treatment including any court-ordered or division-recommended case plan; and

(8) The adverse impact of registration on the person and the rehabilitative process, including the impact on employment opportunities.

(c) A person who was entered on the Child Protection Registry at any level as a child, may, at any time after his or her eighteenth birthday, file a Petition for Removal in the Family Court. The Family Court shall have the discretion to remove the person from the registry. In making this determination, the Court shall consider all relevant factors, including those in § 929(b) of this title.

(d) A Petition for Removal from the Registry must be filed in the Family Court in the county in which the substantiation occurred. A copy of the petition must be served on the Division, which may file an objection or answer to the petition within 30 days after being served. In every case, the Division shall inform the Court whether or not the person applying for removal has been substantiated for abuse or neglect while on the Child Protection Registry. The Family Court may, in its discretion, dispose of a Petition for Removal without a hearing.

(e) Removal from the Child Protection Registry means only that the person's name has been removed from the Registry and may no longer be reported to employers pursuant to Chapter 85 of Title 11. Notwithstanding removal from the Registry, the person's name and other case information remains in the Division's internal information system as substantiated for all other purposes, including, but not limited to, the Division's use of the information for historical, treatment and investigative purposes, child care licensing decisions, foster and adoptive parent decisions, reporting pursuant to § 309 of Title 31, reporting to law enforcement authorities, or any other purpose set forth in § 906(e) of this title.

(73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 403, § 4; 79 Del. Laws, c. 314, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 10
HOSPITALS

§ 1001 Definitions.

As used in this chapter:

(1) "Government unit" means the United States, State, county, municipality or other political subdivision or any department, division, board or other agency of any of the foregoing.

(2) "Hospital" means a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than 24 hours in any week of 4 or more nonrelated individuals suffering from illness, disease, injury or deformity or a place devoted primarily to providing for not less than 24 hours in any week of obstetrical or other medical or nursing care for 2 or more nonrelated individuals but does not include sanatoriums, rest homes, nursing homes or boarding homes.

(3) "Person" means person, firm, association or corporation.

(16 Del. C. 1953, § 1021; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 87; 70 Del. Laws, c. 186, § 1.)

§ 1002 Purpose.

The purpose of this chapter is to provide for the development, establishment and enforcement of standards for the construction, maintenance and operation of hospitals, which, in the light of advancing knowledge, will promote safe and adequate treatment of such individuals in hospitals.

(16 Del. C. 1953, § 1022; 56 Del. Laws, c. 360.)

§ 1003 License requirement.

No person or government unit, acting severally or jointly with any other person or government unit shall construct, establish, conduct or maintain a hospital in this State without a license being issued under this chapter.

(16 Del. C. 1954, § 1023; 56 Del. Laws, c. 360.)

§ 1004 Application for license.

An application for license shall be made to the Department upon forms provided by it and shall contain such information as the Department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards, rules and regulations as are lawfully prescribed under this chapter.

(16 Del. C. 1953, § 1024; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 88; 70 Del. Laws, c. 186, § 1.)

§ 1005 Issuance and renewal of license.

(a) Upon receipt of an application for license and the application fee of $250 for hospitals with 100 beds or fewer and $375 for hospitals with more than 100 beds, the Department shall issue a license if the applicant and hospital facilities meet the requirements established under this chapter.

(b) A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of $150 for hospitals with 100 beds or fewer and $250 for hospitals with more than 100 beds.

(c) A provisional or restricted license as authorized by the Department shall be issued when health requirements are not met, upon payment of a licensure fee of $150 for hospitals with 100 beds or fewer and $250 for hospitals with more than 100 beds. For each hospital which has been issued a provisional or restricted license there shall be resubmission of the application fee for reinspection prior to the issuance of an annual license.

(16 Del. C. 1953, § 1025; 56 Del. Laws, c. 360; 67 Del. Laws, c. 266, § 5; 70 Del. Laws, c. 149, § 89; 70 Del. Laws, c. 186, § 1.)

§ 1006 Denial or revocation of license, hearings and appeal.

(a) The Department shall have the authority to deny, suspend, or revoke a license in any case where it finds that there has been a failure to comply with this chapter or the rules and regulations issued under this chapter or the Hospital Infections Disclosure Act [Chapter 10A of this title] or § 1731A of Title 24 or § 903 of this title.

(b) Before any license issued under this chapter is denied, suspended or revoked, notice shall be given in writing to the holder of the license setting forth the particular reasons for such action. Such denial, suspension or revocation shall become effective 30 days after the mailing by registered mail or personal service of the notice, unless the applicant or licensee within such 30 day period shall give written notice to the Department requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the Department. At any time at or prior to the hearing, the Department may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for denial,

suspension or revocation have been or will be removed. A copy of the decision of the Department setting forth the finding of facts and the particular reasons for the decision shall be sent be registered mail or served personally upon the applicant or licensee. The decision shall become final 30 days after it is so mailed or served unless the applicant or licensee within such 30 day period appeals the decision to the Superior Court in accordance with § 1014 of this title.

(c) The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by said Department.

(d) A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to § 1014 of this title. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the aforesaid rules.

(16 Del. C. 1953, § 1026; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, §§ 90, 91; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 122, § 2; 77 Del. Laws, c. 320, § 7.)

§ 1007 Rules, regulations and enforcement.

(a) The Department shall adopt, amend or repeal regulations governing the establishment and operation of hospitals. These regulations shall establish reasonable standards of equipment, capacity, sanitation and any conditions which might influence the health care received by patients or promote the purposes of this chapter.

(b) The Department shall further adopt regulations to ensure that hospital staff have ready access to a locked hospital bathroom in the event of an emergency.

(16 Del. C. 1953, § 1027; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 92; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 243, § 1.)

§ 1008 Effective date of regulations.

Any hospital which is in operation at the time of adoption of any applicable regulation or standard adopted under this chapter shall be given by the Department a reasonable time, not exceeding 5 years, within which to comply with such regulations and standards.

(16 Del. C. 1953, § 1028; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 93; 70 Del. Laws, c. 186, § 1.)

§ 1009 Inspections and investigations.

The Department shall make or cause to be made such inspections and investigations as it may deem necessary.

(16 Del. C. 1953, § 1029; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 94; 70 Del. Laws, c. 186, § 1.)

§§ 1010 , 1011. Hospital Advisory Council — Membership; appointment; terms of office; compensation; responsibilities and duties.

Repealed by 68 Del. Laws, c. 79, § 1, eff. July 1, 1991.

§ 1012 Information confidential.

Information received by the Department through filed reports, through inspections or as otherwise authorized under this chapter shall not be made public in such manner as to identify individuals or hospitals, except in a hearing pursuant to § 1006 of this title or when otherwise required by law or federal regulation.

(16 Del. C. 1953, § 1032; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 95; 70 Del. Laws, c. 186, § 1.)

§ 1013 Annual report of Department.

The Department shall prepare and publish an annual report of its activities and operations under this chapter.

(16 Del. C. 1953, § 1033; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 96; 70 Del. Laws, c. 186, § 1.)

§ 1014 Appeal to Superior Court; procedure.

Any applicant or licensee who is dissatisfied with the decision of the Department as a result of the hearing provided in § 1006 of this title may, within 30 days after the mailing or service of the notice of decision as provided in said section, file a notice of appeal to the Superior Court in the office of the Prothonotary of the Superior Court of the county in which the hospital is located or to be located, and serve a copy of said notice of appeal upon the Department. The Department shall promptly certify and file with the Court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Proceedings thereafter shall be governed by the Rules of the Superior Court of the State.

(16 Del. C. 1953, § 1034; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 97; 70 Del. Laws, c. 186, § 1.)

§ 1015 Penalties.

Any person constructing, establishing, conducting, managing or operating any hospital without a license shall be fined not more than $50 for the first offense and not more than $500 for each subsequent offense and each day of a continuing violation after conviction shall be considered a separate offense.

(16 Del. C. 1953, § 1035; 56 Del. Laws, c. 360.)

§ 1016 Injunction.

Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license.

(16 Del. C. 1953, § 1036; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 98; 70 Del. Laws, c. 186, § 1.)

§ 1017 Waiver.

Any person who has presented plans for a hospital and received approval of them by the Department prior to June 28, 1968, shall be eligible for licensing until the fifth anniversary of such effective date of this chapter.

(16 Del. C. 1953, § 1037; 56 Del. Laws, c. 360; 70 Del. Laws, c. 149, § 99; 70 Del. Laws, c. 186, § 1.)

§ 1018 Maintaining anatomical gifts data.

(a) All hospitals covered by this section shall, if possible, ascertain from a patient upon an inpatient admission whether or not the patient has a validly executed donor card, will, other document of gift, or driver's license or identification card evidencing an anatomical gift. A hospital shall ascertain this information by including an inquiry on the hospital admission form to read as follows:

"Do you have a validly executed donor card, will, other document of gift, or drivers license or identification card evidencing an anatomical gift?"

The absence of a document of anatomical gift, in and of itself, shall not create any presumption regarding the patient's wishes regarding anatomical donation.

(b) All hospitals shall maintain as a part of a patient's permanent record such pertinent information about any anatomical gift which will facilitate the carrying out of the patient's wishes in the event of the patient's death. Upon the death of a patient who has made an anatomical gift, such hospital shall make every reasonable effort to contact without delay the person, institution or organization to which such gift has been made.

(63 Del. Laws, c. 238, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 453, § 1.)

§ 1019 Designation of hospitals as primary stroke centers.

(a) The Secretary of Health and Social Services shall designate as a primary stroke center any hospital which has received a Certificate of Distinction for Primary Stroke Centers issued by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(b) The Secretary shall suspend or revoke a hospital's distinction as a primary stroke center if the JCAHO suspends or revoke's a hospital's Certificate of Distinction for Primary Stoke Center.

(76 Del. Laws, c. 299, § 1.)

§ 1020 Hospital visitation policy.

(a) Each hospital shall include in its visitation policy a provision allowing each competent adult patient to receive visits from any individual from whom a patient desires to receive visits, subject to restrictions contained in the visitation policy related to a patient's medical condition, the number of visitors simultaneously permitted in a patient's room, and the hospital's visitation hours, as well as protective orders issued by a court.

(b) Each hospital shall honor each adult patient's desires set forth in the adult patient's power of attorney documents, advance health-care directives, and any similar documents, in accordance with and subject to provisions related to same that appear in this chapter, Chapter 25 of this title, and Chapter 49 of Title 12.

(c) The duties and rights conferred by this section are in addition to, and not in derogation of, duties and rights otherwise conferred by law, including §§ 2508 and 5161 of this title.

(d) Nothing in 77 Del. Laws, c. 49 shall preclude a hospital from restricting visitations due to attempts to interfere with patient care, the presentation of a threat to staff, patients or hospital personnel, or other actions disruptive to hospital operations.

(e) Except as provided in subsection (d) of this section above, nothing in this section shall be read to overrule any decision of the Delaware Department of Correction.

(77 Del. Laws, c. 49, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 10A
HEALTHCARE ASSOCIATED INFECTIONS DISCLOSURE ACT

§ 1001A Short title.

This chapter may be cited as the "Healthcare Associated Infections Disclosure Act."

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

§ 1002A Definitions.

For purposes of this chapter:

(1) "Advisory Committee" means the Committee established under this chapter.

(2) "Correctional facility" means any healthcare facility operated at any Department of Correction facility in this State.

(3) "Department'" means the Department of Health and Social Services.

(4) "Dialysis center" means a facility approved to furnish outpatient dialysis services directly to end stage renal disease (ESRD) patients. Outpatient dialysis includes: staff-assisted dialysis (dialysis performed by the staff of the facility) and self-dialysis (dialysis performed with little or no professional assistance by an ESRD patient who has completed an appropriate course of training). ESRD is that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

(5) "Freestanding surgical center" means a facility licensed under Chapter 1 of this title.

(6) "Healthcare associated infection" means a localized or systemic condition:

a. That results from adverse reaction to the presence of an infectious agent or agents or its toxin or toxins; and

b. That was not present or incubating at the time of admission to the healthcare facility.

(7) "Healthcare facility" means a correctional facility, dialysis center, freestanding surgical center, hospital, long-term care facility, or psychiatric facility.

(8) "Hospital" means an acute care healthcare facility licensed under Chapter 10 of this title.

(9) "Long-term care facility" means a nursing home or intermediate care facility for persons with mental retardation licensed under Chapter 11 of this title.

(10) "Psychiatric facility" means a facility that is primarily engaged in providing, by or under the supervision of a doctor of medicine or osteopathy, psychiatric services for the diagnosis and treatment of mentally ill persons.

(11) "Public report" means the report provided to the healthcare facilities and the public by the Department as set forth in this chapter.

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

§ 1003A Reporting of infections by physicians.

In accordance with this chapter, a physician who diagnoses and treats a healthcare associated infection related to a clinical procedure, or a licensed practitioner who is permitted by law to diagnose and treat such infection and does so, is required to report the infection back to the healthcare facility at which the clinical procedure was performed. The infection control department of the healthcare facility will then be required to report to the Department only those infections that meet the accepted National Healthcare Safety Network definitions and are currently required to be reported by law.

(78 Del. Laws, c. 351, § 1.)

§ 1004A Hospital reports.

(a) Individual hospitals shall collect data on healthcare associated infection rates related to specific clinical procedures as determined by the Advisory Committee and set forth in regulations promulgated by the Department. Examples may include the following categories:

(1) Surgical site infections such as total hip and knee arthroplasty;

(2) Central line-related bloodstream infections in an intensive care unit (ICU);

(3) Direct healthcare provider's influenza vaccination rates; and

(4) Other categories as provided under subsection (c) of this section.

(b)(1) Infection control professionals, or a designee, of hospitals shall submit quarterly reports on their healthcare associated infection rates to the Department using the accepted Centers for Disease Control and Prevention's (CDC) National Healthcare Safety Network (NHSN) definitions. Prevention and control data related to quality measures will be based on nationally recognized and recommended standards that may include those developed by the CDC, Centers for Medicare and Medicaid, and/or the Agency for Healthcare, Research and Quality, to name a few. Data in quarterly reports must cover a period ending not earlier than 45 days prior to submission of the report.

Quarterly reports shall be made available to each hospital 45 days after submittal to the Department for review by the hospitals. The hospitals shall have 7 days to review the quarterly reports and report any changes to the Department. Following the 7-day review period, such quarterly reports shall be made available to the public at each hospital and through the Department (the "public report").

(2) If the hospital is a division or subsidiary of another entity that owns or operates other hospitals or related organizations, the quarterly report shall be for the specific division or subsidiary and not for the other entity.

(c) After June 30, 2010, and upon consultation with the Advisory Committee and other experts in infection, prevention, identification and control, the Department may revise categories of infections set forth in subsection (a) of this section.

(76 Del. Laws, c. 122, § 1; 77 Del. Laws, c. 233, §§ 1, 2; 78 Del. Laws, c. 351, § 1.)

§ 1005A Department reports.

(a) The Department shall annually submit to the legislature a report summarizing the hospital quarterly reports and shall publish the annual report on its website. The first annual report shall be published no later than June 30, 2009. Following the initial report, the Department shall update the public information on a quarterly basis.

(b) All reports issued by the Department shall be risk adjusted, or use some other method to account for the differences in patient populations among hospitals.

(c) The annual report shall compare healthcare associated infection rates to national rates published by the CDC's NHSN program and collected pursuant to this chapter for each individual hospital in the State. The Department, in consultation with the Advisory Committee, shall make this report as easy to comprehend as possible. The report shall also include an executive summary, written in plain language that shall include but not be limited to a discussion of findings, conclusions and trends concerning the overall state of healthcare associated infections in the State, including a comparison to prior years. The report may include policy recommendations, as appropriate.

(d) The Department shall publicize the report and its availability as widely as practical to interested parties, including but not limited to hospitals, providers, media organizations, health insurers, health maintenance organizations, purchasers of health insurance, organized labor, consumer or patient advocacy groups and individual consumers. The annual report shall be made available to any person upon request.

(e) No hospital report or Department disclosure may contain information identifying a patient, employee or licensed health care professional in connection with a specific infection incident.

(f) The annual report shall provide background information about each hospital which shall include: the hospital's adult and pediatric populations, bed size, and specialty divisions; whether the hospital provides tertiary care; and whether the hospital is a teaching or a nonteaching institution. This background information shall be included in the public report.

(g) The annual report shall include a brief summary report to allow hospitals to comment on performance improvement and changes in patient population and risk factors. The information contained in the summary report shall be considered proprietary information and shall be utilized by the Department but shall not be made available in the public report and shall not be subject to disclosure under the State's Freedom of Information Act (Chapter 100 of Title 29).

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

§ 1006A Correctional facility reports.

(a) Correctional facilities shall collect data on healthcare associated infections related to specific clinical procedures resulting from care in the correctional facility, as determined by the Advisory Committee and as set forth in regulations promulgated by the Department. These categories of infection data may differ from that information required from hospitals.

(b) Correctional facilities shall report data to the Department in accordance with regulations of the Department. The information from the correctional facilities shall be segregated from the hospital data contained in the reports submitted pursuant to this chapter.

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

§ 1007A Reports by other healthcare facilities.

Only with the concurrence of the Advisory Committee, and not until such time that the Centers for Medicaid and Medicare or the Centers for Disease Control and Prevention issue final federal regulations requiring such, and after careful evaluation of the economic and public health impact, the Department may through regulation require the reporting of healthcare associated infections from healthcare facilities other than hospitals and correctional facilities. The procedures for reporting shall be consistent with procedures for reporting by hospitals as specified in this chapter, except as may be necessary to accommodate the unique characteristics and capabilities of the healthcare facilities and the capabilities of the National Healthcare Safety Network.

(78 Del. Laws, c. 351, § 1.)

§ 1008A Advisory Committee.

(a) The Secretary of the Department shall appoint an Advisory Committee, which shall include: 1 infection control professional who has responsibility for infection control programs for each hospital or healthcare system in Delaware; 4 infection disease physicians with expertise in infection control; 1 representative of the Delaware Health Care Facilities Association; 1 representative of a freestanding

surgical center; 1 representative of a dialysis center; 1 representative of a psychiatric facility; 1 representative from the State Division of Public Health; and the Public Health Healthcare Associated Infections Specialist responsible for collating and reporting data. The Secretary shall also appoint 8 other members of the Committee including representatives from direct care nursing staff, academic researchers, consumer organizations, health insurers, health maintenance organizations, organized labor and purchasers of health insurance, such as employers. The Advisory Committee shall have the authority to engage personnel with appropriate training and/or certification in infection prevention and control for the purposes of collecting data.

(b) The Advisory Committee shall assist the Department in the development of all aspects of the Department's methodology for collection, analyzing and disclosing the information collected under this chapter, including collection methods, formatting and methods and means for release and dissemination.

(c) In developing the methodology for collecting and analyzing the infection rate data, the Department and the Advisory Committee shall adopt the methodologies and system for data collection from the Centers for Disease Control's National Healthcare Safety Network, or its successor. The data collection and analysis methodology shall be disclosed to the public prior to any public disclosure of healthcare associated infection rates.

(d) The Advisory Committee shall assist the Department in the sharing of information and best practices toward the development of activities and policies that:

(1) Enhance coordination between healthcare facilities throughout the continuum of care for the prevention and control of healthcare associated infections;

(2) Promote the prevention and control of healthcare associated infections generally; and

(3) Encourage the creation of benchmarks against which to measure progress in the prevention and control of healthcare associated infections.

(78 Del. Laws, c. 351, § 1.)

§ 1009A Privacy.

It is the express intent of the legislature that a patient's right of confidentiality shall not be violated in any manner. Patient Social Security numbers and any other information that could be used to identify an individual patient shall not be released notwithstanding any other provision of law.

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

§ 1010A Penalties.

A determination that a healthcare facility has violated the provisions of this chapter may result in any of the following:

(1) Termination of licensure or other sanctions relating to licensure under Chapter 10 of this title; or

(2) A civil penalty of up to $500 per day per violation for each day the healthcare facility is in violation of this chapter.

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

§ 1011A Regulatory oversight.

The Department shall be responsible for ensuring compliance. When the Department licenses a healthcare facility according to the provisions of this title, compliance with this chapter shall be a condition of licensure.

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

§ 1012A Hospital Infection Specialist.

The Department shall establish and fund a Healthcare Associated Infection Specialist position within the Division of Public Health supporting the functions of this chapter. The Healthcare Associated Infection Specialist must have knowledge of the NHSN system and skills to appropriately analyze healthcare acquired infection data.

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

§ 1013A Privilege and confidentiality protections.

Notwithstanding any other provision of federal, state or local law, the healthcare associated infection data provided pursuant to this chapter is privileged and, with the exception of §§ 1003A, 1004A and 1005A of this title, shall not be:

(1) Subject to admission as evidence or other disclosure in any federal, state or local civil, criminal or administrative proceeding, or

(2) Subject to use in a disciplinary proceeding against a healthcare facility or provider, or

(3) Subject to disclosure under Chapter 100 of Title 29.

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

§ 1014A Membership in National Healthcare Safety Network.

By December 31, 2007, all hospitals in the State shall join the Centers of Disease Control and Prevention's National Healthcare Safety Network or its successor. If the Network is not open for enrollment to all hospitals by this date, all hospitals shall join the Network within

180 days after the Center of Disease Control and Prevention permits such enrollment. Hospitals shall authorize the Department to have access to hospital-specific data contained in the National Healthcare Safety Network database consistent with the requirements of this chapter. With the concurrence of the Advisory Committee the Department may require other healthcare facilities through regulation to join the National Healthcare Safety Network as may be appropriate in accordance with this chapter.

(76 Del. Laws, c. 122, § 1; 78 Del. Laws, c. 351, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 11
NURSING FACILITIES AND SIMILAR FACILITIES
Subchapter I
Licensing By The State

§ 1101 Purpose and overview.

(a) It is the intent of the General Assembly that 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.

(b) This chapter and the regulations adopted to implement it establish minimum acceptable levels of care. A violation of a minimum acceptable level of care is prohibited by law.

(c) The State shall undertake measures to prevent violations. Prevention shall be promoted through education, particularly regarding any new laws and regulations adopted by the State.

(d) The State shall undertake measures to assure that violations of this chapter and the regulations promulgated thereunder are remedied. To that end, the Department shall, in conformity with this chapter, set standards of care, determine compliance with those standards through inspections, investigations and other compliance measures, and impose sanctions and remedies for noncompliance.

(e) The Department shall be responsible for issuing licenses and certifying the compliance of facilities with state laws and regulations. Each facility licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the regulations promulgated thereunder. Components of quality of care and quality of life addressed by this Chapter and regulations promulgated thereunder include: access to care; continuity of care; comprehensiveness of care, including activities; coordination of services; humaneness of treatment and respect for the dignity of each resident; safety of the environment; and qualifications of caregivers.

(f) This chapter and the regulations promulgated hereunder apply to each licensed nursing facility and similar facility operating in the State regardless of the nature of its funding sources. This chapter and its regulations are intended for use in state inspections of facilities licensed under this chapter and any investigations and enforcement actions, and are designed to be useful to consumers and providers in assessing the quality of care provided in a facility.

(g) The consumer protection goal of ensuring that residents of nursing facilities and similar facilities receive quality care shall be strived for in the following ways:

(1) Monitoring the factors relating to the health, safety, welfare and dignity of each resident;

(2) Providing effective remedies and requiring their prompt imposition for noncompliance with licensing standards; and

(3) Providing the public with information concerning the operation of nursing facilities and related facilities in this State.

(h) This Chapter shall be construed broadly to accomplish the purposes set forth in this section.

(71 Del. Laws, c. 488, § 2.)

§ 1102 Definitions.

As used in this subchapter, the following terms mean:

(1) "Controlling Person" means:

a. A person who has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or other person.

b. For purposes of this chapter, "controlling person" includes:

1. A management company, landlord or other business entity that operates or contracts with others for the operation of a facility;

2. Any person who is the controlling person of a management company or other business entity that operates a facility or who contracts with another person for the operation of a facility;

3. Any other individual who, because of a personal, familial or other relationship with the owner, manager, landlord, tenant or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally an owner, manager, director, officer, provider, consultant, contractor or employee of the facility.

c. A controlling person described by subsection (b)(3) of this section does not include a person, such as an employee, lender, secured creditor or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility.

d. The Department may adopt regulations to define the ownership interest and other relationships that qualify a person as a controlling person.

(2) "Department" shall mean the Department of Health and Social Services;

(3) "Division" shall mean the Division of Long-Term Care Residents Protection;

(4) "Nursing facility and similar facility" shall mean a residential facility that provides shelter and food to more than 1 person who:

a. Because of their physical and/or mental condition require a level of care and services suitable to their needs to contribute to their health, comfort, and welfare; and

b. Who are not related within the second degree of consanguinity to the controlling person or persons of the facility.

The facilities to be licensed pursuant to Chapter 11 include but are not limited to the following: nursing facilities (commonly referred to as nursing homes); assisted living facilities; intermediate care facilities for persons with intellectual disabilities; neighborhood group homes; family care homes; rest residential facilities; retirement homes; rehabilitation homes; and hospices, with such terms to have such meaning as set forth in this title or, if not defined therein, as such terms are commonly used.

(5) "Long-Term Care Residents' Trust Fund" shall mean a fund maintained by the Department to which civil monetary penalties are to be remitted. Consistent with the federal Centers for Medicare and Medicaid Services ("CMS") regulations, 42 CFR § 488.442(g), regarding civil money penalties collected by the State, such money shall "be applied to the protection of the health or property of residents of facilities that the State or CMS finds noncompliant." Money deposited into this Trust Fund shall not be used for salaries or general operating costs of the Department but rather for the benefit and protection of long-term care residents. If the amount in the Trust Fund reaches $500,000, any funds in excess of that amount shall revert to the General Fund. The Department shall submit a detailed spending report on the uses of the Trust Fund to the Director of the Office of Management and Budget and Controller General no later than 30 days after the end of the fiscal year.

(6) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company or any other legal entity and includes a legal successor of those entities.

(7) "Protection and advocacy agency" shall mean the Community Legal Aid Society, Inc. or successor agency designated the state protection and advocacy system pursuant to: 42 U.S.C. § 10801 et seq.; 42 U.S.C. § 15001 et seq.; or 29 U.S.C. § 794e.

(8) "State Civil Penalty Trust Fund" shall mean a fund maintained by the Department to which civil money penalties imposed for violations of state statute or regulation are to be remitted. Money deposited into this fund shall be used to further the purposes set forth in § 1101 of this title and § 7971 of Title 29.

(71 Del. Laws, c. 488, § 2; 71 Del. Laws, c. 489, § 2; 75 Del. Laws, c. 88, § 21(5); 77 Del. Laws, c. 49, § 2; 77 Del. Laws, c. 201, § 1; 77 Del. Laws, c. 309, § 1; 78 Del. Laws, c. 179, § 163.)

§ 1103 License and renewal requirement.

(a) No person shall establish, conduct or maintain any nursing facility or related facility in this State without first obtaining a license from the Department and thereafter renewing this license on an annual basis. Failure to comply with this subsection shall result in the imposition by the Department of a civil penalty not to exceed $10,000 per violation.

(b) No nursing home within this State, as defined in Chapter 52 of Title 24, shall operate except under the direction of an individual authorized or licensed pursuant to that chapter to perform the functions of a nursing home administrator.

(71 Del. Laws, c. 488, § 2; 76 Del. Laws, c. 89, § 2.)

§ 1104 License and renewal application.

(a) An application for a license or renewal of a license shall be submitted to the Division on forms provided by the Division and must be accompanied by the applicable license fee.

(b) In addition to the general information requested on the application forms, the applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with:

(1) Minimum standards of medical care, and/or nursing care, as applicable by type of facility;

(2) Financial capability; and

(3) Any other applicable state and federal laws and regulations for that category of facility.

(c) The Department shall consider the background and qualifications of the applicant or license holder and it may also consider the background and qualifications of the following:

(1) Any partner, officer, director or managing employee of the applicant or license holder;

(2) Any person who owns or controls the physical plant in which the facility operates or is to operate; and

(3) Any controlling person with respect to the facility for which a license or license renewal is requested.

(d) In making the evaluation described in subsection (c) of this section, the Department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the Department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant operated a facility any time during the 5 year period preceding the date on which the application is made. The Department by regulation shall define what constitutes a satisfactory compliance history. The Department may also require the applicant to file information relating to its financial condition during the 5 year period preceding the date on which the application is made. The Department may also request any of the above-described information about any other person described by subsection (c) of this section.

(e) Financial Disclosure Requirement. As part of the license and annual renewal application, or when the Department determines that conditions exist which threaten the health or safety of a resident or residents, each facility licensed under this chapter shall disclose the

following financial information notwithstanding Chapter 100 of Title 29, the Department may promulgate regulations identifying which, if any, part of such financial information shall be available to the public:

(1) Audited annual financial statements;

(2) Annual financial reports;

(3) Other financial reports regularly filed with state or federal agencies;

(4) Any other information relative to the financial health of the facility.

(f) The license shall terminate if and when there is a transfer of a nursing facility or similar facility to another person or controlling person or the business ceases legal existence or discontinues operation. No license granted by the Department shall be assigned or otherwise transferred to another person or controlling person except upon such conditions as the Department may specifically designate and then only pursuant to written consent from the Department. Application for transfer of a license shall be submitted at least 90 days before the proposed transfer and shall contain the same information and be subject to the same criteria for approval as contained in this section.

(g) The Department shall grant a provisional license to any newly established or newly transferred nursing facility or related facility, provided that the requirements of this section are met. The term of such provisional license shall be 90 days, and thereafter the nursing facility or similar facility shall be entitled to an annual license, provided that the requirements of this section are met.

(71 Del. Laws, c. 488, § 2; 72 Del. Laws, c. 305, § 1.)

§ 1105 Denial of license or its renewal.

(a) The Department may deny a license to any applicant or refuse to renew a license to any license holder if the Department finds that the applicant or license holder or any partner, officer, director, managerial employee or controlling person of the applicant or license holder:

(1) Fails to meet the requirements of § 1104 of this title; or

(2) Operated any nursing facility or related facility without a license or under a revoked or suspended license in any jurisdiction; or

(3) Knowingly, or with reason to know, made a false statement of a material fact in an application for license or renewal, or any data attached thereto, or in connection with any matter under investigation by the Department, or in any document submitted to the Department, including, but not limited to, a plan for the correction of violation(s) of applicable laws or regulations; or

(4) Refused to allow representatives or agents of the Department to inspect a portion of the premises of the facility or any patient related documents, records and files required to be maintained by the facility; or

(5) Interfered with or attempted to impede in any way the work of any authorized representative of the State or protection and advocacy agency or the lawful enforcement of any provision of this chapter; or

(6) Has a history of noncompliance with federal or state law or regulations in providing long-term care. In deciding whether to deny a license under this section, the factors to be considered by the Department shall include the severity and recurrence of the noncompliance.

(b) The due process protections of notice and an opportunity to be heard shall be provided to facilities prior to the denial of a license or its nonrenewal. The hearing process shall be consistent with the Administrative Procedures Act, § 10101 of Title 29.

(71 Del. Laws, c. 488, § 2; 77 Del. Laws, c. 201, § 2.)

§ 1106 License or renewal fees.

(a) The fees for issuance and renewal of licenses pursuant to this chapter shall not exceed $150 plus:

(1) $250 for facilities with less than 100 units of capacity or bed space for which a license is sought, and $400 for facilities with more than 100 units of capacity or bed space for which a license is sought; and

(2) A background examination fee for initial applications in an amount set by the Department necessary to defray its expenses in administering its duties under § 1104(c) and (d) of this title, but not to exceed $500.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, the total fee shall be $50 for facilities with 10 or less units of capacity or bed space for which a license is sought.

(b) The license fee must be paid with each application for initial license, a renewal license or a change of ownership license. An approved increase in bed space is subject to an additional fee.

(c) The State is not required to pay the license fee for any facilities it operates or owns which require licensure under this chapter.

(d) All license fees collected by the Department shall be remitted to the General Fund.

(71 Del. Laws, c. 488, § 2; 72 Del. Laws, c. 3, §§ 1, 2.)

§ 1107 Inspections and monitoring.

(a) The Department shall inspect each nursing facility and similar facility on an annual basis to ensure compliance with this chapter and the regulations adopted pursuant to it.

(b) The Department shall have the authority to assess additional fees to recover the actual costs and expenses of the Department for any monitoring or inspections needed beyond the standard inspection in those cases in which substantiated violations are found.

(c) *Access.* — Any duly authorized employee or agent of the Department may enter and inspect any facility licensed under this chapter without notice at any time. Such inspections may include, but are not limited to, the following: interviewing residents, family members and/or staff; reviewing and photocopying any records and documents maintained by the licensee; inspecting any portion of the physical plant of the facility; and otherwise enforcing any provision of this chapter and the regulations pursuant to it, as well as applicable federal law and regulations. All licensees are required to provide immediate access to Department personnel to conduct inspections.

(d) *No advance notice.* — No advance notice shall be given to any facility of any inspection conducted pursuant to this chapter unless specifically authorized by the Secretary of the Department or his or her designee or as otherwise required by federal law or regulation. Failure to comply with this subsection shall result in the imposition by the Department of a civil penalty not to exceed $5,000 per violation.

(e) *Exit conference.* — At the conclusion of each annual and complaint-driven or "surprise" inspection, the Department shall promptly notify the facility of any violations of this chapter and its regulations as well as of federal law and regulations. It shall provide a comprehensive exit interview at the conclusion of each inspection whereby the facility is made aware of any problems found, including violations of applicable law or regulations. Representatives from the Long-Term Care Ombudsperson's Office shall be invited to attend each exit interview.

(f) In conduct of any surveys under this chapter and the compliance decisions made thereunder, surveyors shall consider the diagnosis and treatment decisions of the resident's attending physician and of the facility's medical director, and to a plan of care established for such resident, as long as such decisions and plans are consistent with acceptable standards of practice.

(g) Any person who is a former employee of a nursing facility shall be disqualified from participating for 5 years in any manner in any survey of that facility.

(71 Del. Laws, c. 488, § 2; 74 Del. Laws, c. 59, § 1.)

§ 1108 Posting of inspection summary and other information and public meetings.

(a) Each facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees and visitors the following:

(1) The license issued under this subchapter.

(2) A sign prescribed by the Department that specifies complaint procedures and provides the "1-800" hotline number to receive complaints 24 hours a day, 7 days a week.

(3) The most recent state survey report prepared by the Department of the most recent inspection report for the facility.

(4) A notice in the form prescribed by the Department stating that informational materials relating to the compliance history of the facility are available for inspection at a location in the facility specified by the sign and online at a web site specified by the sign. The notice shall also provide the telephone number to reach the Division to obtain the same information concerning the facility.

(5) A notice that the Board of Examiners of Nursing Home Administrators can provide information about the nursing facility administrator along with the Board of Examiners' telephone number to call for this information.

(b) The notice relating to the compliance history of the facility must also be posted the facility as determined by regulations.

(c) The compliance history information required to be maintained for public inspection by a facility under subsection (a)(6) of this section must be maintained in a well-lighted accessible location. The compliance history material must include all inspection reports produced for that facility during the preceding 3 year period. The information must be updated as each new inspection or other Department report is received by the facility.

(d) Following completion of the annual inspection report (including any administrative or other appeals therefrom) and any plan of action or other response developed by the nursing facility or similar facility in response to the annual inspection report, the Department shall schedule a meeting as defined by regulations to take place at the facility to present the findings of the annual report and the nursing facility or other facility's response. The Department shall notify nursing home residents and their families of the meetings required pursuant to this subsection. The Department shall also provide staff for these meetings and the staff shall be prepared to present the findings of the surveys and to answer questions regarding the annual inspection surveys and plans of action. This annual meeting requirement shall apply to all nursing facilities during the first year after enactment of this law, and shall be phased in for all other facilities licensed under Chapter 11 of this title within 3 years after the enactment of this law. This section shall become effective on March 31, 1999.

(71 Del. Laws, c. 488, § 2; 72 Del. Laws, c. 3, § 3; 77 Del. Laws, c. 401, §§ 1, 2.)

§ 1109 Civil penalties.

(a) The Department may impose civil money penalties for the violation of provisions of this chapter or the regulations adopted pursuant to it. For violations of this chapter or any of it regulations which the Department determines pose a serious threat to the health and safety of a resident or residents, a licensee or other person is liable for a civil penalty of not less than $1,000 nor more than $10,000 per violation.

(b) In determining the amount of the penalty to be assessed under subsection (a) of this section, the Department shall consider:

(1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or potential hazard created by the violation to the health or safety of a resident or residents;

(2) The history of violations committed by the person or the person's affiliate(s), employee(s), or controlling person(s);

(3) The efforts made by the facility to correct the violation(s);

(4) The culpability of the person or persons who committed the violation(s);

(5) A misrepresentation made to the Department or to another person regarding:

a. The quality of services provided by the facility;

b. The compliance history of the facility; or

c. The identity of an owner or controlling person of the facility.

(6) Any other matter that affects the health, safety or welfare of a resident or residents.

(c) For all other violations that do not constitute a serious threat to the health and safety of a resident, but do violate this chapter or the regulations adopted pursuant to it, the maximum civil penalty shall be $5,000 per violation. Violations in this category include, but are not limited to, the following:

(1) Making a false statement that the person knows or should know is false, about a material fact:

a. On an application for issuance or renewal of a license or any document attached thereto; or

b. With respect to a matter under investigation by the Department;

(2) Refusing to allow a representative of the Department to inspect without notice at any time:

a. Any portion of the premises of a facility; or

b. Any documents, records, or files required to be maintained by a facility;

(3) Willfully interfering with the work of a representative of the Department or with the enforcement of this chapter; or

(4) Willfully interfering with the preservation of evidence of a violation of this chapter or regulation pursuant to it.

(d) In determining the amount of the penalty to be assessed under subsection (c) of this section, the Department shall consider the same six factors outlined in subsection (b)(1)-(6) of this section.

(e) Each day of a continuing violation constitutes a separate violation. However, no penalty for a health and safety violation may exceed $2,500 per day beyond the initial day. No penalty for a nonhealth and safety violation shall exceed $1,250 per day beyond the initial day.

(71 Del. Laws, c. 488, § 2; 72 Del. Laws, c. 305, § 2.)

§ 1110 Waiver of penalty if first time violation(s) corrected.

(a) The Department may waive a civil penalty for a first-time violation that does not constitute a threat to the health or safety of a resident or substantially limit the facility's capacity to provide care. The Department shall assess the amount of the penalty but notify the facility that the penalty will be waived if the violation is corrected within 30 days or a shorter time period if the facts so warrant.

(b) Penalties for failure to maintain correction.

The facility that corrects a violation under subsection (a) of this section must maintain that correction. If the facility fails to maintain a correction, the Department shall, in accordance with § 1109(b)(2) of this title, consider the facility's history of violations in determining the amount of the penalty to be assessed. If the facility fails to maintain a correction until at least the first anniversary of the date the correction was made, the Department may assess a penalty equal to 3 times the amount of the original penalty assessed but not collected under subsection (a) of this section.

(71 Del. Laws, c. 488, § 2.)

§ 1111 Overlap of state licensing and federal certification penalties.

If the Department determines that a facility has violated this Chapter or regulation thereunder, and has thereby also violated a federal certification standard under Social Security Act or regulations adopted under it, the Department may not assess more than one civil money penalty for a violation arising out of the same act or failure to act. If the federal government collects a civil monetary penalty for reported deficiencies, the State will not collect a civil monetary penalty for the same conditions. In the event that a civil monetary penalty has been collected by the State and the federal government subsequently collects a penalty for the same conditions, the State shall refund the previously collected penalty.

(71 Del. Laws, c. 488, § 2; 72 Del. Laws, c. 428, § 1.)

§ 1112 Collection of civil penalties.

(a) All civil penalties collected under this chapter shall be remitted to the Long-Term Care Residents' Trust Fund if based on a federal regulation, or to the State Civil Penalty Trust Fund, if based on a state statute or regulation.

(b) Payment of any civil penalty by a facility is not an allowable cost for reimbursement under the state Medicaid program or under other state funded programs.

(c) If a nursing facility or similar facility, after notice and opportunity for hearing, does not pay a properly assessed penalty in accordance with this subchapter, the Department shall deduct the amount of the civil penalty from amounts otherwise due from the State to the nursing facility and remit that amount to the Long-Term Care Residents' Trust Fund or the State Civil Penalty Trust Fund, as appropriate.

(d) Alternatively, the Department may add the amount of the civil penalty to the licensing fee for the nursing facility or similar facility. If the licensee refuses to make the payment at the time of the application for renewal of its license, its license shall not be renewed.

(e) The Department may also proceed for the collection of the civil money penalty in an action brought in the name of the Department in any court of competent jurisdiction.

(f) In the event of financial hardship, to be determined by the Department, it may redirect the payment of penalties by the facility to take remedial action to correct the violation or violations.

(71 Del. Laws, c. 488, § 2; 74 Del. Laws, c. 194, § 1; 77 Del. Laws, c. 309, §§ 2, 3.)

§ 1113 Other remedies for noncompliance.

In addition to civil money penalties, the Department may impose any or all of the following remedies for noncompliance with this chapter and the regulations promulgated pursuant to it or for noncompliance with § 1731A of Title 24 or § 903 of this title:

(1) Monitoring (according to the terms and conditions, including timeframes, determined necessary by the Department);

(2) Suspension of the admission or readmission of residents to the nursing facility (according to the terms and conditions including timeframes, determined by the Department);

(3) Selective transfer of residents whose care needs are not being met by the licensee;

(4) Suspension, revocation or refusal to renew a license;

(5) In cases where the physical health or safety of residents is in imminent risk, issuance of an emergency order temporarily transferring the management of the facility to another qualified entity (according to the terms and conditions, including timeframes, deemed necessary by the Department).

(6) Issuance of a provisional license for a nursing facility that is in substantial but not full compliance with applicable laws and regulations.

(71 Del. Laws, c. 488, § 2; 72 Del. Laws, c. 305, § 3; 77 Del. Laws, c. 320, § 8.)

§ 1114 Right to hearing on deficiencies and remedies for noncompliance.

The due process protections of notice and opportunity to be heard shall be provided to facilities to appeal survey deficiencies, as well as the imposition of remedies for noncompliance imposed under §§ 1112 and 1113 of this title. The hearing process shall be consistent with the Administrative Procedures Act, Chapter 101 of Title 29.

(71 Del. Laws, c. 488, § 2; 74 Del. Laws, c. 59, § 2.)

§ 1115 Injunctive relief.

In addition to any other remedy provided by law, the Department may bring an action in Chancery Court to enjoin a nursing facility or similar facility from engaging in activities that pose a threat to the health or safety of resident(s) of the nursing facility or similar facility. A temporary restraining order may be granted by the court if continued activity by the nursing facility or similar facility would create an imminent risk to a resident or residents at the facility.

(71 Del. Laws, c. 488, § 2.)

§ 1116 Coordination of enforcement actions with the attorney general's office.

(a) The Department and the Attorney General shall work in close cooperation throughout any legal proceeding initiated by the Department to enforce this chapter and the regulations promulgated pursuant to it.

(b) The Secretary of the Department or the Secretary's designee must be fully consulted before concluding any settlement agreement to a lawsuit brought under this chapter or any other law relating to the health and safety of residents in nursing facilities and similar facilities.

(71 Del. Laws, c. 488, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1117 Retaliation or discrimination against complainant.

(a) No licensee or other person shall discriminate or retaliate in any manner against a resident or employee in its facility on the basis that such resident or employee or any other person on behalf of the resident or employee has initiated or participated in any proceeding pursuant to this chapter, including providing information in connection with an inspection or facilitating a protection and advocacy agency investigation. The Department shall impose a civil penalty of not more than $10,000 per violation upon any licensee or other person who violates this section.

(b) Any attempt to expel a resident of the nursing facility or any other type of retaliatory or discriminatory treatment of a resident or employee or any other person by whom, or upon whose behalf, a complaint has been submitted to the Department or protection and advocacy agency or who has participated in any proceeding instituted pursuant to this chapter within 1 year of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the licensee or other person in retaliation for the filing of the complaint or the cooperation with the proceeding.

(71 Del. Laws, c. 488, § 2; 77 Del. Laws, c. 201, §§ 3, 4.)

§ 1118 Third-Party reimbursement.

Consistent with federal law, 42 U.S.C. § 1395i-3 (c)(5), with respect to admissions policy and practices, a nursing facility or similar facility must not require a third party guarantee or payment to the facility as a condition of admission (or expedited admission) to, or continued stay in the facility.

(71 Del. Laws, c. 488, § 2.)

§ 1119 Priority placement of publicly assisted persons.

Annually, the Department shall notify all public agencies which refer residents to facilities licensed under the chapter of those facilities found upon inspection within the previous 12-month period to be without violations or to have had violations deemed minor by the Department. Public agencies shall give priority to such facilities in referring publicly assisted persons.

(71 Del. Laws, c. 488, § 2.)

§ 1119A "Confidentiality of residents" records.

To protect the privacy of residents of a nursing facility or similar facility, the Department shall establish guidelines to protect the confidentiality of any records, documents or files pertaining to such residents.

(71 Del. Laws, c. 488, § 2.)

§ 1119B Pediatric nursing services.

A facility shall ensure that:

(1) Nursing services for a resident younger than 16 years of age are provided by staff who have received training regarding and have demonstrated competence in the care of children; and

(2) Consultative pediatric nursing services are available to the staff if the facility has a resident younger than 18 years of age.

(71 Del. Laws, c. 488, § 2.)

§ 1119C Regulations.

(a) The Department has the authority to adopt, amend or repeal issue regulations to implement this chapter. In addition to regulations by category of facility to be licensed, the Department shall also develop pediatric regulations regarding the care of children in nursing facilities and similar facilities.

(b) The Department shall include in its regulations for all facilities licensed under this chapter a requirement of full cooperation with the protection and advocacy agency in fulfilling functions authorized by this chapter. Without limiting the protection and advocacy's agency's pursuit of other legal remedies, the Department shall enforce violations of such regulations consistent with §§ 1109 and 1113 of this title.

(71 Del. Laws, c. 488, § 2; 77 Del. Laws, c. 201, § 5.)

Subchapter II
Rights of Patients

§ 1121 Patient's rights.

It is the intent of the General Assembly, and the purpose of this section, to promote the interests and well-being of the patients and residents in sanitoria, rest homes, nursing homes, boarding homes and related institutions. It is declared to be the public policy of this State that the interests of the patient shall be protected by a declaration of a patient's rights, and by requiring that all facilities treat their patients in accordance with such rights, which shall include but not be limited to the following:

(1) Every patient and resident shall have the right to receive considerate, respectful, and appropriate care, treatment and services, in compliance with relevant federal and state law and regulations, recognizing each person's basic personal and property rights which include dignity and individuality.

(2) Each patient or resident and the family of such patient or resident shall, prior to or at the time of admission, receive a written statement of the services provided by the facility including those required to be offered on an "as needed" basis, and a statement of related charges for services not covered under Medicare or Medicaid, or not covered by the facility's basic per diem rate. Upon receiving such statement, the patient and the patient's representative shall sign a written receipt which must be retained by the facility in its files.

(3) After admission, each facility shall submit to the patient, resident or legal representative, on a monthly basis, a written, itemized statement detailing in language comprehensible to the ordinary layperson the charges and expenses the patient or resident incurred during the previous month. The statement shall contain a description of specific services, equipment and supplies received and expenses incurred for each such item. The statement shall include an explanation of any items identified by code or by initials, but shall not include nursing home based physician charges if billed separately. The facility shall make reasonable efforts to communicate the contents of the individual written statement to persons who it has reason to believe cannot read the statement.

(4) Each patient shall receive from the attending physician or the resident physician of the facility complete and current information concerning the patient's diagnosis, treatment and prognosis in terms and language the patient can reasonably be expected to understand, unless medically inadvisable. The patient or resident shall participate in the planning of the patient's or resident's medical treatment, including attendance at care plan meetings, may refuse medication or treatment, be informed of the medical consequences of all

medication and treatment alternatives and shall give prior informed consent to participation in any experimental research after a complete disclosure of the goals, possible effects on the patient and whether or not the patient can expect any benefits or alleviation of the patient's condition. In any instance of any type of experiment or administration of experimental medicine, there shall be written evidence of compliance with this section, including the signature of the patient, or the signature of the patient's guardian or representative if the patient has been adjudicated incompetent. A copy of signed acknowledgment or informed consent, or both when required, shall be forwarded to each signer and a copy shall be retained by the facility.

(5) At the bedside of each patient and resident the facility shall place and maintain in good order the name, address and telephone number of the physician responsible for the patient's care.

(6) Each patient and resident shall receive respect and privacy in the patient's or resident's own medical care program. Case discussion, consultation, examination and treatment shall be confidential, and shall be conducted discreetly. In the patient's discretion, persons not directly involved in the patient's care shall not be permitted to be present during such discussions, consultations, examinations or treatment, except with the consent of the patient or resident. Personal and medical records shall be treated confidentially, and shall not be made public without the consent of the patient or resident, except such records as are needed for a patient's transfer to another health care institution or as required by law or third party payment contract. No personal or medical records shall be released to any person inside or outside the facility who has no demonstrable need for such records.

(7) Every patient and resident shall be free from chemical and physical restraints imposed for purposes of discipline and convenience, and not necessary to treat the patient's medical condition.

(8) Every patient and resident shall receive from the administrator or staff of the facility a courteous, timely and reasonable response to requests, and the facility shall make prompt efforts to resolve grievances. Responses to requests and grievances shall be made in writing upon written request by the patient or resident.

(9) Every patient and resident shall be provided with information as to any relationship the facility has with other healthcare and related institutions and/or service providers, including, but not limited to, pharmacy and rehabilitation services, to the extent the patient is offered care and/or services from these related entities. Such information shall be provided in writing upon admission, and thereafter when additional services are offered.

(10) Every patient and resident shall receive reasonable continuity of care.

(11) Every patient and resident may associate and communicate, including visits and visitation, privately and without restriction with persons and groups of the patient's or resident's own choice (on the patient's or resident's own or their initiative) at any reasonable hour; may send and shall receive mail promptly and unopened; shall have access at any reasonable hour to a telephone where the patient may speak privately; and shall have access to writing instruments, stationery and postage. Nothing in 77 Del. Laws, c. 49 shall preclude a nursing facility or similar facility, as defined in § 1102(4) of this title, from restricting visitations due to attempts to interfere with patient care, the presentation of a threat to staff, patients and residents, or personnel, or other actions disruptive to the facility's operations.

(12) Each patient and resident has the right to manage the patient's or resident's financial affairs. If, by written request signed by the patient or resident, or by the guardian or representative of a patient or resident who has been adjudicated incompetent, the facility manages the patient's or resident's financial affairs, it shall have available for inspection a monthly accounting, and shall furnish the patient or resident and the patient's or resident's family or representative with a quarterly statement of the patient's or resident's account. The patient and resident shall have unrestricted access to such account at reasonable hours.

(13) If married, every patient and resident shall enjoy privacy in visits by the patient's or resident's spouse, and, if both are in-patients of the facility, they shall be afforded the opportunity where feasible to share a room, unless medically contraindicated.

(14) Every patient and resident has the right of privacy in the patient's or resident's own room, and personnel of the facility shall respect this right by knocking on the door before entering the patient's or resident's room.

(15) Every patient and resident has the right, personally or through other persons or in combination with others, to exercise the patient's or resident's own rights; to present grievances; to recommend changes in facility policies or services on behalf of the patient's or resident's self or others; to present complaints or petitions to the facility's staff or administrator, to the Department of Health and Social Services, the protection and advocacy agency or to other persons or groups without fear of reprisal, restraint, interference, coercion or discrimination.

(16) A patient or resident shall not be required to perform services for the facility.

(17) Each patient and resident shall have the right to retain and use the patient's or 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.

(18) No patient or resident shall be transferred or discharged out of a facility except for medical reasons; inappropriate level of care; the patient's or resident's own welfare or the welfare of other patients or residents; or for nonpayment of justified charges. If good cause for transferal is reasonably believed to exist, the patient or resident shall be given at least 30 days' advance notice of the proposed action, together with the reasons for the decision, and the patient or resident shall have the opportunity for an impartial hearing to challenge such action if the patient or resident so desires. In emergency situations such notice need not be given. If a patient or resident is transferred out of a facility to an acute care facility or other specialized treatment facility, the facility must accept the patient or resident back into the facility when the resident no longer needs acute or specialized care and there is space available in the facility.

If no space is available, the resident shall be accepted into the next available bed. For purposes of this section, "specialized treatment facility" shall mean a health care setting including, without limitation, settings licensed or certified pursuant to Chapters 11, 22, 50 or 51 of this title. The Division shall issue an annual report on implementation of this paragraph.

(19) Every patient and resident shall have the right to inspect all records pertaining to the patient or resident, upon oral or written request within 24 hours of notice to the facility. Every patient and resident shall have the right to purchase photocopies of such records or any portion of them, at a cost not to exceed the community standard, upon written request and two working days advance notice to the facility.

(20) Every patient and resident shall be fully informed, in language the patient or resident can understand, of the patient's or resident's rights and all rules and regulations governing patient or resident conduct and the patient's or resident's responsibilities during the stay at the facility.

(21) Every patient and resident shall have the right to choose a personal attending physician.

(22) Every patient and resident shall have the right to examine the results of the most recent survey of the facility conducted by federal and/or state surveyors and any plan of correction in effect with respect to the facility. Survey results shall be posted by the facility in a place readily accessible to patients and residents.

(23) Every patient and 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.

(24) Every patient and 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.

(25) Every patient and resident shall be free to make choices regarding activities, schedules, health care and other aspects of the patient's or resident's life that are significant to the patient or resident, as long as such choices are consistent with the patient's or resident's interests, assessments and plan of care and do not compromise the health or safety of the individual or other patients or residents within the facility.

(26) Every patient and resident has the right to participate in an ongoing program of activities designed to meet, in accordance with the patient's or resident's assessments and plan of care, the patient's or resident's interests and physical, mental and psychosocial well-being.

(27) Every patient and resident shall have the right to participate in social, religious and community activities that do not interfere with the rights of other patients or residents.

(28) Every patient and resident shall receive notice before the resident's room or roommate is changed, except in emergencies. The facility shall endeavor to honor the room or roommate requests of the resident whenever possible.

(29) Every patient and resident shall be encouraged to exercise the patient's or resident's own rights as a citizen of the State and the United States of America.

(30) Every patient and resident shall have the right to request and receive information regarding minimum acceptable staffing levels as it relates to the patient's or resident's own care.

(31) Every patient and resident shall have the right to request and receive the names and positions of staff members providing care to the patient or resident.

(32) Every patient and resident shall have the right to request and receive an organizational chart outlining the facility's chain of command for purposes of making requests and asserting grievances.

(33) Every patient and resident shall have the right to compliance with the patient's or resident's advance health care directive, power of attorney, or similar document in accordance with and subject to Chapter 49 of Title 12 and Chapter 25 of this title.

(34) Where a patient or resident is adjudicated incompetent, is determined to be incompetent by the patient's or resident's attending physician, or is unable to communicate, the patient's or resident's rights shall devolve to the patient's or resident's next of kin, guardian or representative.

(61 Del. Laws, c. 373, § 2; 69 Del. Laws, c. 345, § 5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 465, § 1; 75 Del. Laws, c. 387, § 1; 77 Del. Laws, c. 49, §§ 3-5; 77 Del. Laws, c. 201, §§ 6, 7; 79 Del. Laws, c. 203, § 1; 79 Del. Laws, c. 204, § 3.)

§ 1122 Devolution of rights.

Where consistent with the nature of each right in § 1121 of this title, all of such rights, particularly as they pertain to a person adjudicated incompetent in accordance with state law, or a patient who is found medically incapable by the patient's own attending physician, or a patient who is unable to communicate with others, shall devolve to the patient's next of kin, guardian, representative, sponsoring agency or representative payee (except where the facility itself is the representative payee) selected pursuant to § 205(j) of the Social Security Act [42 U.S.C. § 405(j)].

(61 Del. Laws, c. 373, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1123 Notice to patient.

Section 1121 of this title shall be posted conspicuously in a public place in all sanitoria, rest homes, nursing homes, boarding homes and related institutions. Copies shall be furnished to the patient or resident upon admittance to the facility; all patients and residents currently

residing in the facility; and the next of kin, guardian, representative, sponsoring agency or representative payee of the patient and resident. Receipts for the statement signed by the aforesaid parties shall be retained in the facility's files.

(61 Del. Laws, c. 373, § 2.)

§ 1124 Staff training; issuance of regulations.

Each facility shall provide appropriate staff training to implement the bill of rights set forth in § 1121 of this title. Rules and regulations implementing this subchapter shall be developed by the Secretary of the Department of Health and Social Services and shall be promulgated within 60 days after June 28, 1978.

(61 Del. Laws, c. 373, § 2.)

§ 1125 Investigation of grievances.

The Secretary of the Department of Health and Social Services or the Secretary's designee shall have the right and responsibility to independently investigate any grievance concerning sanitoria, rest homes, nursing homes, boarding homes and related institutions. Upon completion of an investigation, the Secretary of the Department of Health and Social Services or the Secretary's designee shall report the Secretary's or designee's findings to the complainants and to all other appropriate agencies of the State, county or municipality as the case may be. If a grievance involves a protection and advocacy agency client, the findings shall be shared with the protection and advocacy agency.

(61 Del. Laws, c. 373, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 201, § 8.)

§ 1126 Recording anatomical gift data.

(a) All sanitoria, rest homes and other health care facilities covered by this chapter shall, if possible, ascertain from a patient upon admission whether or not the patient has donated all or part of the patient's own body as an anatomical gift either by will or by a form provided for in subchapter VIII of Chapter 17 of Title 24 and the person, institution or organization to which such gift has been made.

(b) All facilities as defined in subsection (a) of this section shall maintain as part of a patient's permanent record the information required under this section and such other pertinent information about said anatomical gift which will facilitate the carrying out of the patient's wishes in the event of the patient's own death. Upon the death of a patient who has made an anatomical gift, health care facilities as defined in subsection (a) shall make every reasonable effort to contact without delay the person, institution or organization to which such gift has been made.

(63 Del. Laws, c. 238, § 2; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Abuse, Neglect, Mistreatment or Financial Exploitation of Residents or Patients

§ 1131 Definitions.

When used in this subchapter the following words shall have the meaning herein defined. To the extent the terms are not defined herein, the words are to have their commonly-accepted meaning.

(1) Abuse shall mean:

a. Physical abuse by unnecessarily inflicting pain or injury to a patient or resident. This includes but is not limited to, hitting, kicking, punching, slapping or pulling hair. When any act constituting physical abuse has been proved, the infliction of pain is assumed.

b. Sexual abuse which includes, but is not limited to, any sexual contact, sexual penetration, or sexual intercourse, as those terms are defined in § 761 of Title 11, with a patient or resident by an employee or volunteer working at a facility. It shall be no defense that the sexual contact, sexual penetration, or sexual intercourse was consensual.

c. Emotional abuse which includes, but is not limited to, ridiculing, demeaning, humiliating, or cursing at a patient or resident, or threatening a patient or resident with physical harm.

d. Medication diversion by knowingly, or intentionally, interrupting, obstructing, or altering the delivery, or administration, of a prescription drug to a patient or resident, providing that such prescription drug was:

1. Prescribed or ordered by a health-care provider for the patient or resident; and

2. The interruption, obstruction, or alteration occurred without the prescription, or order, of a health-care provider;

e. A person is justified in engaging in conduct otherwise prohibited in paragraph (1)d. of this section if the conduct was performed by:

1. A health-care provider, or licensed healthcare professional, who acted in good faith within the scope of the person's practice or employment; or

2. A person acting in good faith while rendering emergency care at the scene of an emergency, or accident.

(2) "Department" shall mean the Department of Health and Social Services or its designee.

(3) "Division" shall mean the Division of Long-Term Care Consumer Protection;

(4) "Facility" shall include:

a. Any facility required to be licensed under this chapter;

b. Any facility operated by or for the State which provides long-term care residential services;

c. The Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to § 5001 or § 5136 of this title; and

d. Any hospital as defined in § 1001(2) of this title. "Hospital" as defined in § 1001(2) of this title is included in the definition of facility only for the purposes and application of §§ 1131 and 1136 of this title.

(5) "Financial exploitation" shall mean the illegal or improper use or abuse of a patient's or resident's resources or financial rights by another person, whether for profit or other advantage.

(6) "Health-care provider" shall mean an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession. This is the same definition as in § 2501 of this title.

(7) "High managerial agent" means an officer of a facility or any other agent in a position of comparable authority with respect to the formulation of the policy of the facility or the supervision in a managerial capacity of subordinate employees.

(8) "Investigation" shall mean the collection of evidence in response to a report of abuse, neglect, mistreatment or financial exploitation of a resident or patient to determine if that resident or patient has been abused, neglected, mistreated or financially exploited. The Division shall develop protocols for its investigations which focus on ensuring the safety and well-being of the patient or resident and which satisfy the requirements of this chapter.

(9) "Mistreatment" shall include the inappropriate use of medications, isolation, or physical or chemical restraints on or of a patient or resident.

(10) "Neglect" shall mean:

a. Lack of attention to physical needs of the patient or resident including, but not limited to toileting, bathing, meals and safety.

b. Failure to report patient or resident health problems or changes in health problems or changes in health condition to an immediate supervisor or nurse.

c. Failure to carry out a prescribed treatment plan for a patient or resident.

d. A knowing failure to provide adequate staffing which results in a medical emergency to any patient or resident where there has been documented history of at least 2 prior cited instances of such inadequate staffing within the past 2 years in violation of minimum maintenance of staffing levels as required by statute or regulations promulgated by the Department, all so as to evidence a willful pattern of such neglect.

(11) "Person" means a human being and where appropriate a public or private corporation, an unincorporated association, a partnership, a government or governmental instrumentality.

(12) "Protection and advocacy agency" shall mean the Community Legal Aid Society, Inc. or successor agency designated the State protection and advocacy system pursuant to the following:

a. Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. § 10801 et seq.);

b. Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. § 15001 et seq.); or

c. Protection and advocacy for individual rights (29 U.S.C. § 794e).

(13) "Prescription drug" means a controlled substance as listed in subchapter II in Chapter 47 of this title or any other drug that can only be dispensed upon written, or verbal, authorization from a licensed health-care provider.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 222, § 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 71 Del. Laws, c. 487, § 1; 72 Del. Laws, c. 120, §§ 1-4; 77 Del. Laws, c. 201, § 9; 78 Del. Laws, c. 30, § 1; 79 Del. Laws, c. 193, § 1.)

§ 1132 Reporting requirements.

(a) Any employee of a facility or anyone who provides services to a patient or resident of a facility on a regular or intermittent basis who has reasonable cause to believe that a patient or resident in a facility has been abused, mistreated, neglected or financially exploited shall immediately report such abuse, mistreatment, neglect or financial exploitation to the Department by oral communication. A written report shall be filed by the employee or service provider within 48 hours after the employee or service provider first gains knowledge of the abuse, mistreatment, neglect or financial exploitation.

(b) Any person required by subsection (a) of this section to make an oral and a written report who fails to do so shall be fined not more than $1,000 or shall be imprisoned not more than 15 days, or both.

(c) In addition to those persons subject to subsection (a) of this section any other person may make such a report, if such persons have reasonable cause to believe that a patient or resident of a facility has been abused, mistreated, neglected or financially exploited.

(d) Any individual who intentionally makes a false report under this subchapter shall be guilty of a class A misdemeanor.

(e) Any correspondence or other written communication from a resident or patient to the Department, the Attorney General's office, the protection and advocacy agency and/or a law-enforcement agency shall, if delivered to or received by a facility, be promptly forwarded, unopened, by the facility or service provider to the agency to which it is written. Any correspondence or other written communication from the Department, the Attorney General's office, the protection and advocacy agency and/or a law-enforcement agency to a resident

or patient shall, if delivered to or received by the facility or other service provider, be promptly forwarded, unopened, by the facility or other service provider to such resident or patient. Failure to comply with this section shall result in a civil penalty not to exceed $1,000 per violation.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 292, § 1; 71 Del. Laws, c. 487, §§ 3, 5, 6; 74 Del. Laws, c. 196, § 1; 77 Del. Laws, c. 201, § 10.)

§ 1133 Contents of reports.

The reports required under this subchapter shall contain the following information: The name and sex of the patient or resident; the name and address of the facility in which the patient or resident resides; the age of the patient or resident, if known; the name and address of the reporter and where the reporter can be contacted; any information relative to the nature and extent of the abuse, mistreatment or neglect, and if known to the reporter any information relative to prior abuse, mistreatment or neglect of such patient or resident; the circumstances under which the reporter became aware of the abuse, mistreatment or neglect; what action, if any, was taken to treat or otherwise assist the patient or resident; and any other information which the reporter believes to be relevant in establishing the cause of such abuse, mistreatment or neglect.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1134 State response to reports of adult abuse, neglect, mistreatment or financial exploitation.

(a) The Department shall ensure that patients or residents are afforded the same rights and protections as other individuals in the State.

(b) In addition to the persons required to report abuse, neglect, mistreatment or financial exploitation pursuant to § 1132(a) of this title, any other person, including a nursing facility resident or patient, may contact the Department to report any complaint concerning the health, safety and welfare of facility residents and patients.

(c) Establish and maintain a 24-hour statewide toll-free telephone report line operating at all times and capable of receiving reports of alleged abuse, neglect, mistreatment and financial exploitation.

(d) In responding to abuse, neglect, mistreatment and financial exploitation complaints, the Division shall:

(1) Receive and maintain reports in a computerized central data base.

(2) Acknowledge all complaints, when authorized by the person making the report. The acknowledgement shall identify other relevant remedial agencies, including the protection and advocacy agency, Office of the Long-Term Care Ombudsman, and victim rights resource organizations. If the Division does not have jurisdiction over the complaint, its staff shall so advise the person making the complaint and shall promptly refer the complainant to the appropriate agency.

(3) Forward complaints to the appropriate Division staff who shall determine, through the use of standard operating procedures developed by the Division, whether an investigation should be initiated to respond to the complaint. The protocols for making this determination shall be developed by the Division and shall give priority to ensuring the well-being and safety of residents and patients.

(4) Begin the investigation within 24 hours of receipt of any report or complaint that alleges the following:

a. A resident's or patient's health or safety is in imminent danger; or

b. A resident or patient has died due to alleged abuse, neglect or mistreatment; or

c. A resident or patient has been hospitalized or received medical treatment due to alleged abuse, neglect or mistreatment; or

d. If the report or complaint alleges the existence of circumstances that could result in abuse, neglect or mistreatment and that could place a resident's or patient's health or safety in imminent danger; or

e. A resident or patient has been the victim of financial exploitation or risk thereof and exigent circumstances warrant an immediate response.

(5) Contact the appropriate law enforcement agency upon receipt of any complaint requiring an investigation immediately under this section and shall provide the police with a detailed description of the complaint received. The appropriate law enforcement agency shall conduct its investigation or provide the Division, within a reasonable time period, an explanation detailing the reasons why it is unable to conduct the investigation. The Department may defer its own investigation in these circumstances until it receives appropriate guidance from the Attorney General's Office and the relevant police agency with respect to how to proceed with its investigation thereby assuring a coordinated investigation. Notwithstanding any provision of the Delaware Code to the contrary, to the extent the law enforcement agency with jurisdiction over the case is unable to assist, the Division may request that the Delaware State Police exercise jurisdiction over the case and, upon such request, the Delaware State Police may exercise such jurisdiction.

(6) Upon receipt of any report pursuant to paragraph (d)(4) of this section, the law enforcement agency having jurisdiction shall conduct a full and complete criminal investigation based on their departmental policies and shall assess probable cause and effectuate arrests when appropriate. The Attorney General's Office or other law enforcement agency conducting the investigation shall keep the Division informed of the case status and all major decisions pursuant to Memoranda of Understanding between the Division and the Attorney General's Office and other relevant law enforcement agencies. The Memoranda of Understanding shall be executed within 180 days of the signing of this legislation and may be amended as needed. To the extent the criminal arrest and criminal prosecution, the Department of Justice shall keep the Division well informed of the case status and all major decisions, including but not limited to the disposition of criminal charges and the specifics of any sentencing order rendered.

(7) The Department shall have the authority to secure a medical examination of a nursing facility resident or patient upon the consent of the resident or patient without the consent of the service provider if the resident has been reported to be a victim of abuse, neglect or mistreatment; provided, that such case is classified as an investigation pursuant to this subchapter.

(8) When a written report of abuse, neglect, mistreatment or financial exploitation is made by a person required to report under § 1132(a) of this title, the Division shall contact the person who made such report within 48 hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information, including medical records, which may be pertinent.

(9) The Division shall conduct an investigation involving all reports which, if true, would constitute criminal offenses pursuant to any of the following provisions of Title 11 of the Delaware Code: §§ 601, 602, 603, 604, 611, 612, 613, 621, 625, 626, 627, 631, 632, 633, 634, 635, 636, 645, 763, 764, 765, 767, 768, 769, 770, 771, 772, 773, 774, 775, 791, 841, 842, 843, 844, 845, 846, 848, 851, 861, 862 and 908 or an attempt to commit any such crime. Except for situations outlined in paragraph (d)(4) of this section requiring the initiation of an investigation within 24 hours, all other investigations under this subchapter shall be initiated within 10 days and conducted during that timeframe unless extenuating facts warrant a longer time period to complete the investigation.

(10) The Division shall develop protocols to ensure that it shall conduct its investigation in coordination with the relevant law enforcement agency. The primary purpose of the Division's investigation shall be the protection of the resident(s) or patient(s).

(11) In investigating abuse, neglect, mistreatment or financial exploitation reports, the Division may:

a. Make unannounced visit(s) to the facility to determine the nature and cause of the alleged abuse, neglect, mistreatment or financial exploitation;

b. Interview available witnesses identified by any source as having personal knowledge relevant to the reported abuse, neglect, mistreatment or financial exploitation;

c. Conduct interviews in private unless the witness expressly requests that the interview not be private;

d. Write an investigation report that includes the investigator's personal observations, a review of the medical and all other relevant documents and records, a summary of each witness statement and a statement of the factual basis for the findings for each incident or problem alleged in the complaint.

(12) Appointment of special investigators; powers and duties.

a. The Secretary of the Department of Health and Social Services may appoint qualified persons to be special investigators for the Division of Long-Term Care Residents Protection. Such investigators shall hold office at the pleasure of the Secretary. Any person appointed pursuant to this section shall have a minimum of 10 years experience as a "police officer," as that term is defined in § 1911(a) of Title 11, significant investigatory experience while working as a police officer, shall be in good standing with the previous or present law-enforcement agency where such person is or was employed, and shall have such other qualifications deemed appropriate by the Secretary.

b. Special investigators appointed under this section may conduct investigations of abuse, neglect, mistreatment or financial exploitation of residents of long-term care facilities and adults who are impaired anywhere in this State as directed by the Director of the Division of Long-Term Care Residents Protection and shall have the power to make arrests and serve writs anywhere in this State. In conducting such investigations, the special investigators shall have the statewide powers enumerated under § 1911 of Title 11 and such other powers as conferred by law on police officers, but such powers shall be limited to offenses involving abuse, neglect, mistreatment or financial exploitation of residents of long-term care facilities and adults who are impaired anywhere in this State as directed by the Director of the Division of Long-Term Care Residents Protection. To the extent possible, special investigators pursuant to this section shall consult with the police agency having jurisdiction and the Director or the Director's designee prior to making an arrest and shall do so in all cases after making such arrest.

c. The salary of special investigators shall be fixed by the Secretary within the appropriations made to the Department.

d. Special investigators will assist in the training of other Division staff.

(13) The Department the Office of the Attorney General and other law enforcement agencies shall develop Memoranda of Understanding pursuant to this subchapter which provide for timely notification, co-investigation, referral of cases, including automatic referral in certain cases, and ongoing coordination in order to keep each other apprised of the status of their respective investigations. This paragraph shall become effective March 31, 1999.

(14) If the Division suspects or discovers information indicating the commission of violations of standards of professional conduct by facilities licensed under this chapter or by staff employed by such facilities, the Division shall immediately contact the Office of the Attorney General and the relevant professional licensing board.

(15) The Division and the Attorney General's Office shall cooperate with law enforcement agencies to develop training programs to increase the effectiveness of Division personnel, Attorney General's Office personnel and law enforcement officers in investigating suspected cases of abuse, neglect, mistreatment or financial exploitation.

(16) A person required to report to the Division under § 1132(a) of this title shall be informed by the Division of the person's right to obtain information concerning the disposition of the report. Such person shall receive, if requested, information on the general disposition of the report at the conclusion of the investigation.

(17) Before the completion of an investigation, the Division shall file a petition for the temporary care and protection of the resident or patient if the Division determines that immediate removal is necessary to protect the resident or patient from further abuse, neglect, mistreatment or financial exploitation.

(18) Upon completing an investigation of a complaint, the Division shall take 1 or more of the following courses of action, as appropriate:

a. If representatives of the Department, the Attorney General's Office and/or the appropriate law enforcement agency are unable to substantiate a complaint that applicable laws or regulations have been violated the Department or appropriate law enforcement agency shall so advise the complainant and the facility, agency or individual against which the complaint was made.

b. If Division representatives are able to substantiate a complaint that applicable laws or regulations have been violated, the Division shall take appropriate enforcement action.

c. Enforcement action may include instituting actions by the Division for injunctive relief or other relief deemed appropriate. The Office of the Attorney General shall provide legal advice and assist the Division to institute such proceedings.

d. If the Division discovers a deficiency in violation of federal laws or regulations or rules administered by any other government agency, the Division shall refer the matter directly to the appropriate government agency for enforcement action.

e. In the event that a criminal prosecution for abuse, neglect, mistreatment or financial exploitation is initiated by the Attorney General's Office pursuant to a report under this subchapter, and incarceration of the person who is the subject of the report is ordered by the Court, the Attorney General's Office shall keep the Division informed of actions taken by the Court which result in the release of any such individual, provided that the Attorney General's Office is represented at such a hearing.

f. In the event that a criminal prosecution for abuse, neglect, mistreatment or financial exploitation is initiated by the Attorney General's Office against a person employed by or associated with a facility or organization required to be licensed or whose staff are required to be licensed under Delaware law, the Attorney General shall notify the Department within 48 hours and the Department shall then notify the person's employer:

1. Upon return of an indictment charging such person with having committed at least one felony offense involving an allegation of abuse, neglect, mistreatment or financial exploitation; or

2. Upon an adjudication of guilt of such person for any misdemeanor or violation, when such offense involved abuse, neglect, mistreatment or financial exploitation.

(19) Protect the privacy of the nursing facility resident or patient and his or her family, and the Division shall establish guidelines concerning the disclosure of information relating to complaints and investigations regarding abuse, neglect, mistreatment or financial exploitation involving that resident or patient. The Division may require persons to make written requests for access to records maintained by the Division. Notwithstanding Chapter 100 of Title 29, the Division may only release information to persons who have a legitimate public safety need for such information and such information shall be used only for the purpose for which it is released pursuant to a user agreement with the Division.

(e) The protection and advocacy agency is authorized to complement the Department's complaint resolution system through monitoring, investigation and advocacy on behalf of facility patients or residents. In furtherance of this authority, protection and advocacy agency representatives may engage in the following functions:

(1) Solicit and receive oral and written reports and complaints of abuse, neglect, mistreatment or financial exploitation of facility patients or residents; and

(2) Access a facility; interview patients, residents, facility staff and agents; and inspect and copy records pertaining to the patient or resident with valid consent or as otherwise authorized by federal law.

(f) The Department may develop protocols with the protection and advocacy agency to facilitate coordination whenever both agencies have initiated an overlapping investigation.

(g) The immunities and protections compiled in § 1135 of this title shall apply to persons offering reports or testimony to initiate or support protection and advocacy agency investigation or advocacy.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 222, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 487, § 4; 72 Del. Laws, c. 3, § 4; 74 Del. Laws, c. 212, § 1; 77 Del. Laws, c. 201, §§ 11-14; 77 Del. Laws, c. 318, § 6; 78 Del. Laws, c. 179, § 164.)

§ 1135 Immunities and other protections.

(a) No person making any oral or written report pursuant to this subchapter shall be liable in any civil or criminal action by reason of such report where such report was made in good faith or under the reasonable belief that such abuse, financial exploitation, mistreatment or neglect has taken place.

(b) No facility shall discharge, or in any manner discriminate or retaliate against any person, by any means whatsoever, who in good faith makes or causes to be made, a report under this subchapter, or who testifies or who is about to testify in any proceeding concerning abuse, financial exploitation, mistreatment or neglect of patients or residents in said facility.

(c) Any facility which discharges, discriminates or retaliates against a person because the person has reported, testified or is about to testify concerning abuse, financial exploitation, mistreatment or neglect of patients or residents shall be liable to such person for treble

damages, costs and attorney fees. Where a facility discharges, demotes or retaliates by any other means, against a person after the person made a report, testified, or was subpoenaed to testify as a result of a report authorized under this subchapter, there shall be a rebuttable presumption that such facility discharged, demoted or retaliated against such person as a result of such report or testimony.

(d) This section shall not apply to any person who has engaged in the abuse, financial exploitation, mistreatment or neglect of a patient or resident.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 201, §§ 15, 16.)

§ 1136 Violations.

(a) Any person, who knowingly or recklessly abuses, mistreats or neglects a patient or resident of a facility shall be guilty of a class A misdemeanor. Where abuse results in sexual contact such person shall be guilty of a class G felony. Where the abuse, mistreatment or neglect results in serious physical injury, sexual penetration or sexual intercourse, such person shall be guilty of a class C felony. Where the abuse, mistreatment or neglect results in death, then the person shall be guilty of a class A felony.

(b) Any person who knowingly causes medication diversion of a patient, or resident, shall be guilty of a class G felony and guilty of a class F felony, if committed by a health-care professional.

(c) Any person who knowingly exploits a patient's or resident's resources shall be guilty of a class A misdemeanor where the value of the resources is less than $1,000 and shall be guilty of a class G felony where the value of the resources is $1,000 or more.

(d) Any member of the board of directors or a high managerial agent who knows that patients or residents of the facility are being abused, mistreated or neglected and fails to promptly take corrective action shall be guilty of a class A misdemeanor.

(e) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(65 Del. Laws, c. 442, § 1; 72 Del. Laws, c. 120, §§ 5, 6; 78 Del. Laws, c. 30, §§ 2, 3; 79 Del. Laws, c. 193, § 2.)

§ 1137 Suspension or revocation of license for violation by licensed or registered professional.

Upon a finding of abuse, mistreatment or neglect, or failure to report such instances by a licensed or registered professional, the Department or the Attorney General shall notify the appropriate licensing or registration board. If, after a hearing, a licensed or registered professional is found to have abused, mistreated or neglected a patient or resident or has failed to report such instance, the appropriate board shall suspend or revoke such person's license.

(65 Del. Laws, c. 442, § 1.)

§ 1138 Suspension or revocation of license for violation by facility.

Upon a finding that abuse, mistreatment or neglect has occurred in a facility, the Department or the Attorney General shall notify the appropriate licensing board and, if such facility receives public funding, the appropriate state or federal agency. If, after a hearing, it is determined that a member of the board of directors or a high managerial agent knew that patients or residents were abused, mistreated or neglected and failed to promptly take corrective action, the appropriate board shall suspend or revoke such facility's license.

(65 Del. Laws, c. 442, § 1.)

§ 1139 Treatment by spiritual means.

Nothing in this subchapter shall be construed to mean that a patient or resident is abused, mistreated or neglected for the sole reason the patient or resident relies upon, or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, nor shall anything in this subchapter be construed to authorize or require any medical care or treatment over the implied or express objection of said patient or resident.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1140 Jurisdiction.

The Superior Court shall have original and exclusive jurisdiction over violations of this subchapter.

(65 Del. Laws, c. 442, § 1.)

Subchapter IV

Criminal Background Checks; Mandatory Drug Screening; Nursing Home Compliance with Title XIX of the Social Security Act

§ 1141 Criminal background checks.

(a) *Purpose.* — The purpose of the criminal background check and drug screening requirements of this section and § 1142 of this title is the protection of the safety and well-being of residents of nursing facilities and similar facilities licensed pursuant to this chapter. These sections shall be construed broadly to accomplish this purpose.

(b) *Definitions.* —

(1) "Applicant" means any of the following:

a. A person seeking employment in a facility, as defined below;

b. A current employee of a facility who seeks a promotion in the facility;

c. A self-employed person or a person employed by an agency for work in a facility;

d. A current employee of a facility or a person as defined in paragraph (b)(1)c. of this section above who the Department of Health and Social Services has a reasonable basis to suspect has been arrested for a disqualifying crime since becoming employed or commencing work;

e. A former employee who consents prior to leaving employment to periodic review of his or her criminal background for a fixed time period.

(2) "Background Check Center (BCC)" means the electronic system which combines the data streams from various sources within and outside the State in order to assist an employer in determining the suitability of a person for employment in a nursing facility or similar facility.

(3) "Criminal history" means a report from the Department of Health and Social Services regarding its review of the applicant's entire federal criminal history from the Federal Bureau of Investigation, pursuant to Public Law 92-544 as amended (28 U.S.C. § 534) and his or her Delaware record from the State Bureau of Identification.

(4) "Department" means the Department of Health and Social Services (DHSS).

(5) "Facility" means any facility licensed pursuant to this chapter, including but not limited to nursing facilities (commonly referred to as nursing homes), assisted living facilities, intermediate care facilities for persons with intellectual disability; neighborhood group homes, family care homes, rest residential homes, intensive behavioral support and educational residences; retirement homes and rehabilitation homes with such terms to have such meaning as set forth in this title or, if not defined therein, as such terms are commonly used.

(6) "Grandfathered employee" means an employee of a facility who was not fingerprinted pursuant to this statute because the employment commenced before the effective date of the statute (March 31, 1999), and no requirement for fingerprinting has since applied (see paragraph (b)(1) of this section above).

(7) "SBI" means the State Bureau of Identification.

(c) No employer may employ an applicant for work in a facility before obtaining a criminal history. The criminal history of any person not employed directly by the facility must be provided to the facility upon the person's commencement of work.

(d) *Conditional hire.* — The requirements of subsection (c) of this section may be suspended for 60 days if the employer wishes to employ the applicant on a conditional basis. Before an employer may offer conditional employment, the employer must receive verification that the applicant has been fingerprinted by the SBI for purposes of the criminal history. No criminal history will be issued if the applicant fails to provide information to DHSS regarding the status or disposition of an arrest within 45 days from the date of notice from DHSS of an open criminal charge. DHSS may extend the time limits for good cause shown.

(e) No employer is permitted to employ or continue to employ a person with a conviction deemed disqualifying by DHSS's regulations.

(f) Any employer who employs an applicant and fails to secure a criminal history shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. An employer is also subject to this penalty if that employer conditionally employs an applicant before receiving verification that the applicant has been fingerprinted for purposes of the criminal history.

(g) The criminal history provided to the employer is strictly confidential. It may be used solely to determine the suitability of an applicant for employment or continued employment in a facility. It must be stored in a manner that maintains its confidentiality.

(h) No applicant is permitted to be employed in a facility, other than conditionally pursuant to subsection (d) of this section above, until the applicant's employer has secured the applicant's criminal history.

(i) Before an applicant is permitted to be employed in a facility, the applicant must, upon request:

(1) Provide accurate information sufficient to secure a criminal history;

(2) Execute a full release to enable the employer to secure a criminal history and to update the criminal history while employed;

(3) Execute a full release giving the employer permission to provide the criminal history to the facility where the work is to be performed if the employer is other than the facility.

(j) An applicant who fails to comply with subsection (i) of this section is subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(k) All grandfathered employees must be fingerprinted by the SBI within 120 days from the date of BCC implementation. SBI:

(1) Shall use the fingerprints to establish the grandfathered employee's identity and to assign an SBI identification number for the sole purpose of enabling the person's criminal record to be monitored for new arrests while the grandfathered employee continues to work at a nursing facility or similar facility;

(2) Shall not secure a state or federal criminal history on the grandfathered employee unless the grandfathered employee is also an applicant as defined in subsection (b) of this section above;

(3) Shall comply with § 1911 of Title 11.

(l) No employer is permitted to continue to employ a grandfathered employee who has not been fingerprinted within 120 days from the date of BCC implementation and assigned an SBI number.

(m) DHSS shall promulgate regulations regarding:

(1) The criteria it uses to determine unsuitability for employment;

(2) The policies and procedures for preparing the criminal history which govern the frequency of criminal record review and updating;

(3) The frequency with which fingerprints must be obtained;

(4) The information that DHSS provides in the criminal history about disqualifying and nondisqualifying criminal convictions;

(5) The methods for notifying applicants and employers of the results of DHSS's review, and for providing applicants with the criminal history;

(6) The administrative review process available to a person desiring to contest adverse information;

(7) Other provisions required to achieve the purpose of this section.

(71 Del. Laws, c. 466, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 2, § 1; 74 Del. Laws, c. 195, §§ 1-6; 77 Del. Laws, c. 84, § 205; 78 Del. Laws, c. 303, § 2.)

§ 1142 Mandatory drug screening.

(a) No employer is permitted to employ an applicant, as defined in § 1141 of this title, without first obtaining the results of that applicant's mandatory drug screening.

(b) All applicants, as defined in § 1141 of this title, must submit to mandatory drug screening, as specified by regulations promulgated by the Department of Health and Social Services (DHSS).

(c) DHSS shall promulgate regulations, regarding the pre-employment testing of all applicants, for use of the following illegal drugs:

(1) Marijuana/cannabis;

(2) Cocaine;

(3) Opiates;

(4) Phencyclidine ("PCP");

(5) Amphetamines;

(6) Any other illegal drug specified by DHSS, pursuant to regulations promulgated pursuant to this section.

(d) An agency, including but not limited to temporary agencies, must provide the drug screening results it receives regarding an applicant referred to work in a facility, as defined in § 1141 of this title, to that particular facility so that the facility is better able to make an informed decision whether to accept the referral.

(e) The employer must provide confirmation of the drug screen in the manner prescribed by DHSS's regulations.

(f) Any employer who fails to comply with the requirements of this section is subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(71 Del. Laws, c. 466, § 2; 72 Del. Laws, c. 2, § 1; 72 Del. Laws, c. 366, § 1; 78 Del. Laws, c. 303, § 2.)

§ 1143 Standards of care for nursing homes providing care to Medicaid recipients.

(a) Any nursing facility as defined in 42 U.S.C. § 1396r(a) shall comply with all requirements regarding such facilities contained in Title XIX of the Social Security Act [42 U.S.C. § 1396 et seq.] and in any federal regulation issued pursuant thereto.

(b) For any violation of subsection (a) of this section, a nursing facility shall be subject to 1 or more of the following remedies:

(1) Denial of payment with respect to any recipient under the state Medicaid program admitted to the nursing facility, with notice to the public and the facility as provided for by regulations promulgated by the Department.

(2) A civil fine between 2 percent to 100 percent of a facility's current per diem rate, which shall be collected with interest at the legal rate of interest, for each day in which a facility fails to comply with a requirement constituting a separate violation. Funds collected as a result of imposition of such a penalty shall be applied to the protection of the health or property of residents of the nursing facility found to have been in violation, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) The appointment, pursuant to regulations adopted by the Department, of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents.

(4) In the case of an emergency, the closure of the facility, the transfer of residents in that facility or other facilities, or both.

(c) In the case of a nursing facility which, on 3 consecutive standard surveys conducted pursuant to the rules or regulations promulgated by the Department, has been found to have provided substandard quality of care or has otherwise failed to comply with the requirement imposed pursuant to subsection (a) or (e) of this section, the Department shall (regardless of what other remedies are provided):

(1) Impose the remedy described in subsection (b)(1) of this section; and

(2) Monitor the facility pursuant to regulations promulgated by the Department, until the facility has demonstrated, to the satisfaction of the Department, that the facility is in compliance with the requirements imposed pursuant to subsection (a) or (e) of this section, and that the facility will remain in compliance with such requirements.

(d) If a nursing facility has failed to comply with any of the requirements pursuant to subsection (a) or (e) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the Department shall impose the remedy described in subsection (b)(1) of this section for all individuals who are admitted to the facility after such date.

(e) The Department may establish and promulgate such rules and regulations governing the administration and operation of this section as may be deemed necessary and which are not inconsistent with the laws of this State.

(f) The Secretary of the Department of Health and Social Services or the Secretary's designee shall have jurisdiction to hear any matter arising under subsections (a) and (e) of this section and shall have the power to impose any remedy listed under subsections (b), (c) and (d) of this section. Any party who is not satisfied with a decision of the Secretary or the Secretary's designee may appeal to the Superior Court for the county in which the facility is located. Such appeal must be filed within 30 days from the date of the Secretary's or the Secretary's designee's decision and shall be on the record made before the Secretary or the Secretary's designee.

(g) This section is intended to be applicable solely to nursing facilities as defined by 42 U.S.C. § 1396r(a) and shall not alter, amend, repeal, restrict or otherwise affect any existing Medicaid appeals procedures established by the Department.

(67 Del. Laws, c. 79, § 1; 70 Del. Laws, c. 149, §§ 105, 106; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 466, § 1.)

Subchapter V

Home Health Agencies and Private Residences — Criminal Background Checks; Drug Testing

§ 1145 Criminal background checks.

(a) *Purpose.* — The purpose of the criminal background check and drug screening requirements of this section and § 1146 of this title is the protection of the safety and well-being of residents of this State who use the services of home health agencies, hospice agencies, or personal assistance services agencies licensed pursuant to this title or who employ a person to provide care in a private residence, as defined below. These sections shall be construed broadly to accomplish this purpose.

(b) *Definitions.* —

(1) "Applicant" means any of the following:

a. A person seeking employment with an employer, as defined below;

b. A current employee who seeks a promotion from an employer, as defined below;

c. A self-employed person seeking employment in a private residence for the purpose of providing services to protect the health, safety and well-being of an individual who requires home health care service as defined in § 122(3)o of this title.

d. A current employee of an employer as defined below who DHSS has a reasonable basis to suspect has been arrested for a disqualifying crime since becoming employed.

e. A former employee who consents prior to leaving employment to periodic review of his or her criminal background for a fixed time period.

(2) "Criminal history" means a report from the Department of Health and Social Services regarding its review of the applicant's entire federal criminal history from the Federal Bureau of Investigation, pursuant to Public Law 92-544 as amended (28 U.S.C. § 534) and his or her Delaware record from the State Bureau of Identification.

(3) "Background Check Center (BCC)" means the electronic system which combines the data streams from various sources within and outside the State in order to assist an employer in determining the suitability of a person for employment in a nursing facility or similar facility, or home care agency.

(4) "Department" means the Department of Health and Social Services (DHSS).

(5) "Employer" means: a home care agency as defined in this section; a management company that contracts to provide services on behalf of a home care agency; or other business entity (including but not limited to a temporary employment agency) that contracts to provide services on behalf of a home care agency.

(6) "Grandfathered employee" means an employee of an Employer who was not fingerprinted pursuant to this statute because the employment commenced before July 1, 2001, and no requirement for fingerprinting has since applied. See paragraph (b)(1) of this section above.

(7) "Home care agency" includes all programs or agencies licensed pursuant to § 122(3)(m), or (3)(o), or (3)(x) of this title that provide services to individuals in their private residence, as defined below.

(8) "Private residence" means the domicile of the individual in need of care, either personally owned by that individual or considered the place of residence of that individual. A private residence does not include those healthcare facilities licensed by the Department of Health and Social Services under Chapter 11 of this title.

(9) "SBI" means the State Bureau of Identification.

(c) No employer is permitted to employ an applicant for work in a private residence before getting a criminal history. Upon request the criminal history must be provided to the person for whom the services are to be provided, or to the person's guardian, agent for health care decisions, or surrogate upon the applicant's commencement of work.

(d) A private individual seeking to hire or employ a self-employed individual to provide services in a private residence may secure access to the BCC from DHSS. The BCC user fee shall be set by regulation, but may not exceed that charged to an employer. The cost of the criminal background check from SBI and/or drug screening shall be borne by the person making the request.

(e) *Conditional hire.* — The requirements of subsection (c) of this section may be suspended for 60 days from the date of hire if the employer wishes to employ the applicant on a conditional basis. Before an employer may offer conditional employment, the employer must receive verification that the applicant has been fingerprinted by the SBI for purposes of the criminal history. No criminal history will be issued if the applicant fails to provide information to DHSS regarding the status or disposition of an arrest within 45 days from the date of notice from DHSS of an open criminal charge. DHSS may extend the time limits for good cause shown.

(f) No employer other than a private person is permitted to employ or continue to employ an individual with a conviction deemed disqualifying by DHSS regulations.

(g) Any employer other than a private person who employs an applicant and fails to secure a criminal history shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. An employer is also subject to this penalty if that employer conditionally employs an applicant before receiving verification that the applicant has been fingerprinted for purposes of the criminal history.

(h) The criminal history provided to the employer is strictly confidential. It may be used solely to determine the suitability of an applicant for employment or continued employment in a private residence.

(i) No applicant is permitted to be employed by an employer other than conditionally pursuant to subsection (e) of this section above, until the applicant's employer has secured the applicant's criminal history.

(j) Before an applicant is permitted to be employed by an employer, the applicant must, upon request:

(1) Provide accurate information sufficient to secure a criminal history;

(2) Execute a full release to enable the employer to secure a criminal history and to update the criminal history while employed;

(3) Execute a full release giving the employer permission to provide the criminal history to the person for whom the services are to be provided, or to the person's guardian, agent for health care decisions, or surrogate.

(k) An applicant who fails to comply with subsection (j) of this section is subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(l) All grandfathered employees must be fingerprinted by SBI and be registered in the BCC within 120 days from the date of BCC implementation. SBI:

(1) Shall use the fingerprints to establish the grandfathered employee's identity and to assign an SBI identification number for the sole purpose of enabling the person's criminal record to be monitored for new arrests while employed in a private residence.

(2) Shall not secure a state or federal criminal history on the grandfathered employee, unless the grandfathered employee is also an applicant as defined in subsection (b) of this section above;

(3) Shall comply with § 1911 of Title 11.

(m) No employer is permitted to continue to employ a grandfathered employee who has not been fingerprinted and assigned an SBI number within 120 days from the date of BCC implementation.

(n) DHSS shall promulgate regulations regarding:

(1) The criteria it uses to determine unsuitability for employment;

(2) The policies and procedures for preparing the criminal history which govern the frequency of criminal record review and updating;

(3) The frequency with which fingerprints must be obtained;

(4) The information that DHSS provides in the criminal history about disqualifying and nondisqualifying criminal convictions;

(5) The methods for notifying applicants and employers of the results of DHSS's review, and for providing applicants with the criminal history;

(6) The administrative review process available to a person desiring to contest adverse information;

(7) Other provisions required to achieve the purpose of this section.

(73 Del. Laws, c. 10, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 195, §§ 7-13; 77 Del. Laws, c. 84, § 206; 78 Del. Laws, c. 303, § 3.)

§ 1146 Mandatory drug screening.

(a) *Definitions.* —

(1) "Applicant" is defined in § 1145 of this title.

(2) "Department" means the Department of Health and Social Services (DHSS).

(3) "Employer" means: a home care agency as defined in this section; a management company that contracts to provide services on behalf of a home care agency; or other business entity (including but not limited to a temporary employment agency) that contracts to provide services on behalf of a home care agency.

(4) "Home care agency" includes all programs or agencies licensed pursuant to § 122(3)(m), or (3)(o), or (3)(x) of this title that provide services to individuals in their private residence, as defined below.

(5) "Private residence" means the domicile of the individual in need of care, either personally owned by that individual or considered the place of residence of that individual. A private residence does not include those healthcare facilities licensed by the Department of Health and Social Services under Chapter 11 of this title.

(b) No employer is permitted to employ any applicant without first obtaining the results of that applicant's mandatory drug screening.

(c) All applicants, with the exception of self-employed individual seeking employment from a private person to provide services in a private residence, must submit to mandatory drug screening, as specified by regulations promulgated by DHSS. The requirement for drug screening for persons seeking employment in a private residence is left to the discretion of the employer.

(d) DHSS shall promulgate regulations regarding the pre-employment screening of all applicants for use of the following illegal drugs:

(1) Marijuana/cannabis;

(2) Cocaine;

(3) Opiates;

(4) Phencyclidine ("PCP");

(5) Amphetamines;

(6) Any other illegal drug specified by DHSS, pursuant to regulations promulgated pursuant to this section.

(e) No employer may employ an applicant for work in a private residence before getting the results of that applicant's drug screening. Upon request, the results of the drug screen must be provided upon the applicant's commencement of work to the person for whom the services are to be provided, or to the person's guardian, agent for health care decisions, or surrogate.

(f) The employer must provide confirmation of the drug screen in the manner prescribed by DHSS's regulations.

(g) Any employer who fails to comply with the requirements of this section shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(73 Del. Laws, c. 10, § 2; 78 Del. Laws, c. 303, § 3.)

Subchapter VI

Office of the Long-Term Care Ombudsperson

§ 1150 Creation of Office.

There is hereby established within the Department of Health and Social Services, Division of Administration, the Office of the Long-Term Care Ombudsperson as provided by the Older Americans Act Amendments of 1987 (P.L. 100-175).

(67 Del. Laws, c. 76, § 1; 69 Del. Laws, c. 345, § 5; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 78, § 140; 78 Del. Laws, c. 118, § 1.)

§ 1151 Definitions.

As used in this subchapter:

(1) "Agency" means any private or public agency operating in the State, one of whose purposes is the funding, provision or regulation of health care services.

(2) "Long-term care facility" means any facility, institution, foster home, group living arrangement, adult care home or any other facility which is required to be licensed under this chapter.

(3) "Long-Term Care Ombudsperson" or "Ombudsperson" means the person designated under § 307(a)(12) of the Older Americans Act Amendments of 1987 (42 U.S.C. § 3027(a)(12)), to perform the mandated functions of the Office of the Long-Term Care Ombudsperson in the State, or the Ombudsperson's designee.

(4) "Record" means any medical, social or financial information pertaining to a resident of a long-term care facility which is maintained by any agency regulated under this chapter or Chapter 10 of this title; provided, however, that "record" shall not include criminal investigative files.

(67 Del. Laws, c. 76, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1152 Purpose and duties.

The purpose of the Ombudsperson is to provide a program to advocate for and promote the adequacy of care received and the quality of life experienced by residents of long-term care facilities in Delaware. The Ombudsperson shall have the power to:

(1) Investigate and seek to resolve complaints and concerns made by or on behalf of residents of long-term care facilities in the State relating to the actions or inactions of any long-term care facility or agencies which may adversely affect the health, safety, welfare or rights of such residents;

(2) Promote the well-being and quality of life of residents of long-term care facilities;

(3) Enter into written agreements of understanding, cooperation and collaboration with other government agencies that provide funding, oversight, inspection or operation of long-term care facilities;

(4) Establish and carry out program policies and procedures for eliciting, receiving, investigating, verifying, referring and resolving residents' complaints;

(5) Receive and investigate complaints of abuse, mistreatment or neglect in accordance with subchapter III of this chapter;

(6) Promulgate rules and regulations and adopt policies to implement this subchapter; and

(7) Perform other duties as mandated by the Older Americans Act of 1965, as amended.

(67 Del. Laws, c. 76, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1153 Access to facilities and patient records.

(a) The Ombudsperson shall have access to any facility or record which is relevant to the performance of the Ombudsperson's responsibilities under this subchapter, including any record otherwise rendered confidential under Delaware law; provided, however, that the Ombudsperson shall obtain the consent of any resident who is able to consent or any resident's legal agent or guardian for access to such resident's records.

(b) The Ombudsperson may initiate an investigation of any long-term care facility independent of the receipt of a specific complaint.

(c) Any state agency to which the Ombudsperson refers a complaint shall periodically advise the Ombudsperson of the status of the investigation of the complaint and notify the Ombudsperson in a timely manner of the disposition of the complaint.

(d) The Ombudsperson shall protect the confidentiality of residents' records and shall permit access to such records only in accordance with regulations of the Office of the Long-Term Care Ombudsperson.

(e) The Ombudsperson shall protect the confidentiality of files maintained by the Ombudsperson and shall permit access to such files only under conditions as the Ombudsperson, in the Ombudsperson's own sole discretion, deems appropriate.

(f) Notwithstanding any other provision of this subchapter, the Ombudsperson shall not disclose the identity of any complainant or resident unless a court orders such disclosure or the complainant or resident consents in writing to the disclosure of the complainant's or resident's identity.

(67 Del. Laws, c. 76, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1154 Good faith immunity.

(a) Persons and agencies participating in an investigation under this subchapter shall be immune from civil liability arising from their good faith participation in the investigation.

(b) No long-term care facility, other entity or person shall engage in retaliation or reprisals against any person or agency due to such person or agency's participation in an investigation under this subchapter.

(67 Del. Laws, c. 76, § 1.)

§ 1155 Sanctions for interference with Ombudsperson.

(a) No person, agency or long-term care facility shall wilfully interfere with the performance of the duties and exercise of the powers of the Ombudsperson provided in this subchapter.

(b) Whoever violates this subchapter shall be fined not more than $100 for the first offense and not less than $100 nor more than $1,000 for each subsequent offense. Each violation shall be considered a separate offense.

(67 Del. Laws, c. 76, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1156 Jurisdiction.

(a) Justices of the Peace shall have jurisdiction over violations of this subchapter.

(b) The Superior Court shall have jurisdiction over appeals of the decisions entered pursuant to subsection (a) of this section. Such appeals shall be on the record.

(67 Del. Laws, c. 76, § 1.)

Subchapter VII

Minimum Staffing Levels for Residential Health Facilities

§ 1161 Definitions.

(a) "Advanced practice nurse" shall mean an individual whose education and certification meet the criteria outlined in Chapter 19 of Title 24, and who is certified in at least 1 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; or

(5) Family nurse practitioner.

(b) "Department" shall mean the Department of Health and Social Services.

(c) "Direct care" shall mean an activity performed by a nursing services direct caregiver that is specific to a resident. Direct care activities are as follows:

(1) "Hands-on" treatment or care, including, but not limited to, assistance with activities of daily living (e.g., bathing, dressing, eating, range of motion, toileting, transferring and ambulation); medical treatments; and medication administration;

(2) Physical and psychosocial assessments;

(3) Documentation, if conducted for treatment or care purposes;

(4) Care planning; and

(5) Communication with a family member or a health care professional or entity, regarding a specific resident.

(d) "Division" shall mean the Division of Long Term Care Residents Protection.

(e) "Nursing services direct caregivers" shall mean certified nursing assistants, licensed practical nurses, registered nurses, advanced practice nurses and nursing supervisors when and only when providing direct care of residential health facility residents. The director of nursing ("DON"), assistant director of nursing ("ADON"), and/or registered nurse assessment coordinator ("RNAC") may be designated as a nursing services direct caregiver and counted in the direct care hours and minimum staffing ratios when exigent circumstances require that they discontinue their administrative and managerial duties in order to provide direct care. Within 24 hours of the exigent circumstance(s) that require that the DON, ADON and/or RNAC provide direct care, the facility shall notify the Division in writing of this emergency situation and provide documentation of the amount of direct care time that was provided by the DON, ADON and/or RNAC.

(f) "Nursing supervisor" shall mean an advanced practice nurse or registered nurse who is assigned to supervise and evaluate nursing services direct caregivers no less than 25 percent of the nursing supervisor's time per shift. Up to 75 percent of the nursing supervisor's time per shift may be spent providing direct care. Registered nurses (RN) holding the following positions may provide the supervision required of a nursing supervisor, and the supervision may be counted towards the minimum 25 percent supervision required per shift:

(1) Director of nursing ("DON").

(2) Assistant director of nursing ("ADON").

(3) Registered nurse assessment coordinator ("RNAC").

(4) Director of in-service education (RN).

(5) Quality improvement coordinator nurse (if an RN).

(6) Nursing home administrator (if an RN).

An individual serving as a nursing supervisor must be an employee of the facility, thus excluding temporary employment agency personnel from serving in this capacity unless exigent circumstances exist. The term "exigent circumstances" means a short-term emergency or other unavoidable situation, and all reasonable alternatives to the use of a temporary employee as a nursing supervisor have been exhausted. Within 24 hours of the exigent circumstances that require the use of temporary employment agency staffing to fill a nursing supervisor position in a residential health facility, the facility shall notify the Division in writing of the exigent circumstances and the expected duration. For any shift that exceeds the minimum RN/LPN shift ratio mandated by § 1162 of this title, the amount of RN time that exceeds the minimum ratio may be counted towards the minimum 25 percent supervision required for that shift; provided, however, that said RN time was dedicated to supervisory functions. For those facilities that are not required by state or federal regulations to have a registered nurse on duty on each shift, a licensed practical nurse with 3 years long-term care experience may serve as a nursing supervisor, provided that no registered nurse is on duty. There shall be a nursing supervisor on duty and on-site at all times. By June 1, 2002, the Nursing Home Residents Quality Assurance Commission shall issue to the Governor and to the General Assembly a report evaluating the requirement that nursing supervisors spend a minimum of 25 percent of their time on supervisory functions. The purpose of the report is to determine if the required minimum amount of supervision time is appropriate and necessary, and whether it should be adjusted.

(g) "Residential health facility" shall mean any facility that provides long-term health-related care and nursing services to individuals who do not require the degree of care and treatment that a hospital is designed to provide. These are those facilities, licensed pursuant to this chapter, that:

(1) Provide skilled nursing services to persons who require medical or nursing care; or

(2) Provide nursing services above the level of room and board to those who, because of a mental or physical condition, routinely require these services.

Also included are units, licensed pursuant to this chapter, of facilities that provide active treatment and health and rehabilitation services to persons with mental retardation or related conditions, in which care is delivered to residents in accordance with medical plans of care. This definition does not include group homes for the mentally ill, mentally retarded or persons with AIDS, rest family care homes, neighborhood homes, rest/residential health facilities, assisted living facilities and intermediate care facilities that, as of March 1, 1999, were solely private pay, provided they remain exclusively intermediate care facilities.

(72 Del. Laws, c. 490, § 2; 73 Del. Laws, c. 162, §§ 2-4; 73 Del. Laws, c. 304, § 1.)

§ 1162 Nursing staffing.

(a) Every residential health facility must at all times provide a staffing level adequate to meet the care needs of each resident, including those residents who have special needs due to dementia or a medical condition, illness or injury. Every residential health facility shall post, for each shift, the names and titles of the nursing services direct caregivers assigned to each floor, unit or wing and the nursing supervisor on duty. This information shall be conspicuously displayed in common areas of the facility, in no fewer number than the number of nursing stations. Every residential health facility employee shall wear a nametag prominently displaying his or her full name and title. Personnel hired through temporary agencies shall be required to wear photo identification listing their names and titles.

(b) By March 1, 2001, the minimum staffing level for nursing services direct caregivers shall not be less than the staffing level required to provide 3.0 hours of direct care per resident per day, provided that funds have been appropriated for 3.0 hours of direct care per resident for Medicaid eligible reimbursement. Nursing staff, rounded to the nearest whole person, must be distributed in order to meet the following minimum shift ratios:

	RN/LPN	CNA (or RN/LPN or NAIT serving as a CNA)
Day	1:20	1:9
Evening	1:25	1:10
Night	1:40	1:22

(c) On or before December 1, 2001, a comprehensive report assessing and reviewing the quality of nursing facility care in Delaware shall be completed by the Delaware Nursing Home Residents Quality Assurance Commission and submitted to the Governor and the General Assembly. The purpose of the report is to determine the efficacy of the minimum staffing levels required under this chapter, including, but not limited to, the availability of qualified personnel in the job market to meet the requirement, the cost and availability of nursing home care, and patient outcomes based on scheduled facility surveys, surprise inspections and other reviews conducted by the Division. Based on this information, the Commission will determine if increasing the minimum nurse staffing levels to 3.28 hours of direct care with the corresponding increased required shift ratios is appropriate and necessary. By January 1, 2002, the minimum staffing level for nursing services direct caregivers shall not be less than the staffing level required to provide 3.28 hours of direct care per resident per day, subject to Commission recommendation and provided that funds have been appropriated for 3.28 hours of direct care per resident for Medicaid eligible reimbursement. Nursing staff must be distributed in order to meet the following minimum shift ratios:

	RN/LPN	CNA (or RN/LPN or NAIT serving as a CNA)
Day	1:15	1:8
Evening	1:23	1:10
Night	1:40	1:20

To the extent a nursing facility meets the minimum nurse staff levels of 3.28 hours of direct care and compliance with the above referenced shift ratios provided in this subsection requires more than 3.28 hours of direct care, the Division may permit a nursing facility to alter the shift ratios above; provided, however, the alternative shift ratios as determined by the Division shall not, on any shift or at any time, fall below the following alternative minimum shift ratios:

	RN/LPN	CNA (or other direct care-givers)
Day	1:20	1:9
Evening	1:25	1:10
Night	1:40	1:22

If a nursing facility cannot meet the above referenced shift ratios due to building configuration or any other special circumstances, they may apply for a special waiver through the Division, subject to final approval by the Delaware Nursing Home Residents Quality Assurance Commission. All nursing facilities shall conspicuously display the minimum shift ratios governing the nursing facility, along with posting requirements pursuant to subsection (a) of this section. Notwithstanding subsection (g) of this section, the time period for review and compliance with any alternative minimum shift ratios or ratios pursuant to a special waiver under this subsection shall be 1 day.

(d) Within 6 months of an appropriation by the General Assembly funding the staffing requirements of subsection (e) of this section, a comprehensive report assessing and reviewing the quality of nursing facility care in Delaware shall be completed by the Delaware Nursing Home Residents Quality Assurance Commission and submitted to the Governor and the General Assembly. The purpose of the report

is to determine the efficacy of the minimum staffing levels required under this chapter, including, but not limited to, the availability of qualified personnel in job market to meet the requirement, the cost and availability of nursing home care, and patient outcomes based on scheduled facility surveys, surprise inspections and other reviews conducted by the Division. Based on this information, the Commission will determine if increasing the minimum nurse staffing levels to 3.67 hours of direct care with the corresponding increased required shift ratios is appropriate and necessary.

(e) By May 1, 2003, the minimum staffing level for nursing services direct caregivers shall not be less than the staffing level required to provide 3.67 hours of direct care per resident per day, subject to Commission recommendation and provided that funds have been appropriated for 3.67 hours of direct care per resident for Medicaid eligible reimbursement. Nursing staff, rounded to the nearest whole person, must be distributed in order to meet the following minimum shift ratios:

	RN/LPN	CNA (or RN/LPN or NAIT serving as a CNA)
Day	1:15	1:7
Evening	1:20	1:10
Night	1:30	1:15

(f) An individual in a facility-sponsored training program who has completed all but the final 37.5 hours of requisite classroom and clinical training to become a CNA may be counted in the direct care hours and minimum staffing shift ratios under the CNA staffing requirements given in subsections (b), (c) and (e) of this section. The individual shall be referred to as a nursing assistant in training (NAIT). The Division of Long Term Care Residents Protection (Division) shall conduct a study of the certified nursing assistant training programs in Delaware, both those sponsored by facilities and those sponsored by educational institutions. It shall report its findings to the Nursing Home Quality Residents Assurance Commission (Commission). The factors to be studied include, but are not limited to, the percentage of each training program's graduates who passed the certified nursing assistant certification test and the number of attempts it took each graduate to become certified, along with the total number of hours, divided by classroom and clinical time, spent in the overall certified nursing assistant training program. The study shall encompass a period of 6 months commencing with the promulgation of the certified nursing assistant regulations. The report shall be issued no later than 2 months after the completion of the study period. Based on the results of its study, the Division shall recommend to the Commission whether a nursing assistant, while in training and prior to certification, should be counted as a CNA in the minimum staffing ratios, and, if so, at what point in the training program.

(g) The time period for review and determining compliance with the staffing ratios required under this chapter shall be 1 week. To the extent a residential health facility subject to the required ratios of this chapter desires an alternative shift schedule, they shall notify the Division of such alternative shift schedule prior to implementation; the proposed shift schedule and corresponding staff ratios must meet the minimum hour requirements and must not exceed the patient to staff ratios provided under this chapter for the night shift. Any alternative shift schedule must be clearly posted along with the postings required pursuant to subsection (a) of this section.

(h) Notwithstanding the minimum staffing requirements established in this subchapter, to the extent additional staffing is necessary to meet the needs of residents, nursing facilities must provide sufficient nursing staffing. If the Division finds unsatisfactory outcomes in a facility, the Department may impose protocols for staffing adequacy, including but not limited to staffing levels above the minimum required under this subchapter. Outcomes examined shall include those outcomes as enumerated by the United States Health Care Financing Administration Quality Indicators. Evidence of a failure to meet the nursing staffing needs of residents shall be grounds for enforcement action under this chapter.

(i) All residential health facilities shall have, in addition to the requirements in subsections (b) through (h) of this section, a full-time director of nursing who is an advanced practice nurse or a registered nurse with 1 year's work experience as a registered nurse. After July 1, 2001, any newly hired director of nursing shall be an advanced practice nurse or a registered nurse with a B.S. degree in nursing and 2 years' experience in long-term care or a registered nurse with 3 years of long-term care experience. After July 1, 2001, all newly hired directors of nursing must complete, within 3 months of hire (or as soon as a course is available), a long-term care director of nursing workshop in accordance with regulations promulgated by the Department in consultation with the Commission.

(j) All residential health facilities licensed for 100 beds or more shall have, at a minimum, the following supervisory and administrative nursing staff, in addition to the personnel listed in subsections (b) through (i) of this section: a full-time assistant director of nursing who is an advanced practice nurse or a registered nurse and a full-time equivalent director of in-service education who is an advanced practice nurse or a registered nurse.

(k) All residential health facilities licensed for fewer than 100 beds shall employ, at a minimum, in addition to the personnel listed in subsections (b) through (i) of this section, a part-time assistant director of nursing who is an advanced practice nurse or a registered nurse and a part-time director of in-service education who is an advanced practice nurse or a registered nurse, in accordance with the following formula:

Number of beds °s 100 x 40<equalsign>_____ hours per week minimum required for an assistant director of nursing and a director of in-service education.

A subacute transitional care unit of an acute care hospital with 30 beds or fewer is exempt from the provisions of this subsection provided that other licensed personnel perform the duties of this function.

(l) For residential health facilities with 15 beds or fewer, the director of nursing, assistant director of nursing, and/or nursing supervisor, while on duty, may also serve as nursing services direct caregivers as described in subsections (b) through (e) of this section.

(m) The educational requirements described above shall be met provided that if an insufficient pool of applicants exists, other qualifications may be deemed acceptable in accordance with regulations promulgated by the Department.

(72 Del. Laws, c. 490, § 2; 73 Del. Laws, c. 162, §§ 5-13; 73 Del. Laws, c. 258, §§ 1, 3.)

§ 1163 Activities staffing.

(a) All residential health facilities licensed for 30 beds or more shall have a full-time activities director. Any activities director hired after July 1, 2001, shall be a certified therapeutic recreation specialist, a certified occupational therapy assistant, a certified music therapist, a certified art therapist, a certified drama therapist, a certified dance/movement therapist, a certified activities director, or a registered occupational therapist.

(b) All residential health facilities licensed for fewer than 30 beds shall have, at a minimum, a part-time activities director as described in subsection (a) of this section, in accordance with the following formula:

Number of beds °s 30 x 40<equalsign>_____ hours per week minimum required for an activities director.

A subacute transitional care unit of an acute care hospital with 30 beds or fewer is exempt from the provisions of this subsection provided that other licensed personnel perform the duties of this function.

(72 Del. Laws, c. 490, § 2; 73 Del. Laws, c. 162, §§ 14, 15.)

§ 1164 Nutrition and dietetics staffing.

Every residential health facility must at all times provide nutrition and dietetics staffing adequate to meet the care needs of each resident. The staffing level must, at a minimum, include a full-time food service manager. Any food service manager hired after July 1, 2001, must be a registered dietitian or a certified dietitian/nutritionist, a registered dietetic technician, a certified dietary manager, or must have a Bachelor of Science or associate degree in food service management or related field. The educational requirements shall be met provided that if an insufficient pool of applicants exists, other qualifications may be deemed acceptable in accordance with regulations promulgated by the Department. A sub-acute transitional care unit of an acute care hospital with 30 beds or fewer is exempt from the provisions of this subsection provided that other licensed personnel perform the duties of this function. Any full-time food service manager with a minimum of 3 years experience as a full-time food service manager as of July 1, 2001, shall be exempt from the requirements of this subsection.

(72 Del. Laws, c. 490, § 2; 73 Del. Laws, c. 162, § 16.)

§ 1165 Social services staffing.

All residential health facilities shall employ a full-time social worker, except that facilities licensed for fewer than 100 beds may designate other personnel to assume the duties associated with that position in accordance with the rules and regulation promulgated and adopted pursuant to this subchapter.

(72 Del. Laws, c. 490, § 2.)

§ 1166 Medicaid reimbursement.

(a) The Medicaid reimbursement program shall be adjusted to reflect costs associated with the increased staffing levels described herein. Reimbursement rates for nursing wages will be adjusted to the 75th percentile under the current wage determination methodology for primary care under the state Medicaid program.

(b) The Department shall ensure that 100% of Medicaid funds paid for primary care are expended by the residential health facility for primary care purposes. If, during any annual cost reporting period, a facility expends less than 100% of the primary care reimbursement it receives from Medicaid for primary care, the sum under-spent must be repaid to the Medicaid program. The repayment will be made through a cost settlement process when the provider files its annual cost report. The Department will revise its regulations and Medicaid cost report forms to require a cost settlement for the primary care reimbursement classification.

(c) Medicaid reimbursement of providers shall be consistent with the provisions of this chapter regardless of the payment methodology employed by Medicaid or its contractors, including managed care.

(72 Del. Laws, c. 490, § 2.)

§ 1167 Outcomes monitoring.

In addition to compliance monitoring, the Division shall use data collected by residential health facilities to monitor quality of care and patient outcomes pursuant to § 1162(h) of this title. The Division shall analyze this data in order to help target licensing surveys and inspections. The Department shall promulgate and adopt regulations that define the outcomes monitoring process.

(72 Del. Laws, c. 490, § 2; 73 Del. Laws, c. 162, § 17.)

§ 1168 Waiver.

A residential health facility may seek from the Delaware Nursing Home Residents Quality Assurance Commission a time-limited waiver of the minimum staffing requirements required under § 1162(c) and (e) of this title. Such waiver will only be granted upon a showing of exigent circumstances, including but not limited to documented evidence of the facility's best efforts to meet the minimum staffing requirements under § 1162(c) and (e) of this title. Any such waiver will be time-limited and will include a plan and a timeline for compliance with this chapter. The Commission may seek input from the Department of Labor in terms of issues of labor availability in connection with any waiver request under this section.

(72 Del. Laws, c. 490, § 2.)

§ 1169 Regulations.

The Department shall promulgate and adopt rules and regulations to fully and effectively implement the provisions of this subchapter. The regulations will become effective 60 days after adopted by the Department.

(72 Del. Laws, c. 490, § 2.)

Subchapter VIII

Nursing Facility Quality Assessment Fund

§ 1180 Definitions.

As used in this subchapter:

(1) The terms "CMS," "DHSS," "managed care company under contract to the Medicaid agency," "Medicaid," "Medicaid resident day," "nursing facility," "nursing facility services," have the meaning given these terms in Chapter 65 of Title 30.

(2) "Medicaid enrolled nursing facility" means a nursing facility enrolled in the Medicaid program and/or enrolled with a managed care company under contract to the Medicaid agency for the purpose of providing nursing facility services to Medicaid eligible patients, but shall exclude the Delaware Veterans Home and any state, federal or other public government-owned facilities and any facilities that exclusively serve children.

(3) "Medicaid share of the quality assessment" means for each nursing facility, the assessment cost applicable to Medicaid residents.

(78 Del. Laws, c. 286, § 2.)

§ 1181 Nursing Facility Quality Assessment Fund — Establishment; funding.

(a) There shall be established in the State Treasury and in the accounting system of the State a special fund to be known as the Nursing Facility Quality Assessment Fund (the "Fund").

(b) The following revenue shall be deposited into the Fund:

(1) As specified in § 6502(e)(1) of Title 30, 90% of the quality assessment collected;

(2) On the last day of each month, the State Treasurer shall credit the Fund with interest on the average balance in the Fund for the preceding month. The interest to be paid to the Fund shall be that proportionate share, during such preceding month, of interest to the State as the Fund's and the State's average balance is to the total State's average balance.

(78 Del. Laws, c. 286, § 2.)

§ 1182 Use of Nursing Facility Quality Assessment Fund; payments [Paragraphs (a)(1) and (2) sunset Dec. 31, 2018, subject to 79 Del. Laws, c. 358, § 1]

(a) Funds deposited into the Nursing Facility Quality Assessment Fund shall be used by DHSS exclusively to secure federal matching funds available through the state Medicaid plan and any applicable waivers, and together with the Federal funds shall be used exclusively by DHSS including any managed care companies under contract to the Medicaid agency to:

(1) *[Sunsets Dec. 31, 2018, subject to 79 Del. Laws, c. 358, § 1]* Provide for per diem rate adjustments in accordance with § 1183 of this title to Medicaid enrolled nursing facilities;

(2) *[Sunsets Dec. 31, 2018, subject to 79 Del. Laws, c. 358, § 1]* To reimburse the Medicaid share of the quality assessment in accordance with § 1183 of this title;

(3) To reimburse any funds advanced from the DHSS Medicaid budget appropriation that were used to make the payments referred to under paragraphs (a)(1) and (2) of this section.

(b) If the quality assessment imposed by § 6502 of Title 30 and the payments referred to by paragraphs (a)(1) and (2) of this section are repealed, any funds remaining in the Nursing Facility Quality Assessment Fund shall:

(1) First reimburse DHSS if the total of all quality assessment payments received from nursing facilities are equal to or less than the state share of all of the payments referred to by paragraphs (a)(1) and (2) of this section made by DHSS including managed care companies under contract to the Medicaid agency to nursing facilities; and

(2) If the total of all quality assessments received is greater than the state share of the payments issued referred to by paragraphs (a)(1) and (2) of this section, the remaining funds will be distributed back to the nursing facilities generally and proportionately on the same basis as the assessments were collected in the last calendar quarter.

(78 Del. Laws, c. 286, § 2.)

§ 1183 Nursing facility rate adjustments.

(a) Medicaid enrolled nursing facilities that are not subject to penalties under § 6503 of Title 30 shall be eligible for per diem rate adjustments referred to by § 1182(a)(1) and (2) of this title. Nursing facilities subject to penalties under § 6503 of Title 30 shall be eligible for per diem rate adjustments only after all penalties and past due quality assessments are paid in full.

(b) Effective April 1, 2012, nursing facilities are paid for services rendered to Medicaid patients directly by DHSS as well as by managed care companies under contract to the Medicaid agency. The per diem rate adjustments referred to by § 1182(a)(1) and (2) of this title will be incorporated into the DHSS nursing facility level of reimbursement rate schedules. Unless a facility is subject to penalties as described in subsection (a) of this section, DHSS and the managed care companies will pay no lower than the adjusted per diem rates in these schedules.

(c) The rate adjustments referred to by § 1182(a)(1) and (2) of this title shall be a rate paid on a per Medicaid resident day basis. The rate paid will be the same per diem amount for each facility other than the per diem to reimburse the Medicaid share of the assessment.

(d) The rate adjustments referred to by § 1182(a)(1) and (2) of this title will be retroactive for dates of service on or after June 1, 2012. Upon CMS notification to DHSS of waiver approval and, if required, state plan amendment approval, the per diem rates in effect as of June 1, 2012, will be increased by the rate adjustments referred to by § 1182(a)(1) and (2) of this title. The retroactive rate adjustments for Medicaid paid claims for service dates between June 1, 2012, and the date of CMS notification of waiver and, if required, plan amendment approval, must be paid within 30 days of CMS approval.

(78 Del. Laws, c. 286, § 2.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 12
INFORMED CONSENT AND CONFIDENTIALITY
Subchapter I
Genetic Information

§ 1201 Definitions.

As used in this subchapter:

(1) "Genetic characteristic" means any inherited gene or chromosome, or alternation thereof, that is scientifically or medically believed to predispose an individual to a disease, disorder or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome.

This includes, but is not limited to, information regarding carrier status, information regarding an increased likelihood of future disease or increased sensitivity to any substance, information derived from laboratory tests that identify mutations in specific genes or chromosomes, requests for genetic services or counseling, tests of gene products and direct analysis of genes or chromosomes.

(2) "Genetic information" means information about inherited genes or chromosomes, and of alterations thereof, whether obtained from an individual or family member, that is scientifically or medically believed to predispose an individual to disease, disorder or syndrome or believed to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome.

(3) "Genetic test" means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA, and mitochrondrial DNA, chromosomes or proteins in order to identify a predisposing genetic characteristic associated with disease, disorder or syndrome.

(4) "Informed consent"

a. For the purpose of obtaining genetic information, means the signing of a consent form which includes a description of the genetic test or tests to be performed, its purpose or purposes, potential uses, and limitations and the meaning of its results, and that the individual will receive the results unless the individual directs otherwise;

b. For the purpose of retaining genetic information, means the signing of a consent form which includes a description of the genetic information to be retained, its potential uses and limitations;

c. For the purpose of disclosing genetic information, means the signing of a consent form which includes a description of the genetic information to be disclosed and to whom.

d. For the purpose of obtaining insurance, there may be a single signing which shall allow the obtaining, retaining and disclosure of genetic information, which, in addition to the requirements of paragraphs (4)a. and b. of this section, shall:

1. Be written in plain language;
2. Be dated;
3. Name or identify by generic reference the persons authorized to disclose information about the individual;
4. Specify the nature of the information authorized to be disclosed;
5. Name or identify by generic reference the person to whom the individual is authorizing information to be disclosed, or subsequently redisclosed;
6. Describe the purpose for which the information is collected;
7. Specify the length of time such authorization shall remain valid; and,
8. Be signed by:
   A. The individual;
   B. Such other person authorized to consent for such individual, if such individual lacks the capacity to consent; or;
   C. The claimant for the proceeds of an insurance policy.

(71 Del. Laws, c. 458, § 2; 78 Del. Laws, c. 277, § 3.)

§ 1202 Informed consent required to obtain genetic information.

(a) No person shall obtain genetic information about an individual without first obtaining informed consent from the individual.

(b) The requirements of this section shall not apply to genetic information obtained:

(1) By a state, county, municipal or federal law-enforcement agency for the purposes of establishing the identity of a person in the course of a criminal investigation or prosecution;

(2) To determine paternity;

(3) Pursuant to the DNA analysis and data bank requirements of § 4713 of Title 29;
(4) To determine the identity of deceased individuals;
(5) For anonymous research where the identity of the subject will not be released;
(6) Pursuant to newborn screening requirements established by state or federal law; or
(7) As authorized by federal law for the identification of persons.

(71 Del. Laws, c. 458, § 2; 78 Del. Laws, c. 277, § 3.)

§ 1203 Authorization to retain genetic information and samples from which genetic information is derived.

(a) No person shall retain an individual's genetic information without first obtaining informed consent from the individual unless:
(1) Retention is necessary for the purposes of a criminal or death investigation or a criminal or juvenile proceeding;
(2) Retention is necessary to determine paternity;
(3) Retention is authorized by order of a court of competent jurisdiction;
(4) Retention is made pursuant to the DNA analysis and data bank requirements of § 4713 of Title 29; or
(5) Retention of information is for anonymous research where the identity of the subject will not be released.

(b) The sample of an individual from which genetic information has been obtained shall be destroyed promptly unless:
(1) Retention is necessary for the purposes of a criminal or death investigation or a criminal or juvenile proceeding;
(2) Retention is authorized by order of a court of competent jurisdiction; or
(3) Retention is authorized by the individual; or
(4) Retention is for anonymous research where the identity of the subject will not be released.

(71 Del. Laws, c. 458, § 2; 78 Del. Laws, c. 277, § 3.)

§ 1204 Genetic information access by the subject.

An individual promptly upon request, may inspect, request correction of and obtain genetic information from the records of that individual.

(71 Del. Laws, c. 458, § 2; 78 Del. Laws, c. 277, § 3.)

§ 1205 Conditions for disclosure to others of genetic information.

(a) Regardless of the manner of receipt or the source of genetic information, including information received from an individual, a person shall not disclose or be compelled, by subpoena or any other means, to disclose the identity of an individual upon whom a genetic test has been performed or to disclose genetic information about the individual in a manner that permits identification of the individual, unless:
(1) Disclosure is necessary for the purposes of a criminal or death investigation or a criminal or juvenile proceeding or to protect the interests of an issuer in the detection or prevention of fraud, material misrepresentation or material nondisclosure;
(2) Disclosure is necessary to determine paternity;
(3) Disclosure is authorized by order of a court of competent jurisdiction;
(4) Disclosure is made pursuant to the DNA analysis and data bank requirements of § 4713 of Title 29;
(5) Disclosure is authorized by obtaining informed consent of the tested individual describing the information to be disclosed and to whom;
(6) Disclosure is for the purpose of furnishing genetic information relating to a decedent for medical diagnosis of blood relatives of the decedent;
(7) Disclosure is for the purpose of identifying bodies;
(8) Disclosure is pursuant to newborn screening requirements established by state or federal law;
(9) Disclosure is authorized by federal law for the identification of persons; or
(10) Disclosure is by an insurer to an insurance regulatory authority;
(11) Disclosure is authorized in accordance with § 1201(4)d. of this title; or
(12) Disclosure is otherwise permitted by law.

(b) This section shall apply to any subsequent disclosure by any person after another person has disclosed genetic information or the identity of an individual upon whom a genetic test has been performed.

(71 Del. Laws, c. 458, § 2; 78 Del. Laws, c. 277, § 3.)

§ 1206 Subchapter applicability.

This subchapter applies only to genetic information or samples that can be identified as belonging to an individual or family. This subchapter does not apply to any law, contract or other arrangement that determines a person's rights to compensation relating to substances or information derived from a sample of an individual from which genetic information has been obtained.

(71 Del. Laws, c. 458, § 2; 78 Del. Laws, c. 277, § 3.)

§ 1207 Parental rights.

This subchapter does not alter any right of parents or guardians to order medical and/or genetic tests of their children.

(71 Del. Laws, c. 458, § 2; 78 Del. Laws, c. 277, § 3.)

§ 1208 Violations, penalties for unlawful disclosure of genetic information, jurisdiction.

(a) Any person who wilfully retains an individual's genetic information or retains an individual's sample in violation of this subchapter shall be punished by a fine of not less than $1,000 nor more than $10,000.

(b) Any person who wilfully obtains or discloses genetic information in violation of this subchapter shall be punished by a fine not less than $5,000 nor more than $50,000.

(c) Any person who wilfully discloses an individual's genetic information in violation of this subchapter, shall be liable to the individual for all actual damages, including damages for economic, bodily or emotional harm which is proximately caused by the disclosure.

(d) The Superior Court shall have jurisdiction over all violations of this subchapter.

(71 Del. Laws, c. 458, § 2; 78 Del. Laws, c. 277, § 3.)

Subchapter II
Confidentiality of Personal Health Information

§ 1210 Definitions.

As used in this subchapter, the following terms shall have the following meanings:

(1) "Expunge" or "expunged" means to permanently destroy, delete or make nonidentifiable.

(2) "Informed consent" means a written authorization for the disclosure of protected health information on a form substantially similar to one promulgated by the Department of Health and Social Services which is signed in writing or electronically by the individual who is the subject of the information. This authorization shall be dated and shall specify to whom the disclosure is authorized, the general purpose for such disclosure, and the time period in which the authorization for the disclosure is effective.

(3) "Legitimate public health purpose" means a population-based activity or individual effort primarily aimed at the prevention of injury, disease or premature mortality or the promotion of health in the community, including:

a. Assessing the health needs of the community through public health surveillance and epidemiological research;

b. Developing public health policy;

c. Responding to public health needs and emergencies;

d. Review by the Child Death, Near Death and Still Birth Commission; and

e. Requests for hospital records by the Division of Long Term Care Residents' Protection pursuant to § 1212 of this title.

(4) "Protected health information" means any information, whether oral, written, electronic, visual, pictorial, physical or any other form, that relates to an individual's past, present or future physical or mental health status, condition, treatment, service, products purchased, or provision of care and that reveals the identity of the individual whose healthcare is the subject of the information, or about which there is a reasonable basis to believe such information could be utilized (either alone or with other information that is or should reasonably be known to be available to predictable recipients of such information) to reveal the identity of that individual.

(5) "Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

(73 Del. Laws, c. 355, § 12; 75 Del. Laws, c. 361, § 4; 75 Del. Laws, c. 387, § 3; 77 Del. Laws, c. 307, § 1; 78 Del. Laws, c. 277, § 3.)

§ 1211 Use of protected health information.

(a) Protected health information collected by the Department of Health and Social Services and/or its agencies and by the Child Death, Near Death, and Still Birth Commission shall be used solely for legitimate public health purposes.

(b) Nonidentifiable health information shall be used by the Department of Health and Social Services and its agencies whenever possible consistent with the accomplishment of legitimate public health purposes.

(c) Any use of protected health information permitted by this subchapter shall be limited to the minimum amount of information which the official using the information reasonably believes is necessary to accomplish the legitimate public health purpose.

(d) Protected health information shall not be used by the State for commercial purposes.

(e) Protected health information whose use no longer furthers the legitimate public health purpose for which it was acquired shall be expunged.

(73 Del. Laws, c. 355, § 12; 75 Del. Laws, c. 361, § 5; 78 Del. Laws, c. 277, § 3.)

§ 1212 Disclosure of protected health information.

(a) *General privacy protection.* — Protected health information is not public information as defined at § 10002 of Title 29 and may not be disclosed without the informed consent of the individual (or the individual's lawful representative) who is the subject of the information

except as expressly provided by statute. Whenever disclosure of protected health information is made pursuant to this subchapter, such disclosure shall be accompanied by a statement concerning the Department of Health and Social Services' disclosure policy.

(b) *Scope of disclosure.* — Protected health information shall be disclosed with the informed consent of the individual who is the subject of the information to any person and for any purpose for which the disclosure is authorized pursuant to informed consent.

(c) *Nonidentifiable information.* — Any disclosure of protected health information permitted by this subchapter shall be disclosed in a nonidentifiable form whenever possible, consistent with the accomplishment of legitimate public health purposes, except when the disclosure is authorized through the informed consent of the person who is the subject of the information. Any disclosures of protected health information permitted by this subchapter shall also be limited to the minimum amount of information which the person making the disclosure reasonably believes is necessary to accomplish the purpose of the disclosure, except when the disclosure is authorized through the informed consent of the individual who is the subject of the information.

(d) *Disclosure without informed consent.* — Protected health information may be disclosed without the informed consent of the individual who is the subject of the information where such disclosures are made:

(1) Directly to the individual;

(2) To appropriate federal agencies or authorities as required by federal or state law and for law-enforcement purposes in accordance with 45 C.F.R. Parts 160, 162, and 164;

(3) To healthcare personnel to the extent necessary in an emergency to protect the health or life of the person who is the subject of the information from serious, imminent harm;

(4) To the public safety authority during a public health emergency in accord with the uses described in § 1211 of this title;

(5) In the course of any judicial or administrative proceeding in accordance with 45 C.F.R. Parts 160, 162, and 164, or pursuant to a court order to avert a clear danger to the individual or the public health;

(6) To the Child Death, Near Death and Still Birth Commission;

(7) To the Division of Long Term Care Residents' Protection in cases where the Division is engaged in an investigation or survey involving the care or treatment of an individual at a facility licensed by the Division, and the individual has been admitted to a hospital from the facility or discharged from a hospital to the facility. The Division of Long Term Care Residents Protection is an entity charged with helping to safeguard the health and safety of patients. It shall be recognized as a "public health authority" and as a "health oversight agency," and it shall be recognized in the performance of its functions as a peer review organization or auditor or evaluator with respect to such aspects of healthcare delivery systems or providers;

(8) Pursuant to § 2005 of this title;

(9) For research, regardless of the source of funding of the research, provided that the researcher provides documentation that an alteration to or waiver, in whole or in part, of the individual authorization required by subsection (a) of this section for use or disclosure of protected health information has been approved by the applicable privacy board in accordance with HIPAA regulations. Said approval shall not be granted until the Board has determined all of the following:

a. The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements:

1. An adequate plan to protect the identifiers from improper use and disclosure;

2. An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

3. Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

b. The research could not practicably be conducted without the waiver or alteration; and

c. The research could not practicably be conducted without access to and use of the protected health information;

(10) For patient treatment and care coordination, defined as the provision, coordination, or management of healthcare and related services by 1 or more healthcare providers, including the coordination or management of healthcare by a healthcare provider with a third party; consultation between healthcare providers relating to a patient; or the referral of a patient for healthcare from 1 healthcare provider to another; or

(11) To a health plan, healthcare clearinghouse, business associate, or healthcare provider, as each is defined by 45 C.F.R. Part 160, to use only in accordance with federal law for transactions that transmit information between 2 parties to carry out financial or administrative activities related to healthcare, healthcare operations, and health insurance, as set forth in 45 C.F.R Parts 160, 162, and 164.

(e) *Deceased individuals.* — Nothing in this subchapter shall prohibit the disclosure of protected health information:

(1) In a certificate of death, autopsy report or related documents prepared under applicable laws or regulations;

(2) For the purposes of identifying a deceased individual;

(3) For the purposes of determining a deceased individual's manner of death by a medical examiner; or

(4) To provide necessary information about a deceased individual who is a donor or prospective donor of an anatomical gift.

(f) *Informed consent by others.* — When an individual who is the subject of protected health information is not competent or is otherwise legally unable to give informed consent for the disclosure of protected health information, informed consent may be given by the individual's parents, legal guardians or other persons lawfully authorized to make healthcare decisions for the individual.

(g) *Secondary disclosures.* — No person to whom protected health information has been disclosed pursuant to this subchapter shall disclose the information to another person except as authorized by this subchapter. This section shall not apply to:

(1) The individual who is the subject of the information;

(2) The individual's parents, legal guardians or other persons lawfully authorized to make healthcare decisions for the individual where the individual who is the subject of the information is unable to give legal consent pursuant to subsection (f) of this section; or

(3) Any person who is specifically required by federal or state law to disclose the information.

(h) Upon written request of an individual to a medical laboratory for a copy of the results of a laboratory examination of that individual, the medical laboratory shall provide a copy of those results that are sought to that individual. The medical laboratory may require a reasonable copying fee for copying and transmitting the records.

(i) The Child Death, Near Death and Still Birth Commission is an entity charged with helping to safeguard the health and safety of children. It shall be recognized as a "health oversight agency", and as a "public health authority", and it shall be recognized in the performance of its functions as a peer review organization or auditor or evaluator with respect to any aspect of healthcare delivery systems or providers.

(73 Del. Laws, c. 355, § 12; 75 Del. Laws, c. 329, § 1; 75 Del. Laws, c. 361, §§ 6, 7; 75 Del. Laws, c. 387, § 4; 76 Del. Laws, c. 292, § 3; 77 Del. Laws, c. 307, §§ 2-4; 77 Del. Laws, c. 392, §§ 1-4; 78 Del. Laws, c. 277, § 3.)

§ 1213 Regulations.

The Department of Health and Social Services shall enforce this subchapter and shall from time to time promulgate any additional forms and regulations that are necessary for this purpose.

(76 Del. Laws, c. 292, § 4; 78 Del. Laws, c. 277, § 3.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 12A
NOTIFICATION OF EMERGENCY MEDICAL PROVIDERS OF PERSONS WITH COMMUNICABLE DISEASES

§ 1201A Definitions.

As used in this chapter:

(1) "Communicable disease" means human immunodeficiency virus, (HIV, the virus that causes AIDS), and hepatitis B.

(2) "Division" means Division of Public Health, Department of Health and Social Services.

(3) "Emergency medical care provider" means a fire fighter, law enforcement officer, paramedic, emergency medical technician, correctional officer, ambulance attendant or other person who serves as an employee or volunteer of an ambulance service and/or provides pre-hospital emergency medical services.

(4) "Receiving medical facility" means a hospital or similar facility that receives a patient attended by an emergency medical care provider for the purposes of continued medical care.

(5) "Universal precautions" means those precautions, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments that minimize the risk of transmission of communicable diseases between patients and health care providers.

(68 Del. Laws, c. 415, § 1; 69 Del. Laws, c. 108, §§ 1, 2.)

§ 1202A Report of exposed emergency medical provider.

(a) An emergency medical care provider may request notification concerning exposure to a communicable disease under this section if the exposure is of a manner known to transmit a communicable disease.

(b) Each employer of an emergency medical care provider, and every organization which supervises volunteer emergency medical care providers, shall designate an officer who shall receive requests for notification from emergency medical care providers; collect facts relating to the circumstances under which the emergency medical provider may have been exposed to a communicable disease; distribute the forms as specified by subsection (c) of this section to receiving medical facilities; report to the emergency medical care provider findings provided by the receiving medical facility; and assist the emergency care provider to take medically appropriate action when necessary. The designated officer shall delegate these duties as may be necessary to ensure compliance with this chapter.

(c) If an emergency medical care provider desires to be notified under this chapter, the officer designated pursuant to subsection (b) of this section shall notify the receiving medical facility within 24 hours after the patient is admitted to or treated by the facility, utilizing a form that is prescribed or approved by the Division of Public Health.

(68 Del. Laws, c. 415, § 1; 69 Del. Laws, c. 108, § 3; 70 Del. Laws, c. 147, § 7; 70 Del. Laws, c. 186, § 1.)

§ 1203A Notification by a receiving medical facility.

(a) Each receiving medical facility shall designate an officer or individual who shall receive completed forms as specified by § 1202A(c) of this title, and who shall insure compliance with the requirements of this section.

(b) If, within 30 days after a patient is admitted or treated, a receiving medical care facility determines whether or not the emergency medical care provider has been exposed to a communicable disease, the receiving medical facility shall so notify the officer designated pursuant to § 1202A(b) of this title as soon as possible, but in no case more than 48 hours after that determination. The receiving medical facility shall base this determination upon information provided in the request for notification made pursuant to § 1202A(c) of this title and patient records or a finding at the facility.

(c) If, after expiration of the 30 day period, the receiving medical facility cannot determine whether or not the emergency medical care provider has been exposed to a communicable disease, the receiving medical facility shall notify the officer designated pursuant to § 1202A(b) of this title as soon as possible, but not more than 48 hours after expiration of the 30 day period.

(d) If a request for notification has been made pursuant to § 1202A(c) of this title, the receiving medical facility shall provide to the Division a copy of the form which shall include information about whether or not the patient is infected with a communicable disease; and if exposure to the patient is considered by the receiving medical facility to be in a manner known to transmit that communicable disease. The Division shall settle any disputes regarding whether or not an emergency medical care provider has or has not been exposed to a communicable disease.

(68 Del. Laws, c. 415, § 1; 69 Del. Laws, c. 108, § 4.)

§ 1204A Universal precautions.

In recognition of the importance of universal precautions to the control of communicable diseases from a patient to an emergency medical care provider, education and training with respect to universal precautions shall be a mandatory component of any required

training and any required continuing education for all emergency medical care providers who have patient contact. Training requirements for this purpose shall be established by the Division of Public Health.

(68 Del. Laws, c. 415, § 1; 70 Del. Laws, c. 147, § 8; 70 Del. Laws, c. 186, § 1.)

§ 1205A Rules and regulations.

(a) The Division of Public Health shall make such rules and regulations as may in its judgment be necessary to carry out the provisions of this section, and may make additions of other communicable diseases which shall be subject to this chapter.

(b) The Division of Public Health may issue regulations necessary to ensure compliance with this chapter relating to patients who are transferred between institutions, or who may die during or shortly after being transferred. The Division of Public Health shall require emergency medical care facilities to notify the officer designated pursuant to § 1202A(b) of this title when an emergency care provider has been exposed to a communicable disease identified by the Division of Public Health to be transmitted through the air, even if a request for notification has not been made pursuant to § 1202A(c) of this title.

(68 Del. Laws, c. 415, § 1; 69 Del. Laws, c. 108, § 5; 70 Del. Laws, c. 147, §§ 9, 10; 70 Del. Laws, c. 186, § 1.)

§ 1206A Confidentiality of HIV test results.

A person who has knowledge of the identity of any person upon whom an HIV related test is performed, or the results of such test, in accordance with this chapter, shall maintain the confidentiality of that information pursuant to § 717 of this title.

(68 Del. Laws, c. 415, § 1; 78 Del. Laws, c. 277, §§ 2, 3.)

§ 1207A Confidentiality.

All information contained in requests for notification and in the notification itself shall be confidential and used solely for the purposes of complying with this chapter. However, any person or agency, including but not limited to a receiving medical care facility or officer designated pursuant to § 1202A(b) of this title, acting in good faith to provide notification in accordance with this chapter, shall not be liable in any cause of action related to the breach of patient confidentiality.

(68 Del. Laws, c. 415, § 1; 69 Del. Laws, c. 108, § 6.)

§ 1208A Failure to provide notice.

A receiving medical care facility or officer designated pursuant to § 1202A(b) of this title, acting in good faith to provide notification in accordance with this chapter, shall not be liable in any cause of action for failure to give the required notice if the emergency medical care provider fails to properly initiate the notification procedures pursuant to § 1202A of this title.

(68 Del. Laws, c. 415, § 1; 69 Del. Laws, c. 108, § 7.)

§ 1209A Minors.

This chapter shall apply in the same manner and to the same extent to any emergency medical care provider who is a minor and above the age of 15, as if such minor were 21 years or older.

(69 Del. Laws, c. 108, § 8.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 13
POLLUTION OF STREAMS

§ 1301 Pollution of streams supplying drinking water; nuisance; penalty; abatement; jurisdiction.

(a) No person shall cast, put, place, discharge in or permit or suffer to be cast, put, placed, discharged in or to escape into any running stream of water within the limits of this State, from which stream the inhabitants of any borough, town or city within this State are supplied wholly or in part with water for and as drink or beverage, any dye-stuffs, drugs, chemicals or other substance or matter of any kind whatsoever whereby the water so supplied as and for a drink or beverage is made and becomes noxious to the health or disagreeable to the senses of smell or taste.

(b) Whoever violates subsection (a) of this section shall be fined not less than $1,000 nor more than $5,000.

(c) The Superior Court shall have exclusive jurisdiction of offenses under this section.

(d) In addition to the fine imposed under subsection (b) of this section, the Court shall issue an order for the abatement of the nuisance within 20 days after conviction. Any police officer authorized to make arrests in the jurisdiction in which the conviction takes place shall, under such order, unless the nuisance was abated before the expiration of the time allowed for its abatement, abate the same, and to this end shall enter on the premises from which the nuisance proceeded and arrest, stop and put an end to the business from the carrying on of which or in the process of which the nuisance was created and carried on.

(12 Del. Laws, c. 405, §§ 1, 2; Code 1915, §§ 764, 765; Code 1935, §§ 770, 771; 16 Del. C. 1953, § 1301; 78 Del. Laws, c. 266, § 18.)

§ 1302 Maintenance of privy, hogpen or slaughterhouse near stream supplying drinking water; nuisance; abatement; penalty; jurisdiction.

(a) No person shall put or place, or permit to be put, placed or used, any privy, hogpen or slaughterhouse over or so near that the excrement or offal therefrom shall escape or run into any stream of running water within the limits of this State from which the inhabitants of any town, borough or city are wholly or in part furnished with water as a drink or beverage.

(b) Whoever violates subsection (a) of this section shall be fined $100. The Court shall order the nuisance to be abated immediately.

(c) The Superior Court shall have exclusive jurisdiction of offenses under this section.

(12 Del. Laws, c. 405, § 3; Code 1915, § 766; Code 1935, § 772; 16 Del. C. 1953, § 1302.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 14
WATER AND/OR SEWER AUTHORITIES

§ 1401 Definitions.

As used in this chapter:

(1) "Authority" means a body politic and corporate created pursuant to this chapter or, if such body politic and corporate shall be abolished, the board, body or commission succeeding to the principal functions thereof or to which the powers given by this chapter to such body politic and corporate shall be given by law.

(2) "Board" means the governing body of an authority.

(3) "Bonds" means and includes notes, bonds and other evidences of indebtedness or obligations which each authority is authorized to issue pursuant to § 1408 of this title.

(4) "Cost" as applied to a water system or a sewerage system includes the purchase price of any such system or the cost of acquiring all of the capital stock of the corporation owning such system and the amount to be paid to discharge all of its obligations in order to vest title to the system or any part thereof in the authority, the cost of improvements, the cost of all lands, properties, rights, easements, franchises and permits acquired, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for 1 year after completion of construction, cost of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to the determining of the feasibility or practicability of any such acquisition, improvement or construction, administrative expenses and such other expenses as may be necessary or incident to the financing herein authorized, to the acquisition, improvement, construction of a water system or a sewerage system and the placing of the same in operation by the authority prior to the issuance of revenue bonds under this chapter for engineering studies and for estimates of cost and of revenues and for other technical or professional services which may be utilized in the acquisition, improvement or construction of such system, may be regarded as a part of the cost of such system.

(5) "Federal agency" means and includes the United States of America, any department or bureau thereof, and any agency or instrumentality of the United States of America heretofore established or which may be established or created hereafter.

(6) "Governing body" as applied to any municipality means the body or board authorized by law to enact ordinances or adopt resolutions for the particular municipality.

(7) "Improvements" means such construction, erection, repairs, replacements, additions, extensions and betterments of and to a water system or a sewerage system as are deemed necessary by the authority to place or to maintain such system in proper condition for the safe, efficient and economic operation thereof or to meet requirements for service in areas which may be served by the authority and in which no existing service is being rendered.

(8) "Municipality" means any county, city, town, village, sanitary district or other political subdivision of this State.

(9) "Project" means any water system, sewer system and any combination or part or parts thereof owned, constructed or operated by an authority under this chapter.

(10) "Sewage" means the water carried wastes created in and carried or to be carried away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public building together with such household and industrial wastes as may be present.

(11) "Sewerage system" means and includes all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the collection, carrying away, treating, neutralizing, stabilizing or disposal of sewage, industrial wastes or other wastes, and any integral part thereof, including sewage treatment plants, disposal fields, lagoons, pumping stations, drainage ditches, surface water intercepting ditches, outfall sewers, trunk sewers, intercepting sewers, lateral sewers, force mains, pipes, pipelines, conduits, equipment, appurtenances and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

(12) "Water system" means and includes all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, and any integral part thereof, including water supply systems, water distribution systems, reservoirs, dams, wells, intakes, mains, laterals, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

(16 Del. C. 1953, § 1401; 49 Del. Laws, c. 417.)

§ 1402 General referendum; creation of authority; certificate and recording; certification of information to Secretary of State.

(a)(1) After a favorable majority referendum vote at a special election in the municipality or in each of the municipalities creating an authority, which referendum election shall be held on the same date in each of such municipalities, the governing body of a municipality

or the governing bodies of 2 or more municipalities may by ordinances or resolutions signify their intention to create an authority to acquire, construct, reconstruct, extend, repair, improve, maintain and operate a project under an appropriate name and title, containing the word "authority," which shall be a public body politic and corporate.

(2) Notice of the holding of such referendum election shall be authorized by resolution of the governing body of each municipality and published once a week for at least 3 consecutive weeks in at least 1 newspaper circulating in the municipality. Such notice shall set out in summary form the purpose, the date and place of holding the referendum election and the hours the polls will be open.

(3) At said referendum election every resident and nonresident taxable of the municipality of the age of 21 years or upwards who has, by the time of voting, paid all municipal taxes theretofore assessed to the taxable resident or nonresident and/or assessed against the property the taxable resident or nonresident owns at the time of the referendum election shall be entitled to vote and shall have 1 vote for each dollar, or fractional part of a dollar, of taxes paid by the taxable resident or nonresident according to the last municipal assessment and tax payment records preceding the referendum election. The judge of the election shall note on the outside of each ballot, before the judge deposits the ballot in the ballot box, the number of votes to which each voter is entitled, in accordance with municipal assessment and tax payment records.

(4) In cases of jointly owned property the votes of the owners of shares therein shall be in accordance with their respective shares or, if all owners appear at the polls and so consent, all of the votes may be cast by the owner of any share, except that the spouse first present at the polls may cast all the votes in reference to property held by husband and wife as tenants by the entirety. Life tenants shall have the entire vote as to the property so held and holders of remainder interest only shall have no vote by reason thereof.

(5) The clerk of each municipality shall provide sufficient ballots which shall have printed thereon "For" and "Against." The election shall be conducted in conformity with the provisions governing general elections as provided in Chapter 49 of Title 15.

(b) Each such ordinance or resolution shall include articles of incorporation which shall set forth:

(1) The name of the "authority";

(2) A statement that such authority is formed under this chapter;

(3) The name of the incorporating municipality or municipalities;

(4) The names, addresses and terms of office of the first members of the board of said authority and, if the governing body of the municipality determines that its members shall constitute the board of said authority, a statement to that effect;

(5) The purpose or purposes for which the authority is to be created or is created.

(c) The articles of incorporation shall be executed by each incorporating municipality by its proper officers and shall be filed with the Secretary of State, who shall receive the same and endorse thereon the date and time of such receipt. If the Secretary of State finds that the articles of incorporation conform to law, the Secretary of State shall forthwith endorse the Secretary of State's own approval thereon and issue a certificate of approval to which shall be attached a copy of the approved articles. Upon the issuance of such certificate of approval by the Secretary of State, the corporate existence of said authority shall begin and thereupon such authority shall be conclusively deemed to have been lawfully and properly created and established and authorized to exercise its powers under this chapter. Promptly thereafter the Secretary of State shall record said articles of incorporation, together with the endorsements thereon, in a book to be kept for that purpose.

(d) When the authority has been organized and its officers elected, the secretary shall certify to the Secretary of State the names and addresses of its officers as well as the principal office of the authority. Any change in the location of the principal office shall likewise be certified to the Secretary of State within 10 days after such change.

(16 Del. C. 1953, § 1402; 49 Del. Laws, c. 417; 53 Del. Laws, c. 327; 70 Del. Laws, c. 186, § 1.)

§ 1403 Amendment of articles of incorporation.

Every authority of this State may, from time to time and in the manner hereinafter provided, amend its articles of incorporation and thereby accomplish any 1 or more of the following: The adoption of a new name, changes in, additions to and diminutions of its powers and purposes, provided that such amendment shall contain only such provisions as it would be lawful or proper to insert in articles of incorporation made at the time of such amendment.

(16 Del. C. 1953, § 1403; 49 Del. Laws, c. 417.)

§ 1404 Withdrawal or joinder of municipalities; procedure.

(a) Whenever an authority has been incorporated by 2 or more municipalities, any 1 or more of such municipalities may withdraw therefrom and any municipality not having joined in the original incorporation may join in the authority, but no municipality shall be permitted to withdraw from any authority after an obligation has been incurred by the authority.

(b) Any municipality wishing to withdraw from or to become a member of an existing authority shall signify its desire by resolution or ordinance after an enabling referendum. If the authority shall by resolution express its consent to such withdrawal or joining, articles of withdrawal or articles of joinder, as the case may be, shall be executed by the proper officers of the withdrawing or incoming municipality and shall be joined by the proper officers of the governing body of the authority and, in the case of a municipality seeking to become a member of the authority, also by the proper officers of each of the municipalities that are then members of the authority, pursuant to resolutions or ordinances by the governing bodies of such municipalities. In the case of a certificate of joinder, the certificate shall set forth all of the information required in the case of original incorporation insofar as it applies to the incoming municipality including the name

and address and term of office of the first member of the board of the authority from the incoming municipality. Articles of withdrawal and articles of joinder shall be filed with the Secretary of State, who shall receive the same and endorse thereon the date and time of such receipt. If the Secretary of State finds that the articles of withdrawal or articles of joinder, as the case may be, conform to law, the Secretary of State shall forthwith endorse the Secretary of State's own approval thereon and issue a certificate of approval to which shall be attached a copy of the approved articles. Upon the issuance of such certificate of approval by the Secretary of State, said articles of withdrawal or articles of joinder, as the case may be, shall become effective and be in full force and effect, and such articles shall be conclusively deemed to have been lawfully and properly adopted. Promptly after the issuance of a certificate of approval the Secretary of State shall record the articles of withdrawal or articles of joinder, as the case may be, together with the endorsements thereon, in the book kept by it for the purpose of recording articles of incorporation.

(16 Del. C. 1953, § 1404; 49 Del. Laws, c. 417; 70 Del. Laws, c. 186, § 1.)

§ 1405 Exercise of powers by governing body; composition; quorum; personnel; salaries; records.

(a) The powers of each authority shall be exercised by a governing body (herein called the "board") composed as follows:

(1) If the authority is incorporated by 1 municipality, the board shall be composed of the members of the governing body of the municipality creating the authority or shall be composed of 5 citizens of such municipality, as the governing body of such municipality shall determine. If the governing body of the municipality creating the authority determines that the said board shall be composed of the members of said governing body, the terms of office of the members of said board shall coincide with their terms of office as members of the governing body and any member of said governing body shall automatically be a member of said board and shall cease to be a member of said board upon ceasing to be a member of said governing body. If the governing body of the municipality creating an authority shall determine that the board shall consist of 5 citizens, the governing body of such municipality shall appoint the members of the board, whose terms of office shall commence on the date of appointment and 1 of whom shall serve for 1 year, 1 for 2 years, 1 for 3 years, 1 for 4 years and 1 for 5 years from the January 1st next succeeding the date of incorporation, and thereafter the said governing body shall, at a meeting held not later than 1 month prior to January 1st in each year in which a vacancy occurs, appoint as a member of the board a citizen of the municipality for which the authority is created for a term of 5 years to succeed the member whose term expires on the January 1st next succeeding.

(2) If the authority is incorporated by 2 or more municipalities, the board shall consist of a number of members at least equal to the number of municipalities incorporating the authority, but in no event less than 5. When 1 or more additional municipalities join an existing authority, each of such joining municipalities shall have 1 member on the board. The first of such members shall be appointed immediately upon the admission of the municipality into the authority for a full term of years equal to that fixed for the other members of the board. The members of the board shall be appointed, their terms staggered and vacancies filled, and where the number of municipalities joining is less than 5, shall be apportioned in such manner as the articles of incorporation shall provide. No member shall be appointed for a term longer than 5 years.

(b) Members of the board who are not members of the governing body of the municipality or municipalities composing the authority shall hold office until their successors have been appointed, and may succeed themselves, and shall receive such salaries as may be determined by the governing body or bodies of the municipality or municipalities, but none of such salaries shall be increased or diminished by such governing body or bodies during the term for which the member receiving the same shall have been appointed. Members of the board who are members of the governing body of a municipality shall serve as board members without pay. If a vacancy shall occur by reason of the death, disqualification, resignation or removal of an appointed member, the governing body of the municipality shall appoint a successor to fill the member's unexpired term. In joint authorities such vacancies shall be filled by the governing body of the municipality in the representation of which the vacancy occurs. Whenever any municipality shall withdraw from a joint authority the term of any member or members appointed from such municipality shall immediately terminate.

(c) A majority of the members shall constitute a quorum of the board for the purpose of organizing the authority and conducting the business thereof and for all other purposes, and all action may be taken by vote of a majority of the members present, unless in any case the bylaws shall require a larger number. The board shall have full authority to manage the properties and business of the authority and to prescribe, amend and repeal bylaws, rules and regulations governing the manner in which the business of the authority may be conducted, and the powers granted to it may be exercised and embodied. The board shall fix and determine the number of officers, agents and employees of the authority and their respective powers, duties and compensation and may appoint to such office or offices any members of the board with such powers, duties and compensation as the board may deem proper.

(d) Every such officer appointed shall be adequately bonded.

(e) Each authority shall keep a complete and true record of its receipts, expenses and expenditures and shall employ a certified or licensed public accountant to audit its books and accounts. Each authority shall always keep available and open to public inspection during business hours, at its principal office, a detailed audit and financial statement of its accounts. Each authority shall file annually with the governing body or governing bodies of the municipality or municipalities composing the authority a certified copy of such detailed audit and financial statement. The governing body of the municipality composing an authority, or in the case of an authority composed of 2 or more municipalities the governing body of each such municipality, may at any time in person or by its duly authorized agent or agents audit and examine the books and records of such authority; provided, however, that such audit or examination shall be without cost to said authority.

(f) Notwithstanding anything in Title 8 or anything in the certificate of incorporation of an authority to the contrary notwithstanding, a member of the Board may be removed at any time and without cause by act of the governing body of the municipality responsible for appointing that Board member.

(16 Del. C. 1953, § 1405; 49 Del. Laws, c. 417; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 132, § 1.)

§ 1406 Character of authorities with reference to public health and welfare; projects; general powers.

(a) Each authority created hereunder shall be deemed to be an instrumentality exercising public and essential governmental functions to provide for the public health and welfare and shall be for the purpose of acquiring, holding, constructing, reconstructing, repairing, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee, a project or projects within or partly within and partly without 1 or more of the municipality or municipalities by action of whose governing body or governing bodies the authority was created.

(b) Every authority is granted and shall have and may exercise all powers necessary or convenient for the carrying out the aforesaid purposes including, but without limiting the generality of the foregoing, the following rights and powers:

(1) To have perpetual existence;

(2) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(3) To adopt an official seal and alter the same at pleasure;

(4) To maintain an office at such place or places as it may designate;

(5) To appoint officers, agents, employees and servants, to prescribe their duties and to fix their compensation;

(6) To sue and be sued;

(7) To acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the authority and to sell, lease as lessor, transfer or dispose of any property or interest therein at any time acquired by it;

(8) To acquire by gift, purchase or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith; provided, however, that no property or any interest therein owned by any county, city, town or other political subdivision of the State shall be acquired by the exercise of the power of eminent domain without the consent of the governing body of such county, city, town or political subdivision;

(9) To issue revenue bonds of the authority, payable solely from revenues, for the purpose of paying all or a part of the cost of any 1 or more projects, and to secure the payment of such bonds or any part thereof by pledge or deed of trust of all or any part of its revenues, and to make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the authority may deem advisable, and in general, to provide for the security for said bonds and the rights of the holders thereof;

(10) To combine any water system and any sewerage system as a single system for the purpose of operation and financing;

(11) To fix, alter, charge and collect rates, fees and charges for the use of or for the services furnished by its systems and each of them for the purpose of providing for the payment of the expenses of the authority, the construction, reconstruction, extension, repair, improvement, maintenance and operation of its facilities and properties, the payment of the principal of and interest on its bonds, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any of its bonds or with the municipality or municipalities incorporating or the municipalities which are members of said authority or with any municipality served or to be served by said authority; said rates, fees and charges to be at reasonable and uniform rates to be determined exclusively by the authority. Any person questioning the reasonableness or uniformity of any rate, fee or charge fixed by an authority may bring suit against the authority;

(12) To enter into contracts with the federal government, the State, or any agency or instrumentality thereof, or with any municipality, private corporation, copartnership, association or individual providing for or relating to the furnishing of services and facilities of any project of the authority or in connection with the services and facilities rendered by any water system or sewerage system owned or controlled by the federal government or the State, any agency or instrumentality thereof, and any municipality, private corporation, copartnership, association or individual;

(13) To contract with any municipality, county, corporation, individual or any public authority of this or any adjoining state, on such terms as the said authority shall deem proper, for the construction and operation of any project which is partly in this State and partly in such adjoining state;

(14) To make and enter into all contracts or agreements, as the authority may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted by this chapter, including contracts with any federal agency or with any municipality, on such terms and conditions as the authority may approve, relating to (i) the use by such agency or by such municipality or the inhabitants thereof of any project acquired or constructed by the authority under this subsection or the services therefrom or the facilities thereof, or (ii) the use by the authority of the services or facilities of any water system or sewerage system owned or operated other than by the authority. Any such contract shall be subject to such provisions, limitations or conditions as may be contained in the resolution of the authority authorizing revenue bonds of the authority or the provisions of any trust agreement securing such bonds. Any such contract may provide for the collecting of fees, rates or charges for the services and facilities rendered to a municipality or to the inhabitants thereof by such municipality or by its agents or by the agents of the authority, and for the enforcement

of delinquent charges for such services and facilities. The provisions of any such contract and of any ordinance or resolution of the governing body of a municipality enacted pursuant thereto shall be irrepealable so long as any of the revenue bonds issued under the authority of this chapter shall be outstanding and unpaid, and the provisions of any such contract and of any ordinance or resolution enacted pursuant thereto shall be and be deemed to be for the benefit of such bondholders. The aggregate of any fees, rates or charges which shall be required to be collected pursuant to any such contract or any ordinance or resolution enacted thereunder shall be sufficient to pay all obligations which may be assumed by the other contracting party;

(15) To enter upon, use, occupy and dig up any street, road, highway or private or public lands necessary to be entered upon, used or occupied in connection with the acquisition, construction or improvement, maintenance or operation of a project, subject, however, to such reasonable local police regulation as may be established by the governing body of any municipality having jurisdiction in the particular respect;

(16) To receive and accept from any federal agency grants for or in aid of the construction, acquisition or operation of any project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value to be held, used and applied only for the purposes for which such grants and contributions may be made;

(17) To charge a reasonable tapping fee whenever the owner of any property connects such property with a water or sewer system operated by the authority, which fee shall be in addition to any rental or use charges assessed by the authority;

(18) In the event of any annexation by a municipality not a member of the authority of lands, areas or territory served by the authority, to continue to do business, exercise its jurisdiction over its properties and facilities in and upon or over such lands, areas or territory as long as any bonds or indebtedness remain outstanding or unpaid, or any contracts or other obligations remain in force.

(16 Del. C. 1953, § 1406; 49 Del. Laws, c. 417; 53 Del. Laws, c. 327.)

§ 1407 Limits of powers.

None of the powers granted by this chapter shall be exercised in the construction, improvement, maintenance, extension or operation of any project or projects which in whole or in part shall duplicate or compete with existing utilities, public or private, serving substantially the same purposes. The municipality or municipalities organizing such an authority may, in the resolution or ordinance signifying their intention so to do, or from time to time by subsequent resolution or ordinance, specify the project or projects to be undertaken by the said authority, and no other projects shall be undertaken by the said authority than those so specified. If the municipality or municipalities organizing an authority fail to specify the project or projects to be undertaken, then the authority shall be deemed to have all the powers granted by this chapter.

No municipality which shall have created an authority under this chapter shall thereafter create any other authority serving the whole or any part of the same area. No municipality which shall have joined with any other municipality or municipalities in the creation of any authority under this chapter shall thereafter create or join in the creation of any other authority unless such other municipality or municipalities shall consent thereto by ordinance or resolution after a general referendum.

(16 Del. C. 1953, § 1407; 49 Del. Laws, c. 417.)

§ 1408 Issuance of revenue bonds — Interest; maturity; use of proceeds; interim receipts or temporary bonds.

(a)(1) Each authority created under this chapter may provide by resolution of its board, at 1 time or from time to time, for the issuance of revenue bonds of the authority for the purpose of paying the whole or any part of the cost of any project.

(2) The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds.

(3) The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company.

(4) In case any officer, whose signature or a facsimile of whose signature shall appear on any bonds or coupons, shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until such delivery.

(5) All revenue bonds issued under this chapter shall have and are declared to have, as between successive holders, all the qualities and incidents of negotiable instruments under the negotiable instruments laws of the State. The bonds may be issued in coupon or in registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest.

(6) The issuance of such bonds shall not be subject to any limitations or conditions contained in any other law and the authority may sell such bonds in such manner, either at public or at private sale, and for such price as it may determine to be in the best interests of the authority and the municipality to be served thereby.

(b)(1) The proceeds of such bonds shall be used solely for the payment of the cost of the project or projects on account of which such bonds are issued and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the authorizing resolution or in the trust agreement hereafter mentioned securing the same.

(2) If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the authorizing resolution or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

(3) If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds shall have been issued, the surplus shall be deposited to the credit of the reserve account or sinking fund for such bonds.

(c)(1) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

(2) The authority may also provide for the replacement of any bonds which shall become mutilated, destroyed or lost.

(d) Bonds may be issued under this chapter without obtaining the approval or consent of any department, division, commission, board, bureau or agency of the State and without any other proceeding or the happening of any other condition or thing than those proceedings, conditions or things which are specifically required by this chapter.

(e) The resolution providing for the issuance of revenue bonds of the authority and any trust agreement securing such bonds may contain such limitations upon the issuance of additional revenue bonds as the authority may deem proper, and such additional revenue bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

(16 Del. C. 1953, § 1408; 49 Del. Laws, c. 417; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 328, §§ 1, 2.)

§ 1409 Issuance of revenue bonds — Faith and credit of State or political subdivisions as unaffected.

Revenue bonds issued under this chapter shall not be deemed to constitute a pledge of the faith and credit of the State or of any political subdivision thereof. All such bonds shall contain a statement on their face substantially to the effect that neither the faith and credit of the State nor the faith and credit of any county, city, town or other subdivision of the State are pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds under this chapter shall not directly or indirectly or contingently obligate the State or any county, city, town or other subdivision of the State to levy any taxes whatever therefor or to make any appropriation for their payment except from the funds pledged under this chapter.

(16 Del. C. 1953, § 1409; 49 Del. Laws, c. 417.)

§ 1410 Exemption of projects from taxes.

No authority shall be required to pay any taxes or assessments upon any project acquired, constructed or operated by it under this chapter or upon the income therefrom, and the bonds issued under this chapter, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation by the State or any of its political subdivisions or by any town or incorporated municipality or any other public agency within the State.

(16 Del. C. 1953, § 1410; 49 Del. Laws, c. 417.)

§ 1411 Fixed charges in connection with projects; regulation of sewage; water meter readings.

(a) The rates, fees and charges of each authority in connection with each project shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times:

(1) To pay the cost of maintaining, repairing and operating the project on account of which the authority shall have issued revenue bonds as authorized by this chapter including reserves for such purposes and for replacement and depreciation and necessary extensions;

(2) To pay the principal of and interest on the revenue bonds as the same shall become due and payable and to create reserves and provide a margin of safety for such purposes; and

(3) To fulfill the terms and provisions of any agreements made with the purchasers or holders of any of its bonds or with the municipality or municipalities incorporating or the municipalities which are members of said authority or with any municipality served or to be served by said authority.

(b) Any authority may fix rates, fees and charges for the services and facilities of its water system sufficient to pay all or any part of the cost of maintaining, repairing and operating its sewerage system and all or any part of the principal of and interest on revenue bonds issued on account of such sewerage system, and to pledge any surplus revenues of its water system, subject to prior pledges thereof, for such purpose or purposes.

(1) Rates, fees and charges for the services of a sewerage system may be based or computed either upon the quantity of water used or upon the amount of the water bill or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewerage system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon the type or character of such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors.

(2) Charges for sewerage services to premises obtaining all or a part of their water supply from sources other than public water system may be determined by gauging or metering or in any other manner approved by the authority.

(3) All other rates, fees and charges of the authority shall be based or computed upon such factor or factors as the authority shall deem reasonable and proper.

(c) In cases where the character of the sewage or waste from any manufacturing, commercial or industrial plant, building or premises is such that it imposes an unreasonable burden upon any sewerage system, an additional charge may be made therefor, or the authority may, if it deems advisable, compel such manufacturing, commercial or industrial plant, building or premises to treat such sewage or waste in such manner as shall be specified by the authority before discharging such sewage or waste into any sewage system owned, operated or maintained by such authority.

(d) Every municipality composing an authority operating a sewerage system shall, at the request of such authority, supply such authority, on or before the fifteenth day of the month following the month during which water bills are issued by such municipality, with a list of all water meter readings forming the basis of such bills and/or a statement of the amount of such bills so that such data may be used by such authority in calculating or computing its rates, fees and charges for sewer services to such water consumer.

(16 Del. C. 1953, § 1411; 49 Del. Laws, c. 417.)

§ 1412 Trust agreements to secure bonds; pledges and assignments; contents of authorizing resolutions; depositaries for bond sales proceeds.

(a) In the discretion of the authority, any revenue bonds issued under this chapter may be secured by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company.

(b)(1) The resolution authorizing the issuance of the bonds or the trust agreement may pledge or assign the revenues to be received from the operation of the project or projects on account of which the bonds are issued and, in the case of bonds issued to finance a sewerage system, may pledge or assign as security for such bonds the revenues to be received from its water system to the extent authorized by § 1411 of this title, but shall not convey or mortgage any project or any part thereof, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisitions, construction, improvement, maintenance, operation, repair and insurance of the project or projects on account of which such bonds are issued, and provisions for the custody, safeguarding and application of all moneys and for the employment of consulting engineers in connection with such construction, reconstruction or operation.

(2) Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustees in the case of a trust agreement and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds or debentures of corporations.

(3) In addition to the foregoing, such resolution or trust agreement may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

(c) Except as is in this chapter otherwise provided, the authority may provide for the payment of the proceeds of the sale of the bonds and its revenues to such officer, board or depositary as it may designate for the custody thereof and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.

(d) All expenses incurred in carrying out such resolution or trust agreement may be treated as a part of the cost of operation of the project or projects.

(16 Del. C. 1953, § 1412; 49 Del. Laws, c. 417.)

§ 1413 Connection with sewerage system by abutting property owners; conditions.

Upon the acquisition or construction of any sewerage system under this chapter, the owner of each lot or parcel of land which abuts upon a street or other public way containing a sanitary sewer which is a part of or which is served or may be served by such sewerage system and upon which lot or parcel of land a building shall have been constructed for residential, commercial or industrial use, shall, if so required by the rules and regulations or a resolution of the authority, connect such building with such sanitary sewer and shall cease to use any other method for the disposal of sewage, sewage waste or other polluting matter; provided, however, that the owner of such lot or parcel of land having a method for the disposal of sewage, sewage waste or other polluting matter constructed and operated in accordance with standards prescribed or approved by the Secretary of the Department of Natural Resources and Environmental Control shall not be required to make such connection. All such connections shall be made in accordance with rules and regulations which shall be adopted from time to time by the authority, which rules and regulations may provide for a charge for making any such connection in such reasonable amount as the authority may fix and establish.

(16 Del. C. 1953, § 1413; 49 Del. Laws, c. 417; 55 Del. Laws, c. 442, § 10; 59 Del. Laws, c. 212, § 1.)

§ 1414 Provisions permitted for inclusion in resolutions or trust agreements providing for bonds.

(a) Any resolution or trust agreement providing for the issuance of revenue bonds under this chapter may include any or all of the following provisions and may require the authority to adopt such resolutions or to take such other lawful action as shall be necessary to effectuate such provisions, and the authority may adopt such resolutions and take such other action:

(1) That the authority may require the owner, tenant or occupant of each lot or parcel of land who is obligated to pay rates, fees or charges for the use of or for the services furnished by any project acquired, constructed or operated by the authority under this chapter to make a reasonable deposit with the authority in advance to insure the payment of such rates, fees or charges and to be subject to application to the payment thereof if and when delinquent;

(2) That if any rates, fees or charges for the use of or for the services furnished by any project acquired, constructed or operated by the authority under this chapter shall not be paid within 30 days after the same shall become due and payable, the authority may at the expiration of such 30 day period disconnect the premises from the water and/or sewer system or otherwise suspend services and the authority may proceed to recover the amount of any such delinquent rates, fees or charges with interest, in a civil action or by foreclosure of the lien therefor;

(3) That, if any rates, fees or charges for the use and services of any sewerage system acquired, constructed or operated by the authority under this chapter shall not be paid within 30 days after the same shall become due and payable, the owner, tenant or occupant of such premises shall cease to dispose of sewage or industrial wastes originating from or on such premises by discharge thereof directly or indirectly into the sewerage system until such rates, fees or charges with interest shall be paid; that, if such owner, tenant or occupant shall not cease such disposal at the expiration of such 30 day period, any political subdivision, district, private corporation, board, body or person supplying water to or selling water for use on such premises shall cease supplying water to or selling water for use on such premises within 5 days after the receipt of notice of such delinquency from the authority; and that, if such political subdivision, district, private corporation, board, body or person shall not, at the expiration of such 5 day period, cease supplying water to or selling water for use on such premises, the authority may shut off the supply of water to such premises.

(b) There shall be lien upon real estate for the amount of any fees, rents or other charges, including tapping fees, by an authority to the owner or lessee or occupant of such real estate for the use and services for any project of the authority by or in connection with such real estate from and after the time when such fees, rents or charges are due and payable, and for the interest which may accrue thereon. Such lien shall be superior to the interest of any owner, lessee or occupant of such real estate.

(c) Such lien shall not bind or affect a subsequent bona fide purchaser of such real estate for valuable consideration without actual notice of such lien, until and except from the time that the amount of such fees, rents and charges are entered in a register or registers furnished for such purpose by and at the expense of the authority and kept in the office where deeds may be recorded in the municipality wherein the real estate or a part thereof is located. The clerk in whose office deeds may be recorded shall keep and preserve and hold available for public inspection any such register which may be delivered to the clerk by the authority and cause entries to be made and indexed therein from time to time upon certification by the authority for which the clerk shall be entitled to a fee of 5 cents per entry to be paid by the authority and added to the amount of the lien.

(d) Such lien on any real estate may be discharged by the payment to the authority of the total amount of such lien and the interest which may accrue to the date of such payment and the authority shall deliver a certificate thereof to the person paying the same, and upon presentation thereof, the clerk having the record of such lien shall mark the entry of such lien satisfied without further fee.

(16 Del. C. 1953, § 1414; 49 Del. Laws, c. 417; 70 Del. Laws, c. 186, § 1.)

§ 1415 Moneys received as trust funds; fiscal agents to act as trustees.

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The resolution or trust agreement providing for the issuance of revenue bonds of the authority shall provide that any officer to whom or any bank, trust company or other fiscal agent to which such moneys shall be paid shall act as trustees of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution or trust agreement may provide.

(16 Del. C. 1953, § 1415; 49 Del. Laws, c. 417.)

§ 1416 Rights of bondholders and trustees.

Any holder of revenue bonds issued by an authority under this chapter or any of the coupons appertaining thereto and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution or trust agreement providing for the issuance of such bonds, may either at law or in equity, by suit, mandamus or other proceeding protect and enforce any and all rights under the laws of this State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the authority or by an officer thereof, including the fixing, charging and collecting of rates, fees and charges for the use of or for the services furnished by any project.

(16 Del. C. 1953, § 1416; 49 Del. Laws, c. 417.)

§ 1417 Revenue refunding bonds; single issues of revenue bonds; applicability thereto of other provisions of this chapter.

Each authority created hereunder may provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds outstanding and issued under this chapter. Each such authority may further provide by resolution for the issuance of a single issue of revenue bonds of the authority for the combined purposes of (1) paying the cost of any project, or the

improvement, extension, addition or reconstruction thereof, and (2) refunding revenue bonds of the authority which shall theretofore have been issued under this chapter and shall then be outstanding and which shall then have matured or be subject to redemption or can be acquired for retirement. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the authority with respect to the same, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

(16 Del. C. 1953, § 1417; 49 Del. Laws, c. 417.)

§ 1418 Accreditation of bonds for investment purposes.

Bonds issued under this chapter are made securities in which all public officers and public agencies of the State and its political subdivisions, and all bonds, trust companies, savings and loan associations, investment companies and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance business, all administrators, executors, guardians, trustees and other fiduciaries and other persons may legally and properly invest funds, including capital in their control or belonging to them. Such bonds are made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

(16 Del. C. 1953, § 1418; 49 Del. Laws, c. 417.)

§ 1419 Transfer of interest by municipalities; use of certain lands; powers of municipalities.

(a) Notwithstanding any contrary provision of law, any municipality may transfer jurisdiction over, lease, lend, grant, sell or convey to any authority upon the request of such authority, with or without consideration, any facilities or any right or interest therein or any property appertaining thereto or any real property or estate, right or interest therein for use by such authority in connection with the construction, reconstruction, extension, repair, improvement, maintenance or operation of 1 or more projects upon such terms and conditions as the governing body of such municipality shall determine to be for the best interest of such municipality. The State consents to the use of all lands below high watermark owned or controlled by it and to the use of any land between the right-of-way limits of any state highway which are necessary or desirable in connection with the construction, reconstruction, extension, repair, improvement, maintenance or operation of any project; provided, however, that the use of any portion between the right-of-way limits of a state highway shall be subject to the approval of the State Highway Department.

(b) Each municipality may:

(1) Contract with any authority created hereunder for the collection, treatment or disposal of sewage;

(2) Contract with any authority created hereunder for shutting off the supply of water furnished by any water system owned or operated by such municipality or under its jurisdiction or control to any premises connected with any sewerage system of the authority in the event that the owner, tenant or occupant of such premises shall fail to pay any rates, fees or charges for the use of or for the services furnished by such sewerage system within the time or times specified in such contract;

(3) Contract with any authority with respect to any and all matters and things concerning which such authority is authorized to contract with such municipality under this chapter;

(4) Loan to any newly created authority money for the purpose of providing funds to pay the organization and preliminary expenses of such authority on condition that such moneys shall be repaid out of the proceeds of the first issue of such authority.

(16 Del. C. 1953, § 1419; 49 Del. Laws, c. 417.)

§ 1420 Transfer of projects to municipalities; conditions; termination of authorities.

When any authority shall have paid or provided for the payment of the principal of and the interest on all bonds secured by a pledge of any of the revenues of a project, it may (subject to any agreements concerning the operation or disposition of such project) grant and convey such project to the municipality or municipalities composing the authority. When any authority shall have paid or made provisions for the payment of the principal of and the interest on all bonds issued by it and settled all other claims against it, it may terminate its existence. A certificate, requesting the termination of the existence of the authority, signed by the proper officers of the authority and stating that the principal of and the interest on all bonds issued by it have been paid or that provisions for such payment have been made and that all claims against the authority have been settled shall be filed with the Secretary of State. If the certificate is approved by the municipality or municipalities composing the authority by ordinance or resolution, the Secretary of State shall note the termination of existence on the records of the Secretary of State and issue its certificate of approval to the board and thereupon the authority shall cease to exist.

(16 Del. C. 1953, § 1420; 49 Del. Laws, c. 417.)

§ 1420A Incorporation of project within other governmental system; assumption of debt.

No project acquired or constructed by an authority pursuant to this chapter may be incorporated within any other governmental system except upon the assumption without surcharge to the authority or its customers by the governing body of that government of full responsibility for payments of any outstanding revenue bonds issued by the authority to finance the acquisition or construction of the project.

(63 Del. Laws, c. 23, § 1.)

§ 1421 Scope and construction of chapter.

This chapter shall constitute full and complete authority, without regard to any other law for the doing of the acts and things herein authorized, and shall be liberally construed to effect the purposes hereof; provided, however, that nothing herein contained shall be taken as restricting any control which the Department of Health and Social Services, State Highway Department and the Water Pollution Commission are empowered to exercise over or within any authority.

The foregoing sections of this chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers not existing.

(16 Del. C. 1953, § 1421; 49 Del. Laws, c. 417; 70 Del. Laws, c. 149, § 107.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 15
CESSPOOLS, PRIVY WELLS, DRAINAGE SYSTEMS AND WATER SUPPLY SYSTEMS

§ 1501 Regulating construction of drainage systems and water supply systems.

(a) The Department of Health and Social Services may regulate and prescribe the manner in which all cesspools, privy wells and other drainage systems shall be constructed within the limits of all incorporated towns and at any place within 1 mile from the water supply thereof. The Department of Health and Social Services may adopt regulations to insure that water supply systems are constructed or altered in a manner that preserves the quality of water supplied to the public.

(b) As used in this chapter, "water supply system" means all plants, systems, facilities or properties used or useful, or having the present capacity for future use, in connection with the supply or distribution of water, and any integral part thereof, including water distribution systems, mains, laterals, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof. Except as otherwise provided in this chapter, the term "water supply system" shall not mean a dam, reservoir, surface water intake, waterway obstruction or well.

(33 Del. Laws, c. 56, § 2; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 66, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, § 859; 16 Del. C. 1953, § 1501; 64 Del. Laws, c. 479, § 2; 70 Del. Laws, c. 149, § 108.)

§ 1502 Changing existing drainage systems.

The Department of Health and Social Services may order and direct any changes in the construction of any cesspool or privy well or other drainage already constructed and used on any property in any incorporated town or within 1 mile of the water supply of the town which it deems necessary for the protection of the health of the inhabitants of the town or for the protection of the water supply thereof.

(33 Del. Laws, c. 56, § 3; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 66, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, § 860; 16 Del. C. 1953, § 1502; 70 Del. Laws, c. 149, § 109.)

§ 1503 Construction changes in drainage systems.

The Department of Health and Social Services may order and direct that the owner of any property on which there is a cesspool or privy well and all other drainage already in use in any incorporated town or within 1 mile from the water supply of the town shall so change and construct the same out of brick and cement or concrete in such manner as to prevent the contents thereof from oozing through or passing into the soil around the cesspool or privy well or from overflowing over the top thereof.

(33 Del. Laws, c. 56, § 4; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 66, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, § 861; 16 Del. C. 1953, § 1503; 70 Del. Laws, c. 149, § 110.)

§ 1504 Prohibiting surface drainage.

The Department of Health and Social Services may prohibit the owner or tenant of any property within any incorporated town or within 1 mile from the water supply thereof from discharging any sewerage or drainage from any house or building on or over the surface of the ground adjoining the same whenever it determines that the same is detrimental to the health of the inhabitants of the town or those living within 1 mile from the water supply thereof.

(33 Del. Laws, c. 56, § 5; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 66, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, § 862; 16 Del. C. 1953, § 1504; 70 Del. Laws, c. 149, § 111.)

§ 1505 Cleaning of cesspools and privy wells.

The Department of Health and Social Services may order and direct the owner or tenant of any property within any incorporated town or within 1 mile from the water supply thereof on which there is a cesspool or privy well to clean the same in such manner as it directs whenever it deems the cleaning thereof to be necessary. Whoever neglects or refuses to comply with the order within 30 days from the time notice of the order is served shall be subject to the fines and penalties provided in § 1507 of this title for the violation of this chapter.

(33 Del. Laws, c. 56, § 6; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 66, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, § 863; 16 Del. C. 1953, § 1505; 70 Del. Laws, c. 149, § 112.)

§ 1506 Plans for construction or alteration of a water supply system.

All plans for the construction or alteration of a water supply system shall be submitted to the Division of Public Health of the Department of Health and Social Services for approval before the construction or alteration of said water supply system begins. Notwithstanding the exclusions in § 1501(b) of this title, the Division of Public Health may review and inspect the construction of wells, dams, reservoirs, surface water intakes and waterway obstructions for health aspects, including but not limited to such features as venting, grouting, integrity

of well seals and protection from contamination. Any negative health aspects observed by the Division of Public Health during such review or inspection shall be referred to the Department of Natural Resources and Environmental Control for investigation, resolution or enforcement action. In addition, and pursuant to § 7931 of Title 16, a dug well or any type of private water supply that is located where there is access to a public water supply shall not be permitted unless the private water supply is approved in writing by the Department of Health and Social Services.

(34 Del. Laws, c. 66, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, § 864; 16 Del. C. 1953, § 1506; 55 Del. Laws, c. 442, § 9; 56 Del. Laws, c. 372, § 2; 57 Del. Laws, c. 739, §§ 219, 220; 64 Del. Laws, c. 479, § 3; 70 Del. Laws, c. 149, § 113.)

§ 1507 Penalties; jurisdiction.

(a) Whoever violates this chapter or any order or regulation of the Department of Health and Social Services or any laws of this State conferring powers upon boards of health or refuses or omits to obey such order and regulation within the time prescribed for the performance thereof, or obstructs or interferes with the execution of such order or regulation, shall, for the first offense, be fined not less than $10 and not more than $100 and for any subsequent offense not less than $25 nor more than $200.

(b) Prosecutions under this section may be brought before the alderperson of the incorporated town in which the violation occurs.

(33 Del. Laws, c. 56, § 7; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 66, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, § 865; 16 Del. C. 1953, § 1507; 70 Del. Laws, c. 149, § 114; 70 Del. Laws, c. 186, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 16
LITTER CONTROL LAW

§ 1601 Short title.

This chapter shall be known and may be cited as the Delaware Litter Control Law.

(60 Del. Laws, c. 613, § 1.)

§ 1602 Declaration of intent.

It is the intention of this chapter to end littering on public or private property, including bodies of water, as a threat to the health and safety of the citizens of this State.

(60 Del. Laws, c. 613, § 1.)

§ 1603 Definitions.

As used in this chapter, unless the context clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Litter" shall include all rubbish, waste material, refuse, cans, bottles, garbage, trash, debris, dead animals or other discarded materials of every kind and description.

(2) "Public or private property" shall include the right-of-way of any road or highway; any body of water or watercourse, or the shores or beaches thereof; any park, playground, building, refuge or conservation or recreation area; and any residential or farm properties, timberlands or forests.

(60 Del. Laws, c. 613, § 1.)

§ 1604 Unlawful activities.

It shall be unlawful for any person or persons to dump, deposit, throw or leave, or cause or permit the dumping, depositing, placing, throwing or leaving of litter on any public or private property of this State, or any waters in this State, unless:

(1) Such property is designated by the State or by any of its agencies or political subdivisions for the disposal of trash or litter, and such person is authorized by the proper public authority to use such property for such purpose;

(2) Such litter is placed in a litter receptacle or container installed on such property; and

(3) Such person is the owner or tenant in lawful possession of such property or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of said owner or tenant, all in a manner consistent with the public welfare.

(60 Del. Laws, c. 613, § 1.)

§ 1605 Penalties; jurisdiction; voluntary assessment form.

(a) Any person found guilty of violating this chapter shall be punished by a fine of not less than $50 and up to 8 hours of community service for a first offense and $75 and up to 25 hours of community service for a second offense within 2 years. If the offense occurred on or along a Delaware byway, as defined in § 101(a)(9) of Title 17, an additional mandatory penalty of $500 must be imposed for every first, second, and subsequent offense, in addition to the fine. In addition, any person found guilty of violating this chapter shall, at the discretion of the Court, be required to pick up and remove from any public street, highway or public or private right-of-way, or public beach, stream, bank or public park any and all litter deposited thereon by anyone prior to the date of execution of sentence.

(b) For the purposes of this chapter the Justices of the Peace Courts shall have jurisdiction.

(c) The Court is hereby directed to make public the names of persons convicted of violating this chapter.

(d) Any duly constituted peace officer in the State, who charges any person with any offense under this chapter may, in addition to issuing a summons for such offense, provide the offender with a voluntary assessment form which, when properly executed by the officer and the offender, allows the offender to dispose of the charge without the necessity of personally appearing in the Court to which the summons is returnable. Payments made pursuant to this section shall be remitted to the Court to which the summons is returnable and shall be received by the Court within 10 days from the date of arrest (excluding Saturday and Sunday) and shall be paid only by check or money order. The fine imposed pursuant to this subsection shall be the minimum fine as provided for in subsection (a) of this section, plus other costs as may be assessed by law. Voluntary assessment forms, as used in this section, means the written agreement or document signed by the violator wherein the violator agrees to pay by mail the fine for the offense described therein together with costs and penalty assessment.

(60 Del. Laws, c. 613, § 1; 62 Del. Laws, c. 387, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 325, § 1; 77 Del. Laws, c. 350, § 3.)

§ 1606 Prima facie evidence.

Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle, boat, airplane or other conveyance in violation of this chapter, it shall be prima facie evidence that the operator of said conveyance shall have violated this chapter and licenses to operate such conveyances may be suspended for a period not to exceed 30 days together with, or in lieu of, other penalties for littering in the Code, unless littering from said vehicle is a first offense in which case the license shall not be suspended and the sanctions provided in § 1605 of this title shall apply.

(60 Del. Laws, c. 613, § 1.)

§ 1607 Receptacles to be provided.

All public authorities and agencies having supervision of properties of this State are authorized, empowered and instructed to establish and maintain receptacles for the deposit of litter at appropriate locations where such property is frequented by the public, and to post signs directing persons to such receptacles and serving notice of this chapter, and to otherwise publicize the availability of litter receptacles and the requirements of this chapter.

(60 Del. Laws, c. 613, § 1.)

§ 1608 Enforcement.

All law-enforcement agencies of the State, including enforcement personnel of the Department of Natural Resources and Environmental Control, shall have authority to enforce this chapter.

(61 Del. Laws, c. 241, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 17
REFUSE AND GARBAGE

§ 1701 Bringing garbage or household refuse into State; permit and bond.

No person shall bring into the State from any place without the State, garbage or household refuse for the purpose of feeding it to hogs or for any other purpose, unless there has first been obtained from the Department of Health and Social Services a permit naming the area within which such garbage or household refuse shall be disposed of, and unless there has been deposited with the Department of Health and Social Services a bond for the sum of $500 which shall be forfeitable if the disposal of such garbage is not provided for in such a manner as meets the requirements of the Department of Health and Social Services.

(38 Del. Laws, c. 46, § 1; Code 1935, § 890; 16 Del. C. 1953, § 1701; 70 Del. Laws, c. 149, §§ 115, 116.)

§ 1702 Prohibited areas for garbage disposal; revocation of permit.

The Department of Health and Social Services may at any time determine the limits of areas within which garbage under no circumstances shall be disposed of or deposited and shall at any time revoke any permit given if the disposal of any garbage is conducted in such a way as to constitute a nuisance or a menace to the public health.

(38 Del. Laws, c. 46, § 2; Code 1935, § 890; 16 Del. C. 1953, § 1702; 70 Del. Laws, c. 149, § 117.)

§ 1703 Nuisance.

The bringing in of garbage from any place without the State without a permit, the depositing of garbage in any area not named by the Department of Health and Social Services as an area suitable for the disposal of such garbage, and the disposal of any garbage in an unsanitary manner shall be deemed a nuisance under § 310 of this title and subject to the penalties provided in § 317 of this title.

(38 Del. Laws, c. 46, § 3; Code 1935, § 890; 16 Del. C. 1953, § 1703; 70 Del. Laws, c. 149, § 118.)

§ 1704 Dumping refuse or other material upon property; penalty.

(a) No person, by agent or otherwise, shall cast, throw, fell or deposit or in any manner cause to be felled or deposited on or upon any public or private real property anywhere in this State, without first obtaining the consent of the legal owner or custodian of such property or premises first obtained for that purpose in the case of private property or from the legal authority having control, management or administration thereof in the case of such public property, any refuse, debris, waste, dirt, trash, brush, tree or part thereof, offal or any other material, matter or substance of any kind whatsoever. No such refuse, etc., shall be dumped or deposited within 50 feet of any highway, whether or not the consent required has been obtained, except where any authorized dumping is to fill a low place to a level not higher than the adjacent roadway shoulder and a sign has been erected designating such place for dumping.

(b) Whoever violates subsection (a) of this section shall be fined not less than $15 nor more than $100.

(20 Del. Laws, c. 123; Code 1915, § 3488; Code 1935, § 3963; 47 Del. Laws, c. 127, § 1; 16 Del. C. 1953, § 1704.)

§ 1705 Refuse from fowl and poultry dressing — Dumping.

No person shall dump or otherwise deposit any blood, garbage, carrion, offal, filth or other refuse derived or resulting from the dressing of fowl and poultry of all kinds in an obnoxious or noisome state upon any land or in any stream or other body of water within this State.

(43 Del. Laws, c. 94, § 1; 16 Del. C. 1953, § 1705.)

§ 1706 Refuse from fowl and poultry dressing — Treatment.

(a) The Department of Natural Resources and Environmental Control, by rules and regulations, shall prescribe the methods and means of treating any blood, garbage, carrion, offal, filth or other refuse from the dressing of fowl and poultry so as to remove the noisome or obnoxious nature thereof.

(b) Whoever dumps or otherwise deposits any blood, garbage, carrion, offal, filth or other refuse from the dressing of fowl and poultry upon any land or in any stream or other body of water within this State without first having treated the same in accordance with the rules and regulations prescribed by the Department of Natural Resources and Environmental Control, pursuant to the authority contained in subsection (a) of this section, shall be fined not less than $10 nor more than $50, with cost of suit, or imprisoned until the same be paid or until discharged by law.

(c) Any person convicted of violating this section, who shall not immediately remove the blood, garbage, carrion, offal, filth or other refuse from the dressing of fowl and poultry from the place where the same has been by that person dumped or otherwise deposited, is guilty of a separate and distinct offense for each day thereafter that the same has not been removed from the place where it has been so dumped or deposited by that person.

(43 Del. Laws, c. 94, § 2; 16 Del. C. 1953, § 1706; 55 Del. Laws, c. 442, § 10; 57 Del. Laws, c. 739, § 221; 70 Del. Laws, c. 186, § 1.)

§ 1707 Burning of refuse and garbage in certain residential areas; penalty.

(a) In any residential area consisting of homes on lots of 1 acre or less no outdoor fire shall be fueled by any material other than wood, wood by-products, limited to paper, leaves, twigs, clippings and grass cuttings and coke for barbecues.

(b) Any violation of this section shall be punishable by a fine not to exceed $25.

(16 Del. C. 1953, § 1707; 54 Del. Laws, c. 320.)

§ 1708 Storage of refuse and garbage in multi-family buildings; penalty.

(a) Multi-family houses and apartment complexes shall provide adequate storage areas outside the principal structure of such multi-family houses and apartment complexes for the temporary storage of trash and garbage and shall provide covered metal containers in such areas for the temporary storage of refuse classed as garbage.

(b) Any person who violates this section shall upon the first conviction thereof be fined $10 and upon each subsequent conviction thereof shall be fined not less than $25 nor more than $500 or shall be imprisoned not more than 90 days, or both.

(16 Del. C. 1953, § 1708; 56 Del. Laws, c. 150.)

§ 1709 Trash containers on highways; penalty.

(a) A person, by agent or otherwise, may not cause a trash container having a capacity of 2 cubic yards or greater to be placed in this State anywhere upon a highway, which means the entire width between the boundary lines, including parking spaces, berms, and shoulders, of any way or place of whatever nature open to the use of the public as a matter of right for purposes of vehicular travel, but not including a road or driveway upon grounds owned by private persons, colleges, universities, or other private institutions, unless:

(1) The container, at a minimum, has a strip of 4-inch, red and white, high-intensity, reflective conspicuity adhesive tape wrapped fully around it at its midpoint, between the bottom of the container and the opening at the top; and

(2) The container clearly displays in letters and numbers at least 3 inches high the name and phone number of the owner of the container, or the owner's agent.

(b) A violation of this section is punishable by a fine of not less than $50 nor more than $500. Justice of the Peace Court has jurisdiction over violations of this section.

(74 Del. Laws, c. 286, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 18
SOLID WASTE: MANAGEMENT, STORAGE, COLLECTION AND DISPOSAL

§ 1801 Definitions.

As used in this chapter:

(1) "Collection and disposal systems" mean systems for the storage, collection, transportation, transfer, processing, reclamation, reduction and disposal of solid wastes.

(2) "Federal aid or grant" means any and all federal grants-in-aid, regardless of source, which supplement the aid provided by the State in this chapter, and which are applied to the planning of solid waste collection and disposal systems by qualified agencies.

(3) "Qualified agency" means the Levy Court or county council of the counties.

(4) "Planning of solid waste collection and disposal systems" means engineering or planning services to survey, plan, develop and supervise the establishment or construction of comprehensive solid waste collection and disposal systems.

(5) "Solid waste" means that material that is made up of residential, domestic, institutional, commercial, agricultural, industrial and street or highway refuse. It includes garbage, rubbish, ashes, street refuse, dead animals, abandoned automobiles, demolition rubble and sewage sludge.

(16 Del. C. 1953, § 1801; 57 Del. Laws, c. 623, § 1.)

§ 1802 Establishment of county plans.

Each of the 3 counties shall prepare and administer a comprehensive and detailed plan for a system for the collection, storage and disposal of all solid wastes which are produced or are disposed of within the boundaries of the respective counties. Provided, however, that if a county does not indicate its willingness within 60 days from June 30, 1970 to submit a plan as provided in this section, the Division of Public Health of the Department of Health and Social Services shall conduct its own study and prepare plans as to that county. Such plans shall:

(1) Consider domestic, industrial, demolition, commercial and agricultural wastes;

(2) Provide for the control of the wastes from point of origin to the place or places of disposal;

(3) Include a method or methods of adequately financing the comprehensive plan;

(4) Establish an organization for the administration and enforcement of the comprehensive plan;

(5) Be completed and submitted to the Division of Public Health of the Department of Health and Social Services by April 1, 1971.

(16 Del. C. 1953, § 1802; 57 Del. Laws, c. 623, § 1; 70 Del. Laws, c. 150, § 5.)

§ 1803 Amount of aid; limitation.

A qualified agency proceeding with the planning of solid waste collection and disposal systems and applying for aid under this chapter shall receive state aid funds appropriated pursuant to the purposes and provisions of this chapter in an amount not to exceed 75% of the cost of the planning of the solid waste collection and disposal system. If federal funds are received, the sum of state and federal grants-in-aid shall not exceed 75% of the cost of the planning of the solid waste collection and disposal system.

(16 Del. C. 1953, § 1803; 57 Del. Laws, c. 623, § 1.)

§ 1804 Allocation of funds.

The Division of Public Health of the Department of Health and Social Services is hereby empowered to administer this chapter and allocate and disburse funds to qualified agencies which make proper application for such funds. Application forms shall be furnished by the Division, and the Division Director, with the approval of the Secretary of the Department, may set rules and regulations to govern the applications and aid the payment process.

(16 Del. C. 1953, § 1804; 57 Del. Laws, c. 623, § 1; 70 Del. Laws, c. 150, § 6.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 19
MOSQUITO CONTROL

§ 1901 Department of Natural Resources and Environmental Control — Supervision.

The duties, powers and functions of the former Mosquito Control Commission of the State and the State Highway Department shall be under the supervision and control of the Department of Natural Resources and Environmental Control, which Department may perform all the duties, powers and functions formerly vested in the Mosquito Control Commission and the State Highway Department.

(Code 1935, c. 182; 45 Del. Laws, c. 27, § 1; 16 Del. C. 1953, § 1901; 57 Del. Laws, c. 739, §§ 228-230.)

§ 1902 Department of Natural Resources and Environmental Control — Powers and duties.

(a) The Department of Natural Resources and Environmental Control, hereinafter referred to as the Department, may:

(1) Take all necessary and proper steps and measures for the eradication of mosquitoes, including but not limited to source reduction methods that alter or eliminate the habitats of immature mosquitoes, biological controls such as native fish stocking, and the application of insecticides by air or ground to control immature or adult mosquitoes, all done in order to effect nuisance relief, to protect public health, and to help avoid adverse impacts to local economies from severe mosquito infestations; and

(2) Treat as nuisances all stagnant pools of water or other breeding places of mosquitoes to help protect the public's well being and health; and

(3) Purchase all needed equipment, supplies and materials, and employ such labor and services as may be proper or necessary in the furtherance of the objects of this chapter of this title and fix the compensation and prescribe the duties of all employees, agents and servants; and

(4) Enter upon land, whether privately-owned or not, for the purpose of determining the breeding places of immature mosquitoes or occurrence of adult mosquitoes, and treat with proper means all such breeding places or adult mosquito populations wherever situated, doing no unnecessary damage; and

(5) Generally do any and all things necessary or incident to the powers granted and to carry out the objects specified in this chapter of this title. This may include at the Secretary's discretion the promulgation of rules and regulations to help effectuate the purposes of this subchapter of this chapter of this title.

(b) Control measures taken for the eradication of mosquitoes shall, to the extent practicable, not be injurious to pets, livestock or wildlife. The Department shall perform and exercise the authority and powers granted under this chapter of this title within the limitations of any appropriation made under any appropriation act of the General Assembly for mosquito control purposes.

(Code 1935, c. 182; 45 Del. Laws, c. 309, § 1; 46 Del. Laws, c. 309, § 1; 16 Del. C. 1953, § 1902; 76 Del. Laws, c. 151, § 1.)

§ 1903 Declaration of nuisance.

Any accumulation of water in which mosquitoes are breeding or are likely to breed is declared to be a nuisance.

(Code 1935, c. 182; 45 Del. Laws, c. 271, § 3; 46 Del. Laws, c. 309, § 2; 16 Del. C. 1953, § 1903.)

§ 1904 Source reduction practices for mosquito control; notice of entry, claims, damages and payments.

(a) Source reduction practices for mosquito control involving physical, topographical, or hydrological alterations of wetlands or other aquatic habitats, such as but not limited to the installation of shallow ponds or small ditches to harbor or allow access for mosquito-eating fishes, or the construction of shallow ponds or small ditches or the placement of fill to eliminate or usurp mosquito-rearing sites, must be done in an environmentally-compatible manner and to the extent practicable shall limit adverse impacts to flora and fauna and shall only be undertaken after all required federal and state permits have been obtained. A property owner must be informed at least 30 days in advance in writing, of any intention to perform such source reduction work. Any property owner objecting to the proposed source reduction work, or who is aggrieved or who claims injury or damages due to the execution of any source reduction work of the Department on said property, may file a protest with the Department setting forth the grievance or claim. The Department shall thereupon and within 30 days after the filing of such protest or claim set a time, place and location for a public hearing thereof. If the protest involves a property owner asserting that the proposed source reduction work is not necessary or is otherwise improper, such work shall not commence or proceed until the protest has been denied by the Secretary after the public hearing. In all such cases the decision of the Department as to the necessity and appropriateness of such source reduction work shall be final. Any damage claimed by any party on account of source reduction work of the Department upon that party's property may be judicially determined. The amount of any damage that may be awarded such party shall be paid by the Department.

(b) This section shall not apply to the application of mosquito control insecticides which are subject to other federal and state laws and regulations governing their legal applications, and are also subject to the Department's administrative policies and procedures for making

such applications. This section shall also not apply to the use of biological controls such as the stocking of native fish that consume immature mosquitoes, which is a practice subject to the Department's administrative policies and procedures.

(Code 1935, c. 182; 45 Del Laws, c. 271, § 4; 46 Del. Laws, c. 309, § 2; 16 Del. C. 1953, § 1904; 57 Del. Laws, c. 739, § 232; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 151, § 2.)

§ 1905 Obstructions and interferences.

Whoever obstructs or interferes with the entry of the Department or its employees upon land or who obstructs or interferes with, molests or damages any of the work performed by it is guilty of a misdemeanor.

(Code 1935, c. 182; 45 Del. Laws, c. 271, § 5; 46 Del. Laws, c. 309, § 2; 16 Del. C. 1953, § 1905; 57 Del. Laws, c. 739, § 233.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 20
UNIFORM HEALTH DATA

§ 2001 Purpose.

It is the purpose of this chapter to establish a health information data base that will assist the health care system to advance the general well-being of the population by better directing and improving the availability of health care services.

It is the policy of this State to foster appropriate and efficient use of health care resources by requiring information necessary for evaluating utilization patterns and costs to the community and the State for health care services. This information shall be available to health care purchasers, health care insurers, health care providers, health care planners and the general public without compromise of patient confidentiality. Such information will improve decision making with regard to access, identified needs, patterns of health care delivery, charges and use of health care services.

(67 Del. Laws, c. 143, § 1; 69 Del. Laws, c. 347, § 1.)

§ 2002 Definitions.

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

(1) "Delaware uniform claims and billing data set" shall mean that data approved for use by the State Uniform Billing Committee.

(2) "Hospital" shall mean any nonfederal facility licensed as such pursuant to Chapter l0 of this title.

(3) "Individual" shall mean a singular human being.

(4) "Nursing Home" shall mean any and all rest residential, assisted living facility, skilled care or intermediate nursing facility licensed pursuant to Chapter 11 of this title.

(5) "Person" shall mean an individual, trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), or a state or political subdivision or instrumentality (including a municipal corporation) of a state.

(6) "Raw data" shall mean any information collected pursuant to this chapter which has not been approved for release by the state agency.

(7) "State agency" shall mean the Division of Public Health within the Department of Health and Social Services. The Division of Public Health shall serve as the designated statistical agency under Public Law 95-623 for data analysis and statistical research related to the National Center for Health Statistics activities and for the designation of Health Manpower Shortage Areas (HMSAs) and Medically Underserved Areas (MUAs) by the U.S. Department of Health and Social Services.

(8) "Third-party payers" shall mean any person authorized to transact health insurance or to engage in the business of a health service corporation in this State.

(67 Del. Laws, c. 143, § 1; 69 Del. Laws, c. 347, § 1; 70 Del. Laws, c. 149, § 119; 74 Del. Laws, c. 161, § 1; 76 Del. Laws, c. 194, § 1.)

§ 2003 Duties and authority of state agency.

(a) The state agency shall compile, correlate, analyze and develop data which it collects pursuant to this chapter. The state agency shall prepare and distribute or make available reports to health care purchasers, health care insurers, health care providers and the general public. The data shall be collected in the most efficient and cost-effective manner. Data collected shall be limited to that contained in the Delaware uniform claims and billing data set (UB-82 or successor form).

(b) The state agency shall periodically compile and disseminate reports on the data collected such as, but not limited to: charge levels, age-specific utilization patterns, morbidity patterns, patient origin and trends in health care charges. Prior to release or dissemination of any compilations, the state agency shall provide a specified time period for hospitals and nursing homes to review the information they have submitted and to submit corrections. The state agency shall incorporate any valid corrections prior to release. Hospitals and nursing homes shall have the right to provide independent data interpretation which shall be disseminated along with the report.

(c) The state agency shall adopt such policies and procedures as necessary to carry out this chapter.

(d) The state agency shall establish the Hospital Discharge Technical Advisory Committee to study issues such as the collection, compilation, dissemination and confidentiality of data with regard to hospital discharge data reporting. The Committee shall be comprised of 9 members. These members shall include hospital and nursing home representatives from the Delaware Healthcare Association and the Delaware Health Care Facilities Association. The members shall be appointed by the Secretary of the Department of Health and Social Services. Members shall serve a 3-year term and are eligible for reappointment. The state agency may establish other committees as deemed appropriate.

(e) The state agency shall issue annual reports to the General Assembly outlining actions and accomplishments as well as recommendations for changes needed to further the purpose of this chapter.

(f) The state agency may study and issue reports on special medical needs, demographic characteristics, access to health care services and need for financing of health care services for the entire population or various population subgroups.

(g) The state agency may also study and issue reports on health status issues such as:

(1) The incidence of medical and surgical procedures;

(2) Mortality rates for specified diagnoses and treatments;

(3) Rates of infection for specified diagnoses and treatments;

(4) Morbidity rates for specified diagnoses and treatments;

(5) Readmission rates for specified diagnoses and treatments; and

(6) Rate of incidence for selected diagnoses and procedures.

(67 Del. Laws, c. 143, § 1; 69 Del. Laws, c. 347, § 1; 77 Del. Laws, c. 57, § 1.)

§ 2004 Reporting requirements.

(a) The Delaware uniform claims and billing data set (UB-82 or successor form) shall be completed for all hospital inpatient discharges and shall be submitted by all hospitals to the state agency according to a schedule established pursuant to subsection (d) of this section. All 3rd-party payers shall be required to accept this uniform claims and billing form. The state agency shall recognize the capabilities of each hospital in specifying the medium or mediums to be used in submitting data (hard copy, data tape or other appropriate electronic media).

(b) The Delaware uniform claims and billing data set (UB-82 or successor form) shall be completed for all nursing home inpatient discharges beginning not sooner than June 30, l995, and shall be submitted by all nursing homes to the state agency according to a schedule established pursuant to subsection (d) of this section. All 3rd-party payers shall be required to accept the Delaware uniform claims and billing form. Prior to this time, nursing homes shall continue to submit data in a medium and format as agreed to by the state agency and the Delaware Health Care Facilities Association.

(c) The state agency shall assure that any report of data specific to hospitals or nursing homes presents data that are reliable, valid and informative. Such data shall reflect, as appropriate, factors including, but not limited to, the number of patients, patient severity at admission, age of patients, the actual versus expected number of deaths, average length of stay and case mix. The report shall explain each of these adjustments. The report also shall include information necessary to adequately represent the operations of the individual hospital or nursing home such as whether or not physician charges are included in the hospital charges, whether or not the hospital maintains medical education programs and the hospital's payer mix. The state agency shall consult with the Association of Delaware Hospitals and the Delaware Health Care Facilities Association in identifying the various adjustment factors and information to be included.

(d) The state agency shall establish schedules for the timely submission of data and information collected pursuant to this section. The state agency may grant waivers from such schedules for good cause shown.

(67 Del. Laws, c. 143, § 1; 69 Del. Laws, c. 347, § 1.)

§ 2005 Cancer incidence data.

(a) Notwithstanding any provisions in this title to the contrary, the agency shall make available as public records cancer incidence by census tract and by type of cancer. Such released data shall be assigned consensus tract geography from the most recent decennial census. If release of such information by census tract will explicitly or implicitly identify any individual, the agency may combine data among contiguous census tracts, but only insofar as is necessary to protect patient confidentiality.

(b) The agency shall create a detailed map of each county in Delaware that graphically illustrates the overall incidence of cancer in each census track. The census tracks will be identified on the maps and shall be color-coded to designate the degree of cancer incidence in each track. These maps shall be created within 90 days of the agency receiving the cancer incidence data.

(c) The agency shall post the maps created under subsection (b) of this section above on their website in a format that can be easily accessed and read by the public.

(76 Del. Laws, c. 292, § 2.)

§ 2006 Confidentiality and access to data.

(a) The collection, compilation, data analysis and dissemination of reports and studies shall be done in a manner that protects the privacy of any individual about whom information is given. The state agency shall consider confidential any information that explicitly or implicitly identifies an individual. Raw data shall not be available for public inspection nor is it a public record within the meaning of the Delaware Freedom of Information Act.

(b) All compilations prepared and authorized by the state agency for release and dissemination shall be public records and efforts will be made to assure their accessibility.

(67 Del. Laws, c. 143, § 1; 69 Del. Laws, c. 347, § 1; 76 Del. Laws, c. 292, § 1.)

§ 2007 Sanctions.

(a) A hospital or nursing home which willfully violates this chapter shall be reported to the Department of Health and Social Services which may take such action as deemed appropriate to enforce compliance. No action shall be taken by the Department of Health and Social Services without first providing an opportunity to the hospital or nursing home for a fair hearing.

(b) A hospital or nursing home which is aggrieved by any action taken by the Department of Health and Social Services pursuant to this section may, within 30 days of being notified of such action, appeal to the Superior Court.

(67 Del. Laws, c. 143, § 1; 69 Del. Laws, c. 347, § 1; 70 Del. Laws, c. 149, §§ 120, 121; 76 Del. Laws, c. 292, § 1.)

§ 2008 Immunity.

No person shall be subject to, and all persons shall be immune from, any claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken or performed, or recommendation made while discharging any duty or authority under this chapter, so long as such person acted in good faith, without malice, and within the scope of the person's duty or authority under this chapter or any other provisions of the Delaware law, federal law or regulations or duly adopted rules and regulations providing for the administration of this chapter, good faith being presumed until proven otherwise, with malice required to be shown by the complainant.

(67 Del. Laws, c. 143, § 1; 69 Del. Laws, c. 347, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 292, § 1.)

§ 2009 Data from other providers.

The Delaware Health Care Commission or its successor agency shall complete an analysis of the merits and feasibility of collecting data from providers other than hospitals and nursing homes. Other providers to be considered shall include, but not be limited to, physicians, freestanding surgical centers, freestanding birthing centers and freestanding emergency centers licensed in the State. The results of such analysis along with proposed enabling legislation, as appropriate, shall be submitted to the Governor and the General Assembly by December 31, 1995.

(69 Del. Laws, c. 347, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 21
MATTRESSES, PILLOWS AND BEDDING

§ 2101 Definitions.

As used in this chapter, unless the context requires a different meaning:

(1) "Bedding" shall mean any mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed, sleeping bag or any other bag, case or cover made of leather, textile or other material which is stuffed or filled in whole or in part with concealed material, which is intended for use by any human being for sleeping or reclining purposes.

(2) "Comfortable" means any cover, quilt or quilted article made of cotton or other textile material and stuffed or filled with fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material.

(3) "Mattress" means any quilted pad, mattress, mattress pad, mattress protector, bunk, quilt or box spring stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, kapok or other soft material, to be used on a couch or other bed for sleeping purposes.

(4) "New" means any material or article which has not been previously manufactured or used for any purpose.

(5) "Pillows," "bolster," or "featherbed," mean any bag, case or covering made of cotton or other textile material, and stuffed or filled with excelsior, straw, hay, grass, cornhusks, moss, fiber, cotton, wool, hair, jute, feathers, feather down, kapok or other soft material to be used on a bed or other article for sleeping purposes.

(6) "Secondhand" means any material or article of which prior use has been made.

(7) "Shoddy" means any material which has been spun into yarn, knit or woven into fabric and subsequently cut up, torn up, broken up or ground up.

(Code 1915, § 824A; 36 Del. Laws, c. 102; Code 1935, § 874; 16 Del. C. 1953, § 2101; 60 Del. Laws, c. 356, § 1.)

§ 2102 Sterilization and disinfection of materials — Required.

No person shall employ or use in the making or renovating of any mattress, pillow, bolster, featherbed or comfortable:

(1) Any material known as "shoddy" or any fabric or material from which shoddy is constructed;

(2) Any secondhand material;

(3) Any new or secondhand feathers, unless such shoddy, secondhand material or new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Department of Health and Social Services.

(Code 1915, § 824B; 36 Del. Laws, c. 102; Code 1935, § 875; 16 Del. C. 1953, § 2102; 70 Del. Laws, c. 149, § 122.)

§ 2103 Sterilization and disinfection of materials — Permit.

(a) Any person engaged in the making, remaking or renovating of any mattress, pillow, bolster or comfortable in which secondhand material is used, or in the making of any new or secondhand feather or down filled article or engaged in sterilizing and disinfecting any material, feathers or article coming under this chapter, shall submit to the Department of Health and Social Services for approval a reasonable and effective process, together with duplicate plans of apparatus or auxiliary devices, for the sterilization and disinfection of secondhand material, feathers and secondhand articles enumerated in this section.

(b) Upon the approval of the process for sterilization and disinfection, a numbered permit for its use shall be issued to the applicant by the Department of Health and Social Services. Such permit shall expire 1 year from date of approval and issue. Every person to whom a permit has been issued shall keep such permit conspicuously posted in the person's office or place of business. Refusal to display such permit in accordance with this chapter shall be sufficient reason to revoke and forfeit the permit.

(c) For all permits issued as required by this chapter (not including, however, by the term "permits" the "tags" otherwise referred to in this chapter) there shall at time of issue thereof be paid by the applicant to the Department of Health and Social Services a fee of $50.

(d) Nothing in this section shall prevent any person engaged in the making, remaking, renovating or sale of any article described in this section, which requires sterilizing and disinfecting under this section, from having such sterilizing and disinfecting performed by any person to whom a permit for such purposes has been issued, provided the number of the permit shall appear in the statement on the tag attached to the article.

(Code 1915, § 824C; 36 Del. Laws, c. 102; Code 1935, § 876; 16 Del. C. 1953, § 2103; 70 Del. Laws, c. 149, §§ 123, 124; 70 Del. Laws, c. 186, § 1.)

§ 2104 Inspection of premises.

All places where any mattress, pillow, bolster, featherbed or comfortable is made, remade or renovated, or where materials for articles named in this section are prepared, or establishment where the articles are offered for sale or are in possession of any person with intent

to sell, deliver or consign them, or establishment where sterilizing and disinfecting are performed, shall be subject to inspection by the Department of Health and Social Services to ascertain whether the materials and the finished articles enumerated in this section conform to the requirements of this chapter.

(Code 1915, § 824D; 36 Del. Laws, c. 102; Code 1935, § 877; 16 Del. C. 1953, § 2104; 70 Del. Laws, c. 149, § 125.)

§ 2105 Selling or leasing used mattresses; sterilization and disinfection.

No person shall sell, lease, offer to sell or lease, or deliver or consign in sale or lease, or have in the person's possession with intent to sell, lease, deliver or consign in sale or lease:

(1) Any mattress, pillow, bolster, featherbed or comfortable made, remade or renovated in violation of this chapter;

(2) Any secondhand mattress, pillow, bolster, featherbed or comfortable, unless since last used it has been thoroughly sterilized and disinfected by a reasonable process approved by the Department of Health and Social Services.

(Code 1915, § 824E; 36 Del. Laws, c. 102; Code 1935, § 878; 16 Del. C. 1953, § 2105; 70 Del. Laws, c. 149, § 126; 70 Del. Laws, c. 186, § 1.)

§ 2106 Tagging; regulations and prohibitions.

(a) Each and every mattress or article covered by this chapter, other than a feather or down filled pillow, bolster, bed or comforter, shall bear securely attached thereto and visible on the outside covering a tag of cloth or other substantial material upon which shall be plainly and indelibly stamped or printed in English:

(1) A statement showing the kind of materials used in filling the mattress or article and whether the materials used in filling are wholly new or secondhand or partly secondhand;

(2) The word "secondhand" upon any article of which prior use has been made;

(3) The number of the permit issued for sterilizing and disinfecting; and

(4) The registry number used in applying and enforcing the tagging and inspection provisions of this chapter.

(b) Each and every pillow or other article covered by this chapter in which feathers or down are used shall bear securely attached thereto and visible on the outside covering a substantial cloth tag upon which shall be plainly and indelibly stamped or printed in English:

(1) A statement that the feathers or down have been sterilized and disinfected in accordance with this chapter;

(2) The number of the permit issued for sterilizing and disinfecting the feathers or down;

(3) The word "secondhand" upon a feather or down filled article of which prior use has been made; and

(4) The registry number used in applying and enforcing the tagging and inspection provisions of this chapter.

(c) No additional information shall be contained in the statements. The statement of materials used in filling must be in plain type not less than one-eighth inch in height. The tag required by this chapter to be attached to any article covered by this chapter shall be not less than 6 square inches in size.

(d) The word "felt," or words of like import if any other than garnetted materials are used in filling, or the words "curled hair," or words of like import if other than curled hair is used in filling, shall not be used exclusively in the statement concerning any mattress, pillow, bolster or comfortable.

(e) No person shall make any false, untrue or misleading statement, term or designation on the tag or remove, deface, alter or in any manner attempt to remove, deface or alter the tag required by this chapter or cause to be removed, defaced or altered any statement on a tag placed upon any article included in this chapter.

(Code 1915, § 824F; 36 Del. Laws, c. 102; Code 1935, § 879; 16 Del. C. 1953, § 2106; 49 Del. Laws, c. 269, §§ 1, 2; 60 Del. Laws, c. 356, §§ 2-6.)

§ 2107 Registration and issuance of registry numbers.

The Department of Health and Social Services shall, upon application to it by any person entitled thereto, register each applicant, issue a permit and assign a registry number by which number applicants shall thereafter be identified in applying and enforcing the tagging and inspection of this chapter.

(Code 1915, § 824G; 36 Del. Laws, c. 102; Code 1935, § 880; 16 Del. C. 1953, § 2107; 50 Del. Laws, c. 251, § 1; 60 Del. Laws, c. 356, § 7; 70 Del. Laws, c. 149, § 127.)

§ 2108 Registration and permit fee.

The initial annual permit fee and subsequent annual renewal fee under this chapter for manufacturers of bedding products within the State or manufacturers of such products who ship said products into this State shall be as follows:

Bedding manufacturer. $50

(Code 1915, § 824H; 36 Del. Laws, c. 102; Code 1935, § 881; 16 Del. C. 1953, § 2108; 49 Del. Laws, c. 269, § 3; 60 Del. Laws, c. 356, § 8.)

§ 2109 Renewal of permit.

Permits shall remain effective only during a calendar year beginning January 1, and ending December 31, or any remaining portion of a calendar year beginning on the date the permit is issued. Applications for renewal of the permit must be made within the 60-day period preceding expiration of the permit currently held by the applicant. The fee for renewal of a manufacturer's permit shall be $50.

(Code 1915, § 824I; 36 Del. Laws, c. 102; Code 1935, § 882; 16 Del. C. 1953, § 2109; 60 Del. Laws, c. 356, § 9.)

§ 2110 Disposition of fees.

All fees collected under this chapter shall be paid to the Department of Health and Social Services and when so paid shall be turned over by the Department of Health and Social Services to the State Treasurer and credited to the General Fund of the State.

(Code 1915, § 824J; 36 Del. Laws, c. 102; 37 Del. Laws, c. 59, § 1; Code 1935, § 883; 16 Del. C. 1953, § 2110; 70 Del. Laws, c. 149, §§ 128, 129.)

§ 2111 Inspection of products and plants of nonresidents.

(a) It is the intent of this chapter to prevent both the manufacture and the sale within this State of any of the articles enumerated in § 2105 of this title, except in conformity to and in compliance with this chapter. Inasmuch, however, as some of the articles so enumerated may be made or the material used in the manufacture or renovation thereof may be processed outside of the limits of this State, it is expressly provided that where the person so manufacturing any such article or processing any such material shall have or operate a plant outside of the limits of this State the Department of Health and Social Services may, in its discretion, in lieu of a physical inspection of the plant of such nonresident person, satisfy itself by examination of the product made or possessed by such nonresident or by such other means as the Department of Health and Social Services Board deems adequate, of the propriety of issuing to such nonresident the permit required by this chapter or of renewing or keeping in force a permit so issued.

(b) In the event that at any time the Department of Health and Social Services deems it necessary to make physical inspection of any plant or factory of the nonresident, it may require the payment by such nonresident of such sum as may cover the reasonable traveling charges entailed by such physical inspection and refuse to issue, or revoke or suspend, any permit until or unless such charges are so paid.

(Code 1915, § 824K; 36 Del. Laws, c. 102; Code 1935, § 884; 16 Del. C. 1953, § 2111; 70 Del. Laws, c. 149, §§ 130, 131; 70 Del. Laws, c. 186, § 1.)

§ 2112 Enforcement; rules and regulations; provisions subject to Chapter 23 of Title 11.

(a) The Department of Health and Social Services, through its officers and employees, is charged with the administration and enforcement of this chapter and may take for evidence, at any trial involving violation of this chapter, any article made or offered for sale in violation of this chapter. The Department of Health and Social Services shall make and enforce reasonable rules and regulations for the enforcement of this chapter.

(b) This section is subject to Chapter 23 of Title 11. If there is any conflict or inconsistency between this section and such chapter, the latter shall prevail.

(Code 1915, § 824L; 36 Del. Laws, c. 102; Code 1935, § 885; 16 Del. C. 1953, § 2112; 70 Del. Laws, c. 149, §§ 132, 133.)

§ 2113 Penalties; appeals.

(a) Whoever violates this chapter or the rules and regulations adopted thereunder shall be fined for each offense not less than $10 nor more than $50. In default of the payment of such fine the violator shall be imprisoned for not less than 10 days for each separate offense. The total term of imprisonment at any 1 time for additional offenses shall not exceed 10 months.

(b) Each mattress, mattress pad, mattress protector pad, box spring, upholstered spring, upholstered bed, davenport, upholstered sofa bed, quilted pad, comforter, bolster, cushion, pillow, featherbed or sleeping bag made or remade, or renovated, sold, offered for sale, delivered or consigned contrary to this chapter shall constitute a separate offense.

(c) Any person convicted of an offense under this section, before a justice of the peace, may appeal the judgment of conviction to the Court of Common Pleas of the county.

(Code 1915, § 824M; 36 Del. Laws, c. 102; 37 Del. Laws, c. 59, § 2; Code 1935, § 886; 16 Del. C. 1953, § 2113; 60 Del. Laws, c. 356, §§ 10, 11; 69 Del. Laws, c. 423; 70 Del. Laws, c. 186, § 1.)

§ 2114 Revocation of permit.

The Department of Health and Social Services may revoke any permit issued under this chapter if the person to whom the permit was issued has violated this chapter or the rules or regulations established thereunder.

(Code 1915, § 824N; 36 Del. Laws, c. 102; 37 Del. Laws, c. 59, § 2; Code 1935, § 886; 70 Del. Laws, c. 149, § 134.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 22
SUBSTANCE ABUSE TREATMENT ACT

§ 2201 Declaration of policy.

Substance abuse is one of the greatest challenges facing our State, schools, workplaces and families because it has destructive influences that pervade all facets of our society. Accordingly, it is the policy of this State to provide treatment to those who abuse substances such as alcohol, drugs or inhalants. Therefore, this chapter is designed to enable those engaged in substance abuse to receive appropriate care and treatment. Although voluntary treatment is preferred, this chapter also provides a mechanism for involuntary treatment in suitable cases.

(73 Del. Laws, c. 358, § 2.)

§ 2202 Establishment of Office.

There is hereby established an Office of Substance Abuse Services within the Department of Health and Social Services Division of Alcoholism, Drug Abuse and Mental Health. The establishment of the Office is not intended to contravene any authority for alcohol and drug treatment services vested in the Department of Services for Children, Youth and Their Families pursuant to Chapter 90 of Title 29.

(73 Del. Laws, c. 358, § 2.)

§ 2203 Definitions.

For the purposes of this chapter, definitions of the following terms and phrases shall be as follows:

(1) "Administrator" means the individual or individuals who have been appointed by the entity that operates a licensed treatment facility to manage its affairs and who will be its agent for service of process or orders of a court.

(2) "Court," unless otherwise identified, means the Superior Court of the State, except where the person in need of treatment is under the age of 18 years. If the person in need of treatment is under the age of 18 and it is appropriate, "court" may then mean the Family Court of the State.

(3) "Department" means the Department of Health and Social Services unless the usage indicates otherwise.

(4) "Designated transport personnel" means those personnel designated by the Secretary of the Department of Health and Social Services, in the case of adults, or the Secretary of the Department of Services for Children, Youth and Their Families, in the case of minors under the age of 18 years, to transport persons in need of treatment.

(5) "Division" means the Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health, or Division of Prevention and Behavioral Health Services as indicated by the usage.

(6) "Facility" or "treatment facility" means an entity, other than a licensed hospital, that provides care, lodging or treatment to persons in need of treatment. A "residential treatment facility" provides 24 hour, live-in treatment to persons in need of treatment. A treatment facility may have 1 or more "treatment programs" which are distinct therapeutic service components that may also address different age populations. "Facility" does not include the outpatient practice offices of licensed independent practitioners, including, but not limited to, physicians, psychologists, social workers and counselors.

(7) "Office" means the Office of Substance Abuse Services within the Department of Health and Social Services.

(8) "Patient" means a person in need of treatment who is the subject of a petition for involuntary treatment or anyone engaged in substance abuse who is requesting voluntary treatment, or as permitted under this chapter, those individuals for whom treatment has been consented to by a parent, relative caregiver, legal guardian or legal custodian.

(9) "Patient representative" means an individual or entity authorized to act on the patient's behalf by operation of law or express appointment by the patient.

(10) "Peace officer" means any public officer authorized by law to make arrests in a criminal case.

(11) "Person in need of treatment" means an individual who engages in substance abuse as previously defined in this section to the extent that:

a. Such use causes the person to pose an imminent risk of injury to self or others without treatment; or

b. Otherwise substantially interferes with the individual's ability to provide self-care in an age-appropriate manner, as evidenced by a significant impairment of functioning in hydration, nutrition, self-protection or self-control, thereby posing a grave and immediate risk of serious harm to the individual's health and well-being.

(12) "Person who is incompetent" means a person who has been adjudged incompetent by an appropriate state court.

(13) "Physician" means an individual licensed to practice medicine in this State; or a physician employed by the Delaware Psychiatric Center, registered within the Medical Council of Delaware, and certified by the Division as being qualified in the diagnosis and treatment of substance abuse; or any physician employed by the United States government within the State in the capacity of psychiatrist and certified by the Division as qualified in the diagnosis and treatment of substance abuse.

(14) "Secretary" means the Secretary of the Department of Health and Social Services, unless the usage indicates otherwise.

(15) "Staff," means individuals with specific training in drug and alcohol assessment or treatment who are licensed by the State as independent practitioners in the fields of nursing, social work, medicine, psychology, or counseling; or individuals otherwise certified as drug and alcohol counselors in a manner acceptable to the State; or individuals otherwise permitted to practice as set out above.

(16) "Substance abuse" means the chronic, habitual, regular or recurrent use of alcohol, inhalants or controlled substances as identified in Chapter 47 of this title.

(17) "Substance evaluation team" is staff in the substance abuse and mental health field charged with assisting other agencies in determination of the appropriate treatment modalities for patients referred.

(18) "Treatment" means clinical and related services rendered to a person who abuses alcohol, drugs or inhalants.

(19) "Treatment team" means staff members who collectively provide clinical services to a person in need of treatment.

(20) "Working day" means all days other than Saturdays, Sundays and legal state and federal holidays.

(73 Del. Laws, c. 358, § 2; 77 Del. Laws, c. 327, § 210(a); 78 Del. Laws, c. 179, § 165.)

§ 2204 Powers of the Office.

The Office of Substance Abuse Services, as a component of the Department of Health and Social Services, may, subject to the express provisions of other sections of this chapter:

(1) Plan for, establish, amend and revise standards for treatment programs when necessary or desirable;

(2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers;

(3) Solicit and accept for use any money, real property or personal property made by will or otherwise and any grant of money, services or property from the federal government, the State or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grants;

(4) Administer or supervise the administration of the provisions relating to persons in need of treatment of any state plan submitted for federal funding pursuant to federal health, welfare or treatment legislation;

(5) Coordinate its activities with the Department of Services for Children, Youth and Their Families, and cooperate with alcohol and drug treatment programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local or private agencies in this and other states to provide services to persons in need of treatment;

(6) Keep records and engage in the gathering of relevant statistics;

(7) Do other acts and things necessary to execute the authority expressly granted to it; and

(8) Acquire, hold or dispose of real property or any interest therein, and construct, lease or otherwise provide treatment facilities for persons in need of treatment.

(73 Del. Laws, c. 358, § 2.)

§ 2205 Duties of Office.

The Office of Substance Abuse Services, as a component of the Department of Health and Social Services, shall:

(1) Cooperate with the Department of Safety and Homeland Security and the Department of Correction to assist in developing and establishing programs to provide services for persons in need of treatment within the criminal justice system;

(2) Cooperate with the Department of Education, law enforcement officials, and other public and private agencies to assist with the development and dissemination of substance abuse prevention materials for use at all levels of school education;

(3) Work in partnership with the Department of Services for Children, Youth and Their Families in establishing, licensing and evaluating programs for the prevention and treatment of substance abuse among children and youth;

(4) Organize and foster training programs for all persons engaged in providing services to persons in need of treatment;

(5) In coordination with the Department of Services for Children, Youth and Their Families, specify uniform methods for keeping statistical information by public and private agencies, organizations and individuals; and collect and annually provide relevant statistical information, including at a minimum the number of persons treated, the most commonly used substances, age of the treatment population, nature of treatment, frequency of admission and readmission, and frequency and duration of treatment;

(6) Advise the Governor in the preparation of a comprehensive plan for providing services to persons in need of treatment and its inclusion into a state comprehensive health plan; the plan should consider diagnosis, treatment, rehabilitation and education in the areas of substance abuse and dependence and should be revised over time as deemed necessary. In matter related to minors, advisement will be done in coordination with the Department of Services for Children, Youth and Their Families;

(7) Encourage hospitals and other health facilities to admit persons in need of treatment if the required treatment is within their scope of practice;

(8) Encourage all health and disability insurance programs to include substance abuse as a covered illness;

(9) Promote, develop, establish, coordinate and conduct through the Department or any approved agency, public or private, unified programs for education, prevention, diagnosis, research, treatment, aftercare, community referral and rehabilitation in the field of substance abuse and dependency, and to implement and administer such programs;

(10) Promulgate rules and regulations with the approval of the Secretary for the implementation of the authority and responsibilities within this chapter and employ persons responsible for implementing the purposes of this chapter, except insofar as such authority is granted to the Department of Services for Children, Youth and Their Families in Chapter 90 of Title 29;

(11) In coordination with the Department of Services for Children, Youth and Their Families, establish guidelines and provide for the systematic and comprehensive evaluation of the effectiveness of various programs licensed by the Office;

(12) Establish a substance evaluation team to assist all other agencies in determination of the appropriate treatment modalities for patients referred.

(73 Del. Laws, c. 358, § 2; 74 Del. Laws, c. 110, § 138.)

§ 2206 Residential and nonresidential facilities.

The Office of Substance Abuse Services, as a component of the Department of Health and Social Services Division of Alcoholism, Drug Abuse and Mental Health, shall, subject to the express provisions of other sections under this chapter:

(1) Have the authority to license all facilities to be used exclusively or partially for the treatment of persons in need of treatment upon application and under this chapter. These facilities may be operated as residential or nonresidential facilities. The Department of Services for Children, Youth and Their Families will be consulted prior to adoption of regulations and standards applicable to facilities serving minors.

(2) Establish procedures whereby persons who are in need of treatment may seek admission to these programs on a voluntary basis and provide a system to accept appropriate referrals from all components of the criminal justice system and provide assistance where necessary for security for such referrals.

(3) Have the authority to contract with other governmental or private agencies for additional diagnostic and treatment facilities or programs. The Office is encouraged to establish these programs on a regional basis with emphasis on prevention and preventive education and broad community involvement.

(4) Except as authorized in § 2211 of this title, provide that no person who voluntarily enters a facility for persons in need of treatment shall be retained in such facilities or programs against the person's will. Such voluntary admission shall not be used as evidence in any criminal prosecution.

(5) Initiate and maintain programs which will include:

a. Prevention of substance abuse;

b. Residential treatment;

c. Nonresidential treatment; and

d. Follow-up treatment.

(73 Del. Laws, c. 358, § 2.)

§ 2207 Standards for public and private treatment facilities.

(a) In cooperation with the Department of Services for Children, Youth and Their Families, the Office shall establish standards for treatment facilities that must be met for a treatment facility to be licensed as a public or private treatment facility.

(b) In coordination with the Department of Services for Children, Youth and Their Families, the Office periodically shall inspect licensed public and private treatment facilities at least every 2 years.

(c) The Office shall maintain a list of licensed public and private treatment facilities.

(d) Each licensed public and private treatment facility shall file with the Office, on request, data, statistics, schedules and information the Office reasonably requires. A licensed public or private treatment facility that without good cause fails to furnish any data, statistics, schedules or information as requested or files fraudulent returns thereof may be removed from the list of licensed treatment facilities, as its license will be either revoked or suspended.

(e) The Office may at times enter and inspect and examine the records and operations of any licensed public or private treatment facility to determine compliance with this chapter.

(f) No action will be taken under this section by the Office without consultation with the Department for Children, Youth and Their Families regarding the operation of treatment facilities for minors.

(73 Del. Laws, c. 358, § 2.)

§ 2208 Licensing of treatment facility; regulations.

(a) The Secretary, upon recommendation from the Division, shall approve the licensure of entities applying to be substance abuse treatment facilities and may designate certain facilities for treatment of individuals on an involuntary basis. Additionally, the Secretary may restrict, condition, limit and/or set the term of the license of a treatment facility as may be reasonable or prudent. In the case of treatment facilities for minors, the Secretary of the Department of Services for Children, Youth and Their Families, or the Secretary's designee, may designate certain facilities for the treatment of minors on a voluntary or involuntary basis.

(b) The Secretary is authorized to promulgate regulations for licensing and develop standards for the proper operation of treatment facilities and conduct of any hearing that may be required so as to implement this chapter. The Secretary may refuse to renew, revoke,

suspend, limit or restrict the license of a facility where the facility has been given 30 days notice of adverse action and an opportunity for a hearing. The Secretary shall not promulgate any such regulations or standards for facilities engaged in the treatment of minors without consulting the Department of Services for Children, Youth and Their Families. The Secretary may also delegate the authority to promulgate regulations and develop standards to the Department of Services for Children, Youth and Their Families.

(c) The Secretary or his/her designee shall conduct licensing or other hearings in accord with applicable sections of Chapters 100 and 101 of Title 29.

(d) The Secretary's final decision on the licensing or sanctioning of a treatment facility or applicant may be judicially reviewed in accord with subchapter V of Chapter 101 of Title 29.

(73 Del. Laws, c. 358, § 2.)

§ 2209 Violation of licensing requirement; injunction.

(a) Any organization that maintains, manages or operates, or aids or abets another in maintaining, managing or operating, a facility knowingly without a valid license or outside of a facility's proper designation is guilty of a class A misdemeanor and subject to the penalties as set out in Chapter 42 of Title 11.

(b) In addition to any other remedy, the Secretary, through the Attorney General, may commence proceedings in the Chancery Court of the State to enjoin any violation of this chapter and may, in the case of a wilful and wanton violation, be awarded the costs of prosecution, including a reasonable amount for attorney fees, if the Secretary prevails.

(73 Del. Laws, c. 358, § 2.)

§ 2210 Voluntary treatment for substance abuse.

(a) A person in need of treatment or anyone engaging in substance abuse may request voluntary treatment from a licensed treatment facility. If the applicant is a person who is incompetent or a minor under 14 years of age, a parent, legal custodian, relative caregiver or legal guardian shall make the request for voluntary treatment and give written consent for treatment.

(b) If a minor is 14 years of age or over, then either the minor, or a parent, legal custodian, relative caregiver or legal guardian may give written consent to a treatment facility for voluntary treatment for nonresidential treatment. In the case of residential treatment, consent to treatment shall be given only by a parent, custodian, relative caregiver or legal guardian. Consent so given by a minor 14 years of age or over shall, notwithstanding the minor's minority, be valid and fully effective for all purposes regardless of whether such minor's substance abuse is subsequently medically confirmed and shall be binding upon such minor, the minor's parents, custodian, relative caregiver and legal guardian as effectively as if the minor were of full legal age at the time of giving such written consent. Consent so given shall not be subject to later denial or disclaimer, and the consent of no other person or court shall be necessary for the treatment rendered such minor.

(c) Subject to regulations adopted by the Secretary, or in the case of a treatment program for minors, the Secretary of the Department of Services for Children, Youth and Their Families, an administrator of a treatment facility may determine who shall be admitted for treatment. If a person is refused admission to a facility, the Division, subject to the rules adopted by the Secretary, shall refer the person to another facility for treatment if available and appropriate.

(d) If a voluntary patient requests or attempts to leave a treatment facility against the advice of the treatment team and administrator of the facility, the facility may initiate involuntary treatment procedures as provided for under this chapter. If the patient is a minor or is incompetent, the request for discharge against advice shall be made by a parent, custodian, relative caregiver, legal guardian or other appropriate legal representative, and the provisions of this paragraph shall apply as if the patient had made the request.

(73 Del. Laws, c. 358, § 2; 78 Del. Laws, c. 179, § 166.)

§ 2211 Involuntary treatment.

(a) A person in need of treatment shall be involuntarily admitted to a licensed residential treatment facility or outpatient treatment program upon a written request for involuntary treatment that provides a factual basis for the request by anyone with knowledge that an individual may be a person in need of treatment and the written certification by a physician that the individual is a person in need of treatment as provided for in this chapter. The request for involuntary treatment shall concisely provide the observations, circumstances and knowledge of the requestor regarding the requestor's belief that a particular individual is in need of treatment. The request shall also contain the written certificate of a physician stating that the physician has reviewed the request and examined the patient and concluded that in the physician's medical opinion the particular individual is a person in need of treatment and is either incapable of or unwilling to consent to treatment. If the individual is incapable of consenting to treatment, the certificate shall state with particularity the physician's findings regarding why the individual is incapable of providing voluntary informed consent to treatment. The refusal to undergo treatment does not in itself constitute evidence of lack of judgment as to the need for treatment.

(b) Any peace officer or designated transport personnel may lawfully transport an individual whom they reasonably believe is a person in need of treatment without the consent of said individual, to or from a hospital, physician's office or licensed treatment facility for the purpose of carrying out this section.

(c) Upon admission of the person in need of treatment, the facility shall evaluate and treat the individual as medically necessary and appropriate for a period not to exceed 2 working days.

(d) The State Treasurer shall pay sheriffs and deputy sheriffs for service as peace officers under this section at the rate of the state's mileage reimbursement amount for each mile necessarily traveled and a custody fee of $25 for the first peace officer and $15 for each additional peace officer, and shall pay medical doctors for services under this section $15 for each case, unless the medical doctor is reimbursed under another public or private plan.

(e) The administrator in charge of a licensed treatment facility shall refuse an application if the request for treatment or physician's certificate fails to meet the requirements of this section.

(73 Del. Laws, c. 358, § 2; 70 Del. Laws, c. 186, § 1.)

§ 2212 Commitment; judicial proceedings.

(a) Not more than 2 working days after the date a patient is admitted to a licensed treatment facility or program under a request for involuntary treatment, the administrator of the treatment facility, through the Attorney General, shall file a petition for involuntary commitment to a licensed treatment facility, supported by affidavit with the Court, unless the patient is discharged or admitted on a voluntary basis. The petition shall state that the administrator, as petitioner, based upon an evaluation by a physician, reasonably and in good faith believes that the involuntary patient (who shall be named as respondent) is a person in need of treatment who should be continued as a patient at the facility pursuant to this chapter until the patient is determined no longer to be in need of treatment at the treatment facility or program. The petition shall also state that the involuntary patient has been advised of the patient's procedural and substantive rights under this chapter. A copy of supporting certificates by an examining physician shall be attached to the petition.

(b) Upon the filing of a petition, the facility may continue to treat the patient as medically necessary and appropriate on an involuntary basis pending a judicial hearing on the petition.

(c) The petition shall indicate the facility's reasonable belief, based upon investigation, as to whether the involuntary patient is able to afford counsel and an independent expert witness.

(73 Del. Laws, c. 358, § 2.)

§ 2213 Limitation on involuntary treatment.

Subject to Chapters 50 and 51 of this title, no person shall be involuntarily admitted or committed to or confined as a patient at a residential treatment facility, and such facilities, other than general hospitals, shall not admit or confine as an involuntary patient any person, unless:

(1) Such person is determined to be a person in need of treatment in accordance with the procedures of this chapter; and

(2) Said treatment facility has been specifically designated as an appropriate facility for the treatment of involuntary adult patients by the Secretary of Health and Social Services and by the Department of Services for Children, Youth and Their Families for the treatment of involuntary minor patients.

(73 Del. Laws, c. 358, § 2.)

§ 2214 Hearing on petition; notice; decision; review.

Upon the filing of the petition the court shall promptly:

(1) Schedule a hearing to determine based on clear and convincing evidence whether the patient is a person in need of treatment and that cause exists for the involuntary treatment of the patient, and if unable to afford counsel, to appoint counsel to represent the involuntary patient. Such hearing shall be held as soon as practicable, but no later than 8 working days from the filing of the petition.

(2) Direct that notice of the hearing and copies of pleadings be supplied to the involuntary patient and the patient's counsel. In the case of a minor, copies of the pleading will be supplied to the patient's parents or legal guardian.

(3) Enter such other orders as may be appropriate, including an order authorizing the continued involuntary treatment of the patient until further order of the court.

(4) If the court determines after a hearing that the patient is not a person in need of treatment or that such patient does not need involuntary treatment, the patient shall be discharged in accord with the court's order. If the court determines that the patient is a person in need of treatment who is unwilling to accept or incapable of accepting voluntary treatment, it may order continued treatment for an additional period not to exceed 30 days. Thereafter, the court shall schedule an additional hearing within 30 days to review the need for continued involuntary treatment unless the court is informed the patient is under voluntary treatment or has been appropriately discharged from treatment. If continued involuntary treatment is warranted beyond the 30 days, the court shall hold hearings to determine the necessity for continued involuntary treatment at intervals of not more than 6 months. A patient involuntarily receiving treatment, if represented by counsel, may waive, orally or in writing, any hearing under this section. The waiver must be submitted in writing to the court or be orally presented in open court.

(5) The court for good cause may order that judicial proceedings under this chapter take place in the Superior Court or Family Court in a county other than the county in which the action was initiated.

(73 Del. Laws, c. 358, § 2.)

§ 2215 Procedural rights of involuntary patients.

An individual whom the staff of a facility has determined to be a person in need of treatment will be provided:

(1) Notice (including a written statement) of the factual grounds upon which the proposed treatment is predicated and the reasons for the necessity of involuntary treatment and confinement.

(2) Judicial review and determination of:

a. Whether the involuntary patient's confinement is based upon sufficient cause;

b. Whether the involuntary patient is a person in need of treatment; and

c. Whether a less restrictive placement such as nonresidential treatment is more appropriate. Such hearings shall be without jury and not open to the public and shall be preceded by adequate notice to the involuntary patient, and the involuntary patient shall be entitled to be present at all such hearings.

(3) Representation by counsel at all judicial proceedings, such counsel to be court-appointed if the involuntary patient cannot afford to retain counsel;

(4) Examination by an independent, licensed professional in the area of substance abuse and treatment and to have such persons testify as a witness on the patient's behalf, such witness to be court-appointed if the involuntary patient cannot afford to retain such witness.

(5) Reasonable discovery, the opportunity to summon and cross-examine witnesses, to present evidence on the person's own behalf and to all other procedural rights afforded litigants in civil causes. The privilege against self-incrimination shall be applicable to all proceedings under this chapter and the patient's testimony, if any, shall not otherwise be admissible in any criminal proceedings against the patient.

(6) To have a full record made of the proceedings, including findings adequate for review. All records and pleadings shall remain confidential unless the court for good cause orders otherwise.

(73 Del. Laws, c. 358, § 2.)

§ 2216 Discharge by the facility.

Notwithstanding the pendency of the action or any order previously entered by the court, if at any time after the petition is filed the staff of the facility determines that the involuntary patient is no longer in need of involuntary treatment, the facility may so certify in writing and discharge the patient, and shall promptly notify the court of its discharge, and the court may dismiss the action.

(73 Del. Laws, c. 358, § 2.)

§ 2217 Changing to voluntary status.

An involuntary patient is entitled to change that patient's own status to that of a voluntary patient if a member of the staff of the facility certifies that:

(1) The patient is reasonably capable of understanding the nature of the decision to change status; and

(2) Such a change is in the patient's best interest. If such a change in status is challenged within 2 days by the patient's next of kin or legal representative, the court will schedule a hearing to finally determine the matter.

(73 Del. Laws, c. 358, § 2; 70 Del. Laws, c. 186, § 1.)

§ 2218 Enlargement of time.

Notwithstanding the above provisions of this chapter, except for the time to appeal, the court may enlarge the time for performance for a reasonable period upon a showing of good cause.

(73 Del. Laws, c. 358, § 2.)

§ 2219 Appeal; rules of procedure.

(a) Any party to the proceedings may appeal an order of discharge or involuntary treatment to the Supreme Court within 30 days of the entry of such order. The appeal shall not operate as a stay of the order of disposition unless the court or the Supreme Court so directs.

(b) The Superior Court and the Family Court may adopt such rules of procedure as may be required to implement the procedural requirements of this chapter.

(73 Del. Laws, c. 358, § 2.)

§ 2220 Patient's rights.

It is the intent of the General Assembly and the purpose of this section to promote the interests and well-being of residential and nonresidential patients of treatment facilities. It is declared to be the public policy of this State that the interests of the patient shall be protected by a declaration of a patient's rights and by requiring that all facilities treat their patients in accordance with such rights, which, unless otherwise provided by state or federal law, shall include but not be limited to the following:

(1) Every patient shall have the right to receive considerate, respectful and appropriate care, treatment and services in compliance with relevant federal and state law and regulations, recognizing each person's basic personal and property rights, which include dignity and individuality.

(2) Each patient or patient's representative of such patient or resident shall, prior to or at the time of admission, receive a written statement of the services provided by the facility, including those required to be offered on an "as needed" basis, and a statement of related charges for services not covered under Medicare or Medicaid or not covered by the facility's basic per diem rate. Upon receiving such statement, the patient and the patient's representative shall sign a written receipt which must be retained by the facility in its files.

(3) After admission, the facility shall submit to the patient and the patient's representative, on a timely basis not to exceed 3 calendar months, a written, itemized statement detailing in language comprehensible to the ordinary lay person the charges and expenses the patient incurred during the treatment period. The statement shall contain a description of specific services, equipment and supplies received and expenses incurred for each such item. The statement shall include an explanation of any items identified by code or by initials. The facility shall make reasonable efforts to communicate the contents of the individual written statement to persons who it has reason to believe cannot read the statement.

(4) Each patient or patient's representative shall receive from the attending or resident physician or staff of the facility complete and current information concerning the patient's diagnosis, treatment and prognosis in terms and language the patient can reasonably be expected to understand. The patient or patient's representative shall participate in the planning of the patient's medical treatment, including attendance at treatment plan meetings, shall be informed of the medical consequences of all medication and treatment alternatives, and shall give prior written informed consent to participation in any experimental research after a complete disclosure of the goals, possible effects on the patient, and whether or not the patient can expect any benefits or alleviation of the patient's condition.

(5) The facility shall provide the name, address and telephone number of the primary staff person or physician responsible for the patient's care.

(6) Each patient shall receive respect and privacy in the patient's own medical care program. Case discussion, consultation, examination and treatment shall be confidential and shall be conducted discreetly. In the patient's discretion, persons not directly involved in the patient's care shall not be permitted to be present during such discussions, consultations, examinations or treatment except with the consent of the patient. Personal and medical records shall be treated confidentially and shall not be made public without the consent of the patient, except such records as are needed for a patient's transfer to another health care institution or as required by law or third party payment contract. No personal or medical records shall be released to any person inside or outside the facility who has no demonstrable need for such records.

(7) Every patient shall be free from chemical and physical restraints imposed for purposes of discipline and convenience and not necessary to treat the patient's medical condition.

(8) Every patient or patient's representative shall receive from the administrator or staff of the facility a courteous, timely and reasonable response to requests, and the facility shall make prompt efforts to resolve grievances. Responses to requests and grievances shall be made in writing upon written request by the patient.

(9) Every patient or patient's representative shall be provided with information as to any relationship the facility has with other health care and related institutions and/or service providers, including, but not limited to, pharmacy and rehabilitation services, to the extent the patient is offered care and/or services from these related entities. Such information shall be provided in writing upon admission and thereafter when additional services are offered.

(10) Every patient shall receive reasonable continuity of care.

(11) Every patient may send and shall receive mail promptly, and shall have access at any reasonable hour to a telephone where the patient may speak privately, and shall have access to writing instruments, stationary and postage.

(12) Each patient has the right to manage personal financial affairs.

(13) Every patient has the right, personally or through other persons or in combination with others, to exercise patient rights; to present grievances; to recommend changes in facility policies or services on behalf of the patient or others; to present complaints or petitions to the facility's staff or administrator, to the Division of Alcoholism, Drug Abuse and Mental Health, and, if the patient is a minor under the age of 18, to the Department of Services for Children, Youth and Their Families, or to other persons or groups without fear of reprisal, restraint, interference, coercion or discrimination.

(14) A patient shall not be required to perform services for the facility.

(15) Every patient shall have the right to inspect all records pertaining to that patient's own self, upon oral or written request. If a patient requests records to assist with preparation of any court hearing under this chapter, such records will be supplied on an expeditious basis.

(16) All patients shall be fully informed, in language they can understand, of their rights and all rules and regulations governing patient conduct and their responsibilities during the stay at the facility. Every patient shall be directed to a prominent place within the facility where a listing of the patient's rights are posted. The facility shall guarantee that a current list of patient's rights are always posted in a highly visible and accessible place.

(17) Every patient shall have the right to receive information from agencies acting as client advocates and be afforded the opportunity to contact those agencies without reprisal.

(18) Every patient 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.

(19) Every patient has the right to participate in an ongoing program of activities designed to meet, in accordance with personal assessments and plan of care, the patient's interests and physical, mental and psychosocial well-being.

(20) Every patient shall have the right to participate in social, religious and community activities that do not interfere with the patient's treatment plan or the rights of other patients or residents.

(21) Every patient shall have the right to request and receive the names and positions of staff members providing care to the patient.

(22) Every patient shall have the right to request and receive an organizational chart outlining the facility's chain of command for purposes of making requests and asserting grievances.

(23) Where a patient is a minor under the age of 18 years and the patient did not consent to treatment under this chapter, the patient's rights shall devolve to a parent, legal custodian, relative caregiver or legal guardian, as appropriate.

(24) A patient's care and treatment shall be provided in a setting and under conditions which restrict the patient's personal liberty only to the extent required by the patient's treatment needs, applicable law, and judicial orders.

(25) The rights described in this section are in addition to, and not in derogation of, any other constitutional, statutory, or regulatory rights.

(73 Del. Laws, c. 358, § 2.)

§ 2221 Devolution of rights.

Where consistent with the nature of each right in § 2220 of this title and unless otherwise provided by state or federal law, all of such rights, particularly as they pertain to a person adjudicated incompetent in accordance with state law, or a patient who is found physically or mentally incapable by the patient's own attending physician, or a patient who is unable to communicate with others, or a minor under the age of 18 years who does not consent to treatment under this chapter, shall devolve to the patient's next of kin, legal guardian, legal custodian, relative caregiver, parents, representative, sponsoring agency or representative payee (except where the facility itself is the representative payee) selected pursuant to § 205(j) of the Social Security Act [42 U.S.C. § 405(j)].

(73 Del. Laws, c. 358, § 2.)

§ 2222 Immunity, limitation of liability.

Any peace officer, emergency medical technician, firefighter, ambulance attendant, physician, employee of the Division, administrator or staff of a treatment facility, or other person acting under their supervision or assisting them, as well as the entities that may employ or direct the foregoing, acting or omitting to act within this chapter shall not be subject to any civil claim or civil legal proceeding of any nature, in law or equity, for damages of any nature or for any harm resulting from any act or proceeding, decision or determination undertaken, performed or recommended unless such harm was intentionally or recklessly caused by the misconduct of the foregoing individuals.

(73 Del. Laws, c. 358, § 2.)

§ 2223 Unwarranted confinement in a substance abuse treatment facility or denial of rights; penalties.

(a) Any person that willingly causes or conspires with or assists another to cause:

(1) The unwarranted involuntary confinement of any individual in a substance abuse treatment facility under this chapter; or

(2) The denial to any individual of any of the rights accorded to said individual under this chapter;

Shall be punished by a fine not exceeding $500 or imprisonment not exceeding 1 year, or both.

(b) The Superior Court shall have jurisdiction of offenses under this section.

(73 Del. Laws, c. 358, § 2.)

§ 2224 Reporting requirements.

(a) Any employee of a facility or anyone who provides services to a patient of a facility on a regular or intermittent basis who has reasonable cause to believe that a patient or resident in a facility has been abused, mistreated, neglected or financially exploited shall immediately report such abuse, mistreatment, neglect or financial exploitation to the Department by oral and written communication. The written report shall be filed by the employee or service provider within 48 hours after the employee or service provider first gains knowledge of the abuse, mistreatment, neglect or financial exploitation.

(b) Any person required by subsection (a) of this section to make an oral and a written report who fails to do so shall be liable for a civil penalty not to exceed $1,000 per violation.

(c) In addition to those persons subject to subsection (a) of this section, any other person may make such a report if such person has reasonable cause to believe that a patient or resident of a facility has been abused, mistreated, neglected or financially exploited.

(d) Any individual who intentionally makes a false report under this subchapter shall be guilty of a class A misdemeanor.

(e) Any correspondence or other written communication from a patient to the Department, the Attorney General's office and/or a law enforcement agency shall, if delivered to or received by a facility, be promptly forwarded, unopened, by the facility or service provider

to the agency to which it is written. Any correspondence or other written communication from the Department, the Attorney General's office and/or a law enforcement agency to a patient shall, if delivered to or received by the facility or other service provider, be promptly forwarded, unopened, by the facility or other service provider to such patient. Failure to comply with this section shall result in a civil penalty not to exceed $1,000 per violation.

(73 Del. Laws, c. 358, § 2.)

§§ 2225 -2232. [Reserved.]

Part II
Regulatory Provisions Concerning Public Health
Chapter 23
CAUSTIC ALKALI, ACIDS OR CORROSIVE SUBSTANCES

§ 2301 Definitions.

As used in this chapter, unless the context requires a different meaning:

(1) "Dangerous caustic or corrosive substance" means each and all of the acids, alkalis and substances named below:

a. Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of 10 percent or more;

b. Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H2SO4) in a concentration of 10 percent or more;

c. Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO3) in a concentration of 5 percent or more;

d. Carbolic acid (C6H5OH), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of 5 percent or more;

e. Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H2C2O4) in a concentration of 10 percent or more;

f. Any salt of oxalic acid and any preparation containing any such salt in a concentration of 10 percent or more;

g. Acetic acid or any preparation containing free or chemically unneutralized acetic acid (C2H4O2) in a concentration of 20 percent or more;

h. Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield 10 percent or more by weight of available chlorine excluding calx chlorinata, bleaching powder and chloride of lime;

i. Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of 10 percent or more;

j. Sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of 10 percent or more;

k. Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO3) in a concentration of 5 percent or more; and

l. Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH3), including ammonium hydroxide and "hartshorn," in a concentration of 5 percent or more.

(2) "Misbranded parcel, package or container" means a retail parcel, package or container of any dangerous caustic or corrosive substance for household use not bearing a conspicuous, easily legible label or sticker containing:

a. The name of the article;

b. The name and place of business of the manufacturer, packer, seller or distributor;

c. The word "POISON" running parallel with the main body of reading matter on the label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24 point size, unless there is on the label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker; and

d. Directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance.

(35 Del. Laws, c. 54, § 1; Code 1935, § 853; 16 Del. C. 1953, § 2301.)

§ 2302 Selling in misbranded parcel.

No person shall sell, barter or exchange, or receive, hold, pack, display, or offer for sale, barter or exchange, in this State, any dangerous caustic or corrosive substance in a misbranded parcel, package or container, the parcel, package or container being designed for household use. Household products for cleaning and washing purposes, subject to this chapter and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this State by any dealer, wholesale or retail.

(35 Del. Laws, c. 54, § 2; Code 1935, § 854; 16 Del. C. 1953, § 2302.)

§ 2303 Approval and registration of brands and labels.

(a) The Department of Health and Social Services may approve and register such brands and labels intended for use under this chapter as may be submitted to it for that purpose and as may in its judgment conform to the requirements of this chapter.

(b) In any prosecution under this chapter the fact that any brand or label involved in the prosecution has not been submitted to the Department of Health and Social Services for approval, or, if submitted, has not been approved by it, shall be immaterial.

(35 Del. Laws, c. 54, § 4; Code 1935, § 856; 16 Del. C. 1953, § 2303; 70 Del. Laws, c. 149, §§ 135, 136.)

§ 2304 Penalties.

Whoever violates this chapter shall be fined not more than $200 or imprisoned not more than 90 days, or both.

(35 Del. Laws, c. 54, § 3; Code 1935, § 855; 16 Del. C. 1953, § 2304.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 24
HAZARDOUS CHEMICAL INFORMATION

§ 2401 Short title.

This chapter shall be known and may be cited as the "Hazardous Chemical Information Act."

(64 Del. Laws, c. 344, § 1.)

§ 2402 Declaration of purpose.

The General Assembly finds that the health and safety of persons living and working in Delaware may be improved by providing access to information regarding hazardous chemicals to which they may be exposed either during their normal employment activities or during emergency situations. The General Assembly also finds that many employers in the State have already established suitable information programs for their employees and that such programs will be required of all manufacturing employers by November, 1985, under the federal Occupational Safety and Health Administration's hazard communication standard. It is therefore, the intent and purpose of this chapter to provide accessibility to information regarding hazardous chemicals to employees who may be exposed to such chemicals in nonmanufacturing employer workplaces as well as to emergency service organizations whose members may be exposed to such chemical hazards during emergency situations.

(64 Del. Laws, c. 344, § 1.)

§ 2403 Definitions.

(a) "Chemical manufacturer" shall mean an employer in Standard Industrial Classification (SIC) Codes 20 through 39 with a workplace where chemicals are produced for use or distribution.

(b) "Chemical name" shall mean the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(c) "Common name" shall mean any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

(d) "Designated representative" shall mean the individual or organization to whom an employee gives written authorization to exercise such employee's rights under this chapter. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

(e) "Distributor" shall mean any business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to purchasers.

(f) "Employee" shall mean any person who may be exposed to hazardous chemicals in that person's workplace under normal operating conditions or foreseeable emergencies. Office workers, grounds maintenance, security and nonresident management personnel are not included unless their job performances routinely involve potential exposure to hazardous chemicals. For the purposes of this chapter, "employee" includes persons working for the State and its political subdivisions, as well as members of volunteer emergency service organizations.

(g) "Expose or exposure" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contract or absorption, etc.) and includes potential (e.g., accidental or possible) exposure.

(h) "Hazardous chemical" shall mean any element, chemical compound or mixture of elements and/or compounds which is a physical hazard or health hazard as defined by the OSHA standard in 29 CFR § 1910.1200(c) or a hazardous substance as defined by the OSHA standard in 29 CFR § 1910.1200(d)(3).

(i) "Label" shall mean any written, printed or graphic material displayed on or affixed to containers of hazardous chemicals.

(j) "Manufacturing employer" shall mean an employer with a workplace classified in SIC Codes 20 through 39 who manufactures or uses a hazardous chemical.

(k) "Material safety data sheet (MSDS)" shall mean a document containing chemical hazard and safe handling information, provided that, after November 25, 1985, MSDS shall mean a document prepared in accordance with the requirements of the OSHA standard for such document.

(l) "Nonmanufacturing employer" or "employer" shall mean an employer with a workplace in a SIC Code, other than 20 through 39, the State, its political subdivisions, and all volunteer emergency service organizations.

(m) "OSHA standard" shall mean the hazard communication standard issued by the Occupation Safety and Health Administration in 48 Federal Register 53280 et seq. (November 25, 1983), to be codified under Title 29 of the Code of Federal Regulations (CFR) Part 1910.1200.

(n) "Secretary" shall mean the Secretary of the Department of Health and Social Services.

(o) "Work area" shall mean a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

(p) "Workplace" shall mean an establishment at 1 geographical location containing 1 or more work areas.

(q) "Workplace chemical list" shall mean the list of hazardous chemicals developed pursuant to § 2406 of this title or subsection (e)(i) of the OSHA standard.

(64 Del. Laws, c. 344, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2404 Relationship to OSHA standard.

(a) Manufacturing employers and distributors that are regulated by and complying with the OSHA standard shall be exempt from this chapter except for §§ 2406(d), 2406(e), 2407(a), 2407(d), 2409 and 2415 of this title. Manufacturing employers and distributors shall be included under this chapter until the OSHA standard goes into effect.

(b) Nonmanufacturing employers that adopt and comply with the OSHA standard may be certified by the Secretary as in compliance with this chapter except for §§ 2406(d), 2406(e), 2407(a), 2407(d), 2409 and 2415 of this title.

(64 Del. Laws, c. 344, § 1.)

§ 2405 Notice to employees.

Employers shall post adequate notice, at locations where notices are normally posted, informing employees about their rights under this chapter. In the absence of a notice prepared by the Secretary pursuant to § 2413 of this title, an employer notice shall be posted.

(64 Del. Laws, c. 344, § 1.)

§ 2406 Workplace chemical list.

(a) Employers shall compile and maintain a workplace chemical list which shall contain the following information for each hazardous chemical normally used or stored in the workplace in excess of 55 gallons or 500 lbs.:

(1) The chemical name or the common name used on the MSDS and/or container label; and

(2) The work area in which the hazardous chemical is normally stored or used.

(b) The workplace chemical list shall be updated as necessary but not less than annually.

(c) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided that the list is readily available to employees and their representatives. New or newly assigned employees shall be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(d) The workplace chemical list shall be provided to the Secretary upon request.

(e) The workplace chemical list shall be maintained by the employer for 30 years. Complete records shall be sent to the Secretary if the business ceases to operate within the State.

(64 Del. Laws, c. 344, § 1.)

§ 2407 Material safety data sheets.

(a) Chemical manufacturers and distributors shall provide manufacturing and nonmanufacturing purchasers of hazardous chemicals in Delaware appropriate MSDSs for the hazardous chemicals purchased.

(b) Employers shall maintain the most current MSDS received from manufacturers or distributors for each hazardous chemical purchased. If an MSDS has not been provided by the manufacturer or distributor for chemicals on the workplace chemical list at the time the chemicals are received at the workplace, the employer shall request one in writing from the manufacturer or distributor in a timely manner.

(c) Material safety data sheets shall be readily available, upon request, for review by employees or designated representatives.

(d) A copy of an MSDS shall be provided to the Secretary, upon request.

(64 Del. Laws, c. 344, § 1.)

§ 2408 Hazardous chemical labels.

(a) Existing labels on incoming containers of hazardous chemicals shall not be removed or defaced.

(b) Employees shall not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use of the employee who performs the transfer.

(64 Del. Laws, c. 344, § 1.)

§ 2409 Emergency information.

(a) Employers or manufacturing employers who normally store a hazardous chemical in excess of 55 gallons or 500 lbs. shall provide the fire chief of the fire department having jurisdiction over the workplace, in writing, the name(s) and telephone number(s) of

knowledgeable representative(s) of the employer or manufacturing employer who can be contacted for further information or in case of an emergency.

(b) Each employer or manufacturing employer shall provide a copy of the workplace chemical list to the fire chief, upon request. The employer shall notify the fire chief of any significant changes that occur in the workplace chemical list.

(c) The fire chief or the fire chief's representative, upon request, shall be permitted on site inspections of the chemicals on the workplace chemical list for the sole purpose of preplanning fire department activities in the case of an emergency.

(d) Employers or manufacturing employers shall provide the fire chief, upon request, a copy of the MSDS for any chemical on the workplace chemical list.

(e) The fire chief shall, upon request, make the workplace chemical list and MSDSs available to members of the fire company having jurisdiction over the workplace and to personnel responsible for preplanning emergency police or fire activities but shall not otherwise distribute the information without approval of the employer.

(64 Del. Laws, c. 344, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2410 Employee education programs.

(a) Every employer shall provide, at least annually, an education and training program for employees using or handling hazardous chemicals. Additional instruction shall be provided whenever the potential for exposure to hazardous chemicals is altered or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees shall be provided training before working with or in a work area containing hazardous chemicals.

(b) The program shall include, as appropriate, information on interpreting labels and material safety data sheets and the relationship between these 2 methods of hazards communication, the location, acute and chronic effects, safe handling, protective equipment to be used and first aid treatment with respect to the hazardous chemicals used by the employees, and general safety instructions on the handling, cleanup procedures and disposal of hazardous chemicals. Employers shall keep a record of the dates of training sessions given to employees.

(c) The Secretary, pursuant to § 2412 of this title, shall develop and maintain an education and training assistance program to aid those employers who, because of size or other practical considerations, are unable to develop such programs by themselves. Such a program shall be made available to such an employer upon request.

(64 Del. Laws, c. 344, § 1.)

§ 2411 Construction of chapter.

The provision of information to an employee shall not in any way affect the liability of an employer with regard to the health and safety of an employee or other persons exposed to hazardous chemicals, nor shall it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease as required under any other provision of law. The provision of information to an employee shall not affect any other duty or responsibility of a manufacturer, producer or formulator to warn ultimate users of a hazardous chemical under any other provision of law.

(64 Del. Laws, c. 344, § 1.)

§ 2412 Powers of Secretary.

The Secretary may, in the manner provided by law, promulgate rules, regulations and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(64 Del. Laws, c. 344, § 1.)

§ 2413 Complaints; investigations; penalties.

(a) Complaints received in writing from employees or their designated representative, relating to alleged violations of this chapter by nonmanufacturing employers, shall be investigated in a timely manner by the Secretary or the Secretary's designated representative. Complaints from employees or their designated representatives relating to alleged violations by manufacturing employers shall be referred to the federal Occupational Safety and Health Administration by the Secretary.

(b) Officers or duly designated representatives of the Secretary, upon presentation of appropriate credentials and written notice or warrant to the employer, shall have the right of entry into any workplace at reasonable times to inspect and investigate complaints within reasonable limits and in a reasonable manner.

(c) Employers found to be in violation of this chapter shall be given 14 days to comply. Employers not complying within 14 days following written notification of a violation shall be subject to civil penalties of not more than $500 per violation.

(64 Del. Laws, c. 344, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2414 Outreach program.

(a) The Secretary shall develop and provide each employer with a suitable form of notice providing employees with information regarding their rights under this chapter.

(b) As part of the outreach program, the Secretary shall develop an education and training program to assist employers pursuant to § 2410 of this title.

(c) As part of the outreach program, the Secretary may develop and distribute a supply of informational leaflets on employer duties, employee rights, the outreach program and/or the effects of hazardous chemicals.

(d) The Secretary may contract with the University of Delaware or other public or private organizations to develop and implement such an outreach program.

(e) The Secretary shall establish and publicize the availability of an information office to answer inquiries from employees, employers or the public in Delaware concerning the effects of hazardous chemicals.

(64 Del. Laws, c. 344, § 1.)

§ 2415 Employee rights.

(a) Employees that may be exposed to hazardous chemicals shall be informed of such exposure and shall have access to the workplace chemical list and material safety data sheets for the hazardous chemicals. In addition, employees shall receive training on the hazards of the chemicals and on measures they can take to protect themselves from those hazards and shall be provided appropriate personal protective equipment. These rights are guaranteed on the effective date of these subsections providing the information or action.

(b) No employer shall discharge, or cause to be discharged, or otherwise discipline or in any manner discriminate against an employee because the employee has filed a complaint, assisted an inspector of the Department who may make or is making an inspection under § 2413 of this title, or has instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise of any rights afforded pursuant to this chapter on behalf of the employee or on behalf of others, nor shall pay, position, seniority or other benefits be lost for exercise of any right provided by this chapter.

(c) Any waiver by an employee of the benefits or requirements of this chapter shall be against public policy and be null and void. Any employer's request or requirement that an employee waive any rights under this chapter as a condition of employment shall constitute a violation.

(64 Del. Laws, c. 344, § 1.)

§ 2416 Protection of trade secrets.

(a) An employer who believes that all or any part of the information required under §§ 2406, 2409(b) or 2409(d) of this title is a trade secret may withhold the information provided that:

(1) Material safety data sheets are available to employees in the area where they work;

(2) Hazard information on the trade secret chemicals is provided to the fire chief;

(3) All relevant information is provided to a physician diagnosing and treating an employee exposed to the chemical, pursuant to requirements stated in the OSHA standard set forth in 29 CFR Part 1910.1200(i)(2); and

(4) The employer can substantiate the trade secret claim.

(b) The Secretary, upon the Secretary's own initiative, or upon request of an employee, an employee's representative or a fire chief, may request any or all of the data substantiating the trade secret claim to determine whether the claim made pursuant to subsection (a) of this section is valid. The Secretary shall protect from disclosure any or all information coming into the Secretary's possession when such information is marked by the employer as confidential and shall return all information so marked to the employer at the conclusion of the Secretary's determination.

(c) The employer shall have 30 days after notification by the Secretary that a trade secret claim is not valid to request an administrative hearing on the determination. Any such hearing shall be held in a manner similar to that provided for in the Administrative Procedures Act [Chapter 101 of Title 29] for hearings in contested cases.

(64 Del. Laws, c. 344, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2417 Exemptions.

Notwithstanding any language to the contrary, this chapter shall not apply to chemicals in the following:

(1) Any article which is formed to a specific shape or design during manufacture, which has end use function(s) dependent in whole or in part upon its shape or design during end use, and which does not release or otherwise result in exposure to a hazardous chemical under normal conditions of use;

(2) Products intended for personal consumption by employees in the workplace;

(3) Retail food sale establishments and all other retail trade establishments, exclusive of processing and repair areas;

(4) A workplace where a hazardous chemical is received in a sealed package and is subsequently sold or transferred in that package if the seal remains intact while the chemical is in the workplace and if the chemical does not remain in the workplace more than 5 working days, except for the provisions of § 2409(a) and § 2410 of this title.

(5) Any food, food additive, color additive, drug or cosmetic as such terms are defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) or distilled spirits, wines or malt beverages as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. § 201 et seq.).

(6) A laboratory under the direct supervision or guideline of a technically qualified individual provided that:

a. Labels on containers of incoming chemicals shall not be removed or defaced;

b. MSDSs received shall be maintained and made accessible to employees and students;

c. Sections 2409 and 2410 of this title are met; and

d. The laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes.

(7) The workplace of an agriculture employer or employer group if the Secretary of the Department of Agriculture certifies to the Secretary that the chemicals are covered by other federal or state laws and regulations.

(64 Del. Laws, c. 344, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 25
HEALTH-CARE DECISIONS

§ 2501 Definitions.

(a) "Advance health-care directive" shall mean an individual instruction or a power of attorney for health care, or both.

(b) "Agent" shall mean an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

(c) "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or intravenous line where the recipient is not required to chew or swallow voluntarily, including, but not limited to, nasogastric tubes, gastrostomies, jejunostomies and intravenous infusions. Artificial nutrition and hydration does not include assisted feeding, such as spoon or bottle feeding.

(d) "Capacity" shall mean an individual's ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health-care decision.

(e) "Declarant" shall mean a person who executes an advance health care directive.

(f) "Guardian" shall mean a judicially appointed guardian or conservator having authority to make health-care decisions for an individual.

(g) "Health care" shall mean any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition.

(h) "Health-care decision" shall mean a decision made by an individual or the individual's agent, surrogate or guardian regarding the individual's health care, including:

(1) Selection and discharge of health-care providers and institutions;

(2) Acceptance or refusal of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and

(3) Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care.

(i) "Health-care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

(j) "Health-care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

(k) "Individual instruction" means an individual's direction concerning a health-care decision for the individual.

(l) "Life-sustaining procedure" means:

(1) Any medical procedure, treatment or intervention that:

a. Utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function; and

b. Is of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition or permanent unconsciousness.

(2) Procedures which can include, but are not limited to, assisted ventilation, renal dialysis, surgical procedures, blood transfusions and the administration of drugs, antibiotics and artificial nutrition and hydration.

(m) "Medically ineffective treatment" means that, to a reasonable degree of medical certainty, a medical procedure will not:

(1) Prevent or reduce the deterioration of the health of an individual; or

(2) Prevent the impending death of an individual.

(n) "Person" means an individual, corporation, statutory trust, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

(o) "Physician" means an individual authorized to practice medicine under Chapter 17 of Title 24.

(p) "Power of attorney for health care" means the designation of an agent to make health-care decisions for the individual granting the power.

(q) "Primary physician" or "attending physician" shall mean a physician designated by an individual or the individual's agent, surrogate or guardian to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(r) "Qualifying condition" means the existence of 1 or more of the following conditions in the patient, certified in writing in the patient's medical record by the attending physician and by at least 1 other physician who, when the condition in question is "permanently unconscious" shall be a board-certified neurologist and/or neurosurgeon:

(1) "Permanently unconscious" or "permanent unconsciousness" means a medical condition that has existed for at least 4 weeks and that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and

irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma.

(2) "Terminal condition" means any disease, illness or condition sustained by any human being for which there is no reasonable medical expectation of recovery and which, as a medical probability, will result in the death of such human being regardless of the use or discontinuance of medical treatment implemented for the purpose of sustaining life or the life processes.

(s) "Reasonably available" shall mean readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs.

(t) "Supervising health-care provider" shall mean the primary physician, or if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care.

(u) "Surrogate" means an adult individual or individuals who (1) have capacity; (2) are reasonably available; (3) are willing to make health care decisions, including decisions to initiate, refuse to initiate, continue or discontinue the use of a life sustaining procedure on behalf of a patient who lacks capacity; and (4) are identified by the attending physician in accordance with this chapter as the person or persons who are to make those decisions in accordance with this chapter.

(70 Del. Laws, c. 392, § 2; 73 Del. Laws, c. 329, § 57.)

§ 2502 Right of self-determination.

An individual, legally adult, who is mentally competent, has the right to refuse medical or surgical treatment if such refusal is not contrary to existing public health laws.

(70 Del. Laws, c. 392, § 2.)

§ 2503 Advance health-care directives.

(a) Subject to the limitations of this chapter, an adult who is mentally competent may:

(1) Give an individual instruction. The instruction may be limited to take effect only if a specified condition arises; and/or

(2) Execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity.

(b)(1) An advance health-care directive must be:

a. In writing;

b. Signed by the declarant or by another person in the declarant's presence and at the declarant's expressed direction;

c. Dated;

d. Signed in the presence of 2 or more adult witnesses neither of whom:

1. Is related to the declarant by blood, marriage or adoption;

2. Is entitled to any portion of the estate of the declarant under any will or trust of the declarant or codicil thereto then existing nor, at the time of the executing of the power of attorney for health care, is entitled thereto by operation of law then existing;

3. Has, at the time of the execution of the advance health care directive, a present or inchoate claim against any portion of the estate of the declarant;

4. Has a direct financial responsibility for the declarant's medical care; or

5. Has a controlling interest in or is an operator or an employee of a health care institution at which the declarant is a patient or resident.

(2) Each witness to the advance health-care directive shall state in writing that he or she is not prohibited under this section from being a witness.

(c) An advance health-care directive shall become effective only upon a determination that the declarant lacks capacity, and when the advance health-care directive is to be applied to the providing, withholding or withdrawal of a life-sustaining procedure, the advance health-care directive shall become effective only upon a determination that the declarant lacks capacity and has a qualifying condition.

(d) An advance health-care directive ceases to be effective upon a determination that the declarant has recovered capacity.

(e) A determination that an individual lacks or has recovered capacity that affects an individual instruction or the authority of an agent must be made by the primary physician or other physician(s) as specified in a written health-care directive; however, a power of attorney for health care may include a provision accommodating an individual's religious or moral beliefs. That provision may designate a person other than a physician to certify in a notarized document that the individual lacks or has recovered capacity.

(f) An agent shall make a health-care decision to treat, withdraw or withhold treatment on behalf of the patient after consultation with the attending physician or with the person other than a physician designated pursuant to subsection (e) of this section, and in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. If the patient's instructions or wishes are not known or clearly applicable, the agent's decision shall conform as closely as possible to what the patient would have done or intended under the circumstances. To the extent that the agent knows or is able to determine, the agent's decision is to take into account, including, but not limited to, the following factors if applicable:

(1) The patient's personal, philosophical, religious and ethical values;

(2) The patient's likelihood of regaining decision making capacity;

(3) The patient's likelihood of death;

(4) The treatment's burdens on and benefits to the patient; and

(5) Reliable oral or written statements previously made by the patient, including, but not limited to, statements made to family members, friends, health care providers or religious leaders.

If the agent is unable to determine what the patient would have done or intended under the circumstances, the agent's decision shall be made in the best interest of the patient. To the extent the agent knows and is able to determine, the agent's decision is to take into account, including, but not limited to, the factors, if applicable, stated in this subsection.

(g) A health-care decision made by an agent for a principal is effective without judicial approval.

(h) Unless related to the principal by blood, marriage or adoption, an agent may not have a controlling interest in or be an operator or employee of a residential long-term health-care institution at which the principal is receiving care.

(i) A written advance health-care directive may include the individual's nomination of a guardian of the person.

(j) A life-sustaining procedure may not be withheld or withdrawn from a patient known to be pregnant, so long as it is probable that the fetus will develop to be viable outside the uterus with the continued application of a life-sustaining procedure.

(70 Del. Laws, c. 392, § 3.)

§ 2504 Revocation of advance health-care directive.

(a) An individual who is mentally competent may revoke all or part of an advance health-care directive:

(1) By a signed writing; or

(2) In any manner that communicates an intent to revoke done in the presence of 2 competent persons, 1 of whom is a health care provider.

(b) Any revocation that is not in writing shall be memorialized in writing and signed and dated by both witnesses. This record shall be made a part of the medical record.

(c) Any person, including, but not limited to, a health care provider, agent or guardian, who is informed of a revocation shall immediately communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

(d) A decree of annulment, divorce, dissolution of marriage or a filing of a petition for divorce revokes a previous designation of a spouse as an agent unless otherwise specified in the decree or in a power of attorney for health care.

(e) An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

(f) The initiation of emergency treatment shall be presumed to represent a suspension of an advance health-care directive while receiving such emergency treatment.

(70 Del. Laws, c. 392, § 3.)

§ 2505 Optional form.

The following form may, but need not, be used to create an advance health-care directive. The other sections of this chapter govern the effect of this or any other writing used to create an advance health-care directive. An individual may complete or modify all or any part of the following form:

ADVANCE HEALTH-CARE DIRECTIVE

EXPLANATION

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding anatomical gifts and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, an agent may not have a controlling interest in or be an operator or employee of a residential long-term health-care institution at which you are receiving care.

If you do not have a qualifying condition (terminal illness/injury or permanent unconsciousness), your agent may make all health-care decisions for you except for decisions providing, withholding or withdrawing of a life sustaining procedure. Unless you limit the agent's authority, your agent will have the right to:

(a) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition unless it's a life-sustaining procedure or otherwise required by law.

(b) Select or discharge health-care providers and health-care institutions;

If you have a qualifying condition, your agent may make all health-care decisions for you, including, but not limited to:

(c) The decisions listed in (a) and (b).

(d) Consent or refuse consent to life sustaining procedures, such as, but not limited to, cardiopulmonary resuscitation and orders not to resuscitate.

(e) Direct the providing, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional instructions for other than end of life decisions.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end. It is required that 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that the person understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1: POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

_____

(name of individual you choose as agent)

_____

(address) (city) (state)
(zip code)

_____

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

_____

(name of individual you choose as first alternate agent)

_____

(address) (city) (state)
(zip code)

_____

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

_____

(name of individual you choose as second alternate agent)

_____

(address) (city) (state)
(zip code)

_____

(home phone) (work phone)

(2) AGENT'S AUTHORITY: If I am not in a qualifying condition my agent is authorized to make all health-care decisions for me, except decisions about life-sustaining procedures and as I state here; and if I am in a qualifying condition, my agent is authorized to make all health-care decisions for me, except as I state here:

_____

_____

_____

(Add additional sheets if necessary.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions. As to decisions concerning the providing, withholding and

withdrawal of life-sustaining procedures my agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions and my primary physician and another physician determine I am in a terminal condition or permanently unconscious.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, (please check one):

[ ] I nominate the agent(s) whom I named in this form in the order designated to act as guardian.

[ ] I nominate the following to be guardian in the order designated:

_____

_____

_____

[ ] I do not nominate anyone to be guardian.

PART 2: INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: If I am in a qualifying condition, I direct that my health-care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

Choice Not To Prolong Life

I do not want my life to be prolonged if: (please check all that apply)

_____ (i) I have a terminal condition (an incurable condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, makes death imminent and from which, despite the application of life-sustaining procedures, there can be no recovery) and regarding artificial nutrition and hydration,

I make the following specific directions: I want used I do not want used

Artificial nutrition through a conduit _____ _____

Hydration through a conduit _____ _____

_____ (ii) I become permanently unconscious (a medical condition that has been diagnosed in accordance with currently accepted medical standards that has lasted at least 4 weeks and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma) and regarding artificial nutrition and hydration,

I make the following specific directions: I want used I do not want used

Artificial nutrition through a conduit _____ _____

Hydration through a conduit _____ _____

Choice To Prolong Life

_____ I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

RELIEF FROM PAIN: Except as I state in the following space, I direct treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

_____

_____

_____

(7) OTHER MEDICAL INSTRUCTIONS: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

_____

_____

_____

(Add additional sheets if necessary.)

PART 3: ANATOMICAL GIFTS AT DEATH

(OPTIONAL)

(8) I am mentally competent and 18 years or more of age.

I hereby make this anatomical gift to take effect upon my death. The marks in the appropriate squares and words filled into the blanks below indicate my desires.

I give: [ ] my body; [ ] any needed organs or parts; [ ] the following organs or parts;

To the following person or institutions [ ] the physician in attendance at my death; [ ] the hospital in which I die; [ ] the following named physician, hospital, storage bank or other medical institution; [ ] the following individual for treatment; for the following purposes: [ ] any purpose authorized by law; [ ] transplantation; [ ] therapy; [ ] research; [ ] medical education.

PART 4: PRIMARY PHYSICIAN

(OPTIONAL)

(9) I designate the following physician as my primary physician:

_____

(name of physician)

_____

(address) (city) (state)
(zip code)

_____

(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

_____

(name of physician)

_____

(address) (city) (state)
(zip code)

_____

(phone)

Primary Physician shall mean a physician designated by an individual or the individual's agent or guardian, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

(10) EFFECT OF COPY: A copy of this form has the same effect as the original.

(11) SIGNATURE: Sign and date the form here: I understand the purpose and effect of this document.

_____ _____

(date) (sign your name)

_____ _____

(address) (print your name)

_____

(city) (state) (zip code)

(12) SIGNATURES OF WITNESSES:

Statement Of Witnesses

SIGNED AND DECLARED by the above-named declarant as and for the declarant's written declaration under 16 Del. C. §§ 2502 and 2503, in our presence, who in the declarant's presence, at the declarant's request, and in the presence of each other, have hereunto subscribed our names as witnesses, and state:

A. That the Declarant is mentally competent.

B. That neither of them:

1. Is related to the declarant by blood, marriage or adoption;

2. Is entitled to any portion of the estate of the declarant under any will of the declarant or codicil thereto then existing nor, at the time of the executing of the advance health care directive, is so entitled by operation of law then existing;

3. Has, at the time of the execution of the advance health-care directive, a present or inchoate claim against any portion of the estate of the declarant;

4. Has a direct financial responsibility for the declarant's medical care;

5. Has a controlling interest in or is an operator or an employee of a residential long-term health-care institution in which the declarant is a resident; or

6. Is under eighteen years of age.

C. That if the declarant is a resident of a sanitarium, rest home, nursing home, boarding home or related institution, one of the witnesses,

First witness Second Witness

(print name)	(print name)
(address) (city, state, zip code)	(address) (city, state, zip code)
(signature of witness) (date)	(signature of witness) (date)
I am not prohibited by § 2503 of Title 16 of the Delaware Code from being a witness.	I am not prohibited by § 2503 of Title 16 of the Delaware Code from being a witness.

(70 Del. Laws, c. 392, § 3; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 204, § 1.)

§ 2506 Decisions by guardian.

A guardian shall comply with the instructions of the adult person with a disability and may not revoke the person's advance health-care directive unless the appointing court expressly so authorizes. Nothing in this chapter shall limit the jurisdiction of the Court of Chancery over the person and property of a person with a disability.

(70 Del. Laws, c. 392, § 3; 79 Del. Laws, c. 371, § 13.)

§ 2507 Surrogates.

(a) A surrogate may make a health care decision to treat, withdraw or withhold treatment for an adult patient if the patient has been determined by the attending physician to lack capacity and there is no agent or guardian, or if the directive does not address the specific issue. This determination shall be confirmed in writing in the patient's medical record by the attending physician. Without this determination and confirmation, the patient is presumed to have capacity and may give or revoke an advance health care directive or disqualify a surrogate.

(b)(1) A mentally competent patient may designate any individual to act as a surrogate by personally informing the supervising health-care provider in the presence of a witness. The designated surrogate may not act as a witness. The designation of the surrogate shall be confirmed in writing in the patient's medical record by the supervising health-care provider and signed by the witness.

(2) In the absence of a designation or if the designee is not reasonably available, any member of the following classes of the patient's family who is reasonably available, in the descending order of priority, may act, when permitted by this section, as a surrogate and shall be recognized as such by the supervising health-care provider:

a. The spouse, unless a petition for divorce has been filed;

b. An adult child;

c. A parent;

d. An adult sibling;

e. An adult grandchild;

f. An adult niece or nephew;

g. An adult aunt or uncle.

Individuals specified in this subsection are disqualified from acting as a surrogate if the patient has filed a petition for a Protection From Abuse order against the individual or if the individual is the subject of a civil or criminal order prohibiting contact with the patient.

(3) If an adult patient is in an acute care setting or is a client of the Department of Health and Social Services and none of the individuals eligible to act as a surrogate under subsection (b) of this section is reasonably available, an adult, other than a paid caregiver, who has exhibited special care and concern for the patient, who is familiar with the patient's personal values and who is reasonably available may make health-care decisions to treat, withdraw or withhold treatment on behalf of the patient. Such person shall provide an affidavit to the health-care facility or to the attending or treating physician which includes statements that he or she is:

a. A close friend of the patient;

b. Is willing and able to become involved in the patient's health care; and

c. Has maintained such regular contact with the patient as to be familiar with the patient's activities, health, personal values and morals.

The affidavit must also recite facts and circumstances that demonstrate such person's familiarity with the patient. End of life decisions involving the withdrawal or withholding of treatment must meet the requirements of this chapter.

(4) Nothing in this section shall be interpreted as limiting the Court of Chancery's authority to appoint a guardian of a person to act as a surrogate under the Court's rules and procedures.

(5) A supervising health-care provider may require an individual claiming the right to act as a surrogate for a patient to provide a written declaration under the penalty of perjury stating facts and circumstances sufficient to establish the claimed authority.

(6) A mentally competent patient may at any time disqualify a member of the patient's family from acting as the patient's surrogate by a signed writing or by personally informing the health-care provider of the disqualification.

(7) A surrogate may make a decision to provide, withhold or withdraw a life-sustaining procedure if the patient has a qualifying condition documented in writing with its nature and cause, if known, in the patient's medical record by the attending physician.

(8) A surrogate's decision on behalf of the patient to treat, withdraw or withhold treatment shall be made according to the following paragraphs and otherwise meet the requirements of this chapter:

a. Decisions shall be made in consultation with the attending physician.

b.1. The surrogate shall make a health-care decision to treat, withdraw or withhold treatment in accordance with the patient's individual instructions, if any, and other wishes to the extent known by the surrogate.

2. If the patient's instructions or wishes are not known or clearly applicable, the surrogate's decision shall conform as closely as possible to what the patient would have done or intended under the circumstances. To the extent the surrogate knows or is able to determine, the surrogate's decision is to take into account, including, but not limited to, the following factors if applicable:

A. The patient's personal, philosophical, religious and ethical values;

B. The patient's likelihood of regaining decision making capacity;

C. The patient's likelihood of death;

D. The treatment's burdens on and benefits to the patient;

E. Reliable oral or written statements previously made by the patient, including, but not limited to, statements made to family members, friends, health care providers or religious leaders.

3. If the surrogate is unable to determine what the patient would have done or intended under the circumstances, the surrogate's decision shall be made in the best interest of the patient. To the extent the surrogate knows and is able to determine, the surrogate's decision is to take into account, including, but not limited to, the factors, if applicable, stated in paragraph (b)(8)b.2. of this section.

(9) In the event an individual specified in paragraph (b)(2) of this section claims that the individual has not been recognized or consulted as a surrogate or if persons with equal decision making priority under paragraph (b)(2) of this section cannot agree who shall be a surrogate or disagree about a health-care decision, and a patient who lacks capacity is receiving care in a health-care institution, the attending physician or an individual specified in paragraph (b)(2) of this section may refer the case to an appropriate committee of the health-care institution for a recommendation in compliance with this chapter, and the attending physician may act in accordance with the recommendation of the committee or transfer the patient in accordance with the provisions of § 2508(g) of this title. A physician who acts in accordance with the recommendation of the committee is not subject to civil or criminal liability or to discipline for unprofessional conduct for any claim based on lack of consent or authorization for the action.

(70 Del. Laws, c. 392, § 3; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 328, §§ 1-3; 79 Del. Laws, c. 28, § 1.)

§ 2508 Obligations of health-care provider.

(a) Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision. The decision of an agent or surrogate does not apply if the patient objects to the decision to remove life-sustaining treatment, providing that the objection is (1) by a signed writing or (2) in any manner that communicates in the presence of 2 competent persons, 1 of whom is a physician.

(b) A supervising health-care provider who knows of the existence of an advance health-care directive or a revocation of an advance health-care directive shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and, if it is not in writing, shall request a copy of the witness statement, and shall arrange for its maintenance in the health-care record.

(c) A primary physician who makes or is informed of a determination that a patient lacks or has recovered capacity or that another condition exists which affects an individual instruction or the authority of an agent, surrogate or guardian, shall promptly record the determination in the patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

(d) Except as provided in subsections (e) and (f) of this section, a health-care provider or institution providing care to a patient shall:

(1) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and

(2) In the absence of an individual instruction, comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the extent the agent or surrogate is permitted by this chapter.

(e) A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a written policy of the institution which is based on reasons of conscience and if the policy was communicated to the patient or to a person then authorized to make health-care decisions for the patient.

(f) A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective treatment or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(g) A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

(1) Promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;

(2) Provide continuing care, including continuing life sustaining care, to the patient until a transfer can be effected; and

(3) Not impede the transfer of the patient to another health-care provider or institution identified by the patient, the patient's agent or the patient's surrogate.

(70 Del. Laws, c. 392, § 3; 70 Del. Laws, c. 186, § 1.)

§ 2509 Health-care information.

(a) Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy and consent to the disclosure of medical or any other health-care information.

(b) Unless otherwise specified in an advance health-care directive or court order, an agent appointed by a valid advance health-care directive under this chapter, a surrogate determined and confirmed under § 2507 of this title or a guardian of the person of a minor or adult appointed pursuant to a court order shall be authorized as a "personal representative" with full authority and standing thereof as provided in the Health Insurance Portability and Accountability Act of 1996 [P.L. 104-191], its regulations and the standards issued by the Secretary of the United States Department of Health and Social Services.

(70 Del. Laws, c. 392, § 3; 76 Del. Laws, c. 307, § 1.)

§ 2510 Immunities.

(a) A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(1) Complying with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to withhold or withdraw health care;

(2) Declining to comply with a health-care decision of a person based on a belief that the person then lacked authority;

(3) Complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated;

(4) Providing life-sustaining treatment in an emergency situation when the existence of a health care directive is unknown; or

(5) Declining to comply with a health care decision or advance health-care directive because the instruction is contrary to the conscience or good faith medical judgment of the health care provider or the written policies of the institution.

(b) An individual acting as agent or surrogate under this chapter is not subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

(70 Del. Laws, c. 392, § 3.)

§ 2511 Safeguards.

(a) Anyone who has good reason to believe that the withdrawal or withholding of health care in a particular case: (1) Is contrary to the most recent expressed wishes of a declarant; (2) is being proposed pursuant to an advance health-care directive that has been falsified, forged or coerced; or (3) is being considered without the benefit of a revocation which has been unlawfully concealed, destroyed, altered or cancelled; may petition the Court of Chancery for appointment of a guardian for such declarant.

(b) The Department of Health and Social Services and the Public Guardian shall have oversight over any advance health-care directive executed by a resident of a sanatorium, rest home, nursing home, boarding home or related institution as the same is defined in § 1102 of this title. Such advance health-care directive shall have no force nor effect if the declarant is a resident of a sanatorium, rest home, nursing home, boarding home or related institution at the time the advance health-care directive is executed unless 1 of the witnesses is a person designated as a patient advocate or ombudsperson by the Department of Health and Social Services. The patient advocate or ombudsperson must have the qualifications required of other witnesses under this chapter except as provided in 2508 of this title.

(63 Del. Laws, c. 386, § 1; 64 Del. Laws, c. 204, § 8; 69 Del. Laws, c. 345, § 5; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 392, §§ 3, 4; 79 Del. Laws, c. 204, § 2.)

§ 2512 Assumptions and presumptions.

(a) Neither the execution of an advance health-care directive under this chapter nor the fact that health care is withheld from a patient in accordance therewith shall, for any purpose, constitute a suicide.

(b) The making of an advance health-care directive pursuant to this chapter shall not restrict, inhibit nor impair in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed or presumed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of health care from an insured patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility or other health care provider, nor any health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan or nonprofit hospital service plan, shall require any person to execute an advance health-care

directive as a condition to being insured, or for receiving health care services, nor shall the signing of an advance health-care directive be a bar, except as provided in § 2508 of this title.

(d) [Repealed.]

(63 Del. Laws, c. 386, § 1; 64 Del. Laws, c. 204, § 7; 70 Del. Laws, c. 392, §§ 3, 5.)

§ 2513 Penalties.

(a) Whoever threatens directly or indirectly, coerces or intimidates any person to execute a declaration directing the withholding or withdrawal of maintenance medical treatment shall be guilty of a misdemeanor and upon conviction shall be fined not less than $500 nor more than $1,000, be imprisoned not less than 30 days nor more than 90 days, or both.

(b) Whoever knowingly conceals, destroys, falsifies or forges a document with intent to create the false impression that another person has directed that maintenance medical treatment be utilized for the prolongation of that person's life is guilty of a class C felony.

(c) The Superior Court shall have jurisdiction over all offenses under this chapter.

(63 Del. Laws, c. 386, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 392, §§ 3, 6.)

§ 2514 Capacity.

(a) This chapter does not affect the right of an individual to make health-care decisions while having capacity to do so.

(b) An individual is presumed to have capacity to make a health-care decision and to give or revoke an advance health-care directive.

(70 Del. Laws, c. 392, § 7.)

§ 2515 Accommodation.

Notwithstanding this chapter, an individual who elects to have treatment by spiritual means in lieu of medical or surgical treatment shall not be compelled to submit to medical or surgical treatment.

(70 Del. Laws, c. 392, § 7.)

§ 2516 Effect of copy.

A copy of an advance health-care directive or revocation of an advance health-care directive, has the same effect as the original.

(70 Del. Laws, c. 392, § 7.)

§ 2517 Recognition of advance directives executed in other states.

An advance directive or similar health-care declaration validly executed under the laws of another state in compliance with the laws of that state or of this State is valid for purposes of and subject to the limitations of this chapter.

(70 Del. Laws, c. 392, § 7.)

§ 2518 Effect on prior declarations and directives.

Nothing in this chapter shall be construed to modify or affect the terms of any declaration, appointment of agent or durable power of attorney validly executed prior to June 26, 1996, which grants the authority for medical treatment or directs the withholding or withdrawal of medical treatment, except that a prior declaration shall not be interpreted to allow the withdrawal or withholding of artificial nutrition or hydration unless that desire is specifically stated in that directive. If withdrawal or withholding of artificial nutrition or hydration is not specifically addressed in a prior declaration, a health care provider shall comply with a decision regarding withdrawal or withholding of artificial nutrition or hydration for the patient made by a person then authorized to make health-care decisions for the patient to the extent the agent or surrogate is permitted by this chapter. Nothing in this chapter shall be construed to limit the use of any previous living will forms conforming to law or any other form which meets the requirements of this chapter.

(70 Del. Laws, c. 392, § 7; 71 Del. Laws, c. 419, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 26
CHILDHOOD LEAD POISONING PREVENTION ACT

§ 2601 Short title.

This act shall be known and may be cited as the Childhood Lead Poisoning Prevention Act.

(69 Del. Laws, c. 310, § 1.)

§ 2602 Physicians and health care facilities to screen children.

(a) Every health care provider who is the primary health care provider for a child shall order screening of that child, in accordance with standards promulgated by the Division of Public Health, at or around 12 months of age for lead poisoning.

(b) In addition to the screening required by subsection (a) of this section, every health care provider who is the primary health care provider for a child shall determine based upon criteria promulgated by the Division of Public Health whether that child should be screened for lead poisoning at or around 24 months of age. The health care provider shall order screening for children for whom screening is suggested by said criteria. The health care provider shall maintain records of the determination regarding the necessity of screening at 24 months of age.

(c) Unless the child is at high risk for lead poisoning, as determined by the primary health care provider, pursuant to guidelines promulgated by the Division of Public Health, screening shall not be required for any child who is over 12 months of age on March 1, 1995.

(d) All laboratories involved in lead level analysis will participate in a universal reporting system as established by the Division of Public Health.

(e) Nothing in this section shall be construed to require any child to undergo a lead blood level screening or test whose parent or guardian objects on the grounds that the screening or test conflicts with the parent's or guardian's religious beliefs.

(f) All laboratories involved in blood lead level analysis will participate in a universal reporting system as established by the State Board of Health.

(69 Del. Laws, c. 310, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 402, §§ 1, 3.)

§ 2603 Screening prior to child care or school enrollment.

For every child born on or after March 1, 1995, and who has reached the age of 12 months, child care facilities and public and private nursery schools, preschools and kindergartens shall require screening for lead poisoning for admission or continued enrollment; except in the case of enrollment in kindergarten, such testing may be done within 60 calendar days of the date of enrollment. A statement shall be provided from the child's primary health care provider that the child has been screened for lead poisoning or in lieu thereof a certificate signed by the parent or guardian stating that the screening is contrary to that person's religious beliefs.

(69 Del. Laws, c. 310, § 1; 74 Del. Laws, c. 76, § 1.)

§ 2604 Reimbursement by third party payers.

Screening, screening-related services and diagnostic evaluations as required by § 2602 of this title shall be reimbursable under health insurance contracts and group and blanket health insurance as provided by Chapter 33 and Chapter 35, respectively, of Title 18.

(69 Del. Laws, c. 310, § 1.)

§ 2605 Childhood Lead Poisoning Advisory Committee.

(a) There is hereby established the Childhood Lead Poisoning Prevention Advisory Committee to ensure the implementation of the Childhood Lead Poisoning Prevention Act established pursuant to this chapter and to make any necessary recommendations for the implementation of the program or improvements of the processes to be followed by the agencies responsible for the implementation of said plan.

(b) The Committee shall semiannually prepare and distribute a report regarding the Childhood Lead Poisoning Prevention Act, the intervention activities, studies of incidence, the State Blood Lead Screening Program, and monitoring and implementation of regulations promulgated pursuant to this chapter.

(c) The Committee shall be cochaired by the Secretary of the Department of Health and Social Services or the Secretary's designee and the Secretary of Education or the Secretary's designee and shall have no more than 7 members. The Secretary of Education and the Secretary of Health and Social Services shall, after consultation with the Governor, appoint 7 members comprised of individuals which shall include a representative of the Department of Services for Children, Youth and Their Families, which must represent the interests of daycare licensing, a representative of the medical community at large who is a practicing physician, an administrative representative of a school district, and a public member.

(d) The Committee will sunset upon full implementation of the Childhood Lead Poisoning Prevention Act.

(73 Del. Laws, c. 46, § 2; 70 Del. Laws, c. 186, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 26A
HEARING AID LOAN BANK PROGRAM

§ 2601A Short title.

The short title of this chapter shall be known and may be cited as the "Hearing Aid Loan Bank Re-Authorization Act."

(74 Del. Laws, c. 109, § 1; 76 Del. Laws, c. 129, § 1.)

§ 2602A Definitions.

The following definitions shall be applicable to this chapter:

(1) "Director" means the Director of the Division of Public Health, Department of Health and Social Services.

(2) "Division" means the Division of Public Health, Department of Health and Social Services.

(3) "Eligible child" means a child who:

a. Is a resident of the State;

b. Is identified by a licensed audiologist as having a hearing impairment;

c. Has no immediate access to a hearing aid; and

d. Is under the age of 18 years.

(4) "Licensed audiologist" means an individual who is licensed to practice audiology under Chapter 37 of Title 24.

(5) "Loan bank" means the hearing aid loan bank.

(6) "Program" means the Hearing Aid Loan Bank Program.

(7) "Program manager" means the program manager of the Hearing Aid Loan Bank Program.

(74 Del. Laws, c. 109, § 1; 76 Del. Laws, c. 129, § 1; 76 Del. Laws, c. 408, § 1.)

§ 2603A Hearing Aid Loan Bank Program.

(a) A Hearing Aid Loan Bank Program is re-established in the Division.

(b) The program hereby re-established is for the purpose of lending hearing aids on a temporary basis to parents and legal guardians of eligible children in order to ensure that such children have maximum auditory exposure during critical years of language development and learning.

(74 Del. Laws, c. 109, § 1; 76 Del. Laws, c. 129, § 1.)

§ 2604A Administration.

(a) The program shall be administered by a program manager hired under the merit system.

(b) The Newborn Hearing Screening Program manager shall be the Hearing Aid Loan Bank Program manager, who shall be responsible for the Hearing Aid Loan Program.

(c) The program manager must contract with licensed audiologists for the implementation and administration of Hearing Aid Loan Bank sites.

(d) The program manager shall provide and maintain:

(1) A pool of hearing aids in the loan bank to lend to a parent or legal guardian of an eligible child;

(2) Testing and programming equipment or contracts for testing and programming for hearing aids in the loan bank; and

(3) Supplies for repair and reconditioning or contracts for supplies and services for repair and reconditioning of hearing aids in the loan bank.

(74 Del. Laws, c. 109, § 1; 76 Del. Laws, c. 129, § 1.)

§ 2605A Hearing aids: procedures, loans.

(a) The program manager shall lend a suitable hearing aid to a parent or legal guardian of an eligible child upon receipt of:

(1) A prescription from a licensed audiologist; and

(2) Any documents required by the program manager to prove that the child is an eligible child.

(b) The loan period shall be for not more than 6 months except that the program manager may extend the original loan period for additional 6-month periods if, prior to each extension, the program manager determines that:

(1) The child does not have immediate access to another hearing aid under Medicaid, the state children's health program, or private health insurance;

(2) The child's parent or legal guardian currently does not have the financial means to obtain immediate access to another hearing aid; and

(3) The child's parent or legal guardian is making reasonable efforts to obtain access to another hearing aid.

(c) A parent or legal guardian who borrows a hearing aid for an eligible child shall:

(1) Be the custodian of the hearing aid;

(2) Return the hearing aid immediately to the loan bank upon the expiration of the loan period or receipt of a suitable permanent hearing aid, whichever occurs first;

(3) Be responsible for the proper care and use of the hearing aid;

(4) Be responsible for any damage to or loss of the hearing aid; and

(5) Sign a written agreement provided by the program manager that states the term and conditions of the loan.

(d) The program manager shall ensure that the eligible child's licensed audiologist instructs the parent or legal guardian about the proper care and use of a hearing aid provided under the program.

(74 Del. Laws, c. 109, § 1; 76 Del. Laws, c. 129, § 1; 76 Del. Laws, c. 408, § 2.)

§ 2606A Regulations.

The Division of Public Health shall adopt regulations to implement the provisions of this chapter, including regulations that:

(1) For the purpose of implementing § 2605A(a) of this title, identify the types of documents that the program manager may require a parent or legal guardian to submit to prove that a child is an eligible child; and

(2) For the purpose of implementing § 2605A(b) of this title, establish factors that the program manager shall consider when evaluating whether a parent or legal guardian:

a. Has the financial means to obtain immediate access to another hearing aid; or

b. Is making reasonable efforts to obtain immediate access to another hearing aid.

(74 Del. Laws, c. 109, § 1; 76 Del. Laws, c. 129, § 1.)

§ 2607A Reports.

(a) Beginning in the year 2008, and no later than January 15 of each year thereafter, the Director of Public Health shall submit an annual report to the Governor and the General Assembly regarding the implementation of this chapter.

(b) The annual report shall include the following information:

(1) The number and ages of children who received hearing aids through the loan program that year;

(2) The number of children who received hearing aids through the loan program that year and subsequently received hearing aids through Medicaid, the State's Children's Health Program, or private insurance;

(3) The length of each original loan;

(4) The number of times that each original loan was extended and the length of each extension;

(5) The number of times that hearing aids were not properly returned to the loan bank; and

(6) Any other information that the Director believes is relevant to evaluating the costs and benefits of the program.

(74 Del. Laws, c. 109, § 1; 76 Del. Laws, c. 129, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 27
ANATOMICAL GIFTS AND STUDIES
Subchapter I
Anatomical Studies

§ 2701 Registration of approved institutions and persons.

Any nonprofit hospital, accredited university or research institution and teachers, students, research workers and technicians in this State conducting anatomical studies accredited by a nationally recognized accrediting body approved by the Board of Medical Licensure and Discipline desiring to obtain dead bodies for the purpose of anatomical studies shall register with the Board of Medical Licensure and Discipline on such forms as may be prescribed by the Board and for the purpose of this subchapter such a registered hospital, university or research institution shall be known as an approved institution, and any registered teacher, student, research worker or technician shall be known as an approved person, and the Board of Medical Licensure and Discipline shall have the right to refuse registration of such hospital, accredited university or research institution or such persons.

(24 Del. C. 1953, § 1771; 54 Del. Laws, c. 281; 63 Del. Laws, c. 4, § 1; 65 Del. Laws, c. 487, § 2; 77 Del. Laws, c. 319, § 1.)

§ 2702 Duties of public officers.

Every public officer of this State or of any agency, county or political subdivision thereof, who shall have or receive custody or control of the body of any decedent, other than a dead body on which an autopsy has been performed pursuant to § 4707 of Title 29, and which body is not claimed within a reasonable time by a surviving spouse or relative of the decedent but not less than 120 hours following the death of the decedent, and which body will require burial at the expense of the State or of any agency, county or political subdivision thereof, shall forthwith notify the Medical Council of the existence and location of the dead body and of any identification thereof.

(24 Del. C. 1953, § 1772; 54 Del. Laws, c. 281; 65 Del. Laws, c. 487, § 2.)

§ 2703 Designation of recipient approved institution.

(a) The Medical Council shall promptly, upon receipt of notice of the existence, location and identification of a dead body pursuant to § 2702 of this title, designate 1 of the approved institutions to receive such body for use, including dissection, in connection with anatomical studies conducted by approved persons and shall notify the approved institutions of its designation and shall notify the officer having custody of the body thereof, and the officer shall promptly deliver the body to the approved institution so designated upon payment by the hospital or research institution of the cost of embalming said body and any necessary transportation and storage costs involved.

(b) Each approved institution to which a dead body has been assigned for anatomical studies shall maintain said body in an embalmed condition, shall at all times ensure its proper and safe custody in an approved place of dissection, shall permit only approved persons to have access to such a body and shall identify all parts dissected free from the body with the same serial number assigned to the body by the Medical Council.

(24 Del. C. 1953, § 1773; 54 Del. Laws, c. 281; 65 Del. Laws, c. 487, § 2.)

§ 2704 Disposition of remains.

Any approved institution which shall have received a dead body pursuant to this subchapter shall, upon completion of the study thereof, deliver the body as then constituted to the coroner of the county in which such approved institution shall be situate for burial or cremation, and such approved institution shall pay the expenses of such burial or cremation and of the preparation of such body therefor, at the rates provided by law or which are usual and customary in such cases, provided that with the approval of the Inspector of Anatomy mentioned in § 2706 of this title, such an approved institution may retain certain portions of said body for special research or teaching purposes.

(24 Del. C. 1953, § 1774; 54 Del. Laws, c. 281; 65 Del. Laws, c. 487, § 2.)

§ 2705 Powers and duties of Medical Council.

The Medical Council shall in the performance of its duties pursuant to this subchapter:

(1) Establish such reasonable regulations as may be necessary;

(2) Maintain complete records;

(3) Maintain a registry of approved institutions and persons pursuant to § 2701 of this title;

(4) Allocate unclaimed dead bodies to each of the approved institutions according to the number of approved persons and the character of anatomical studies conducted at such approved institutions.

(24 Del. C. 1953, § 1775; 54 Del. Laws, c. 281; 65 Del. Laws, c. 487, § 2.)

§ 2706 Appointment of an Inspector of Anatomy.

The Attorney General, in consultation with the Medical Council, shall, on such conditions as the Attorney General may deem fit, appoint as an Inspector of Anatomy, a medical practitioner or a person with a special training or experience in medicolegal matters, and the duties of such Inspector shall be to: (i) Enter and inspect periodically any or all approved institutions where dissection of dead bodies may be in progress and examine any body or record or thing relating to the use of such dead bodies; (ii) report to the Medical Council and the Attorney General any unsatisfactory condition relating to the custody, use or disposal of dead bodies at such institutions or any other place where they may be located; (iii) investigate the alleged misconduct of any authorized or unauthorized person who has access to dead bodies; and, for the purpose of this subchapter, any person who obstructs the Inspector of Anatomy in the performance of the Inspector's duties shall be punishable by a fine not exceeding $100.

(24 Del. C. 1953, § 1776; 54 Del. Laws, c. 281; 65 Del. Laws, c. 487, § 2; 70 Del. Laws, c. 186, § 1.)

§ 2707 Postmortem examination only by physicians; liability; consent.

(a) No postmortem examination of the body of a deceased person shall be conducted by any person other than a duly licensed doctor of medicine or osteopathy. Written or telegraphic consent for a doctor of medicine or osteopathy to conduct a postmortem examination of the body of the deceased person shall be deemed sufficient when given by whichever 1 of the following assumes custody of the body for the purpose of burial: Father, mother, husband, wife, child, guardian, next of kin or, in absence of any of the foregoing, a person who assumes the duty of legal disposal of the body. If 2 or more such persons assume custody of the body, consent of 1 of them who is legally considered as the next of kin shall be deemed sufficient.

(b) The licensed physician conducting the postmortem examination shall not be liable in damages for any action taken in making such postmortem examination.

(24 Del. C. 1953, § 1777; 56 Del. Laws, c. 429, § 2; 65 Del. Laws, c. 487, § 2.)

Subchapter II

Uniform Anatomical Gift Act

§ 2710 Definitions.

As used in subchapters II and III of this chapter:

(1) "Acute care general hospital" means a hospital that provides diagnostic and therapeutic services to patients for a variety of medical conditions both surgical and nonsurgical and in which the average length of stay for all patients is less than 30 days.

(2) "Anatomical donation" or "anatomical donor" means a human body part donation or a human body part donor.

(3) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

(4) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(5) "Department" means the Delaware Department of Health and Social Services.

(6) "Donor" means an individual who makes a gift of all or part of the individual's body.

(7) "Fund" means the Organ and Tissue Donor Awareness Trust Fund.

(8) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the United States government, a state or a subdivision thereof, although not required to be licensed under state laws.

(9) "OPO" means the federally certified organ procurement organization for the State.

(10) "Part" includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body, and "part" includes "parts".

(11) "Person" means an individual, corporation, government or governmental subdivision or agency, statutory trust, business trust, estate, trust, partnership or association or any other legal entity.

(12) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(13) "Recovery specialist" means a medical professional licensed by this or another state or technician trained in accordance with federal standards pursuant to 42 U.S.C. § 274(b) and nationally accredited standards for human body part removal.

(14) "State" includes a state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.

(24 Del. C. 1953, § 1780; 57 Del. Laws, c. 445, § 2; 65 Del. Laws, c. 487, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 453, § 2; 73 Del. Laws, c. 329, § 58.)

§ 2711 Persons who may execute an anatomical gift.

(a) Any individual of sound mind and 18 years of age or more or an individual not of such age who has parental consent may give all or any part of the individual's body for any purposes specified in § 2712 of this title, the gift to take effect upon the donor's death. However, a married minor may make such a donation without parental consent.

(b) "Parental consent" as used in this section shall be defined as the written permission by any of the following persons in order of priority stated below when persons of prior classes are no longer living or no longer have contractual capacity and when there is no notice to a donee of an objection, written or otherwise, by a person of the same class:

(1) Either parent;

(2) A legal guardian;

(3) Any individual having legal custody.

(c) Any of the following persons in order of priority stated, when persons in prior classes are not available at the time of death and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in § 2712 of this title:

(1) The spouse;

(2) An adult son or daughter, 18 years of age or older;

(3) Either parent;

(4) An adult brother or sister;

(5) A guardian of the person of the decedent at the time of death;

(6) Any other person authorized or under obligation to dispose of the body.

(d) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (c) of this section may make the gift after death or immediately before death.

(e) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(f) The rights of the donee created by the gift are paramount to the rights of others except as provided by § 2716(f) of this title.

(g) A donor's gift of all or any part of the individual's body, as indicated pursuant to this chapter, including, but not limited to, a designation on a driver's license or identification card, donor card, advance health care directive, will or other document of gift, may not be revoked by the next-of-kin or other persons identified in subsection (c) of this section, nor shall the consent of any such person at the time of the donor's death or immediately thereafter be necessary to render the gift valid and effective.

(24 Del. C. 1953, § 1781; 57 Del. Laws, c. 445, § 2; 64 Del. Laws, c. 16, §§ 1-3; 65 Del. Laws, c. 487, § 3; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 1, § 1.)

§ 2712 Persons who may become donees, and purposes for which anatomical gifts may be made.

The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) Any hospital, surgeon or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy; or

(3) Any bank, storage facility or OPO for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(4) Any specified individual for therapy or transplantation needed by that individual.

(24 Del. C. 1953, § 1782; 57 Del. Laws, c. 445, § 2; 65 Del. Laws, c. 487, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 453, § 3.)

§ 2713 Manner of executing anatomical gifts.

(a) A gift of all or part of the body under § 2711(a) of this title may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under § 2711(a) of this title may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of 2 witnesses who need not be in the presence of each other but who must sign the document in the donor's presence. If the donor cannot sign, the document may be signed for the donor at the donor's direction and in the donor's presence and in the presence of 2 witnesses who must sign the document in the donor's presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding § 2716(b) of this title, the donor may designate in the donor's will, card or other document of gift the surgeon, physician or recovery specialist to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon, physician or recovery specialist for the purpose or, in the case of a gift of eyes, donee or authorized person may employ or authorize an undertaker licensed by the State or a qualified eye bank technician on the staff of the Medical Eye Bank of Delaware or the Lion's Eye Bank of Delaware Valley who has successfully completed a course in eye enucleation approved by the Medical Examiner of the State to enucleate eyes for the gift after certification of death by a physician. A qualified undertaker or eye bank technician acting in accordance with this subsection shall be free from civil and criminal liability with respect to the eye enucleation.

(e) Any gift by a person designated in § 2711(c) of this title shall be made by a document signed by the person or made by the person's telegraphic, recorded, telephonic or other recorded message.

(f) A person who so directs the manner in which the person's body or any part of the person's body shall be disposed of shall receive no remuneration or other thing of value for such disposition.

(24 Del. C. 1953, § 1783; 57 Del. Laws, c. 445, § 2; 59 Del. Laws, c. 330, § 1; 65 Del. Laws, c. 487, § 3; 67 Del. Laws, c. 360, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 453, § 4.)

§ 2714 Delivery of document of gift.

If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

(24 Del. C. 1953, § 1784; 57 Del. Laws, c. 445, § 2; 65 Del. Laws, c. 487, § 3.)

§ 2715 Amendment or revocation of the gift.

(a) If the will, card or other document or executed copy thereof has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) The execution and delivery to the donee of a signed statement;

(2) An oral statement made in the presence of 2 persons and communicated to the donee;

(3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(4) A signed card or document found on the person or in the person's effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set in subsection (a) of this section or by destruction, cancellation or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

(24 Del. C. 1953, § 1785; 57 Del. Laws, c. 445, § 2; 65 Del. Laws, c. 487, § 3; 70 Del. Laws, c. 186, § 1.)

§ 2716 Rights and duties at death.

(a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, the donee may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body. The heir of any donor, at the time the disposition of the body takes place, may submit a request in writing to the donee that the body be returned to the heir at such time as the donee either refuses the disposition of the entire body or the parts thereof or determines that the donee no longer has use of the remains.

(b) A surgeon, physician, funeral director, recovery specialist or eye bank technician who is authorized to remove any part in accordance with this subchapter is also authorized to draw or secure a blood sample from the donor, in order to screen the tissue received for medical purposes.

(c) The time of death shall be determined by a physician who attends the donor at the donor's death or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

(d) A person who acts in good faith in accord with the terms of this subchapter or under the anatomical gift laws of another state (or a foreign country) is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for that act.

(e) Where no other provision for the same exists, a body, or the remains thereof, after it is no longer needed for the purpose indicated by the donor, may be buried at public expense on order of the Medical Council of Delaware, but in no case shall the expense of the burial exceed $100.

(f) This subchapter is subject to the laws of this State prescribing powers and duties with respect to autopsies.

(24 Del. C. 1953, § 1786; 57 Del. Laws, c. 445, § 2; 65 Del. Laws, c. 335, §§ 1, 2; 65 Del. Laws, c. 487, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 453, § 5.)

§ 2717 Uniformity of interpretation.

This subchapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(24 Del. C. 1953, § 1787; 57 Del. Laws, c. 445, § 2; 65 Del. Laws, c. 487, § 3.)

§ 2718 Short title.

This subchapter may be cited as the Uniform Anatomical Gift Act.

(24 Del. C. 1953, § 1788; 57 Del. Laws, c. 445, § 2; 65 Del. Laws, c. 487, § 3.)

§ 2719 Forms.

The following forms may be used to accomplish the purposes of this subchapter:

Anatomical Gift by Next of Kin or Other Authorized Person

I,....., hereby make this anatomical gift of or from to the body of..... who died on..... at the..... in..... The marks in the appropriate squares and the words filled into the blanks below indicate my relationship to the deceased and my desires respecting the gift.

I am the surviving: ( ) ....spouse; ( ) ....adult son or daughter; ( ) ....parent; ( ) ....adult brother or sister; ( ) ....guardian; #....., authorized to dispose of the body:

I give ( ) ....the body of deceased; ( ) ....any needed organs or parts; ( ) ....the following organs or parts.....;

To the following person (or institution)..... (insert the name of a physician, hospital, research or educational institution, storage bank or individual), for the following purposes: ( ) ....any purpose authorized by law; ( ) ....transplantation; ( ) ....therapy; ( ) ....research; ( ) ....medical education.

Dated..... City and State.....

Signature of Survivor

Address of Survivor Anatomical Gift by a Living Donor

I am of sound mind and 18 years or more of age.

I hereby make this anatomical gift to take effect upon my death. The marks in the appropriate squares and words filled into the blanks below indicate my desires.

I give: ( ) ....my body; ( ) ....any needed organs or parts; ( ) ....the following organs or parts ;

To the following person or institutions ( ) ....the physician in attendance at my death; ( ) ....the hospital in which I die; ( ) ....the following named physician, hospital, storage bank or other medical institution.....; ( ) ....the following individual for treatment.....; for the following purposes: ( ) ....any purpose authorized by law; ( ) ....transplantation; ( ) ....therapy; ( ) ....research; ( ) ....medical education.

Dated..... City and State.....

Signed by the Donor in the presence of the following who sign as witnesses.

Witness Signature of Donor

Witness Address of Donor Anatomical Gift by a Living Minor Donor

I am of sound mind and under 18 years of age.

I hereby make this anatomical gift to take effect upon my death with the parental consent of the undersigned. The marks in the appropriate squares and the words filled into the blanks below indicate my desires.

I give: ( ) ....my body; ( ) ....any needed organs or parts; ( ) ....the following organs or parts ;

To the following person or institutions ( ) ....the physician in attendance at my death; ( ) ....the hospital in which I die; ( ) ....the following named physician, hospital, storage bank or other medical institution.....; ( ) ....the following individual for treatment.....; for the following purposes; ( ) ....any purpose authorized by law; ( ) ....transplantation; ( ) ....therapy; ( ) ....research; ( ) ....medical education.

Dated..... City and State.....

The undersigned parent or other person authorized by law grants permission for the above anatomical gift.

Signed by the Donor and the person giving parental consent in the presence of the following who sign as witnesses.

Signature of Donor

Witness Address of Donor

Signature of Parent or
other Person Authorized by Law

_____

Witness Address of Consenting Party

(24 Del. C. 1953, § 1789; 57 Del. Laws, c. 445, § 2; 64 Del. Laws, c. 16, § 4; 65 Del. Laws, c. 487, § 3.)

Subchapter III

Request for Consent to an Anatomical Gift and Establishment of Organ and Tissue Donation Awareness Trust Fund

§ 2721 Requests for anatomical gifts.

(a) Identification of potential anatomical donors. At or near the time of death of any patient age 75 years or less in an acute care general hospital, the attending physician or hospital designee shall make contact with the OPO in order to determine the suitability for organ, tissue and eye donation for any purpose specified under this chapter. This contact and the disposition shall be noted in the patient's medical record.

(b) Protocol for referral of potential anatomical donors to OPO.

(1) The person designated by the acute care general hospital to contact the OPO shall have the following information available:

a. Patient's name and identifier number;

b. Patient's age;

c. Anticipated cause of death;

d. Past medical history; and

e. Other pertinent medical information.

(2) The OPO, in consultation with the patient's attending physician or his/her designee or the hospital's designee shall determine suitability for donation. This determination must be made prior to the initiation of any request of the persons identified under § 2711(c) of this title for anatomical donation.

a. If the OPO determines that donation is not appropriate based on established medical criteria, this shall be noted by hospital personnel in the patient's record and no further action shall be necessary.

b. If the OPO determines that the patient is a suitable candidate for anatomical donation, a request shall be initiated by informing the appropriate persons under § 2711(c) of this title of the option to donate organs, tissue or eyes. The request for anatomical donation shall be made by a representative of the OPO in consultation with the attending physician or the hospital designee. In those cases where the attending physician desires to approach the family to discuss organ or tissue donation, the attending physician may do so when accompanied by a representative of the OPO. The person making the request shall ask persons pursuant to § 2711(c) of this title whether the deceased had a validly executed donor card, will, other document or gift, driver's license or identification card evidencing an anatomical gift. If there is no such evidence of an anatomical gift, then the person designated under § 2711(c) of this title shall be informed in accordance with this chapter of the option to donate organs, tissue or eyes.

c. Each hospital may designate tissue recovery provider(s) to serve the hospital. Each hospital shall notify the OPO in writing of designation(s) it makes, if any. Hospital designated tissue recovery provider(s) shall work cooperatively with the OPO to support the development and/or release of any consent or medical information regarding a potential donor.

(3) Within 1 year of enactment of this section, each acute care general hospital in the state shall develop and implement a protocol for referring potential anatomical donors as provided in this section. The protocol shall require that, at or near the time of the death of any patient age 75 years or less, the acute care general hospital shall contact by telephone the OPO to determine suitability for anatomical donation of the potential donor. The protocol shall encourage discretion and sensitivity to family circumstances and beliefs in all discussions regarding donations of organs, tissue or eyes.

a. Limitation. If the hospital staff advises the OPO that the hospital staff has received actual notice that the decedent did not wish to be an anatomical donor, the gift of all or any part of the decedent's body shall not be requested.

b. Medical Record Reviews. Death Medical record reviews must be performed annually in each acute care general hospital for the sole purpose of determining anatomical donor potential at the hospital. The hospital may perform the medical record review or may designate the OPO to conduct the review. If the hospital chooses to conduct its own review, it must do so in accordance with clinical specifications and guidelines established by the OPO. If the hospital conducts the review, the OPO must provide the necessary training to hospital personnel conducting the review. The hospital must report the results of the review to the OPO no later than 45 days following the completion of the review. If the hospital designates the OPO to conduct the review, the OPO shall provide the hospital with written assurance that the OPO shall maintain the confidentiality of patient identifying information."

(65 Del. Laws, c. 487, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 453, § 7.)

§ 2722 Persons qualified to consent.

The following persons may, in the order set forth herein, consent to or deny a request for an anatomical gift of any specific parts, organs or tissues of the body of a patient in a terminal condition and incompetent or a deceased person who has not made an anatomical gift. Such consent or denial shall be in writing. If there is a conflict among members of a class, the denial will control:

(1) The spouse of the patient or decedent;

(2) A child of the patient or decedent, if such child is 18 years of age or older;

(3) Either parent of the patient or decedent;

(4) A sibling of the patient or decedent, if such sibling is 18 years of age or older; and

(5) The guardian of the patient or decedent at the time of the decedent's death.

(65 Del. Laws, c. 487, § 4; 70 Del. Laws, c. 186, § 1.)

§ 2723 Recovery of human body parts by recovery specialist.

A recovery specialist may recover a human body part for any purpose specified in this chapter. A physician shall not be required to be present during the recovery procedure. Nothing in this section shall be construed to limit a physician or other person authorized by law to recover human body parts pursuant to law.

(71 Del. Laws, c. 453, § 8.)

§ 2724 Organ donation designation on driver's license.

Beginning as soon as practicable but no later than July 1, 1998, the Delaware Division of Motor Vehicles shall modify the driver's license and identification card application process and renewal system to obtain information regarding an individual's consent to anatomical donation, including a process to allow persons under age 18 to register as donors with parental consent as defined in § 2711(b) of this title. The following question shall be asked:

Do you wish to have the organ donor designation printed on your driver's license?

Only an affirmative response of an individual shall be noted on the front of the driver's license or identification card with the word "Organ Donor" and recorded in the individual's computer record with the Division of Motor Vehicles. The OPO shall be given access to the foregoing donor information 24 hours a day through the Division of Motor Vehicles computer database. Notwithstanding the Driver's Privacy Protection Act, Title 21, Section 305, the Division of Motor Vehicles is authorized to provide the OPO with the foregoing donor information. The OPO shall not be assessed a fee or other charges for such access. The donor designation on the driver's license or identification card shall be deemed sufficient to satisfy all requirements for consent to organ and tissue donation.

(71 Del. Laws, c. 453, § 8.)

§ 2725 Declaration concerning medical treatment.

Consent to an anatomical gift under this statute shall not override an individual's declaration regarding medical treatment under Chapter 25 of this title.

(65 Del. Laws, c. 487, § 4.)

§ 2726 Liability.

A person who acts in good faith in accord with the terms of this subchapter is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for that act.

(65 Del. Laws, c. 487, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 453, § 9.)

§ 2727 Consent not necessary for anatomical donation.

Notwithstanding any law to the contrary, if a validly executed donor card, advance health care directive, will, other document of gift, driver's license or identification card evidencing an anatomical gift exists, consent at the time of death is not necessary to render the gift valid.

(71 Del. Laws, c. 453, § 10.)

§ 2728 Organ and Tissue Donor Awareness Trust Fund Contributions.

The Delaware Department of Finance shall provide a space on the face of the state individual income tax return for the 1998 tax year and each year thereafter whereby an individual may voluntarily designate a contribution of any amount desired to the Fund. The amount so designated by an individual on the state income tax return form shall be deducted from the tax refund to which the individual is entitled or added to the individual's payment and shall not constitute a charge against the income tax revenues due the State.

(71 Del. Laws, c. 453, § 10; 73 Del. Laws, c. 179, § 3.)

§ 2729 Organ and Tissue Donation Awareness Trust Fund.

(a) There is hereby created a special fund in the State Treasury to be known as the Organ and Tissue Donor Awareness Trust Fund.

(b) Moneys deposited into the Fund and interest which accrues from those funds are hereby appropriated to the Organ and Tissue Donor Awareness Board as a continuing appropriation, to be distributed by the board in the manner provided in and for the purposes delineated in § 2730. Funds in the Organ and Tissue Donor Awareness Fund shall not lapse.

(71 Del. Laws, c. 453, § 10; 73 Del. Laws, c. 179, § 4.)

§ 2730 Organ and Tissue Donor Awareness Board.

(a) There is hereby established an Organ and Tissue Donor Awareness Board comprised of 9 members to be appointed by the Governor. The members of the board shall include a representative of the federally certified organ procurement organization serving Delaware, a representative of an eye bank located in Delaware, a transplant recipient, a donor family member, a physician having special interest in area of transplantation, a current officer, employee or board member of a Delaware acute care general hospital, 1 representative each from the Department of Health and Social Services, the Department of Education and the Division of Motor Vehicles. Members of the board shall serve for 3-year terms and may be appointed to successive terms by the Governor. Members of the board shall serve without compensation, but shall be reimbursed for all reasonable and necessary travel and other expenses incurred in the performance of their duties under this section.

(b) The board shall have the power and its duty shall be:

(1) To develop donor awareness programs in Delaware, including but not limited to a promotional campaign to encourage Delaware residents to register as donors through the state's driver's license program; educational programs in secondary schools; and an education and awareness campaign for Delaware State employees;

(2) From moneys in the Organ and Tissue Donor Awareness Trust Fund or otherwise made available to the Board, to award grants or make and enter into contracts with any person, association, partnership or corporation for the development, design and implementation of donor awareness programs in Delaware.

(3) To appoint officers, agents, employees and servants, and to prescribe their duties and fix their compensation; provided, that the board shall have the authority to obtain staff support, office space, equipment and supplies from any state department, with or without compensation;

(4) To make and execute contracts and other instruments necessary or convenient for the conduct of its business and the exercise of the authority of the board;

(5) To apply for and accept appropriations, grants, loans and other assistance from, and to enter into contracts, agreements or other transactions with the federal government, the state government, political subdivisions, persons, associations, partnerships or corporations for the development, design and implementation of donor awareness programs in Delaware;

(6) To do all acts and things necessary to carry out the powers granted to it by this act.

(71 Del. Laws, c. 453, § 10.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 28
SPERM BANK AND TISSUE BANK REGISTRY

§ 2801 Establishment of registry; testing of donors; penalties.

(a) The Department of Health and Social Services shall establish a registry of all sperm banks and tissue banks operating in this State. All sperm banks and tissue banks operating in this State shall register with the Department of Health and Social Services by May 1 of each year. Any person, hospital, clinic, corporation, partnership or other legal entity which operates a sperm bank or tissue bank in this State and fails to register with the Department of Health and Social Services pursuant to this section shall be subject to a fine of $5,000.

(b) All donors of semen for purposes of artificial insemination, or donors of corneas, bones, organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body, shall be tested for evidence of exposure to human immunodeficiency virus (HIV) and any other identified causative agent of Acquired Immunodeficiency Syndrome (AIDS) at the time of or after the donation, but prior to the semen, corneas, bones, organs or other human tissue being made available for such use. However, when in the opinion of the attending physician the life of a recipient of a bone, organ or other human tissue donation would be jeopardized by delays caused by testing for evidence for exposure to HIV and any other causative agent of AIDS, testing shall not be required prior to the life-saving measures.

(c) No person may intentionally, knowingly, recklessly or negligently use the semen, corneas, bones, organs or other human tissue of a donor unless the requirements of subsection (b) of this section have been met. No person may knowingly, recklessly or intentionally use the semen, corneas, bones, organs or other human tissue of a donor who has tested positive for exposure to HIV or any other identified causative agent of AIDS. Violation of this subsection shall be a class E felony.

(d) For the purposes of this section, "tissue bank" means any facility or program that is involved in procuring, furnishing, donating, processing or distributing corneas, bones, organs or other human tissue for the purpose of injecting, transfusing or transplanting any of them in the human body.

(66 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 147, §§ 11, 12.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 29
CLEAN INDOOR AIR ACT

§ 2901 Legislative intent.

The General Assembly finds that it is in the best interest of the people of this State to protect nonsmokers from involuntary exposure to environmental tobacco smoke in most indoor areas open to the public, public meetings, foods service establishments and places of employment.

The General Assembly recognizes that a balance should be struck between the health concerns of nonconsumers of tobacco products and the need to minimize unwarranted governmental intrusion into and regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public areas and in private places. Therefore, the General Assembly declares that the purpose of this act is to preserve and improve the health, comfort and environment of the people of this State by limiting exposure to tobacco smoke.

(69 Del. Laws, c. 287, § 1.)

§ 2902 Definitions.

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

(1) "Auditorium" means the part of a public building where an audience sits and any corridors, hallways or lobbies adjacent thereto.

(2) "Bar" means any indoor area open to the public operated primarily for the sale and service of alcoholic beverages for on-premises consumption and where the service of food is secondary to the consumption of such beverages. An establishment which has been licensed by the Delaware Alcoholic Beverage Control Commission as a "taproom or tavern" as that term is defined in Title 4 shall be considered a "bar" for purposes of the application of the provisions of this chapter.

(3) "Employer" means any person, partnership, association, corporation or nonprofit entity that employs 1 or more persons, including the legislative, executive and judicial branches of state government; any county, city, town, village or any other political subdivision of the State, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.

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

(5) "Food service establishment" means any indoor area open to the public or portion thereof in which the principal business is the sale of food for on-premises consumption including, but not limited to, restaurants, cafeterias, coffee shops, diners, sandwich shops or short order cafes. A food service establishment shall not include the bar area of such establishment. An establishment which has been licensed by the Delaware Alcoholic Beverage Control Commission as a "restaurant" as that term is defined in Title 4 shall be considered a "food service establishment" for purposes of the application of the provisions of this chapter.

(6) "Indoor area open to the public" means any indoor area or portion thereof generally accessible to the public.

(7) "Place of employment" means any indoor area or portion thereof under the control of an employer in which employees of the employer perform services but that is not generally accessible to the public.

(8) "Public building" means any building owned or operated by the State, including the legislative, executive and judicial branches of state government; any county, city, town, village or any other political subdivision of the State, public improvement or special district, public authority, commission, agency or public benefit corporation; or any other separate corporate instrumentality or unit of state or local government.

(9) "Public meeting" means all meetings open to the public pursuant to the laws of Delaware and its political subdivisions.

(10) "Smoke-free work area" means an indoor area in a place of employment where no smoking occurs.

(11) "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco.

(12) "Tobacco business" means a sole proprietorship, corporation, partnership or other enterprise engaged primarily in the sale, manufacture or promotion of tobacco, tobacco products and accessories either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental.

(13) "Work area" means an area in a place of employment where 1 or more employees are routinely assigned and perform services for their employer.

(69 Del. Laws, c. 287, § 1; 73 Del. Laws, c. 275, §§ 1, 2, 3, 4, 5, 6.)

§ 2903 Smoking restrictions.

Except as is provided in § 2904 of this title, and in order to reduce the levels of exposure to environmental tobacco smoke, smoking shall not be permitted and no person shall smoke in any indoor enclosed area to which the general public is invited or in which the general public is permitted, including, but not limited to:

(1) Public meetings;

(2) Elevators;

(3) Government owned and/or operated means of mass transportation including buses, vans, trains, taxicabs and limousines;

(4) Grocery stores;

(5) Gymnasiums;

(6) Jury waiting and deliberation rooms;

(7) Courtrooms;

(8) Child day care facilities;

(9) Health care facilities including hospitals, health care clinics, doctor's offices or other health-care-related facilities;

(10) Any workplace not exempted;

(11) Restrooms, lobbies, reception areas, hallways and other common-use areas;

(12) Restaurants as licensed by the Division of Public Health or defined by Title 4;

(13) Gaming facilities that are open to the public;

(14) Any indoor sports arena;

(15) Lobbies, hallways and other common areas in apartment buildings, condominiums and other multiple-unit residential facilities;

(16) Lobbies, hallways and other common areas in hotels and motels, and in no less than 75% of the sleeping quarters within a hotel or motel that are rented to guests;

(17) Bowling alleys;

(18) Billiard or pool halls;

(19) Retirement facilities and nursing homes not including any private residence;

(20) Public buildings;

(21) Auditoria;

(22) Theaters;

(23) Museums;

(24) Libraries;

(25) Public and nonpublic schools;

(26) Other educational and vocational institutions.

(27) Establishments defined as a motorsports speedway, tavern or taproom by Title 4.

(69 Del. Laws, c. 287, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 316, § 1; 73 Del. Laws, c. 275, § 7.)

§ 2904 Smoking restrictions inapplicable.

This chapter shall not apply to:

(1) Private homes, private residences and private automobiles; provided, however, it shall only apply when such homes, residences or vehicles are being used for child care or day care or when the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

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

(3) Limousines under private hire;

(4) A hotel or motel room rented to 1 or more guests; provided that the total percentage of such hotel or motel rooms does not exceed 25%;

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

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

(69 Del. Laws, c. 287, § 1; 73 Del. Laws, c. 275, § 8.)

§ 2905 Posting of signs.

"Warning: Smoking Permitted" signs shall be prominently posted and properly maintained where smoking is permitted pursuant to § 2904(2) and (4) of this title. Such signs shall be posted and maintained by the owner, operator, manager or other person having control of such area. The letters on such signs shall be at least 1 inch in height.

(69 Del. Laws, c. 287, § 1; 73 Del. Laws, c. 275, § 9.)

§ 2906 Implementation; rules and regulations.

(a) The Department of Labor shall adopt rules and regulations as are necessary and reasonable to implement the provisions of this chapter as they apply to employers, employees, places of employment and the work place.

(b) The Department of Health and Social Services shall adopt rules and regulations as are necessary and reasonable to implement remaining provisions of this chapter not affecting employers, employees and the work place.

(c) The Department of Health and Social Services and the Department of Labor may upon request waive the provisions of this chapter if they determine there are compelling reasons to do so, and such waiver will not significantly affect the health and comfort of nonconsumers of tobacco products.

(d) The Department of Health and Social Services and the Department of Labor shall file annual reports by January 15 to the General Assembly outlining their enforcement efforts for the prior year and the results of those efforts. The first report shall be due 1 year after the effective date of the legislation.

(69 Del. Laws, c. 287, § 1; 73 Del. Laws, c. 275, § 10.)

§ 2907 Administrative penalties.

(a) Any person who violates any provision of this chapter or any rule or regulation promulgated pursuant thereto shall be subject to an administrative penalty of $100 for a first violation and not less than $250 for each subsequent violation.

(b) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department of Labor pursuant to this chapter, or because the employee has caused to be instituted or is about to cause to be instituted any proceedings under this chapter, or testified or is about to testify in any such proceedings, shall be deemed in violation of this chapter and shall be subject to a civil penalty of not less than $2,000 nor more than $10,000 for each violation.

(69 Del. Laws, c. 287, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 460, § 4; 73 Del. Laws, c. 275, §§ 11, 12.)

§ 2908 Preemption.

Repealed by 73 Del. Laws, c. 275, § 13.

Part II
Regulatory Provisions Concerning Public Health
Chapter 30
NONCONTAGIOUS DISEASE PREVENTION AND EDUCATION INITIATIVES

§ 3001 Osteoporosis prevention and education.

The Secretary of Health and Social Services shall establish, promote, and maintain an osteoporosis prevention and education initiative in order to raise public awareness of the causes and nature of osteoporosis, personal risk factors, the value of prevention and early detection, and options for diagnosing and treating the disease and to educate consumers, health professionals, teachers and human services providers.

(71 Del. Laws, c. 223, § 1.)

§ 3002 RSDS education.

The Secretary of Health and Social Services shall establish, promote and maintain a Reflex Sympathetic Dystrophy Syndrome (RSDS), also known as Complex Regional Pain Syndrome, education initiative in order to raise public awareness of, and to educate consumers, health professionals, teachers and human services providers about, the causes and nature of RSDS, personal risk factors, the value of early detection and prompt treatment, and options for diagnosing and treating the disease.

(74 Del. Laws, c. 70, § 2.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 30A
TRAINING AND QUALIFICATIONS FOR NURSING ASSISTANTS AND CERTIFIED NURSING ASSISTANTS

§ 3001A Definitions.

As used in this chapter:

(1) "Certified nursing assistant" means a duly-certified individual under the supervision of a licensed nurse, who provides care that 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 or persons to whom they are providing care.

(2) "Department" means the Department of Health and Social Services.

(3) "Nursing assistant" means an individual who has completed the requisite training to become a Certified Nursing Assistant but is awaiting certification.

(4) "Senior certified nursing assistant" means a certified nursing assistant who has met the requirements of § 3005A of this title.

(72 Del. Laws, c. 168, § 1; 77 Del. Laws, c. 401, §§ 4, 5; 79 Del. Laws, c. 318, § 1.)

§ 3002A Certified nursing assistant training.

To obtain certification as a certified nursing assistant, all trainees must complete a total of 150 clock hours of training, 75 of which are in the classroom and 75 of which include clinical training.

(72 Del. Laws, c. 168, § 1; 79 Del. Laws, c. 318, § 1.)

§ 3003A Composition of certified nursing assistant training course and curriculum.

All courses in this State offering certification to individuals as certified nursing assistants must meet the requirements of 42 C.F.R. Ch. IV § 483.152 and have the following:

(1) A student to teacher ratio of no greater than 24 students to 1 registered nurse instructor for the classroom portion of the training;

(2) A student to teacher ratio of no greater than 8 students to 1 registered nurse instructor or 8 students to 1 licensed practical nurse having at least 3 years experience and working under the supervision of a registered nurse for all clinical phases of the program; and

(3) A curriculum complying with requirements mandated by the Department through regulations promulgated pursuant to this chapter.

(2 Del. Laws, c. 168, § 1; 73 Del. Laws, c. 258, § 4; 74 Del. Laws, c. 209, § 1; 76 Del. Laws, c. 304, § 1; 77 Del. Laws, c. 401, §§ 6, 7; 79 Del. Laws, c. 318, § 1.)

§ 3004A Mandatory orientation period.

(a) A nursing assistant who has undergone 150 clock hours of training in a training program sponsored by the facility where the nursing assistant will be employed immediately thereafter shall be required to complete additional facility specific orientation of 40 hours in a skilled nursing facility or 32 hours in an assisted living facility. 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. Nursing assistants must receive certification within 90 calendar days of completion of the training program. Nursing assistants who do not receive certification within 90 calendar days may not work as a nursing assistant. The guidelines for nursing assistant orientation shall be promulgated by the Department.

(b) All certified nursing assistants hired to work in a skilled care or intermediate care facility shall undergo a minimum 80 hours of orientation, at least 40 of which shall be clinical. Certified nursing assistants hired to work in an assisted living facility shall undergo a minimum 64 hours of orientation at least 24 of which shall be clinical. Any certified nursing assistant undergoing orientation and completing clinical tasks may be considered a facility employee for purposes of satisfying the minimum facility staffing requirements set by this chapter and the Department. The guidelines for certified nursing assistant orientation shall be promulgated by the Department.

(c) All certified nursing assistants employed by temporary agencies and placed in a facility in which they have not worked within the previous 6 months shall undergo a minimum of 2 hours of orientation prior to beginning their first shift at that facility, the guidelines for which shall be promulgated by the Department. 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 set by the Department.

(72 Del. Laws, c. 168, § 1; 79 Del. Laws, c. 318, § 1.)

§ 3005A Senior certified nursing assistant certification.

Any certified nursing assistant may pursue designation as a senior certified nursing assistant, and shall be so designated if such individual meets the following requirements:

(1) Has been a certified nursing assistant in good standing for a minimum of 3 years;

(2) Has successfully completed an additional 50 hours of instruction in an approved program featuring a curriculum specified by the Department; and

(3) Has passed a competency test issued pursuant to the guidelines delineated by the Department.

(72 Del. Laws, c. 168, § 1.)

§ 3006A Renewal of certification; late renewal; and penalties.

(a) Every certified nursing assistant shall recertify biennially by filing an application; provided however, that the certification of any certified nursing assistant who is on active military duty with the armed forces of the United States and serving in a theater of hostilities on the date such application or recertification is due shall be deemed to be current and in full compliance with this chapter until the expiration of 30 days after such certified nursing assistant is no longer on active military duty in a theater of hostilities.

(b) Upon receipt of the application, the Department shall verify the accuracy of the information set forth in the application and issue to the applicant a certificate of renewal for 2 years, provided that the applicant has successfully completed continuing education requirements as established by the Department. Such certificate shall entitle the holder to engage in work as a certified nursing assistant for the period stated therein.

(c) A certification may be renewed up to 30 days past the certification's expiration date by submitting, to the Department, payment of a $25 penalty fee along with an application and proof of completion of continuing education requirements during the previous certification period. The certification of a certified nursing assistant who fails to renew on time or during the 30-day late renewal period is considered lapsed and the certified nursing assistant is not permitted to work until the certified nursing assistant submits an application and takes and passes the certified nursing assistant test.

(79 Del. Laws, c. 318, § 1.)

§ 3007A Promulgation of regulation.

The Department shall promulgate rules and regulations to implement this chapter.

(72 Del. Laws, c. 168, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 30B
PRESCRIPTION DRUG PAYMENT ASSISTANCE PROGRAM

§ 3001B Short title.

This chapter shall be known and may be cited as the "Delaware Prescription Drug Payment Assistance Program".

(72 Del. Laws, 1st Sp. Sess., c. 259, § 1.)

§ 3002B Purpose.

The purpose of this chapter is to provide payment assistance for prescription drugs and certain Medicare Part D costs to Delaware's low-income senior and disabled citizens who are ineligible for, or do not have, prescription drug benefits or coverage through federal (excluding Medicare Part D coverage), state or private sources.

(72 Del. Laws, 1st Sp. Sess., c. 259, § 1; 75 Del. Laws, c. 17, § 1.)

§ 3003B Definitions.

(a) "Department" shall mean the Department of Health and Social Services.

(b) "Eligible person" shall mean a person eligible for the Delaware Prescription Drug Payment Assistance Program pursuant to § 3004B of this title.

(c) "Prescription drugs" shall mean drugs and supplies that have been approved as safe and effective by the Federal Food and Drug Administration or are otherwise legally marketed in the United States, including items related to diabetes management, if not covered by Medicare, that a physician has deemed medically necessary for the diagnosis and/or treatment of the patient. For the purposes of this chapter, prescription drugs may include cost effective over-the-counter pharmaceutical products if prescribed by a health care provider authorized to prescribe prescription drugs as an alternative to more costly drugs. Prescription drugs covered under this chapter shall be limited and subject to the provisions of § 3005B of this title and the rules and regulation adopted pursuant thereto.

(d) The "Program" shall mean the Prescription Drug Payment Assistance Program.

(e) "Secretary" shall mean the Secretary of the Department of Health and Social Services.

(f) "Medicare Part D costs" shall mean monthly premiums, deductibles and those drug costs falling into Part D coverage gap up to the Program benefit limits and subject to program co-pay requirements as described in § 3005B(a)(4) of this title. Medicare Part D costs do not include Medicare Part D co-payments.

(72 Del. Laws, 1st Sp. Sess., c. 259, § 1; 75 Del. Laws, c. 17, § 2.)

§ 3004B Eligibility.

To be eligible for the Program a person must:

(1) Be a U.S. citizen or a lawfully admitted alien;

(2) Have income that is less than 200% of the Federal Poverty Level (FPL) or have prescription drug expenses that exceed 40% of his or her annual income;

(3) Be a resident of the State;

(4) Be ineligible for Medicaid prescription benefits;

(5) Be ineligible for and/or not receiving a prescription drug benefit or any third party payer prescription benefit (excluding Medicare Part D coverage);

(6) Be enrolled in Medicare Part D and Medicare Part D Low Income Subsidy if eligible or qualify for a Medicare Part D Special Enrollment Period as an eligible person under the Delaware Prescription Drug Payment Assistance Program; and

(7) Be an individual aged 65 or over or be an individual between the ages 19 and 64 who is otherwise eligible for benefits under Title II of the Social Security Act (Federal Old Age, Survivors and Disability Insurance Benefits) [42 U.S.C. § 401 et seq.].

(72 Del. Laws, 1st Sp. Sess., c. 259, § 1; 75 Del. Laws, c. 17, §§ 3-7; 76 Del. Laws, c. 7, §§ 1, 2.)

§ 3005B Program administration.

(a) The Delaware Prescription Drug Payment Assistance Program shall be administered by the Department. The Department shall promulgate and adopt rules and regulations as are necessary to implement the Program in a cost-effective manner and to ensure the Program is the payer of last resort for prescription drugs. Rules and regulations shall include the following:

(1) Payment assistance shall not exceed $3,000 in a benefit year to assist each eligible person in the purchase of prescription drugs and the payment of certain Medicare Part D costs.

(2) Medicare Part D coverage will be primary to payment assistance under the program.

(3) The Department shall restrict covered prescription drugs covered under the Program to those manufactured by pharmaceutical companies that agree to provide manufacturer rebates under the drug rebate program established for non-Medicaid programs. The Department shall establish a state rebate program that it determines is in the best interests of the citizens who are being served. The rebate amount shall be calculated using the full methodology prescribed by the federal government for the Medicaid program. Notwithstanding any provisions of the Delaware Code to the contrary, the Department shall deposit any drug rebate funds received into the appropriate Social Services program account and be used to meet program costs.

(4) The Department shall develop a copayment requirement, which shall not exceed 25% of the acquisition cost but shall be no lower than $5.00. Copayment amounts may vary when a generic drug is purchased by eligible persons in the Program. These same copayment amounts shall apply to prescription drug costs not covered by Medicare Part D. The copayment may be waived in cases of severe hardship.

(5) The Secretary or the Secretary's designee shall provide a clear, written explanation defining the scope of the Program's coverage, the amount of the cost-sharing requirements and any limitations on access to covered prescription drugs. The Department shall provide notice, when 75% of the cap has been expended. The Department will also notify persons of the process to appeal a decision denying reimbursement for prescription drugs or denying a person's eligibility for the Program. Services shall begin on the first day of the month, following the month that eligibility is determined. Eligible individuals will receive an identification card for the Program.

(6) No drug prescription may exceed 100 dosing units or a 34-day supply, whichever is greater.

(7) No system of administration shall make direct cash payment to any eligible person.

(b) The Department may promulgate and adopt rules and regulations consistent with the following:

(1) Limiting application to the Program to a specific open-enrollment period, with coverage effective as of the date the application is approved.

(2) Imposing an annual enrollment fee in an amount not to exceed $20 to be paid by all eligible persons in the Program to defray administrative expenses. Payment of any such fee shall be credited to a special fund to be designated as the Prescription Assistance Fund. For each year, the maximum unencumbered balance which shall remain in the Prescription Assistance Fund at the end of any year shall be no more than the administrative cost of the program in the subsequent year.

(3) Determining income eligibility of a person by any reasonable means, including, but not limited to a review of the person's most recent federal and state income tax returns and copies of income checks. Residency and age/disability eligibility may be verified by submission of such documents as the Secretary or the Secretary's designee deems reasonable.

(4) Rules and regulations the Secretary deemed necessary to implement the Program consistent with the purposes outlined herein and appropriations provided to implement this Program.

(72 Del. Laws, 1st Sp. Sess., c. 259, § 1; 75 Del. Laws, c. 17, §§ 8, 10; 75 Del. Laws, c. 363, § 1.)

§ 3006B Annual report.

The Department shall maintain data to evaluate the cost and effectiveness of the Program and shall produce an annual report summarizing participant demographics, utilization, utilization review results and such other available information as may be needed to evaluate the costs and benefits of the Program.

(72 Del. Laws, 1st Sp. Sess., c. 259, § 1; 75 Del. Laws, c. 17, § 11.)

§ 3007B Pharmacist duty.

A pharmacist shall not dispense or provide a covered prescription drug to an eligible person until the eligible person makes the required copayment.

(72 Del. Laws, 1st Sp. Sess., c. 259, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 30C
AUTOMATIC EXTERNAL DEFIBRILLATORS (AEDS)

§ 3001C Findings and purpose.

The General Assembly of the State has found that each year more than 350,000 Americans experience out-of-hospital sudden cardiac arrest. More than 95% of them die. In many cases, people die because life saving defibrillators arrive on the scene too late, if at all. It is estimated that more than 100,000 deaths could be prevented each year if defibrillators were more widely available to designated users (responders). Many communities around the country have invested in 911 emergency response systems, emergency personnel and ambulance vehicles. However, many of these same communities do not have enough defibrillators. It is therefore the intent of this General Assembly to encourage greater acquisition, deployment and use of automated external defibrillators in communities within the State.

(72 Del. Laws, c. 412, § 1.)

§ 3002C Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning:

(a) "Automated external defibrillator," (AED) shall mean a medical device which is both a heart monitor and defibrillator that has received approval of its premarket notification, filed with the Food and Drug Administration pursuant to United States Code, Title 21, section 360(k).

(b) "Records" shall mean the recordings of interviews and all oral or written reports, statements, minutes, memoranda, charts, statistics, data and other documentation generated by the State EMS Medical Director.

(72 Del. Laws, c. 412, § 1.)

§ 3003C Correct use of defibrillator; training in order to ensure public health and safety.

(a) Any entity to whom AEDs are distributed shall insure that:

(1) Each prospective defibrillator user receives appropriate training by the American Red Cross, the American Heart Association, Delaware State Fire School or by another nationally recognized provider of training for cardio-pulmonary resuscitation and AED use; provided however, that such training shall be approved by the State EMS Medical Director;

(2) The defibrillator is maintained and tested according to the manufacturer's guidelines; and

(3) Any person who renders emergency care or treatment on a person in cardiac arrest by using an AED shall notify the appropriate EMS units as soon as possible and report any clinical use of the AED to the appropriate licensed physician or medical authority.

(b) The State EMS Medical Director shall maintain a file containing the name of each person or entity that acquires an AED with State funding.

(72 Del. Laws, c. 412, § 1.)

§ 3004C Quality Review Program.

All quality management proceedings shall be confidential. Records of the State EMS Medical Director, and EMS quality care review committee relating to AED reviews and audits shall be confidential and privileged, are protected, and are not subject to discovery, subpoena or admission into evidence in any judicial or administrative proceeding. Raw data used in any AED review or audit shall not be available for public inspection; nor is such raw data a "public record" as set forth in the Delaware Freedom of Information Act.

(72 Del. Laws, c. 412, § 1.)

§ 3005C Provision of limited liability protections.

(a) Any person or entity, who in good faith and without compensation, renders emergency care or treatment by the use of an AED shall be immune from civil liability for any personal injury as a result of such care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment, if such person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances and such act or acts do not amount to willful or wanton misconduct or gross negligence.

(b) Any individual who authorizes the purchase of an AED, any person or entity who provides training in cardiopulmonary resuscitation and the use of an AED, and any person or entity responsible for the site where the AED is located shall be immune from civil liability for any personal injury that results from any act or omission that does not amount to wilful or wanton misconduct or gross negligence.

(72 Del. Laws, c. 412, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 30D
TANNING FACILITIES

§ 3001D Purpose.

The purpose of this chapter it to provide for the regulation of tanning facilities throughout this State in order to better provide for the health and welfare of its citizens.

(77 Del. Laws, c. 195, § 1.)

§ 3002D Definitions [Effective until Jan. 1, 2015]

As used in this chapter:

(1) "Customer" means any member of the public who is provided access to a tanning facility in exchange for a fee or other compensation or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning facility as a condition or benefit of membership or access.

(2) "Department" means the Department of Health and Social Services.

(3) "Minor" means any individual less than 18 years of age.

(4) "Operator" means an individual designated by the licensee to control operation of the tanning facility and to instruct and assist the customer in the proper operation of the tanning equipment.

(5) "Person" means an individual, partnership, corporation, or association.

(6) "Tanning equipment or device" means any equipment that emits radiation used for tanning of the skin, such as a sunlamp, tanning booth or tanning bed that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers. The term includes any accompanying equipment, including but not limited to: timers; ballasts; starters; lamps; reflectors; cooling fans; acrylics; comfort pillows and handrails.

(7) "Tanning facility" means any location, place, area, structure or business which provides customers access to tanning equipment.

(77 Del. Laws, c. 195, § 1.)

§ 3002D Definitions [Effective Jan. 1, 2015]

As used in this chapter:

(1) "Customer" means any member of the public who is provided access to a tanning facility in exchange for a fee or other compensation or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning facility as a condition or benefit of membership or access.

(2) "Department" means the Department of Health and Social Services.

(3) "Minor" means any individual less than 18 years of age.

(4) [Repealed.]

(5) "Person" means an individual, partnership, corporation, or association.

(6) "Phototherapy device" means equipment that emits ultraviolet radiation and is used in the diagnosis or treatment of disease or injury.

(7) "Tanning device" means equipment that emits electromagnetic radiation having wavelengths in the air between 200 and 400 nanometers and that is used for tanning of human skin and any equipment used with that equipment, including but not limited to protective eyewear, timers and handrails. Such term shall not include a phototherapy device used, or prescribed for use, by a physician.

(8) "Tanning facility" means any location, place, area, structure, or business that provides customers access to any tanning device.

(77 Del. Laws, c. 195, § 1; 79 Del. Laws, c. 365, § 1.)

§ 3003D Restrictions on use by minors [Effective until Jan. 1, 2015]

(a) A tanning facility shall not permit a minor between the ages of 14 to 18 to use a tanning device unless the minor provides a consent form signed by the parent or legal guardian at the time of first exposure, and the signature of the consent form is witnessed by an operator. The Department shall promulgate appropriate model language for the consent form to be used by tanning facilities that is consistent with subsection (b) of this section.

(b) The consent form should include all of the following:

(1) Failure to use eye protection may result in damage to the eyes.

(2) Overexposure to ultraviolet light causes burns.

(3) Repeated exposure may result in premature aging of the skin and skin cancer.

(4) Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain:

a. Foods;

b. Cosmetics; or

c. Medications, including:

1. Tranquilizers;

2. Diuretics;

3. Antibiotics;

4. High blood pressure medicines; or

5. Birth control pills.

(5) Any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device.

(6) A person with skin that always burns easily and never tans should avoid a tanning device.

(7) A person with a family or past medical history of skin cancer should avoid a tanning device.

(c) Any minor under 14 years of age may not use a tanning device unless deemed medically necessary as evidenced by a prescription from a properly licensed physician, a physician's assistant who is supervised by a licensed physician or an advanced practice nurse who is employed by or who has a collaborative agreement with a licensed physician and unless the minor also provides a consent form signed by the parent or legal guardian at the time of first exposure, and the signature on the consent form is witnessed by an operator.

(d) The minor's parent or legal guardian may withdraw the consent form at any time. Unless so withdrawn, the consent form shall expire 1 year from signature. A new consent form shall be provided by the minor, as prescribed in this section at such time.

(77 Del. Laws, c. 195, § 1.)

§ 3003D Restrictions on use by minors [Effective Jan. 1, 2015]

(a) A tanning facility shall not permit a minor. to use a tanning device.

(b) <equalsign>p1;0 (b)-(d) [Repealed.]

(77 Del. Laws, c. 195, § 1; 79 Del. Laws, c. 365, § 1.)

§ 3004D Liability [Effective until Jan. 1, 2015]

The consent form provided under § 3003D of this title shall not affect the liability of the owner, manager or operators of a tanning facility in the event that a customer incurs damages.

(77 Del. Laws, c. 195, § 1.)

§ 3004D Liability [Effective Jan. 1, 2015]

(77 Del. Laws, c. 195, § 1; repealed by 79 Del. Laws, c. 365 § 1, eff. Jan. 1, 2015.)

§ 3005D Duty [Effective until Jan. 1, 2015]

It shall be the duty of the tanning facility owner to ensure that each customer utilizing the tanning facility is of legal age to do so. The tanning facility licensee shall be held responsible for the use of the tanning facility by anyone under 18 years of age who does not submit a consent form as prescribed in § 3003D of this title.

(77 Del. Laws, c. 195, § 1.)

§ 3005D Duty [Effective Jan. 1, 2015]

It shall be the duty of the tanning facility owner to ensure that each customer utilizing the tanning facility is of legal age to do so. The tanning facility owner shall be held responsible for the use of the tanning facility by any minor pursuant to § 3003D of this title.

(77 Del. Laws, c. 195, § 1; 79 Del. Laws, c. 365, § 1.)

§ 3006D Records [Effective until Jan. 1, 2015]

Records of consent forms shall be maintained for all minor customers of the tanning facility for a period of at least 3 years from date of signature. Records shall be maintained on the premises and made available for review by the Department upon request.

(77 Del. Laws, c. 195, § 1.)

§ 3006D Warning signs and statements [Effective Jan. 1, 2015]

(a) Each tanning facility shall post at least 1 warning sign in a place readily visible to persons entering the facility. Lettering must be clear, legible, and at least 1/4 inch in height, unless otherwise provided herein. The sign shall have dimensions not less than 11 inches by 17 inches and shall have the following statements:

(1) "DANGER — ULTRAVIOLET RADIATION", in capital letters at least 1/2 inch in height;

(2) "Follow the manufacturer's instructions for this device.";

(3) "Avoid overexposure. As with sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, bruising of the skin, and skin cancer.";

(4) "Avoid sunbathing before or after exposure to ultraviolet radiation from sunlamps.";

(5) "Wear protective eyewear. Failure to do so may result in severe burns or permanent injury to the eyes."; and

(6) "Medications or cosmetics may increase sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight."

(b) Each customer shall be provided with a written warning statement prior to each use of the tanning equipment or device. The warning statement shall include the following statements:

(1) "Failure to use eye protection may result in injury to the eyes.";

(2) "Overexposure to ultraviolet light may cause burns.";

(3) "Repeated exposure to ultraviolet light may result in skin cancer and premature aging of the skin.";

(4) "Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain foods, cosmetics, or medications, including tranquilizers, diuretics, antibiotics, high blood pressure medications, and birth control pills.";

(5) "Anyone taking a prescription or over-the-counter drug should consult a physician before using any tanning equipment or device.";

(79 Del. Laws, c. 365, § 1.)

§ 3007D Penalties [Effective until Jan. 1, 2015]

Notwithstanding any other provision of Delaware law, a licensee who violates § 3003D of this title shall be guilty of a violation and shall be fined $250 for the first offense, $500 for the second offense and $1,000 for the third and all subsequent offenses.

(77 Del. Laws, c. 195, § 1.)

§ 3007D Penalties [Effective Jan. 1, 2015]

Notwithstanding any other provision of Delaware law, an owner who violates this chapter shall be guilty of a violation and shall be fined $250 for the first offense, $500 for the second offense and $1,000 for the third and all subsequent offenses.

(77 Del. Laws, c. 195, § 1; 79 Del. Laws, c. 365, § 1.)

§ 3008D Promulgation.

The Department shall promulgate any necessary rules and regulations to implement this chapter.

(77 Del. Laws, c. 195, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 30E
SCHOOL ACCESS TO EMERGENCY MEDICATION ACT

§ 3001E Definitions.

As used in this chapter:

(1) "Emergency medication" means a medication necessary for response to a life-threatening allergic reaction.

(2) "Licensed healthcare provider" means anyone lawfully authorized to prescribe medications and treatments.

(3) "School" means an educational facility serving students in kindergarten through grade 12, and any associated pre-kindergarten program in such facility.

(4) "School nurse" means a registered nurse employed by a local education agency meeting the certification and licensure requirements of the employing agency.

(5) "Trained person" means an educator, coach or person hired or contracted by schools serving students in pre-kindergarten through grade 12 who has completed the training to administer emergency medicine to diagnosed and undiagnosed individuals.

(6) "Without an order" means that the school nurse or trained person may administer emergency medication, as further described within this chapter, without an individual prescription from a licensed healthcare provider for a person to receive the emergency medication. In lieu of a licensed healthcare provider's order, i.e., an individual prescription, the Division of Public Health will issue guidance for administration emergency medication in the school setting. The Division of Public Health will continue to provide medical emergency standing orders for allergic reactions and anaphylaxis in previously undiagnosed individuals for use by public—charter school registered nurses.

(79 Del. Laws, c. 342, § 1.)

§ 3002E Responsibilities of the Department of Education.

The Department of Education shall adopt rules and regulations regarding emergency medication, including but not limited to the training of trained persons and documentation thereof; and the storage, provision and administration of emergency medication and documentation thereof.

(79 Del. Laws, c. 342, § 1.)

§ 3003E Responsibilities of the Division of Public Health.

The Division of Public Health shall provide guidance on the administration of emergency medications without an order in the school setting to undiagnosed individuals. The Division of Public Health will continue to provide medical emergency standing orders for allergic reactions and anaphylaxis in previously undiagnosed individuals for use by public/charter school registered nurses.

(79 Del. Laws, c. 342, § 1.)

§ 3004E Responsibilities of the school.

(a) The school nurse, in consultation with the school administration, shall identify and train a sufficient number of eligible persons willing or required by position to become trained persons to administer emergency medication.

(b) The school shall maintain stock emergency medication.

(79 Del. Laws, c. 342, § 1.)

§ 3005E Training.

(a) The Department of Education shall develop, for approval by the Division of Public Health, a training course to prepare trained persons to administer emergency medications to diagnosed and undiagnosed individuals.

(b) Except for a school nurse, an educator, coach or person hired or contracted by schools serving students in pre-kindergarten through grade 12 shall not be compelled to become a trained person, unless this is a requirement of hire or contract.

(79 Del. Laws, c. 342, § 1.)

§ 3006E Storage of emergency medication.

(a) Emergency medication which shall be administered by the school nurse, shall be located in a secure but accessible area which is easily accessible to the school nurse.

(b) Emergency medication which shall be administered by a trained person, shall be located in a secure but accessible area, which is identified by the school as easily accessible.

(79 Del. Laws, c. 342, § 1.)

§ 3007E Provision of limited liability protections.

Any trained person or school nurse, who, in good faith and without expectation of compensation from the person aided or treated, renders emergency care or treatment in response to an apparent allergic reaction by the use of an emergency medication shall not be liable for damages for injuries alleged to have been sustained by the aided or treated person or for damages for the death of the aided or treated person alleged to have occurred by reason of an act or omission in the rendering of such emergency care or treatment, unless it is established that such injuries or such death were caused wilfully, wantonly or by gross negligence on the part of the trained person or school nurse who rendered the emergency care or treatment by the use of an emergency medication.

(79 Del. Laws, c. 342, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 30F
ANIMALS HELD IN SHELTER
Subchapter I
Shelter Operation

§ 3001F Definitions.

For purposes of this subchapter:

(1) "Animal shelter" means a public or private facility which includes a physical structure that provides temporary or permanent shelter to stray, abandoned, abused, or owner-surrendered animals and that is operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals. "Animal shelter" shall not include individuals providing temporary foster care to animals in their home or to animal rescue groups sheltering animals on an individual's private property.

(2) "Department" means the Department of Health and Social Services or its duly authorized representatives.

(3) "Licensed veterinarian" means a veterinarian licensed to practice veterinary medicine pursuant to Title 24.

(4) "Licensed veterinary technician" means an individual licensed as a veterinary technician pursuant to Title 24.

(77 Del. Laws, c. 418, § 2; 79 Del. Laws, c. 377, § 1.)

§ 3002F Shelter care and treatment.

(a) Animal shelters shall be advised by a licensed veterinarian and shall adhere to a written veterinary care protocol developed with a licensed veterinarian, which protocol shall include appropriate evaluation and testing of newly impounded animals, disease control and prevention, and adequate veterinary care. The protocol shall be updated as needed.

(b) Animal shelters shall vaccinate all dogs against canine distemper virus, canine parvovirus, and bordetella bronticeptica and all cats against feline viral rhinotracheitis, calicivirus, and the panleukopenia virus before or upon entering the shelter or holding facility to reduce the spread of disease. Such vaccinations must be administered as soon as possible and no more than 8 hours after entering the shelter. This provision shall not apply to animals in quarantine for rabies observation or to animals having injuries, illness or temperament that make administration of the vaccinations unsafe.

(c) An examination of animals entering an animal shelter shall be performed within 72 hours of entry.

(d) Animal shelters shall ensure that animals requiring veterinary care are seen by a licensed veterinarian within a reasonable amount of time based on the condition of the animal, and that urgent medical care is provided as needed. Animal shelters shall comply with treatment plans developed by a licensed veterinarian for animals at the shelter requiring treatment.

(e) Animal shelters shall include a designated treatment area and isolation and/or quarantine areas. Animals suspected of carrying a contagious deadly disease will be moved to isolation or quarantine and remain there until they are no longer a threat to susceptible animals.

(65 Del. Laws, c. 136, § 1; 77 Del. Laws, c. 418, § 2; 79 Del. Laws, c. 377, § 1.)

§ 3003F Animal adoption, recovery, and rehabilitation.

(a) Animal shelters shall be open to the public after normal business hours, including evenings and weekends, to increase access for the purpose of adoption.

(b) Animal shelters shall provide a minimum holding period of 72 hours for animals in their care, to allow reclamation by their owners. If an adoptable animal is not reclaimed, the animal may be transferred to another animal shelter or rescue for adoption, or adopted as a companion in a suitable home. This holding period required by this subsection shall not apply to owner-surrendered animals or other cases in which the owner of the animal is known. Wild animals may be disposed of by rehabilitation to their natural habitat.

(c) *Animal recovery.* —

(1) Animal shelters shall take appropriate action to ensure that all animals brought to the shelter are checked for all currently acceptable methods of identification, including microchips, identification tags, tattoos, and licenses.

(2) Animal shelters shall maintain updated lists of animals reported lost, and attempt to match these lost reports with animals reported found and animals in the shelter, and shall also post all stray animals on the Internet with sufficient detail to allow them to be recognized and claimed by their owners.

(3) If a possible owner is identified, the animal shelter shall make every reasonable attempt to reunite the animal with its owner. Upon the owner's or caretaker's initiative of recovery procedures, the animal shelter shall retain custody of the animal for a 5-day period to allow for completion of the recovery process. The owner or custodian of the animal may be held responsible for reasonable housing

and boarding costs once the owner or custodian has been notified of the animal's location, provided that the owner or custodian has been advised of such costs prior to the costs being incurred.

(d) Animal shelters shall establish and maintain a registry of organizations willing to accept animals for the purpose of adoption, including breed specific rescues, or to provide the animals with long-term placements. The registry shall include the types and breeds of animals about which the organization wishes to be contacted. Animal shelters shall have the right to inspect the facilities of any adoption organization taking animals from the shelter.

(e) Animal shelters shall make best efforts to prioritize acceptance of animals from within the State of Delaware before accepting dog or cat intakes from outside of Delaware. Animals accepted from shelters outside the State of Delaware must have a current health certification.

(77 Del. Laws, c. 418, § 2; 79 Del. Laws, c. 377, § 1.)

§ 3004F Euthanasia in animal shelters.

(a) Any dog, cat or other animal held by or in the custody of an animal shelter and not adopted, transferred to another shelter or animal rescue group, or reclaimed by the owner within 5 days may be euthanized, provided that no reasonable alternatives are available and the requirements of subsections (b) and (c) of this section are met.

(b) Animal shelters shall ensure that the following conditions are met before an animal is euthanized:

(1) The holding period for the animal required by this subchapter is expired;

(2) There are no empty cages, kennels, or other living environments in the shelter that are suitable for the animal;

(3) The animal cannot share a cage or kennel with appropriately-sized primary living space with another animal;

(4) A foster home is not available;

(5) Organizations on the registry developed pursuant to § 3003F(d) of this title are not willing to accept the animal; and

(6) The animal care/control manager certifies that the above conditions are met and that such manager has no other reasonable alternative.

(c) Notwithstanding any other provisions of this chapter to the contrary, an animal may be euthanized immediately if necessary to alleviate undue suffering or to protect shelter staff and/or other sheltered animals from an animal's severe aggression or contagious deadly health condition. The determination of whether euthanasia is necessary pursuant to this subsection shall be made by a licensed veterinarian or, in cases of extreme emergency occurring after regular business hours in circumstances under which a licensed veterinarian is not available, by other appropriately trained staff.

(d) *Euthanasia method and procedure.* —

(1) The Department shall promulgate regulations regarding acceptable methods of euthanasia in animal shelters and regarding sanitation and ventilation of euthanasia areas. The methods included shall be approved or conditionally approved by the most recent American Veterinary Medical Association Guidelines on Euthanasia.

(2) Under no circumstances shall carbon monoxide or carbon dioxide be used as a method of euthanasia.

(3) Any animal shelter performing euthanasia shall have a current policy and procedure manual regarding euthanasia. The policy and procedure manual shall set forth the shelter's equipment, process, and the procedures for individual separation of animals.

(4) Notwithstanding the provisions of Chapter 33 of Title 24, euthanasia must be performed by:

a. A licensed veterinarian;

b. A nationally certified euthanasia technician; or

c. A licensed veterinary technician; or

d. A person certified by a licensed veterinarian, after passing both a written and practical examination, as proficient to perform euthanasia. Training and certification requirements shall be established by Department regulation in consultation with the Delaware Board of Veterinary Medicine.

(5) If euthanasia is by injection, animals in an animal shelter that are amenable to being controlled shall be lowered to the surface on which they are being held and shall not be permitted to drop or otherwise collapse without support.

(6) The trained staff member performing the euthanasia in animal shelters shall remain in attendance between the time procedures to euthanize the animal are commenced and the time death occurs, and shall verify death has occurred using methods to be determined by regulation.

(7) Sodium pentobarbital may be obtained by an animal shelter with required federal and state permits.

(65 Del. Laws, c. 136, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 418, § 3; 79 Del. Laws, c. 377, § 1.)

§ 3005F Proper facilities required.

Any municipality that does not have proper facilities and trained personnel shall transport in a humane manner any animals which are to be euthanized to the nearest private or public shelter or agency which has proper facilities and trained personnel or contract for euthanasia of such animals by a licensed veterinarian.

(65 Del. Laws, c. 136, § 1; 77 Del. Laws, c. 418, § 3; 79 Del. Laws, c. 377, § 1.)

§ 3006F Violation constitutes class A misdemeanor; civil remedy; jurisdiction of Superior Court.

(a) Failure by any person employed by, volunteering at or an agent of any private or public animal shelter to comply with § 3004F(d) of this title regarding euthanizing animals shall constitute a class A misdemeanor and shall be punishable as provided by law.

(b) Any person may maintain a civil action to enjoin the continuance of the violation of § 3004F(d) of this title. If the acts sought to be enjoined are determined by the courts to violate § 3004F(d) of this title, a permanent injunction against such acts shall be granted. The violation may also be abated by any public body or officer authorized to do so by law.

(c) The Superior Court shall have exclusive jurisdiction of misdemeanor offenses under this section.

(65 Del. Laws, c. 136, § 1; 77 Del. Laws, c. 418, §§ 3- 6; 79 Del. Laws, c. 377, § 1.)

§ 3007F Record keeping and reporting.

Animal shelters shall maintain records regarding the following information:

(1) Intake rate;

(2) Euthanasia rate including age (infant, juvenile, and adult), by animal;

(3) Number of adoptions;

(4) Number reclaimed by owner;

(5) Number transferred to other agencies for adoption;

(6) Number of spay/neuters;

(7) Number of animals in the shelter;

(8) Records showing the number of animals that died or were lost/stolen;

(9) Records showing compliance with vaccination requirements; and

(10) Records regarding medical treatment provided.

The information in paragraphs (1) through (7) of this section shall be posted to the shelter's website on a quarterly basis. The information in paragraphs (8), (9) and (10) of this section shall be made available upon request by appropriate authorities.

(77 Del. Laws, c. 418, § 7; 79 Del. Laws, c. 377, § 1.)

§ 3008F Enforcement.

(a) The Department shall adopt rules and regulations as may be necessary for the protection and care of companion animals in animal shelters, as defined in this subchapter.

(b) The Department will conduct at least annual inspection of every animal shelter.

(c) The Department or its duly authorized representative(s) shall have the power to enter at all reasonable times, during ordinary business hours, upon any private or public animal shelter for the purpose of determining whether or not there is compliance with or violations of this subchapter, rules, and regulations thereunder.

(d) Upon request of the Department, animal shelters shall make available records concerning the requirements of this subchapter.

(e) All findings will be documented in writing and a copy provided to the animal shelter within 30 days. Once provided to the animal shelter, the documentation will also be posted on the Department web site. Deficiencies must be corrected within the timeframe established by the Department.

(f) The Department shall have the power to issue orders to correct deficiencies and to impose penalties pursuant to § 107(a) of this title.

(g) The animal shelter management has the right to appeal the results of the inspection. If the opinion of the animal shelter management is in conflict with the inspection, the animal shelter management may request a review of the inspection by the Department. The appeal will be made in writing and submitted within 30 days after publication of the findings. After receipt of the appeal, the Department will have 60 days to respond in writing.

(h) The Department shall conduct an investigation upon receipt of a complaint of alleged violations of this subchapter.

(1) Anyone desiring to file a complaint against any animal shelter shall file a written complaint with the Department. All complaints shall be reviewed and complaints concerning violations of this chapter will be investigated by the Department or its designee. The Department shall notify the animal shelter of the complaint within 30 days of receipt of said complaint. The Department shall be responsible for issuing a final written report of violations of this subchapter to the animal shelter. Once the final report is issued to the animal shelter, the report will also be posted to the Department web site at the conclusion of the proceedings.

(2) The animal shelter management may, in writing to the Department, request a hearing if they wish to contest the findings of the investigation. The appeal will be made in writing and submitted within 30 days after publication of the findings. Within 30 days of receipt of the request for public hearing, the Department shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29, and the Freedom of Information Act, Chapter 100 of Title 29.

(79 Del. Laws, c. 377, § 1.)

Subchapter II
Animal Population Control Program and Spay/Neuter Fund

§ 3010F Short title.

This subchapter shall be known and may be cited as the "Animal Population Control Program."
(75 Del. Laws, c. 326, § 1; 79 Del. Laws, c. 377, § 2.)

§ 3011F Findings.

The General Assembly for the State of Delaware hereby finds that:

(1) During 2002, of the 22,165 dogs and cats which were received at Delaware's primary animal facilities, of those received:
  a. Two thousand four hundred and nine (11%) were returned to their owners/guardians; while
  b. Seven thousand two hundred and ninety (33%) were adopted; and
  c. Twelve thousand six hundred and fifty-nine (57%) were euthanized.

(2) During 2003, of the 24,510 dogs and cats which were received at Delaware's primary animal facilities, of those received:
  a. Two thousand one hundred and eighty-six animals (9%) were returned to their owners/guardians; while
  b. Seven thousand one hundred and twenty-five animals (29%) were adopted; and
  c. Thirteen thousand six hundred and fifty-three animals (56%) were euthanized.

(3) During 2004, of the 21,254 dogs and cats which were received at Delaware's primary animal facilities, of those received:
  a. Two thousand one hundred and ninety-three animals (10.3%) were returned to their owners/guardians; while
  b. Five thousand five hundred animals (25.8%) were adopted; and
  c. Thirteen thousand and sixty-seven animals (61.4%) were euthanized.

(4) During 2005, of the 21,062 dogs and cats which were received at Delaware's primary animal facilities or those received:
  a. Two thousand two hundred and ninety-nine animals (10.9%) were returned to their owners/guardians; while
  b. Five thousand eight hundred and thirty-seven animals (27.7%) were adopted; and
  c. Thirteen thousand five hundred and eighty three animals (64.4%) were euthanized.

(5) As Delaware's human population growth rate increases so too will the population growth rate of the dog and cat populations, the intake at animal facilities and the consequent disposition rates associated therewith.

(6) Controlling the dog and cat population would have a significant benefit to the public health and safety in the following manner:
  a. Reducing nuisance complaints regarding homeless dogs and cats;
  b. Reducing the number of homeless dogs and cats seeking to mate;
  c. Reducing the number of dog and cat bite cases involving children;
  d. Minimizing opportunities for rabies transmission;
  e. Decreasing the number of automobile accidents caused by stray dogs and cats; and
  f. Reducing cruelty to animals opportunities by addressing and decreasing the presence of unwanted/nuisance populations.

(7) This subchapter recognizes the economic hardships associated with animal population control, the problems associated with homeless animals, and the societal impacts associated with failing to address these problems and establishes a program focused upon addressing dog and cat population control by providing a means by which population control and rabies vaccinations may be financed.

(75 Del. Laws, c. 326, § 1; 79 Del. Laws, c. 377, § 2.)

§ 3012F Purpose.

The purpose of the spay/neuter program is to assist low-income residents and low-income communities. The Animal Population Control Program's goals include:

(1) Population growth among stray and unwanted cats and dogs; and
(2) Stray and unwanted cats and dogs entering animal shelters; and
(3) Cat and dog euthanasia rates; and
(4) Animal-inflicted injuries to humans (e.g., bites); and
(5) Threats to public health and safety (e.g., from rabies and vehicular accidents).

(75 Del. Laws, c. 326, § 1; 79 Del. Laws, c. 377, § 2.)

§ 3013F Definitions.

(a) "Abandoned/free roaming/homeless/stray/unwanted animal" — A cat or dog with no known owner or keeper or not wanted by its owner or keeper or that may be deserted by its owner or keeper.

(b) "Administrator" — Department of Health and Social Services.

(c) "Animal control agency" — Any state, county or municipally authorized animal control agency.

(d) "Animal shelter" — A public or private facility which includes a physical structure that provides temporary or permanent shelter to stray, abandoned, abused, or owner-surrendered animals.

(e) "Cat" — A member of the genus and species known as felis catus.

(f) "Dog" — A member of the genus and species known as canis familiaris.

(g) "Feral cat" — An offspring of abandoned domestic cats who reverts to a semi-wild state and lives outside in family groups called colonies. Feral cats have a temperament of extreme fear and resistance to contact with humans.

(h) "Feral cat caretaker" — A person or group of people who provide food and shelter to feral cats, and work or works to reduce colony numbers by working to spay and neuter the animals within their specific colony or colonies.

(i) "Keeper" — A person in possession or control of a cat, dog or other animal becomes the keeper of a stray domesticated animal, other than livestock, if the person feeds that animal for at least 3 consecutive days.

(j) "Owner" — Any person, firm, partnership, association or corporation owning, keeping or harboring a cat, dog or other animal.

(k) "Program" — The mandatory pre-adoption sterilization and rabies inoculation program established by and set forth in this subchapter for cats and dogs.

(l) "Spay/neuter" — To sterilize a female animal by removing the ovaries or to castrate a male animal by removing the testicles or by FDA approved pharmaceutical sterilization.

(75 Del. Laws, c. 326, § 1; 76 Del. Laws, c. 284, § 1; 79 Del. Laws, c. 377, § 2.)

§ 3014F Funding.

(a) Spay/Neuter Fund shall be established for the purpose of funding the Animal Population Control Program.

(b) All moneys received by the administrator in accordance with the authority provided by this subchapter shall be deposited into a separate, nonlapsing account and shall be dedicated for use by the administrator exclusively for veterinarian reimbursement and administration costs associated with the Program and set forth in this subchapter.

(c) All interest earnings shall be credited to the assets of the Fund and shall become part of the Fund.

(d) Any balance remaining in the Fund at the end of any fiscal year shall be carried forward for the next fiscal year for this Program.

(e) The Fund shall be created from a combination of the following:

(1) On June 29, 2006, $250,000, subject to appropriation, shall be deposited in the account for use during fiscal year 2007.

(2) In addition to the foregoing, a $3.00 surcharge shall be added to each rabies shot administered to cats and dogs in Delaware on or after September 1, 2006. It shall be the responsibility of the veterinarian administering the inoculation to collect said funds and forward same on a monthly basis, together with all applicable rabies inoculation verifications and other forms to the administrator.

(3) The surcharge shall be deposited in the Fund's account and shall become part of the Fund's corpus.

(4) The funding stream established in this section shall be evaluated on or before December 30, 2007, to assess the measurable impacts as set forth in § 8226 of this title and to determine the potential necessity for an extension of subsidized funding compared to the ability of the fund's corpus, as set forth below, to generate sufficient on-going revenues to provide a self-sustaining funding mechanism.

(f) Soliciting and accepting funds from public or private sources:

(1) The administrator is authorized to solicit and accept donations, grants, gifts, and bequests of money, property or personal services from individuals and/or organizations including, but not limited to, private foundations or alliances, nonpublic agencies, institutions, organizations or businesses. All funds generated shall be retained by the administrator in order to defray costs associated with the Animal Population Control Program and any volunteer and community service activities and events of the Animal Population Control Program. Funds received will not be used for employee salaries or benefits. All funds received are subject to audit by the Office of Management and Budget, and employees of the administrator or the Animal Population Control Program, if any, are bound by § 5806 of Title 29 when engaging in fundraising activities.

(2) Any misnomer shall not defeat or annul any gift, grant, devise or bequest to the administrator if it sufficiently appears by the will, conveyance or other writing that the party making the same intended to pass and convey thereby to the administrator, the property, estate or interest therein expressed or described.

(3) Any property, real or personal, acquired by the administrator on behalf of the Animal Population Control Program may be used solely for purposes related to the goals of the Animal Population Control Program or, at the discretion of the administrator, sold at public auction to raise funds to support the Animal Population Control Program.

(4) All money donated or bequeathed to the administrator or otherwise received hereunder shall be deposited with the Secretary of Finance and shall be appropriated semi-annually to the administrator for purposes of the Animal Population Control Program.

(75 Del. Laws, c. 326, § 1; 79 Del. Laws, c. 377, § 2.)

§ 3015F Eligibility; division of Spay/Neuter Fund proceeds.

The proceeds of the Spay/Neuter Fund outlined in this subchapter shall be available to those parties qualifying for participation under the following eligibility requisites:

(1) An individual may qualify to participate in the program if the individual:

a. Is 18 years of age or older;

b. Is a resident of the State;

c. Establishes proof of being a recipient of benefits from 1 of the following programs:

1. Food Stamps;

2. General Assistance;

3. Delaware Medical Assistance;

4. Social Security Disability (SSD), including an individual who was receiving Social Security Disability benefits at the time the individual reached full retirement age but whose benefits have since been converted to regular retirement benefits by the Social Security Administration;

5. SSI (Supplemental Security Income);

6. Temporary Assistance for Needy Families (TANF);

7. WIC [Women, Infants and Children];

8. Veteran's Administration Disability Compensation (only if veteran has a disability rating of 50% or higher).

d. Establishes proof of identity through photo identification; and

e. Presents a Delaware feral cat or a Delaware stray dog or is the owner or keeper of the Delaware cat or Delaware dog being spayed or neutered to a participating veterinarian or clinic.

(2) A corporation may qualify to participate in the Program if it:

a. Is registered as a Delaware corporation with the Delaware Secretary of State, Division of Corporations;

b. States in its corporate purpose clause or in its mission statement that its activities are devoted to animal rescue, animal welfare, or the humane treatment of animals;

c. Applies these funds to animals who have their origin in Delaware; and

d. Is exempt from federal taxation in accordance with Internal Revenue Code § 501(c)(3) [26 U.S.C. § 501(c)(3)].

(3) The first 2 years' fiscal allotment shall be divided by the administrator as follows:

a. Approximately 75% of the funding shall be dedicated to subsidizing the cost of sterilizing domesticated animals owned by those participants qualifying under the terms set forth in paragraph (1) of this section.

b. Approximately 25% of the funding shall be dedicated to subsidizing the cost of sterilizing those abandoned, free-roaming, homeless, stray, or unwanted animals located in communities by participants qualifying under paragraph (2) of this section.

c. An individual seeking a low-income subsidy in accordance with paragraph (1) of this section shall be limited to 3 such procedures per fiscal year and shall be ineligible to seek additional funding by participating in the Program under the terms set forth in paragraph (2) of this section.

d. Division by the Administrator of the program's fiscal allotment and the numerical spay and neuter procedures established above shall be reevaluated by the Administrator after the first 2 years of operations and thereafter as necessary to assure the program's continued viability.

e. [Repealed.]

(75 Del. Laws, c. 326, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 284, § 2; 77 Del. Laws, c. 174, §§ 1-5; 79 Del. Laws, c. 377, § 2.)

§ 3016F Preadoption spay/neuter mandate.

(a) Effective on June 29, 2006, it shall be mandatory for all cats and/or dogs of reproductive age to be spayed or neutered and inoculated for rabies prior to adoption from any of the following:

(1) A private animal welfare or rescue agency/group or organization;

(2) Any adoption clinic endorsed, operated, managed, or sponsored by an animal welfare or rescue agency, organizations, commercial enterprises or private parties or combination thereof; or

(3) An animal shelter as defined herein.

(b) Exceptions to the preadoption spay/neuter mandate shall be limited to the following:

(1) An animal which, following a medical examination by an accredited veterinarian, is found to be in a state of health which would preclude the safe and humane implementation of a spay/neuter procedure or rabies inoculation; or

(2) A dog or cat under the age of 6 months provided that:

a. The adopted shall post a deposit of $75; and

b. In the absence of an exemption as provided in paragraph (b)(1) of this section above, said deposit shall be held by the adopting agency until such time as:

1. Said deposit is rebated to the adopter upon proof that the spay/neuter procedures has been completed within 5 months of the date of adoption; and

2. The animal has received a rabies inoculation in accordance with the existing laws governing rabies inoculations and such inoculation was not postponed beyond the seventh month of age; or

3. The deposit is disbursed subject to and in accordance with the procedures elaborated in § 3017F(c) of this title below.

(75 Del. Laws, c. 326, § 1; 79 Del. Laws, c. 377, § 2.)

§ 3017F Enforcement, violations and penalties.

(a) The administrator shall adopt regulations pursuant to this subchapter relative to:

(1) Format and content of all forms required under this subchapter.

(2) Proof of eligibility under § 3015F of this title.

(3) Administration of the Fund established under § 3018F of this title.

(4) Any other matter necessary for the administration or enforcement of the Animal Population Control Program and Spay/Neutering Fund established under this subchapter.

(b) Any person who knowingly falsifies proof of eligibility for, or participation in, any program established under this chapter, or who knowingly furnishes any licensed veterinarian with inaccurate information concerning ownership of a pet submitted for sterilization, or who falsifies an animal sterilization certificate shall be guilty of an unclassified misdemeanor and shall be subject to a minimum mandatory fine, which shall not be subject to suspension, of $250.

(c) Failure to spay/neuter a dog or cat once within the parameters established in § 3016F of this title:

(1) In the absence of a medical exemption resulting from an examination by an accredited veterinarian, which finds that the dog/cat has reached reproductive age but is in a state of health which precludes the safe and humane implementation of a spay/neuter procedure or rabies inoculation (as is outlined in § 3016F(b)(1) of this title above) the adopter's spay/neuter deposit shall be escheated to the Fund's corpus after the specified timeframe has lapsed, and the proceeds shall be disbursed in accordance with the guidelines and process elaborated in § 3015F of this title.

(2) The administrator shall be notified and prosecution shall follow.

(3) In addition to the forfeiture of the spay/neuter deposit, which shall not be subject to suspension, the adopter shall be responsible for the actual cost of having the animal spayed/neutered and inoculated for rabies within a period of 15 calendar days.

(4) In addition to the forfeiture of the deposit moneys and the actual cost of having the animal spayed/neutered and inoculated for rabies within the established period of 15 calendar days a mandatory minimum fine of $250, plus all enforcement and court costs, all of which shall not be subject to suspension, shall be levied upon the violator for failure to comply with the spay/neuter and inoculation requisite within the established timeframe.

(5) If the adopter fails to comply with the spay/neuter and inoculation process within the extended 15-day timeframe, the minimum mandatory fine, which shall not be subject to suspension, shall be doubled and the animal shall be forfeited to the original adopting agency.

(6) The administrator shall employ all available remedies at law in any court of competent jurisdiction in pursuing the collection of any and all fines.

(d) Agency failure to spay/neuter an animal of reproductive age:

(1) Any agency, organization, or other entity cited under § 3016F of this title failing to comply with the mandatory pre-adoption spay/neuter and rabies inoculation program set forth in this subchapter shall be subject to a mandatory minimum fine of $500, which shall not be subject to suspension, for each violation of this subchapter.

(2) An agency's holding of animals of reproductive age until such time as said animals are the subject of an adoption application does not constitute a violation of this subchapter.

(e) All fines collected in association with this subchapter shall be deposited in and become a part of the Fund's corpus, shall be invested with the proceeds thereof and the moneys earned therefrom, together with other interest income generated by the Fund's corpus shall be disbursed according to the guidelines and process elaborated in § 8015F of this title.

(75 Del. Laws, c. 326, § 1; 76 Del. Laws, c. 284, §§ 3, 4; 79 Del. Laws, c. 377, § 2.)

§ 3018F Program administration.

(a) The administrator shall administer the Program and shall be responsible for:

(1) Distributing, collecting and compiling all forms, including but not limited to, veterinarian participation agreements, sterilization and immunization certifications, and creating a database there from for enforcement and accountability purposes; and

(2) Maintaining a list of participating veterinarians; and

(3) Determining keeper/owner eligibility; and

(4) Collecting co-payments; and

(5) Obtaining the maximum number of spay/neuter/inoculation procedures available to the Program's financial parameters per calendar year.

(b) All reimbursement shall be through the administrator.

(c) The cost of the program manager position to administer the Pet Population Control Spay/Neuter Program shall be paid for out of General Funds until this Special Fund of $500,000, at which time the position and support costs shall be paid for out of Appropriated Special Funds.

(75 Del. Laws, c. 326, § 1; 76 Del. Laws, c. 284, § 5; 79 Del. Laws, c. 377, § 2.)

§ 3019F Veterinarian participation.

(a) Any veterinarian licensed in the State of Delaware may participate in the Program established under this chapter. To participate, a veterinarian must file an application provided by the administrator spanning a 2-year period from date of approval agreeing to all preset fees and program conditions. Preset fees shall be set by the administrator, in consultation with the Delaware Veterinary Medical Association and shall be subject to revision at 2-year intervals.

(b) For all cats or and dogs sterilized under this Program, the administrator shall reimburse the veterinarians or business they work for or the 501(c)(3) [26 U.S.C. § 501(c)(3)] organization for services on a monthly basis. The preset fee shall cover the cost of a presurgical medical evaluation; spay/neuter surgery, rabies vaccination and routine postsurgical care required by the servicing veterinarian's postoperative protocol. The keeper/owner/caretaker shall be responsible for the payment of any additional fees for procedures mutually agreed upon and administered by the veterinarian that are not covered under this Program.

(c) To receive reimbursement for procedures performed, the participating veterinarian or business they work for or the 501(c)(3) [26 U.S.C. § 501(c)(3)] organization shall submit an animal sterilization form signed by the owner of the dog or cat and the veterinarian together with a copy of the completed Spay/Neuter Fund Certificate to the administrator.

(d) The current rabies forms shall be revised in such a manner as to create an area for recording a serialized tag number for purposes of accountability.

(e) This process shall also apply to all inoculations clinics except that it shall also be the responsibility of the organization conducting the clinic to maintain copies of the certificates for a minimum of 12 months after the expiration date of the vaccination.

(f) In addition to that which is already established by law, a copy of the rabies registration form shall be generated and provided to the Program's administrator. The administrator's copy shall be utilized for establishing and maintaining a database for enforcement, performance review analysis and tax credit reporting purposes.

(75 Del. Laws, c. 326, § 1; 76 Del. Laws, c. 284, § 6; 79 Del. Laws, c. 377, § 2.)

§ 3020F Veterinarian services tax credit.

Repealed by 76 Del. Laws, c. 284, § 10, effective Dec. 31, 2008.

§ 3021F Performance measurement.

Performance measurement is necessary to determine the success of the Program and to assess if any changes in the Program should be made.

(1) To measure the performance of this Program, the administrator shall establish a standardized statewide yearly reporting system for the following:

a. The number of spay/neuter surgeries; and

b. The number of rabies inoculations performed pursuant to this subchapter; and

c. Cat and dog shelter intake statistics; and

d. Euthanasia statistics; and

e. Such other criteria as the administrator shall find necessary for the purposes of performance review analysis.

(2) The Performance Review Committee shall be reinstated as the Spay/Neuter Performance Review Committee (the Committee). The Committee shall consist of the following members or their respective designees:

a. The Secretary of the Department of Health and Social Services, shall serve as an ex officio nonvoting member and shall also act as Chairperson of the Committee;

b. The Director of the Division of Public Health, or a designee having knowledge in the area of rabies control;

c. The President of the Delaware Veterinary Medical Association;

d. The President of the Board of Directors of the First State Animal Center—Delaware Society for the Prevention of Cruelty to Animals;

e. The President of the Board of Directors of the First State Animal Center— SPCA;

f. The President of the Board of Directors of Faithful Friends Animal Society;

g. The President of the Board of Directors of the Delaware Humane Association;

h. The Director of the Division of Social Services; and

i. Six additional members appointed by the Chairperson, including 2 members from each county, each of whom shall be a veterinarian or a representative of an animal rescue organization not cited above.

(3) The Chairperson shall schedule Committee meetings as often as is necessary. The Committee shall issue recommendations to the Department of Health and Social Services as often as the Chairperson deems necessary, but no less often than annually. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from the Committee and a replacement shall be appointed by the Chairperson.

(4) Subject to and in accordance with Robert's Rules of Order, a quorum shall consist of 51% of the Committee's membership and actions by the Committee may only be taken by majority vote of those members present. The members shall receive no compensation for their services. The Committee is authorized to adopt such rules and procedures as may be necessary or convenient to accomplish the purposes set forth in this subchapter, including without limitation, the adoption of conflict of interest rules.

(75 Del. Laws, c. 326, § 1; 76 Del. Laws, c. 284, §§ 7-9; 79 Del. Laws, c. 377, § 2.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 30G
NALOXONE

§ 3001G Administration of naloxone by peace officers and the Community-Based Naloxone Access Program.

(a) A peace officer is authorized to receive, carry, and administer the drug naloxone if the peace officer has completed a Department approved training course.

(b) A peace officer who, acting in good faith and after completing a Department-approved training course, administers the drug naloxone to an individual whom the officer reasonably believes to be undergoing an opioid-related drug overdose shall not be liable for damages for injuries or death sustained to the individual in connection with administering the drug, unless it is established that such injuries or death were caused wilfully, wantonly or by gross negligence on the part of the peace officer who administered the drug.

(c) Nothing in this chapter mandates that any law-enforcement agency require its peace officers to carry or administer naloxone.

(d) Notwithstanding any other provision of law, the purchase, acquisition, possession or use of naloxone pursuant to this section shall not constitute the unlawful practice of a profession or violation of the Uniform Controlled Substances Act [§ 4701 et seq. of this title].

(e) DHSS shall create written and uniform treatment and care plans for emergency and critical patients statewide that constitute the standing orders for the administration of naloxone by peace officers and participants in the Community-Based Naloxone Access Program. The treatment protocol for naloxone administration under this chapter must be approved and signed by the State EMS Medical Director, or the Medical Director or the Director of the Division of Public Health, Department of Health and Social Services. Doctors prescribing naloxone who, acting in good faith, directly or by standing order, prescribe or dispense the drug naloxone to a person who completes an approved-training program who, in the judgment of the health-care provider, is capable of administering the drug for an emergency opioid overdose, shall not be subject to disciplinary or other adverse action under any professional licensing statute, criminal liability, or liable for damages for injuries or death sustained to the individual in connection with administering the drug, unless it is established that such injuries or death were caused wilfully, wantonly, or by gross negligence on the part of the doctors who signed the standing order and protocol.

(f) DHSS is authorized to oversee the implementation and monitoring of the Peace Officer and Community-Based Naloxone Access Programs.

(79 Del. Laws, c. 384, § 1.)

Part II
Regulatory Provisions Concerning Public Health
Chapter 30H
ACCESS TO PRIVATE RESTROOMS

§ 3001H Definitions.

For purposes of this chapter:

(1) "Customer" means an individual who is lawfully on the premises of a retail establishment.

(2) "Eligible medical condition" means Crohn's disease or ulcerative colitis, celiac disease, any other inflammatory bowel disease, irritable bowel syndrome, or any other medical condition that requires immediate access to a restroom facility.

(3) "Restroom" means a room containing a toilet.

(4) "Retail establishment" means any business or place where members of the public have access as invitees, licensees, or customers.

(79 Del. Laws, c. 414, § 1.)

§ 3002H Access to restrooms.

(a) A retail establishment that has a restroom facility for its employees, not usually accessible to the public, shall allow a customer to use that facility during normal business hours if the following conditions are met:

(1) The customer requesting the use of the employee restroom facility suffers from an eligible medical condition or uses an ostomy device, provided that the existence of the condition or device is documented in writing by a physician or other licensed medical professional, or an identification card that is issued by a nationally-recognized health organization or state agency and that indicates the customer suffers from an eligible medical condition or uses an ostomy device;

(2) Three or more employees of the retail establishment are working at the time the customer requests the use of the employee restroom facility;

(3) The employee restroom facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the establishment;

(4) Accessing the bathroom would not expose the customer to sensitive company documents, materials, or trade secrets;

(5) Accessing the bathroom would not cause the retail establishment to cease or significantly curtail normal business operations; and

(6) A public restroom is not immediately accessible to the customer.

(b) For purposes of this section, an "obvious health or safety risk" would include but is not limited to a situation where accessing the employee restroom facility requires the customer to traverse an area where manufacturing or heavy equipment is in use, items are stored on high shelves, adequate lighting is not present, the floor may be wet or slippery, or hazardous materials are used or stored.

(79 Del. Laws, c. 414, § 1.)

§ 3003H Physical changes or improvements.

This chapter does not require a retail establishment to make any physical changes or improvements to an employee restroom facility located on the premises.

(79 Del. Laws, c. 414, § 1.)

§ 3004H Penalty.

A violation of this chapter shall for the first offense receive a warning. Any subsequent offense shall be punished by a civil penalty of $100.

(79 Del. Laws, c. 414, § 1.)

§ 3005H Enforcement.

The Division of Public Health shall enforce the provisions of this chapter. Any civil penalties collected under this chapter shall be directed to the Division of Public Health for enforcement and education related to this chapter.

(79 Del. Laws, c. 414, § 1.)

Part III
Vital Statistics
Chapter 31
REGISTRATION OF BIRTHS, DEATHS, MARRIAGES, DIVORCES, ANNULMENTS AND ADOPTIONS
Subchapter I
General Provisions

§ 3101 Definitions.

As used in this chapter:

(1) "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death recently occurred.

(2) "Department" means the Department of Health and Social Services.

(3) "File" means the presentation of a vital record provided for in this chapter for registration by the Office of Vital Statistics.

(4) "Induced termination of pregnancy" means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant and which does not result in a live birth. This definition excludes management of prolonged retention of products of conception following fetal death.

(5) "Institution" means any establishment, public or private, which provides in-patient medical, surgical or diagnostic care or treatment or nursing, custodial or domiciliary care, or to which persons are committed by law.

(6) "Live birth" is defined as the complete expulsion or extraction from its mother of a product of conception (irrespective of the duration of pregnancy) which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsations of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

(7) "Physician" means a person authorized or licensed to practice medicine or osteopathy pursuant to the laws of this State.

(8) "Registration" means the acceptance by the Office of Vital Statistics and the incorporation of vital records provided for in this chapter into its official records.

(9) "Spontaneous fetal death" or "stillborn fetus" is defined as a spontaneous death (i.e., not an induced termination of pregnancy) prior to the complete expulsion or extraction from its mother of a product of conception. The death is indicated by the fact that after such separation, the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.

(10) "System of vital statistics" means the registration, collection, preservation, amendment and certification of vital records; the collection of other reports required by this chapter; and activities related thereto including the tabulation, analysis and publication of vital statistics.

(11) "Vital records" means certificates or reports of birth, death, marriage, divorce or annulment, and data related thereto.

(12) "Vital statistics" means the data derived from certificates and reports of birth, death, spontaneous fetal death, marriage, divorce or annulments, and related reports.

(40 Del. Laws, c. 96, §§ 1-10; Code 1935, § 806; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3124; 52 Del. Laws, c. 88, § 1; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 137; 70 Del. Laws, c. 378, § 1.)

§ 3102 Supervision and enforcement of registrations.

(a) The Department has charge of the registration of births, deaths, marriages, divorces and fetal deaths and shall prepare the necessary methods, forms and blanks for obtaining and preserving such records and insuring the faithful registration of the same throughout this State and in the central Office of Vital Statistics.

(b) The Department is charged with the uniform and thorough enforcement of this chapter throughout the State and shall from time to time promulgate any additional forms and regulations that are necessary for this purpose.

(27 Del. Laws, c. 84, § 1; 27 Del. Laws, c. 85, § 1; Code 1915, § 797; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 780; 16 Del. C. 1953, § 3101; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 138.)

§ 3103 Regulations of Department; adoption and enforcement.

The Department may adopt, promulgate, amend and repeal such regulations as may be consistent with law relative to this chapter, including regulations governing the conditions under which the bodies of persons dying from an infectious or communicable disease

can be transported from any portion of the State to a crematorium for the purpose of cremation. The regulations shall be enforced by the Department.

(25 Del. Laws, c. 66, § 9; 27 Del. Laws, c. 84, §§ 14, 18; 27 Del. Laws, c. 85, §§ 15, 18; Code 1915, §§ 818, 821; 33 Del. Laws, c. 57, § 4; 33 Del. Laws, c. 82; 34 Del. Laws, c. 69, § 1; Code 1935, §§ 801, 803; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, §§ 3102, 3168; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 139.)

§ 3104 Central Office of Vital Statistics.

(a) There is hereby established within the Division of Public Health an Office of Vital Statistics which shall install, maintain and operate the only system of vital statistics throughout this State.

(b) The Office of Vital Statistics shall have branch offices in each county. The Department shall designate 1 such branch as the central Office of Vital Statistics, and this branch shall be responsible for the supervision of the operation of the other vital statistics offices throughout this State.

(27 Del. Laws, c. 84, § 2; 27 Del. Laws, c. 85, § 2; Code 1915, § 798; 29 Del. Laws, c. 49, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 781; 16 Del. C. 1953, § 3103; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 140.)

§ 3105 State Registrar of Vital Statistics; duties.

(a) The Director of the Division of Public Health of the Department of Health and Social Services shall be the State Registrar and shall:

(1) Direct and supervise the system of vital statistics and the Office of Vital Statistics and be custodian of its records.

(2) Direct, supervise and control the activities of all persons when they are engaged in activities pertaining to the operation of the system of vital statistics.

(3) Conduct training programs to promote uniformity of policy and procedures throughout the State in matters pertaining to the system of vital statistics.

(4) Prescribe, with the approval of the Department, furnish and distribute such forms as are required by this chapter and the rules and regulations issued hereunder, or prescribe such other means for transmission of data as will accomplish the purpose of complete and accurate reporting and registration.

(5) Prepare and publish reports of vital statistics of this State and such other reports as the Registrar may deem necessary.

(b) The Delaware Health Statistics Center within the Division of Public Health shall have responsibility for the statistical analysis of vital statistics data and shall prepare and publish vital statistics reports of this State. The State Registrar may establish or designate other offices in the State to aid in the efficient administration of the system of vital statistics.

(c) The central office and each branch office of the Office of Vital Statistics shall offer voluntary paternity acknowledgment services, as described in § 3121(c) and (d) of this title, to the mother and putative father of a child born to unmarried parents.

(d) The State Registrar may delegate such functions and duties vested in the Registrar to employees of the Office of Vital Statistics and to employees of any office established or designated under subsection (b) of this section.

(26 Del. Laws, c. 75; Code 1915, § 770; 27 Del. Laws, c. 84, § 2; 27 Del. Laws, c. 85, § 2; Code 1915, §§ 770, 798; 29 Del. Laws, c. 49, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, §§ 776, 781; 16 Del. C. 1953, §§ 3104, 3154; 57 Del. Laws, c. 591, § 14; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 141; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 216, § 104; 76 Del. Laws, c. 194, § 2.)

§ 3106 Employment of personnel and acquisition of equipment.

The Division of Public Health shall provide the Office of Vital Statistics with sufficient staff, suitable offices and other resources for the proper administration of the system of vital statistics and for the preservation of its official records.

(27 Del. Laws, c. 84, § 2; 27 Del. Laws, c. 85, § 2; Code 1915, § 798; 29 Del. Laws, c. 49, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 781; 16 Del. C. 1953, § 3105; 68 Del. Laws, c. 274, § 1.)

§ 3107 Reproduction of vital records; official seal for certification.

(a) To preserve vital records, the State Registrar is authorized to prepare typewritten, photographic, electronic or other reproductions of certificates or reports in the Office of Vital Statistics. Such reproductions when certified by the State Registrar shall be accepted as the original records.

(b) The Department shall adopt an official seal for purposes of certification. Every certificate or other official paper executed by the State Registrar, in pursuance of any authority conferred by law, and bearing the seal of the Department shall be received as evidence when duly certified by the Department, under its seal, with the same force and effect as the original would, in law, be entitled to if produced in open court.

(27 Del. Laws, c. 84, § 2; 27 Del. Laws, c. 85, § 2; Code 1915, § 798; 29 Del. Laws, c. 49, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 781; 16 Del. C. 1953, § 3106; 57 Del. Laws, c. 591, § 15; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 142.)

§ 3108 Form of certificates and reports.

(a) In order to promote and maintain nationwide uniformity in the system of vital statistics, the forms of certificates and reports required by this chapter, or by regulations adopted hereunder, shall include as a minimum the items recommended by the federal agency responsible

for national vital statistics, subject, however, to approval of and modification by the Department; provided, however, that every death certificate shall include the social security number of the decedent.

(b) Each certificate, report and other document required by this chapter shall be on a form or in a format prescribed by the State Registrar.

(c) All vital records shall contain the date received for registration.

(d) Information required in certificates or reports authorized by this chapter may be filed and registered by photographic, electronic or other means as prescribed by the State Registrar.

(27 Del. Laws, c. 84, § 8; 27 Del. Laws, c. 85, § 14; Code 1915, § 805; 35 Del. Laws, c. 55; Code 1935, § 788; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3133; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 143; 71 Del. Laws, c. 216, § 59.)

§ 3109 Completion of certificates and reports.

(a) Those individuals and/or institutions responsible for completion of certificates or reports according to this chapter or regulations adopted hereunder shall complete all items on the forms provided by the State Registrar. The State Registrar shall carefully examine the certificates and reports received in the Office of Vital Statistics, and if they are incomplete or unsatisfactory, shall require such further information as may be necessary to make the record complete and satisfactory.

(b) No claim or cause of action shall arise and no judgment, damages, penalties, costs or other money entitlement shall be awarded against an individual or institution that furnishes vital statistics in accordance with this chapter.

(25 Del. Laws, c. 66, § 7; 27 Del. Laws, c. 84, § 13; Code 1915, §§ 813, 815; Code 1935, §§ 796, 798; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, §§ 3109, 3130; 68 Del. Laws, c. 274, § 1.)

§ 3110 Disclosure of records.

(a) To protect the integrity of vital records, to ensure their proper use and to ensure the efficient and proper administration of the system of vital statistics, the records and files of the Office of Vital Statistics shall be considered confidential matter and shall not be open to inspection, except as authorized by this chapter, and regulations adopted hereunder or by order of a court of competent jurisdiction. Regulations adopted under this section shall provide for adequate standards of security and confidentiality of vital records and reports.

(b) The State Registrar shall upon receipt of an application issue a certified copy of a vital record in the Registrar's custody or a part thereof to the registrant's, the registrant's spouse, children, parents or guardian, or their respective authorized representative. The State Registrar shall, upon receipt of an application, issue a non-certified copy of a vital record, including an original birth certificate, to a registrant who is an adoptee 21 years of age or older. Others may be authorized to obtain certified copies when they demonstrate that the record is needed for the determination or protection of their personal or property rights or for genealogical purposes. The Department shall adopt regulations to further define those who may obtain copies of vital records under this chapter.

(c) The Department may authorize by regulation the disclosure of information contained on vital records for research purposes.

(d) Subject to the provisions of this section, the State Registrar may, by agreement, transmit copies of records and other reports required by this chapter to the federal agency responsible for national vital statistics and other offices of vital statistics outside this State when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall require that the copies be used for statistical and/or administrative purposes only and the agreement shall further provide for the retention and disposition of such copies. Copies received by the Office of Vital Statistics from offices of vital statistics in other states shall be handled in the same manner as prescribed in this section.

(e) Appeals from decisions of custodians of vital records, as designated under authority of § 3105 of this title, who refuse to disclose information, or to permit inspection or copying of records as prescribed by this section and regulations adopted hereunder, shall be made to the Department whose decisions shall be binding upon such custodians.

(f) When 72 years have elapsed after the date of birth or 40 years have elapsed after the date of death or marriage, the records of these events shall become public records and information shall be made available in accordance with regulations which shall provide for the continued safekeeping of the records.

(g) The State Registrar of Vital Statistics shall submit a monthly report of all births to women under 18 years of age to the Division of Child Support Enforcement of the Department of Health and Social Services, and to the Division of Family Services of the Department of Services for Children, Youth and Their Families for informational, investigative and/or child support purposes. The monthly report shall include the name, address, date of birth and Social Security number of the mother and father, if available, the date of birth and sex of the child.

(h) The State Registrar of Vital Statistics shall create a stillbirth certificate which shall be issued upon request to a parent (or authorized representative thereof) who is authorized to receive a certificate of fetal death under subsection (b) of this section.

(27 Del. Laws, c. 85, §§ 6, 9; Code 1915, §§ 807, 810; 34 Del. Laws, c. 65, § 1; Code 1935, §§ 790, 793; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, §§ 3110, 3134; 67 Del. Laws, c. 383, § 1; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 144; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 481, § 1; 72 Del. Laws, c. 70, § 1; 74 Del. Laws, c. 408, § 1; 78 Del. Laws, c. 121, § 1.)

§ 3111 Penalties.

(a) A fine of not more than $10,000, or imprisonment of not more than 5 years, or both, shall be imposed on:

(1) Any individual who wilfully and knowingly makes any false statement in a certificate, record or report required by this chapter, or in an application for an amendment thereof, or in an application for a certified copy of a vital record, or who wilfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record or certificate, or amendment thereof; or

(2) Any individual who without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends or mutilates any certificate, record or report required by this chapter or a certified copy of such certificate, record or report; or

(3) Any individual who wilfully and knowingly obtains, possesses, uses, sells, furnishes or attempts to obtain, possess, use, sell or furnish to another, for any purpose of deception, any certificate, record or report required by this chapter or certified copy thereof so made, counterfeited, altered, amended or mutilated, or which is false in whole or in part or which relates to the birth of another person, whether living or deceased; or

(4) Any employee of the State who wilfully and knowingly furnishes or processes a certificate, or certified copy of a certificate, with the knowledge or intention that it be used for the purposes of deception; or

(5) Any individual who without lawful authority possesses any certificate, record or report, required by this chapter or a copy or certified copy of such certificate, record or report knowing same to have been stolen or otherwise unlawfully obtained.

(b) A fine of not more than $1,000, or imprisonment of not more than 1 year, or both, shall be imposed on:

(1) Any individual who wilfully and knowingly refuses to provide information required by this chapter or regulations adopted hereunder; or

(2) Any individual who wilfully and knowingly transports or accepts for transportation, interment or other disposition a dead body without an accompanying permit as provided in this chapter or regulations adopted hereunder; or

(3) Any individual who wilfully and knowingly neglects or violates any of the provisions of this chapter or regulations adopted hereunder or refuses to perform any of the duties imposed upon the individual by this chapter or regulations adopted hereunder.

(25 Del. Laws, c. 66, § 9; 26 Del. Laws, c. 75; 27 Del. Laws, c. 84, §§ 14, 16; 27 Del. Laws, c. 85, §§ 15, 16; Code 1915, §§ 770, 818, 819; 28 Del. Laws, c. 60, § 2; Code 1935, §§ 776, 801, 802; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, §§ 3111, 3139, 3152, 3157, 3169; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3112 Immunity.

No employee of the Office of Vital Statistics or other state offices established or designated under § 3105(b) of this title shall be subject to, and such persons shall be immune from any claim, suit, liability or damages or any other recourse, civil or criminal, arising from any act or proceedings, decision or determination undertaken or performed while discharging any duty or authority under this chapter, so long as such person acted in good faith, without gross negligence, and within the scope of the person's own duty or authority under this chapter or any other provisions of the Delaware law, federal law or regulations or duly adopted rules and regulations providing for the administration of this chapter, good faith being presumed until proven otherwise, with gross negligence required to be shown by the complainant.

(68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter II
Registration Requirements and Procedures

§ 3121 Registration of births.

(a) A certificate of birth for each live birth which occurs in this State shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within 10 days after such birth and shall be registered if it has been completed and filed in accordance with this section.

(b) When a birth occurs in an institution or en route thereto, the person in charge of the institution or the person's designated representative shall obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate as directed in subsection (a) of this section or as otherwise directed by the State Registrar within the required 10 days. The physician or other person in attendance shall provide the medical information required by the certificate and certify to the facts of birth within 72 hours after the birth. If the physician, or other person in attendance, does not certify to the facts of birth within the 72-hour period, the person in charge of the institution shall complete and sign the certificate.

(c) When a child is born to an unmarried woman in an institution, the person responsible for completing the birth certificate, or the person's designated representative, shall:

(1) Provide written information prepared by the Division of Child Support Enforcement to the mother and the putative father, if he is present, explaining the rights and responsibilities of acknowledging paternity;

(2) Provide the mother and the putative father the opportunity to sign an acknowledgment of paternity as described in subsection (d) of this section and provide notary public services for this purpose;

(3) Provide the mother and the putative father with a copy of the signed and notarized acknowledgment; and

(4) File the signed and notarized acknowledgment with the Office of Vital Statistics within 10 days after execution. The Office of Vital Statistics shall send a copy of the acknowledgment to the Division of Child Support Enforcement within 7 days after it receives the acknowledgment.

(d) The acknowledgment provided for in subsection (c) of this section shall contain:

(1) The mother's address and Social Security number, her statement that the putative father is the only possible father and her consent to the acknowledgment of paternity;

(2) The putative father's address and Social Security number and his statement that he is the biological father of the child;

(3) Subject to the provisions of § 804(c) of Title 13, their acknowledgment of a right to blood, tissue or other genetic testing to determine paternity or nonpaternity and of the right to otherwise dispute paternity in any civil or criminal action in which the paternity of the child by the putative father is an element of the claim for relief or a defense;

(4) A statement of the presumptive effect of the acknowledgment of paternity under § 804(c) of Title 13;

(5) A statement of the rights and responsibilities of acknowledging paternity, including that the acknowledgment of paternity establishes the duty of both parties to support the child, is the basis for the entry of a child support order without further proceedings to establish paternity, may be the basis for the putative father establishing custody and visitation rights, establishes inheritance rights and may be the basis for requiring notice to the putative father prior to an adoption; and

(6) Instructions for filing the acknowledgment with the Office of Vital Statistics; and

(7) The acknowledgment of both the putative father and the mother that they have been notified, orally and in writing of each of the items listed in paragraphs (1) through (6) of this subsection before signing the acknowledgment of paternity.

(e) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth, or in the absence of such a person;

(2) Any other person in attendance at or immediately after the birth, or in the absence of such a person;

(3) The father, the mother, or, in the absence of the father and the inability of the mother, the State Registrar or a duly authorized representative.

(f) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this State, the birth shall be registered in this State and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this State, the birth shall be registered in this State but the certificate shall show the actual place of birth insofar as can be determined.

(g)(1) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by Family Court.

(2) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate without a court order from Family Court or an acknowledgment of paternity which is signed by both parents and their signatures notarized.

(3) In any case in which paternity of a child is determined by Family Court, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

(h) Either of the parents of the child, or other informant, shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within 10 days prescribed in this section.

(i) The time within which a supplementary report furnishing information omitted from the original certificate may be returned for the purpose of completing the certificate shall not be more than 6 months from the date of birth. Certificates of birth completed by a supplementary report shall not be considered delayed or altered.

(27 Del. Laws, c. 84, § 5; 27 Del. Laws, c. 85, § 10; Code 1915, § 802; Code 1935, § 785; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3122; 68 Del. Laws, c. 274, § 1; 69 Del. Laws, c. 296, §§ 22, 23; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 216, §§ 102, 103.)

§ 3122 Infants of unknown parentage; foundling registration.

(a) When the State assumes the custody of a live born infant of unknown parentage, an officer of the Department of Services for Children, Youth and Their Families shall report on a form and in a manner prescribed by the State Registrar within 5 days to the Office of Vital Statistics the following information:

(1) The date and place of finding;

(2) Sex, race and approximate age of child;

(3) Name and address of the person or institution with whom the child has been placed for care;

(4) Name given to the child by the custodian of the child;

(5) Other data required by the State Registrar.

(b) The place where the child was found shall be known as the place of birth and the date of birth shall be determined by approximation.

(c) The report shall constitute the certificate of birth.

(d) If the child is identified and a regular certificate of birth is found or obtained, the report shall be sealed and filed in the Office of Vital Statistics and may be opened only by court order.

(27 Del. Laws, c. 84, § 6; 27 Del. Laws, c. 85, § 12; Code 1915, § 803; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 64, § 1; 34 Del. Laws, c. 69, § 1; Code 1935, § 786; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3123; 68 Del. Laws, c. 274, § 1.)

§ 3123 Registration of deaths.

(a) A certificate of death for each death which occurs in this State shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within 3 days after death and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown but the dead body is found in this State, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it may be determined by approximation.

(2) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this State, the death shall be registered in this State and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this State, the death shall be registered in this State but the certificate shall show the actual place of death insofar as can be determined.

(b) The funeral director who assumes custody of the dead body shall file the certificate of death. The funeral director shall obtain the personal data from the next-of-kin or best qualified person or source available and shall obtain the medical certification from the attending physician or Medical Examiner.

(c) The medical certification shall be completed, signed and returned to the funeral director within 48 hours after death by the attending physician, except when an official death investigation is required by the Division of Forensic Science. In the absence of the attending physician the certificate may be completed and signed by the attending physician's designated physician or the chief medical officer of the institution in which death occurred provided such individual has knowledge about the medical history of the case.

(d) When an official death investigation is required pursuant to § 4706(a) of Title 29, the Medical Examiner shall determine the manner and cause of death and shall complete and sign the medical certification.

(e) If the cause of death cannot be determined within 48 hours after death, the attending physician or medical examiner shall file with the Office of Vital Statistics a pending certificate of death and a toxicology study shall be performed. If a cause of death cannot be determined after the toxicology study is performed, the remains and all reports and/or studies shall be turned over to the Division of Forensic Science for review. When the cause of death is determined a revised certification of death shall be issued and presented to the funeral director or the funeral director's agent, who in turn shall file the certificate with the Office of Vital Statistics.

(f) When a death is presumed to have occurred within this State but the body cannot be located, a death certificate may be prepared by the State Registrar upon receipt of a court order which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "By Court Order" and shall show on its face the date of registration and shall identify the court and the date of decree.

(25 Del. Laws, c. 66, § 3; 27 Del. Laws, c. 84, § 7; 27 Del. Laws, c. 85, § 13; Code 1915, § 804; 35 Del. Laws, c. 55; Code 1935, § 787; 44 Del. Laws, c. 69, § 1; 48 Del. Laws, c. 319, § 1; 16 Del. C. 1953, § 3125; 52 Del. Laws, c. 88, § 2; 68 Del. Laws, c. 274, § 1; 69 Del. Laws, c. 146, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 320, § 1; 79 Del. Laws, c. 265, § 14.)

§ 3124 Registration of spontaneous fetal death.

Each spontaneous fetal death of 350 grams or more, or in the absence of weight, of 20 completed week's gestation or more, calculated from the date the last normal menstrual period began to the date of delivery, which occurs in this State shall be reported within 3 days after delivery to the Office of Vital Statistics by filing a fetal death certificate. Induced terminations of pregnancy shall not be reported as spontaneous fetal deaths.

(1) When a fetal death occurs in an institution, the person in charge of the institution or a designated representative shall prepare and file a Certificate of Fetal Death.

(2) When a fetal death occurs outside an institution, the physician in attendance at or immediately after delivery shall prepare and file a Certificate of Fetal Death. No person other than a physician may sign a Certificate of Fetal Death.

(3) When a fetal death occurs without medical attendance at or shortly after the delivery, or when a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this State or when a fetal death occurs in this State and the place of fetal death is unknown, an investigation by the Division of Forensic Science shall be conducted to determine the cause and manner of the fetal death.

(25 Del. Laws, c. 66, § 3; 27 Del. Laws, c. 84, § 7; 27 Del. Laws, c. 85, § 13; Code 1915, § 804; 35 Del. Laws, c. 55; Code 1935, § 787; 44 Del. Laws, c. 69, § 1; 48 Del. Laws, c. 319, § 1; 16 Del. C. 1953, § 3125; 52 Del. Laws, c. 88, § 2; 68 Del. Laws, c. 274, § 1; 79 Del. Laws, c. 265, § 15.)

§ 3125 Registration of marriage.

(a) A record of each marriage performed in this State shall be filed with the Office of Vital Statistics and shall be registered if it has been completed and filed in accordance with this section.

(b) The official who issues the marriage license shall prepare the record on the form prescribed and furnished by the State Registrar upon the basis of information obtained from the parties to be married.

(c) The person who performs the marriage ceremony shall certify the fact of marriage and, within 5 days following the day on which the marriage was solemnized, file the marriage license/certificate with 1 of the 3 vital statistics offices in this State.

(27 Del. Laws, c. 84, § 15; Code 1915, § 816; Code 1935, § 799; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3126; 68 Del. Laws, c. 274, § 1.)

§ 3126 Registration of adoptions; duty of clerk of court; old and new birth certificates.

(a) Upon the issuance of a final decree of adoption or of an order certifying the validity of a foreign adoption, the clerk of the court in which the decree of adoption was made, or filed in the case of a foreign adoption under § 927 of Title 13, shall immediately file in the office of the State Registrar, on forms provided by the State Registrar for this purpose, a report setting forth the information required by § 921 of Title 13, together with a certified copy of the final decree of adoption.

(b) Upon receipt of the information, the State Registrar shall remove from the files the original certificate of birth and, after proper identification, shall place it in a confidential file. The State Registrar shall file a new certificate setting forth the adopted name and sex of the child, together with the names of the adopting parents and the actual birth date and birthplace of the child. Certificates may be issued in accordance with § 3110 of this title.

(c) The State Registrar shall file a new certificate of birth for any child born in Delaware who is legally adopted in another state upon receipt of a certified or exemplified copy of the court order of adoption from the clerk of the court of such other state, and shall issue a certificate as provided under § 3110 of this title.

(d) In the event of a child born outside of the United States and who is adopted in Delaware and for whom no certificate of birth can be secured from the nation of birth, the State Registrar may file and issue a special certificate of birth in accordance with this chapter, provided the adopting parents can furnish evidence considered satisfactory by the State Registrar of the facts and circumstances surrounding the birth of the child.

(27 Del. Laws, c. 85, § 11; Code 1915, § 811; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 794; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3127; 52 Del. Laws, c. 88, § 3; 62 Del. Laws, c. 157, § 1; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 481, § 2; 72 Del. Laws, c. 306, § 3.)

§ 3127 Acknowledgment or establishment of paternity.

In cases of acknowledgment or establishment of paternity, the State Registrar, upon receipt of a court order, an administrative order or a properly executed acknowledgment of paternity, executed or issued in this State or any other state, which establishes paternity or creates a presumption of paternity under the law of the state in which it was executed or issued, shall prepare an amended or new certificate of birth, as the case may be, consistent with the document. The fact that the father-and-child relationship was declared after the child's birth shall not be ascertainable from the amended or new certificate, but the actual place and date of birth shall be shown. The evidence upon which the amended or new certificate was made and the original birth certificate shall be sealed and filed and may be opened only upon court order or upon application of the Division of Child Support Enforcement certifying that the child for whom information is sought is the subject of a child support case administered by the Division under Title IV-D of the federal Social Security Act [42 U.S.C. § 651 et seq.]

(25 Del. Laws, c. 66, §§ 7, 8; Code 1915, § 812; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; 40 Del. Laws, c. 99, § 1; Code 1935, § 795; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3128; 68 Del. Laws, c. 274, § 1; 69 Del. Laws, c. 296, §§ 24, 25.)

§ 3128 Divorce or annulment registration for statistical purposes.

(a) A record of each divorce or annulment granted by the Family Court in this State shall be filed by that court with the Office of Vital Statistics and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the petitioner or the petitioner's legal representative on a form prescribed and furnished by the State Registrar and shall be presented to the Family Court with the petition. In all cases the completed record shall be a prerequisite to the granting of the final decree.

(b) The Family Court shall complete and forward to the Office of Vital Statistics on or before the 15th day of each calendar month the records of each divorce or annulment decree granted during the preceding calendar month.

(c) Records of divorce are collected by the Office of Vital Statistics for statistical purposes only. Certified copies of a divorce decree may be issued by Family Court in the county in which the decree was granted.

(25 Del. Laws, c. 66, § 11; 27 Del. Laws, c. 84, § 12; 27 Del. Laws, c. 85, § 9; Code 1915, § 817; Code 1935, § 800; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3129; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3129 Registration of birth, death, marriage, divorce or fetal death where registration neglected or omitted.

Notwithstanding any other provisions of this chapter, the State Registrar, on the production of evidence satisfactory to the State Registrar relative to a birth, death, marriage, divorce or fetal death, if for any reason registration has been neglected or omitted, may register any birth, death, marriage, divorce or fetal death which may have occurred when registration was not effective or which may from any cause have escaped registration.

(27 Del. Laws, c. 84, §§ 23, 24; 27 Del. Laws, c. 85, §§ 23, 24; Code 1915, §§ 823, 824; Code 1935, § 805; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3131; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3130 Certificates as evidence.

Certificates filed within 6 months after the time prescribed therefor shall be prima facie evidence of the facts therein stated. Data therein pertaining to the father of the child are prima facie evidence only if the alleged father is the husband of the mother. The data pertaining to the father of the child are not evidence in any proceeding adverse to the interests of the alleged father or of his heirs, next-of-kin, devisees, legatees or other successors in interest if the father is not the husband of the mother and the paternity is not acknowledged.

(27 Del. Laws, c. 84, § 9; 27 Del. Laws, c. 85, § 14; Code 1915, § 806; Code 1935, § 789; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3135; 68 Del. Laws, c. 274, § 1.)

§ 3131 Delayed or amended certificates; procedures; evidence.

(a) A person born in this State may file or amend a certificate of birth after the time prescribed by this chapter upon submitting such evidence relative to the circumstances surrounding the birth as may be required by the State Registrar. In the case of a correction to the birth record of an American Indian, the substantiating documentary proof may include, but shall not be limited to, an affidavit satisfactory to the State Registrar or any local registrar and signed by the chief of the tribe that according to tribal records the person whose certificate is to be amended is a member of the tribe of the chief whose signature appears on the affidavit.

(b) Any certificate in the custody of the State Registrar upon which the information thereon is charged to be in error may be corrected or amended upon submitting such proof of error as may be required by the State Registrar.

(c) Certificates accepted subsequent to 6 months after the time prescribed in this chapter for filing or certificates which have been amended after being filed with the State Registrar shall contain the date of the delayed filing or the date of amendment and shall be marked "delayed" or "amended", respectively.

(d) A summary statement of the evidence submitted in support of the acceptance for delayed filing or amendment shall be endorsed on the certificate.

(e) Such evidence submitted in support of a delayed or amended registration as may be retained by the State Registrar shall be kept in special permanent file.

(f) The probative value of a delayed or amended certificate shall be determined by the judicial or administrative body or official before whom the certificate is offered for evidence.

(27 Del. Laws, c. 85, § 8; Code 1915, § 809; 38 Del. Laws, c. 164; Code 1935, § 792; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3136; 68 Del. Laws, c. 274, § 1.)

§ 3132 Fee for issuance of certificates and searches.

(a) The State Registrar shall receive a fee not to exceed $25 for each certified or noncertified copy of a certificate or record, or for a search of the files or records when no copy is made, or for a copy or information provided for research, statistical or administrative purposes. The fee shall be established by the State Board to reflect the costs of doing such work.

(b) The fee charged for each certified copy of a marriage license/certificate shall be $25, except that upon production of a valid military identification card, active members of the military and their spouses shall be exempt from paying such fee. This fee shall be collected by the Bureau of Vital Statistics or the Clerk of the Peace, whichever agency issues the certified copy. Each Clerk of the Peace and the Bureau of Vital Statistics shall file a semi-annual report of the fees collected with the Department of Revenue and shall deposit $15 from each fee for a certified marriage license/certificate copy into the Domestic Violence Fund, to be administered by the Criminal Justice Council. The Criminal Justice Council shall receive 5% of the annual revenues generated by the fee for administrative costs.

(c) The State Registrar shall upon request furnish any applicant with an heirloom certificate of birth for births registered in this State. Heirloom certificates shall be specially designed for framing and display. The name of the person shall be calligraphed on the heirloom certificate. The State Board shall receive a fee of $35 for heirloom certificates. The sum of $12.50 shall be retained by the Department of Health and Social Services to offset the cost of certificates in the Office of Vital Statistics. Any excess funds shall be deposited in a special account to be used for the Delaware Health Statistics Center.

(d) The State Registrar shall furnish free of charge to the relative of a veteran, 1 time, a certified copy of the veteran's certificate of death providing that said certified copy is essential to the settlement of a claim involving the settlement of the veteran's affairs. All other copies shall be issued at the statutory fee.

(e) Subject to § 3110 of this title, the federal agency responsible for national vital statistics and other vital statistics offices outside this State may obtain transcripts or copies of certificates, without payment of fees.

(f) The State Registrar shall keep an account of all fees received and turn the same over to the State Treasurer.

(27 Del. Laws, c. 85, §§ 6, 7; Code 1915, §§ 807, 808; 32 Del. Laws, c. 41, §§ 1, 2; 34 Del. Laws, c. 65, § 1; 38 Del. Laws, c. 165; Code 1935, §§ 790, 791; 44 Del. Laws, c. 69, § 1; 46 Del. Laws, c. 259, §§ 1, 2; 16 Del. C. 1953, §§ 3134, 3137, 3138; 50 Del. Laws, c. 313, §§ 1, 2; 57 Del. Laws, c. 489, §§ 1-5; 62 Del. Laws, c. 332, § 1; 63 Del. Laws, c. 105, § 1; 67 Del. Laws, c. 383, § 1; 68 Del. Laws, c. 274, § 1; 71 Del. Laws, c. 481, § 3; 76 Del. Laws, c. 317, § 2; 76 Del. Laws, c. 375, §§ 1-3; 77 Del. Laws, c. 62, § 1; 77 Del. Laws, c. 80, §§ 1, 2.)

§ 3133 Reports of induced termination of pregnancy.

Each induced termination of pregnancy which occurs in this State, regardless of the length of gestation, shall be reported to the Delaware Health Statistics Center within the Division of Public Health by the person in charge or a designated representative of the institution or

abortion facility in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution or abortion facility, the attending physician shall prepare and file the report. Such reporting shall occur within 30 days after the end of the month in which the induced termination of pregnancy was performed. These reports are to be used only for purposes of statistical analysis and shall not be incorporated into the permanent official records of the system of vital statistics. The reporting form shall include only those items recommended by the federal agency responsible for national vital statistics except that it shall not include any item that allows identification of patients or physicians. Furthermore, no statistical analysis shall be released which identifies the reporting institution or abortion facility.

(70 Del. Laws, c. 378, § 2; 76 Del. Laws, c. 194, § 3.)

Subchapter III

Burial, Removal or Cremation of Dead Bodies

§ 3151 Permit for removal, burial or other disposition; foreign permits; prerequisites for permit.

When a death or a fetal death occurs or a dead body is found, the body shall not be disposed of until the burial/transit permit is completed. Said permit is required to accompany the body and is to be:

(1) Given to the sexton of the cemetery when the body is interred.

(2) Retained by the funeral director when the cemetery has no sexton.

(3) Retained with the ashes in cases of cremation, or by the funeral director if so desired.

(27 Del. Laws, c. 84, § 10; Code 1915, § 814; 28 Del. Laws, c. 60, § 1; Code 1935, § 797; 44 Del. Laws, c. 69, § 1; 48 Del. Laws, c. 319, § 1; 16 Del. C. 1953, § 3151; 52 Del. Laws, c. 88, § 4; 68 Del. Laws, c. 274, § 1.)

§ 3152 Burial/transit permits for shipment of corpses — Required.

No common carrier shall receive for shipment from any point within this State to any other point either within or without this State any dead human body, unless the funeral director or person acting as such presents a completed burial/transit permit as provided in § 3151 of this title.

(26 Del. Laws, c. 75; Code 1915, § 770; Code 1935, § 776; 16 Del. C. 1953, § 3153; 68 Del. Laws, c. 274, § 1.)

§ 3153 Disinterment — Rules and regulations.

No body or stillborn fetus shall be disinterred within the State except upon a permit granted by the State Registrar of Vital Statistics. The forms of disinterment permits shall be prepared by the Office of Vital Statistics. Disinterment and removal must be conducted under the personal supervision of a licensed funeral director.

(68 Del. Laws, c. 274, § 1.)

§ 3154 Authorization for disinterment and reinterment.

(a) *Authorization.* — A permit for disinterment and reinterment of a dead body or fetus shall be issued by the State Registrar upon receipt of a notarized application/authorization signed by the next-of-kin and the person who is in charge of the disinterment, or upon receipt of an order of a court of record of this state directing such disinterment, or upon notarized written application of the Attorney General to request a special disinterment permit for legal purposes.

(b) *Mass disinterment and reinterment.* — Upon receipt of a court order, a signed and notarized permission of the next-of-kin of all decedents, or a signed and notarized application for disinterment for legal purposes, the State Registrar may issue 1 permit for disinterment and reinterment of all remains in a mass disinterment provided that, insofar as possible, the remains of each body be identified and the place of disinterment and reinterment specified.

(c) *Nature of permit.* — The authorization issued in accordance with the statutes and regulations governing disinterment shall be permission for disinterment, transportation and reinterment.

(d) *Fee for permit.* — The Department shall receive a fee not to exceed $10 for each disinterment/reinterment permit issued.

(68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 145.)

§ 3155 Permits for disinterment of bodies buried in Kent or Sussex County before January 1, 1893.

The State Registrar of Vital Statistics through the central office or any of the county vital statistics offices, upon application to and the payment of the usual fee to any or either of them, shall issue a permit to any relative of any deceased person buried prior to January 1, 1893, and now remaining in private, family or old and neglected burying grounds in Sussex County and Kent County for the disinterment of the remains and the reinterment of the remains in public or private cemeteries or any other chosen or designated place in Kent County or Sussex County or without the State, the same as if the application had been made by a duly licensed undertaker. Upon obtaining the permit, the relative is vested with the same authority as a duly licensed undertaker in the disinterment and reinterment of the remains including the securing of vaults and providing for all other necessary arrangements in connection therewith.

(Code 1915, § 812a; 38 Del. Laws, c. 47, § 1; Code 1935, § 889; 16 Del. C. 1953, § 3158; 68 Del. Laws, c. 274, § 1.)

§ 3156 Disinterment from condemned land.

The Department shall modify and relax its regulations and restrictions relative to the disinterring and reinterring of dead bodies, including the securing of separate disinterment and transfer permits of the bodies in those cases where the bodies are in public or private burying grounds which have been condemned by this State or the United States government for the purposes of public improvement, in order to enable the carrying into effect of complete removals in such cases to the full extent that the same can be accomplished, in the opinion of the Department, by licensed undertakers under its supervision and without jeopardizing the public health.

(41 Del. Laws, c. 196; 16 Del. C. 1953, § 3159; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 146.)

§ 3157 Cremation; prohibited except in licensed crematory.

No person shall destroy or dispose of by burning in this State the body of an individual dead from any cause, except in a crematorium or crematory licensed for this express purpose and under the conditions provided in §§ 3158-3164 of this title.

(25 Del. Laws, c. 66, § 9; 27 Del. Laws, c. 84, § 14; 27 Del. Laws, c. 85, § 15; Code 1915, § 818; Code 1935, § 801; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3160; 68 Del. Laws, c. 274, § 1.)

§ 3158 Crematory; approval for construction; requirements; inspection.

(a) A person, firm, organization or association desiring to acquire, erect, or construct a crematory shall first obtain approval from the Department of Natural Resources and Environmental Control.

(b) The crematory shall be constructed in accordance with regulations adopted under Chapters 60 and 79 of Title 7 and shall not be located, managed, or conducted at any time in such a way to be a public nuisance.

(c) The crematory shall be subject at all times to inspection by the Department of Natural Resources and Environmental Control, the Department of Health and Social Services, and by such officers of the state law-enforcement departments as may desire to inspect it.

(25 Del. Laws, c. 66, § 9; 27 Del. Laws, c. 84, § 14; 27 Del. Laws, c. 85, § 15; Code 1915, § 818; Code 1935, § 801; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3161; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 149, § 147; 74 Del. Laws, c. 293, § 1.)

§ 3159 Permit for cremation; issuance, retention and inspection.

(a) A body may be cremated only after the preparation of a special cremation permit signed by the chief medical examiner or an assistant or deputy medical examiner. In the presentation of the cremation permit to the chief medical examiner or the chief medical examiner's representative for signature, the permit must be accompanied by a death certificate signed by the attending physician and by a cremation authorization signed by the next-of-kin or legal representative of the deceased. The signature of the chief medical examiner or the chief medical examiner's representative to the cremation permit shall constitute an affirmation that there is no medical reason why the cremation should not take place. The chief medical examiner or an assistant or deputy medical examiner shall have the authority to hold the remains of the deceased pending any investigation into the cause and manner of death.

(b) One copy of the cremation permit shall be retained by the person, firm, corporation or association conducting the crematory and shall be produced for inspection or other purposes when asked for by the inspecting authority. A second copy of the cremation permit shall accompany the death certificate when it is filed in the Office of Vital Statistics.

(25 Del. Laws, c. 66, § 9; 27 Del. Laws, c. 84, § 14; 27 Del. Laws, c. 85, § 15; Code 1915, § 818; Code 1935, § 801; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3162; 65 Del. Laws, c. 413, § 1; 68 Del. Laws, c. 164, § 1; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3160 Report of cremation.

Within 24 hours after the cremation is completed a report indicating the name of the individual, the individual's address while alive, the date and cause of death, the names of the individuals signing the permit, the date of the cremation and the disposal of the ashes shall be forwarded by the person in charge of the crematory to the central Office of Vital Statistics.

(25 Del. Laws, c. 66, § 9; 27 Del. Laws, c. 84, § 14; 27 Del. Laws, c. 85, § 15; Code 1915, § 818; Code 1935, § 801; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3163; 68 Del. Laws, c. 274, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3161 Delivery, transportation and disposal of ashes.

The ashes resulting from the cremation of a body may be delivered by the attendants of the crematory to any member of the family of the deceased designated to receive them or to the person arranging for the cremation. After this delivery, they may be transported in any way in the State and disposed of in such a way as is desired by the person receiving them.

(25 Del. Laws, c. 66, § 9; 27 Del. Laws, c. 84, § 14; 27 Del. Laws, c. 85, § 15; Code 1915, § 818; Code 1935, § 801; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3164; 68 Del. Laws, c. 274, § 1.)

§ 3162 Witnesses at cremation.

A representative of the family or some individual accredited to act as representative of the family of the individual being cremated may be present at the time the cremation is being carried out.

(25 Del. Laws, c. 66, § 9; 27 Del. Laws, c. 84, § 14; 27 Del. Laws, c. 85, § 15; Code 1915, § 818; Code 1935, § 801; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3165; 68 Del. Laws, c. 274, § 1.)

§ 3163 Permit where death occurs in this State and cremation takes place elsewhere.

The provisions of § 3159 of this title, respecting the signatures of the chief medical examiner or an assistant or deputy medical examiner and by the Attorney General or a deputy attorney general, are required in respect of the cremation of the body of an individual dying in the State but removed to any other state for the purpose of cremation.

(25 Del. Laws, c. 66, § 9; 27 Del. Laws, c. 84, § 14; 27 Del. Laws, c. 85, § 15; Code 1915, § 818; Code 1935, § 801; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3166; 68 Del. Laws, c. 274, § 1.)

§ 3164 Cremation in this State when death occurred elsewhere.

The cremation in this State of the bodies of persons dying in other states is permissible if all the legal requirements of the state in which the death occurred have first been complied with.

(25 Del. Laws, c. 66, § 9; 27 Del. Laws, c. 84, § 14; 27 Del. Laws, c. 85, § 15; Code 1915, § 818; Code 1935, § 801; 44 Del. Laws, c. 69, § 1; 16 Del. C. 1953, § 3167; 68 Del. Laws, c. 274, § 1.)

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Part III
Vital Statistics
Chapter 32
CANCER CONTROL ACT

§ 3201 Short title.

This chapter may be cited as the Delaware Cancer Control Act.

(62 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 391, § 1.)

§ 3202 Purpose.

The intent of the General Assembly is to require the establishment and maintenance of a cancer registry for the State. This responsibility is delegated to the Department of Health and Social Services, along with the authority to exercise certain powers to implement this requirement. To ensure an accurate and continuing source of data concerning cancer and certain specified tumors of a benign nature, the General Assembly by this chapter requires certain health care practitioners and all hospitals, clinical laboratories and cancer treatment centers within the State to make available to the Department of Health and Social Services information contained in the medical records of patients who have cancer or tumors of a benign nature. It is intended that the product of these efforts will be a central data bank of accurate, precise and current information regarding the subject diseases.

(62 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 391, § 1.)

§ 3203 Definitions.

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

(1) "Benign tumor" means any nonmalignant neoplasm, regardless of the tissue of origin, that appears on the American College of Surgeons most recently published annual list of reportable cancers and benign tumors.

(2) "Cancer" means any malignant neoplasm, regardless of the tissue of origin, that appears on the American College of Surgeons most recently published annual list of reportable cancers and benign tumors.

(3) "Department" means the State of Delaware Department of Health and Social Services.

(62 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 391, § 1.)

§ 3204 Cancer registry.

The Department shall adopt, promulgate, amend and repeal any rules and regulations that are consistent with law relative to this chapter and necessary to achieve the purpose and requirements of this chapter. These rules and regulations shall include provisions for:

(1) The establishment and maintenance of an up-to-date registry that shall document every occurrence of cancer and of benign tumor in this State;

(2) The establishment of a procedure for reporting to the Department, within 180 days of initial diagnosis or treatment, every occurrence of cancer and of benign tumor in this State. Such procedure shall include the reporting of specified information that the Department deems necessary and appropriate for the recognition, prevention, control or cure of cancer and benign tumors, and shall minimally include the reporting requirements of the National Cancer Data Base established by the American College of Surgeons, along with information regarding the patient's length of residency in Delaware, primary residential address in Delaware and the location and nature of the patient's primary past employment. Those required to report to the Department occurrences of cancer and benign tumors shall include:

a. Any physician, surgeon, dentist, podiatrist or other health care practitioner who diagnoses or provides treatment for cancer or benign tumors;

b. The designated representative of any hospital, dispensary, asylum or other similar public or private institution that diagnoses or provides treatment for cancer or benign tumors; and

c. The designated representative of any laboratory that examines tissue specimens which disclose the existence of cancer or benign tumor;

(3) The establishment of a procedure for the publication and distribution of forms, instructions and notices required by this chapter or necessary to accomplish the purpose of this chapter; and

(4) The establishment of a procedure to obtain follow-up information from those required to report occurrences of cancer and benign tumors pursuant to this chapter. Any follow-up information deemed necessary by the Department shall be submitted to the Department at least 1 time each year by those required to report occurrences of cancer and benign tumors.

This chapter and any rules or regulations issued pursuant to this chapter shall not apply to any person or private institution that, as an exercise of religious freedom, treats the sick or suffering by spiritual means through prayer alone.

(62 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 391, § 1; 73 Del. Laws, c. 431, §§ 1, 2.)

§ 3205 Confidentiality of reports.

(a) Any report of an occurrence of cancer or benign tumor made pursuant to this chapter shall not be divulged nor made public in any way that might tend to disclose the identity of the person to whom it relates. However, patient-identifying information may be exchanged among cancer control agencies as authorized by the Department and upon receipt by the Department of satisfactory assurances by those agencies of the preservation of the confidentiality of such information.

(b) No individual or organization providing information to the Department in accordance with this chapter shall be deemed to be, or held liable for, divulging confidential information.

(62 Del. Laws, c. 334, § 1; 63 Del. Laws, c. 288, § 1; 70 Del. Laws, c. 149, § 148; 70 Del. Laws, c. 391, § 1.)

§ 3206 Compulsion prohibited.

Nothing in this chapter shall be construed to compel any individual to submit to any medical or public health examination, treatment or supervision.

(62 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 391, § 1.)

§ 3207 Violations.

Any person or entity who violates any provision of this chapter shall be fined $100 for each violation.

(62 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 391, § 1; 73 Del. Laws, c. 431, § 3.)

§ 3208 Audit and Abstraction of records by department.

(a) Upon request of a person or organization required to report by § 3204 of this title, the Department may audit records and abstract information that is required to be reported.

(b) Any person or organization failing to report as required by this chapter shall permit the Department to audit records and abstract information that is required to be reported.

(c) The Department may charge a fee to be established by regulation to persons and organizations subjected to an audit pursuant to subsection (a) or (b) of this section. Said person or organization shall reimburse the Department.

(73 Del. Laws, c. 431, § 3.)

§ 3209 [Reserved.]

Part IV
Food and Drugs
Chapter 33
PURE FOOD AND DRUGS

§ 3301 Definitions.

As used in this chapter:

(1) "Drug" includes all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either humans or other animals. Notwithstanding any other provision of this subdivision, the word "drug" shall not include laetrile (amygdalin).

(2) "Food" includes all articles used for food, drink, ice, confectionery or condiment by humans or other animal, whether simple, mixed or compound.

(32 Del. Laws, c. 190, § 2; Code 1935, § 3994; 16 Del. C. 1953, § 3301; 61 Del. Laws, c. 90, § 1; 66 Del. Laws, c. 314, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3302 Manufacture or sale of adulterated or misbranded food or drugs.

No person shall manufacture, sell or trade in, within this State, any article of food or drugs which is adulterated, misbranded, poisonous or deleterious within the meaning of this chapter.

(32 Del. Laws, c. 190, § 1; Code 1935, § 3993; 16 Del. C. 1953, § 3302.)

§ 3303 Adulteration of drugs.

A drug is deemed to be adulterated:

(1) If, when a drug is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality or purity as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation. No drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this subdivision if the standard of strength, quality or purity is plainly stated upon the bottle, box or other container thereof although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary.

(2) If its strength or purity falls above or below the professed quality under which it is sold.

(3) If it violates the definition of adulteration as stated in the Federal Food, Drug and Cosmetic Act.

(32 Del. Laws, c. 190, § 3; Code 1935, § 3995; 16 Del. C. 1953, § 3303; 63 Del. Laws, c. 83, §§ 1, 2.)

§ 3304 Adulteration of food other than confectionery.

Food is deemed to be adulterated:

(1) If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength;

(2) If any substance has been substituted wholly or in part for the article of food;

(3) If any valuable constituent of the article of food has been wholly or in part abstracted;

(4) If it is mixed, colored, powdered, coated or stained in a manner whereby damage or inferiority is concealed;

(5) If it contains any added poisonous or other added deleterious ingredient which may render the article of food injurious to health. When in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically or by maceration in water, or otherwise, and directions for the removal of the preservative are printed on the covering or the package, this chapter shall be construed as applying only when the products are ready for consumption;

(6) If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a deceased animal or one that has died otherwise than by slaughter.

(32 Del. Laws, c. 190, § 3; Code 1935, § 3995; 16 Del. C. 1953, § 3304.)

§ 3305 Adulteration of confectionery.

Confectionery is deemed to be adulterated if it contains terra alba, barytes, talc, chrome yellow or other mineral substance or poisonous color or flavor or other ingredient deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug.

(32 Del. Laws, c. 190, § 3; Code 1935, § 3995; 16 Del. C. 1953, § 3305.)

§ 3306 Destruction of adulterated candy.

Adulterated candy shall be forfeited and destroyed under the direction of the Attorney General.

(21 Del. Laws, c. 267; Code 1915, § 3513; Code 1935, § 3996; 16 Del. C. 1953, § 3306.)

§ 3307 Definition of misbranded.

The term "misbranded," as used in this chapter, applies to all drugs or articles of food, or articles which enter into the composition of food, the package or label of which bears any statement, design or device regarding such article or the ingredients or substances contained therein which is false or misleading in any particular, and to any food or drug product which is falsely branded as to the state, territory or country in which it is manufactured or produced.

(32 Del. Laws, c. 190, § 4; Code 1935, § 3997; 16 Del. C. 1953, § 3307.)

§ 3308 Misbranding of drugs.

For the purposes of this chapter, a drug is deemed to be misbranded:

(1) If it is an imitation of or offered for sale under the name of another drug;

(2) If the contents of the package as originally put up were removed, in whole or in part, and other contents were placed in such package or if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of any such substances contained therein;

(3) If its package or label bears any statement, design or device regarding such article, or the ingredients or substances contained therein which is false or misleading in any particular way;

(4) If it is included in the definition of misbranding in the Federal Food, Drug and Cosmetic Act.

(32 Del. Laws, c. 190, § 4; Code 1935, § 3997; 16 Del. C. 1953, § 3308; 63 Del. Laws, c. 83, §§ 3, 4.)

§ 3309 Misbranding of food.

For the purposes of this chapter, food is deemed to be misbranded:

(1) If it is an imitation of or offered for sale under the distinctive name of another food;

(2) If it is labeled or branded so as to deceive or mislead the purchaser or purports to be a foreign product when not so or if the contents of the package as originally put up were removed in whole or in part and other contents were placed in such package or if it fails to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of any of such substances contained therein;

(3) If in package form, the quantity of the contents is not plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count;

(4) If the package containing it or its label bears any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device is false or misleading in any particular;

(5) If it is obtained by the dealer in frozen bulk form and is subsequently thawed and offered for sale in a package or bearing a label indicating such food to be fresh.

(32 Del. Laws, c. 190, § 4; Code 1935, § 3997; 16 Del. C. 1953, § 3309; 56 Del. Laws, c. 37.)

§ 3310 Exceptions to adulteration or misbranding of food.

An article of food which does not contain any added poisonous or deleterious ingredients is not deemed to be adulterated or misbranded in the following cases:

(1) In the case of mixtures or compounds known as articles of food under their own distinctive names and not an imitation of or offered for sale under the distinctive name of another article, if the name is accompanied on the same label or brand with a statement of the place where the article was manufactured or produced;

(2) In the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends and the word "compound," "imitation" or "blend," as the case may be, is plainly stated on the package in which it is offered for sale. The term "blend" as used in this subdivision shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only. Nothing in this chapter shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredient to disclose their trade formulas, except insofar as the provisions of this chapter require in order to secure freedom from adulteration or misbranding.

(32 Del. Laws, c. 190, § 4; Code 1935, § 3997; 16 Del. C. 1953, § 3310.)

§ 3311 Guaranty from seller saving dealer from prosecution.

No dealer shall be prosecuted under this chapter when the dealer can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom the dealer purchases such articles to the effect that the same is not adulterated or misbranded within the meaning of this chapter. The guaranty, to afford protection, shall contain the name and address of the party making the sale of such articles to such dealer and, in such case, the party shall be amenable to the prosecutions, fines and other penalties which would attach, in due course, to the dealer under this chapter.

(32 Del. Laws, c. 190, § 5; Code 1935, § 3998; 16 Del. C. 1953, § 3311; 70 Del. Laws, c. 186, § 1.)

§ 3312 Penalties for violating §§ 3302-3311.

(a) Whoever violates §§ 3302-3311 of this title shall, for each offense, be fined not more than $500 or imprisoned not more than 1 year, or both. For each subsequent offense the violator shall be fined not more than $1,000 or imprisoned for 1 year, or both.

(b) When construing and enforcing this chapter, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association, within the scope of that person's own employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, company, society or association as well as that of the person.

(24 Del. Laws, c. 160, § 10; Code 1915, § 3523; 32 Del. Laws, c. 190, § 6; Code 1935, § 3999; 16 Del. C. 1953, § 3312; 70 Del. Laws, c. 186, § 1.)

§ 3313 Excepting articles sold under federal laws.

This chapter shall not apply to articles of food or to mixtures or compounds of foods offered for sale in this State when prepared, labeled, branded or inspected in compliance with the federal laws and department regulations established thereunder.

(24 Del. Laws, c. 160, § 4; Code 1915, § 3517; Code 1935, § 4000; 16 Del. C. 1953, § 3313.)

§ 3314 Other exceptions.

An offense is not deemed to be committed under this chapter, in the following cases:

(1) Where the order calls for an article of food or drug inferior to the standard required under this chapter and the difference is made known at the time;

(2) Where the article of food or drug is mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight or measure or conceal its inferior quality, if at the time such article is delivered to the purchaser it is made known to the purchaser that the article of food or drug is so mixed.

(24 Del. Laws, c. 160, § 5; Code 1915, § 3518; Code 1935, § 4001; 16 Del. C. 1953, § 3314; 70 Del. Laws, c. 186, § 1.)

§ 3315 Enforcement agencies; rules and regulations.

(a) The Department of Health and Social Services shall enforce all the provisions of this chapter and shall promulgate rules and regulations to carry out the same so far as they relate to foods. The State Board of Pharmacy shall enforce all the provisions of this chapter and shall promulgate rules and regulations for carrying out the same so far as they relate to drugs, including proper methods for handling volatile and variable drugs.

(b) Such rules shall provide for the examination and analysis of specimens and shall give the party from whom a specimen is obtained opportunity to verify any findings and to be heard before prosecution. The rules and regulations officially prescribed for the enforcement of the Federal Food, Drug and Cosmetic Act, and acts amendatory thereof [21 U.S.C. § 301 et seq.], so far as applicable, shall be adopted by the officials referred to in subsection (a) of this section for the enforcement of this chapter. No rule or regulation shall be promulgated under subsection (a) of this section which is in conflict with Chapter 49 of this title.

(24 Del. Laws, c. 160, § 7; Code 1915, § 3520; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 4002; 16 Del. C. 1953, § 3315; 61 Del. Laws, c. 90, § 3; 70 Del. Laws, c. 149, §§ 149, 150.)

§ 3316 Expenses of enforcement.

The expenses incurred by all officials in performing the duties imposed by §§ 3302-3317 of this title, including reasonable compensation for services rendered, shall be paid by requisition upon the State Treasurer, when approved by the Governor, out of the funds in hand not otherwise appropriated.

(24 Del. Laws, c. 160, § 9; Code 1915, § 3522; Code 1935, § 4003; 16 Del. C. 1953, § 3316.)

§ 3317 Treatment of meats with unhealthful drugs and preparations.

No person shall sell or offer to sell by that person's own self, or by that person's servants or agents, or as the servant or agent of any other person, any meat or flesh of any animal used for food after the same has been butchered which contains any drug or preparation of whatever kind or nature, deleterious or detrimental to the health of persons who may eat the same, or which has been treated with, either externally or internally, or to which has been applied in any manner, any drug or preparation of whatsoever kind or nature, deleterious or detrimental to the health of persons who may eat the same, whether for the purpose of preserving meat or flesh used for food or for any other purpose.

(23 Del. Laws, c. 212, § 1; Code 1915, § 3524; Code 1935, § 4004; 16 Del. C. 1953, § 3317; 70 Del. Laws, c. 186, § 1.)

§ 3318 Complaint of violations of § 3317; procedure for entry, sampling and testing; costs; certificate as evidence.

(a) If any person makes complaint in writing, verified by oath or affirmation before any justice of the peace or other court having criminal jurisdiction, alleging that the complainant has probable cause to suspect and does suspect and believe that any person, by that person's own self or by that person's servants or agents, has sold or offered or exposed for sale or has in that person's own possession with

intent to sell, any meat or flesh of any animal to be used for food which has been treated with or which contains any drug or preparation as mentioned in § 3317 of this title, and in the complaint describes such meat as particularly as may be and designates the house or place where complainant suspects and believes such meat or flesh is kept or sold and the name of the persons suspected, the justice of the peace or such court may, within the limits of the justice of the peace's or its jurisdiction, issue a warrant to search such house or place.

(b) The warrant shall be directed to any officer or to any other person by name for service and shall recite the essential parts alleged in the complaint, and the officer or other person to whom it shall be directed for service shall proceed thereunder as provided in subsection (c) of this section.

(c) The officer or person to whom the warrant is directed may enter the house or place designated and, if the officer or person finds therein what the officer or person believes to be any meat or flesh such as is described in § 3317 of this title, the officer or person shall take a sample or samples for the purpose of having the same analyzed or tested as provided in this section. To obtain such sample or samples the officer or other person to whom the warrant is directed may cut pieces from any such meat or flesh by the officer or person believed to be treated with or containing any drug or preparation within the meaning of § 3317 of this title. The officer or other person to whom the warrant is directed, when taking a sample or samples of meat or flesh, shall then and there divide the samples into 2 parts as nearly equal as may be, wrap the parts in separate packages, seal the same and offer 1 of the parts to the person in whose custody the meat was when taken with a written notice of the time, place and date, when and where the sample was taken, and that it was taken for the purpose of analyzing or testing it. The other part of the sample, together with a written copy of the written notice, shall be delivered by the officer or other person to whom the warrant is directed to the State Chemist, who shall cause the same to be analyzed or otherwise satisfactorily tested, the result of which analysis or test the State Chemist shall record and preserve as evidence.

(d) The officer or other person to whom the warrant was directed shall, within 1 week after delivery to the State Chemist, return the warrant with officer's or other person's proceedings thereunder and the costs and actual expenses endorsed thereon to the justice of the peace or court, the costs to correspond in amount as nearly as may be with the costs to which an officer serving a search warrant would thereby be entitled.

(e) After the sample has been delivered to the State Chemist, the State Chemist shall, with all convenient speed, analyze or test the same and upon the completion thereof shall forward to the Attorney General a certificate of the result thereof, duly verified by oath or affirmation, and the certificate so verified shall be admitted as evidence in any prosecution under §§ 3317 and 3319 of this title.

(f) The provisions of this section relating to searches and seizures shall be subject to Chapter 23 of Title 11. If there is any conflict or inconsistency between this section and such chapter, the latter shall prevail.

(23 Del. Laws, c. 212, § 2; Code 1915, § 3525; Code 1935, § 4005; 16 Del. C. 1953, § 3318; 70 Del. Laws, c. 186, § 1.)

§ 3319 Penalties for violations of § 3317.

(a) Whoever violates § 3317 of this title shall be fined not less than $50 nor more than $100, or imprisoned not more than 3 months, and pay the costs of prosecution, among which shall be taxed the costs of the justice of the peace, the costs and actual expenses endorsed upon the warrant and the charge of the State Chemist, whose charge shall not in any case exceed the sum of $10.

(b) In case of failure to convict the charge of the State Chemist, the costs of the justice of the peace and the costs and actual expenses endorsed upon the warrant shall be paid by the county in which the prosecution is conducted. The amount of money to be paid by any county shall not exceed in any 1 year the sum of $200.

(23 Del. Laws, c. 212, § 3; Code 1915, § 3526; Code 1935, § 4006; 16 Del. C. 1953, § 3319.)

§ 3320 Oleomargarine; manufacture, sale, marking and advertising.

(a) Subject to subsection (b) and (c) of this section, no person, by that person's own self or that person's agents or servants, shall render or manufacture, sell, offer for sale, expose for sale or have in that person's possession with intent to sell, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance, or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk, or cream from the same.

(b) Nothing contained in subsection (a) of this section or in § 3321 or 3322 of this title shall be construed to prohibit the manufacture or sale of oleomargarine, whether yellow or white, in a separate and distinct form in such manner as will advise the consumer of its real character. No oleomargarine shall be sold in open tubs or containers. Every retail dealer in oleomargarine shall exhibit, in conjunction with any display of packaged oleomargarine being offered for sale, a placard with the word "oleomargarine" in plain uncondensed gothic letters not less than 1 inch high. No package of oleomargarine shall contain the word "butter" or any imitation or simulation thereof or any picture or reproduction of a cow or any name or simulation of the name of any dairy breed of cattle or any name or term normally used in the dairy industry. No owner or proprietor of any public eating place shall serve yellow oleomargarine unless a notice that oleomargarine is served is displayed prominently on the menu or on a placard in clear view of all customers.

(c) As used in this section the term "oleomargarine" shall be deemed applicable to the food product known as "margarine" and any requirement contained in this section for labeling or display of the word "oleomargarine" shall be deemed sufficiently complied with by the use of the word "margarine."

(20 Del. Laws, c. 209, § 1; 22 Del. Laws, c. 161, § 1; Code 1915, § 3527; 33 Del. Laws, c. 216; Code 1935, § 4007; 48 Del. Laws, c. 14, § 1; 16 Del. C. 1953, § 3320; 70 Del. Laws, c. 186, § 1.)

§ 3321 Complaint of violation of § 3320; procedure for entry, sampling and testing; costs; certificate as evidence.

(a) If any person makes complaint in writing, verified by oath or affirmation before any justice of the peace or other court having criminal jurisdiction, alleging that the complainant has probable cause to suspect and does suspect and believe that any other person by that person's own self, or that person's agents or servants, has rendered or manufactured, sold, offered or exposed for sale or has in that person's possession with intent to sell, contrary to § 3320 of this title, any article, product or compound made in imitation of yellow butter and in the complaint describes the article, product or compound as particularly as may be and designates the house or place where complainant suspects and believes the article, product or compound is and the name of the person suspected, the justice of the peace or such court may, within the limits of the justice of the peace or its jurisdiction, issue a warrant to search such house or place.

(b) The warrant shall be directed to any officer or to any other person by name for service and shall recite the essential facts alleged in the complaint, and the officer or other person to whom it is directed for service shall proceed thereunder as provided in subsection (c) of this section.

(c) The officer or other person to whom the warrant is directed may enter the house or place designated and if that officer or person finds therein what that officer or person believes to be any article, product or compound made in imitation of yellow butter, contrary to § 3320 of this title, that officer or person shall take a sample or samples thereof for the purpose of having the same analyzed or tested as provided in this section. To obtain such sample or samples, the officer or other person to whom the warrant is directed may open any can, vessel or package by that officer or person believed to contain such imitation article, product or compound and take therefrom the sample or samples. The officer or other person to whom the warrant is directed, when taking a sample or samples of the alleged imitation article, product or compound, shall then and there divide the sample into 2 parts as nearly equal as may be, wrap the parts in separate packages, seal the same and offer 1 of the parts to the person in whose custody the article was when taken with a written notice of the time, place and date, when and where the sample was taken and that it was taken for the purpose of analyzing or testing it. The other part of the sample, together with a copy of the written notice, shall be delivered by the officer or other person to whom the warrant is directed to the State Chemist, who shall cause the same to be analyzed or otherwise satisfactorily tested, the result of which analysis or test the State Chemist shall record and preserve as evidence.

(d) The officer or other person to whom the warrant was directed shall, within 1 week after delivery to the State Chemist, return the warrant with that officer's or person's proceedings thereunder and that officer's or person's costs and actual expenses endorsed thereon to the justice of the peace or court, the costs to correspond in amount as nearly as may be with the costs to which an officer serving a search warrant would thereby be entitled.

(e) After the sample has been delivered to the State Chemist, the State Chemist shall, with all convenient speed analyze or test the same and upon the completion thereof shall forward to the Attorney General a certificate of the result thereof duly verified by oath or affirmation, and the certificate so verified shall be admitted as evidence in any prosecution under § 3320 of this title.

(f) This section relating to searches and seizures shall be subject to Chapter 23 of Title 11. If there is any conflict or inconsistency between this section and such chapter, the latter shall prevail.

(20 Del. Laws, c. 209, § 2; Code 1915, § 3528; Code 1935, § 4008; 16 Del. C. 1953, § 3321; 70 Del. Laws, c. 186, § 1.)

§ 3322 Penalties for violations of § 3320.

(a) Whoever violates § 3320 of this title shall be fined not less than $50 nor more than $250, or imprisoned not more than 1 year, and pay the costs of prosecution, among which shall be taxed the costs of the justice of the peace, the costs and actual expenses endorsed upon the warrant and the charge of the State Chemist, whose charge shall not in any 1 case exceed the sum of $20.

(b) In case of failure to convict, the charge of the State Chemist, the costs of the justice of the peace and the costs and actual expenses endorsed upon the warrant shall be paid by the county in which the prosecution is conducted. The amount of money to be paid by any county shall not exceed in any year the sum of $200.

(20 Del. Laws, c. 209, § 3; Code 1915, § 3529; Code 1935, § 4009; 16 Del. C. 1953, § 3322.)

§ 3323 Detention or embargo of article.

(a)(1) When a duly authorized agent of the Department of Health and Social Services, when food is involved, or of the Board of Pharmacy, when drugs are involved, finds or has probable cause to believe that any food or drug as defined by this chapter is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, or is in violation of § 3303, 3304, 3308 or 3309 of this title, the agent shall affix to such article a tag or other appropriate marking. This tag or marking shall give notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed. The tag or other appropriate marking shall warn all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by an authorized agent or the Court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(2) When an authorized agent has found that an article which is embargoed or detained is not adulterated or misbranded, the agent shall remove the tag or other markings and it may be disposed of by sale or otherwise by the owner.

(b) When an article is adulterated or misbranded or is in violation of § 3303, 3304, 3308 or 3309 of this title, it shall be liable to be proceeded against by petition to the justice of the peace or the judge of the Court of Common Pleas in whose jurisdiction the article is located, detained or embargoed for a decree of condemnation of such article.

(c) If the Court finds that a sampled, detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the owner thereof, under the supervision of an authorized agent. All court costs and fees, and storage and other expenses, shall be charged against the owner of such article or the owner's agent. If adulteration or misbranding can be corrected by proper labelling or processing of the article, the Court, after entry of the decree may, by order, direct that such article be delivered to the owner thereof for such labelling or processing under the supervision of an agent of the State Board of Pharmacy or the Department of Health and Social Services. Expense of such supervision and any other costs, fees or expenses involved shall be paid by the owner. A sufficient bond shall be executed on the condition that the articles shall be properly labelled or processed. The article shall be returned to the owner and the bond shall be discharged on the representation to the Court by the Department of Health and Social Services or the Board of Pharmacy or their authorized agents that the article is no longer in violation of this chapter, and that the expenses of such supervision have been paid. The tag or markings described in paragraph (1) of subsection (a) of this section may then be removed.

(d) The Department of Health and Social Services or its authorized agents shall condemn or destroy, or otherwise render unsaleable as human food, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to the health, or are otherwise unsafe. This applies to food found in any room, building, vehicle of transportation or other structure. The cost of condemning, destroying or rendering such food unsaleable shall be paid by the claimant.

(63 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 149, § 151; 70 Del. Laws, c. 186, § 1.)

§ 3324 Penalties for violations of § 3323.

(a) Whoever violates any of the provisions of § 3323 of this title shall, for each offense, be fined not more than $500, or imprisoned not more than 1 year, or both. For each subsequent offense, the violator shall be fined not more than $1,000 or imprisoned for more than 1 year, or both.

(b) When construing and enforcing § 3323 of this title, the act, admission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association, within the scope of employment or office, shall in every case be deemed to be the act, admission or failure of such corporation, company, society or association as well as of that person.

(63 Del. Laws, c. 148, § 2; 70 Del. Laws, c. 186, § 1.)

Part IV
Food and Drugs
Chapter 35
CANNERIES AND OTHER FOOD PROCESSING ESTABLISHMENTS

§ 3501 Supervision of canneries.

This chapter, relating to the sanitation of factories or establishments within this State in which fruits, vegetables or by-products thereof are packed and preserved in tin or glass cans or jars or other containers to be sold as food, shall be implemented by and under the supervision of the Department of Health and Social Services.

(28 Del. Laws, c. 228, § 1; Code 1935, § 4075; 16 Del. C. 1953, § 3501; 70 Del. Laws, c. 149, § 152.)

§ 3502 Duties of inspection and enforcement.

The Department of Health and Social Services shall inspect, at reasonable hours and as often as practicable, all factories and establishments in this State in which fruits, vegetables or by-products thereof are packed and preserved in tin or glass cans or jars or other containers to be sold as food, and shall enforce the correction of all unsanitary conditions and practices found therein. The Department of Health and Social Services shall enforce the laws, rules and regulations provided in this chapter.

(28 Del. Laws, c. 228, § 3; Code 1935, § 4077; 16 Del. C. 1953, § 3502; 70 Del. Laws, c. 149, §§ 153, 154.)

§ 3503 Issuance of certificate of inspection.

The Department of Health and Social Services shall, on the 1st day of October in each year, furnish to each person operating a factory affected by this chapter, who has complied with this chapter during the year immediately preceding the 1st day of October, a certificate of inspection under the hand of the Department of Health and Social Services setting forth that such factory has been inspected and all laws, rules and regulations for the year immediately preceding the date of the certificate have been fully complied with.

(28 Del. Laws, c. 228, § 4; Code 1935, § 4078; 16 Del. C. 1953, § 3503; 70 Del. Laws, c. 149, §§ 155, 156.)

§ 3504 Rules and regulations.

The Department of Health and Social Services may promulgate and enforce standards to regulate food processing establishments which may include, but are not limited to, canneries, factories and cottage industries that process food for human consumption whenever it is determined that said food represents a hazard to the public health.

(28 Del. Laws, c. 228, § 5; Code 1935, § 4079; 16 Del. C. 1953, § 3504; 70 Del. Laws, c. 149, § 157; 71 Del. Laws, c. 85, § 3.)

§ 3505 Abstracts of regulations; furnishing and posting.

The Department of Health and Social Services shall have prepared and printed abstracts of rules, regulations and requirements prescribed in §§ 3505 and 3506 of this title and shall furnish every person in this State affected by this chapter with a reasonable number of printed abstracts, and such printed abstracts shall be posted in at least 5 conspicuous places in each factory affected by this chapter and they shall be kept posted in plain view so that they can be easily read by the employees. If persons are employed who do not understand the English language, suitable translations, or so much of such rules, regulations and requirements as affect the employees, shall also be posted in languages with which they are familiar. Such translations shall be furnished by the Department of Health and Social Services upon application by the owner.

(28 Del. Laws, c. 228, § 6; Code 1935, § 4080; 16 Del. C. 1953, § 3507; 70 Del. Laws, c. 149, §§ 158, 159; 71 Del. Laws, c. 85, § 4.)

§ 3506 Entering premises for inspection and enforcement; penalty for refusal.

(a) The Department of Health and Social Services, by its agent or representative, may enter upon the premises of any factory in this State engaged in the canning business for the purpose of inspecting and enforcing this chapter.

(b) Any person engaged in the canning business refusing access to the agent or representative of the Department of Health and Social Services or in any way interfering with such agent or representative in the exercise of the agent's or representative's duties, when other penalties are not provided in this chapter, shall, for each offense, be fined not more than $100. In default of the payment of any fine that may be imposed under this chapter, imprisonment may be imposed for a term, in the direction of the court, in lieu thereof.

(28 Del. Laws, c. 228, § 9; Code 1935, § 4083; 16 Del. C. 1953, § 3508; 70 Del. Laws, c. 149, § 160; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 85, § 4.)

§ 3507 Enforcement; assistance of sheriffs and constables.

The Department of Health and Social Services may enforce this chapter and, if necessary, call to its assistance the sheriff of any county or any constable within the State. The sheriffs and constables of the respective counties of the State shall assist the Department of Health and Social Services in enforcing this chapter whenever they shall be called upon by the Department of Health and Social Services.

(28 Del. Laws, c. 228, § 7; Code 1935, § 4081; 16 Del. C. 1953, § 3509; 70 Del. Laws, c. 149, §§ 161, 162; 71 Del. Laws, c. 85, § 4.)

§ 3508 Penalties.

(a) Whoever violates this chapter or refuses, neglects or fails to comply with this chapter shall, for the first offense, be fined not less than $25 nor more than $100, for the second offense not less than $100 nor more than $150.

(b) If any person engaged in the canning business within the provisions of this chapter is convicted a third time for any violation of this chapter, the Superior Court may close the factory in which such third offense is committed, and the person convicted may be prohibited from engaging in the canning business until further order of the Court.

(28 Del. Laws, c. 228, § 8; Code 1935, § 4082; 16 Del. C. 1953, § 3510; 71 Del. Laws, c. 85, § 4.)

§ 3509 Venue.

Whenever any person violates any of this chapter the Department of Health and Social Services shall cause the person so violating to be prosecuted in a court having jurisdiction in the county where the offense is committed.

(28 Del. Laws, c. 228, § 7; Code 1935, § 4081; 16 Del. C. 1953, § 3511; 70 Del. Laws, c. 149, § 163; 71 Del. Laws, c. 85, § 4.)

§ 3510 Closing factories.

In any case the Department of Health and Social Services, in its discretion, may, instead of prosecuting a person, close the factory in which a violation of this chapter occurs and may cause all work therein to be discontinued until such violations are discontinued or until such changes as may be necessary to make the factory sanitary are made, as directed by the Department of Health and Social Services.

(28 Del. Laws, c. 228, § 7; Code 1935, § 4081; 16 Del. C. 1953, § 3512; 70 Del. Laws, c. 149, § 164; 71 Del. Laws, c. 85, § 4.)

§ 3511 Resisting closing authority; penalties.

Should any person engaged in the canning business whose factory should be ordered closed by the Department of Health and Social Services under § 3510 of this title, resist the authority of the Department of Health and Social Services or sheriff or constable deputized by the Department, such person shall be fined not less than $50 nor more than $100 and imprisoned not more than 30 days.

(28 Del. Laws, c. 228, § 7; Code 1935, § 4081; 16 Del. C. 1953, § 3513; 70 Del. Laws, c. 149, § 165; 71 Del. Laws, c. 85, § 4.)

§§ 3512 , 3513. Closing factories; resisting closing authority; penalties.

Transferred.

Part IV
Food and Drugs
Chapter 37
POULTRY PROCESSING

§§ 3701 -3711. Definitions; license for operating poultry viscerating or dressing establishment; applications for license; license fee; issuance and term of license; form and display of license; denial or revocation of license; grounds; revocation of licenses; duration and effect; notice and hearing; licensee's right of appeal; penalty; injunction against continuing violations.

Repealed by 71 Del. Laws, c. 85, § 5, eff. June 26, 1997.

Part IV
Food and Drugs
Chapter 39
TOMATO PROCESSING

§§ 3901 -3904. Prohibited processing practices; deceptive labels or advertising; prohibitions affecting sellers of processed tomatoes; penalty.

Repealed by 71 Del. Laws, c. 85, § 6, eff. June 26, 1997.

Part IV
Food and Drugs
Chapter 41
FROZEN SWEETENED PRODUCTS

§ 4101 Policy and definitions.

(a) *Declaration of policy.* —

(1) The dairy industry is a paramount industry of the State and the production, processing, packaging, distribution and sale of frozen desserts is an important segment of the dairy industry and is of vast economic importance to the State and of vital importance to the consuming public of the State and should be encouraged and promoted in the public interest. It is in the interest of the dairy industry and of the consuming public that there be uniformity of standards for frozen desserts as between the various states and the federal government to the end that there may be free movement of frozen desserts between the states and to the end that the inefficiency, needless expense and confusion caused by differences in products sold under the same name, and differences in labeling of identical products may be eliminated.

(2) It is the purpose of this chapter to promote honesty and fair dealing in the interest of consumers, to insure fair competition between the manufacturers and distributors of the different products and to prevent confusion and deception in the sale of all such products by establishing definitions and standards of identity for such products and by providing for rules and regulations which will effect their orderly marketing and insure uniform and proper sanitary standards.

(b) *Definitions.* — For the purpose of this chapter and for any rules, regulations, definitions, standards of identity or labeling requirements promulgated pursuant thereto, the term "frozen desserts" shall be deemed to include ice cream, frozen custard, French ice cream, French custard ice cream, artificially sweetened ice cream, artificially sweetened ice milk, ice milk, fruit sherbet, water ice, quiescently frozen confection, quiescently frozen dairy confection, whipped cream confection, bisque tortoni, mellorine frozen desserts as all such products are commonly known, together with any mix used in such frozen desserts, and any products which are similar in appearance, odor or taste to such products or are prepared or frozen as such products are customarily prepared or frozen whether made with dairy or nondairy products.

(45 Del. Laws, c. 98, § 1; 16 Del. C. 1953, § 4101; 56 Del. Laws, c. 465, § 1.)

§ 4102 Conformity with federal standards.

(a) It is the intent of the General Assembly that Delaware law and regulations substantially conform with the federal regulations promulgated under the authority of the United States Secretary of Health, Education and Welfare prescribing definitions and standards for frozen desserts published pursuant to 21 U.S.C. § 371. It is further intended that this chapter and definitions and standards of identity promulgated in accordance herewith be construed in a manner similar to the corresponding federal regulation, aforesaid, whenever possible.

(b) The Department of Agriculture shall, after public hearing, promulgate definitions and standards of identity for frozen desserts, regulations for the labeling of any frozen desserts and regulations to implement the purposes of this chapter. Definitions and standards of identity promulgated by the Department shall not be in conflict with federal standards. The Department may adopt such definitions and standards of identity as are adopted by the United States Secretary of Health, Education and Welfare as aforesaid.

(c) Public hearings as provided in subsection (b) of this section shall be held only upon reasonable notice to all interested parties as provided by law in like cases. Following any hearing to consider rules, regulations, definitions, standards of identity, labeling requirements or any of these, the Department shall issue a recommended decision and shall afford interested parties an opportunity to file exceptions based upon the hearing record. The Department in issuing a final decision shall rule on any exceptions filed setting forth its reasons therefor. No definition or standard of identity promulgated by the Department shall conflict with federal definitions or standards of identity. With each rule or regulation adopted there shall be filed and made available upon request to any interested person the findings of fact supporting such rule or regulation. A copy of each proposed rule or regulation of the Department of Agriculture shall be printed and generally distributed, and specially distributed to any person who signified an interest theretofore or thereafter. No rule or regulation shall take effect or be effective until 30 days after general distribution or such longer time as the Secretary of Agriculture shall deem to be in the public interest. Rules and regulations promulgated in accordance with this authority shall have the force and effect of law and supersede all local ordinances and regulations inconsistent therewith. Any interested person aggrieved by any rule or regulation promulgated in accordance with this authority may have an appeal within 20 days after the effective date of such rule or regulation by petition to the Court of Chancery and may appeal from the decision of the Court of Chancery as provided for in other cases.

(d) Upon adoption of the rules and regulations by the Department of Agriculture as provided in this section, the provisions of § 4101 of this chapter which are inconsistent with such rules and regulations shall be deemed to be of no effect.

(16 Del. C. 1953, § 4102; 56 Del. Laws, c. 465, § 2; 57 Del. Laws, c. 764, § 30; 70 Del. Laws, c. 186, § 1.)

§ 4103 Sale or possession of adulterated or misbranded products.

No person shall sell, distribute, offer for sale or have in possession for selling or distribution any frozen dessert which is adulterated or misbranded.

(16 Del. C. 1953, § 4103; 56 Del. Laws, c. 465, § 3.)

§ 4104 Adulterations; prohibited and permitted ingredients.

(a) Any product for which a definition and standard of identity has been promulgated in accordance with this chapter shall be deemed to be adulterated within the meaning of this chapter if in purity or quality it fails to conform with the definitions and standards of identity promulgated.

(b) Any frozen dessert which contains any substance or compounds known or likely to be harmful to health, as determined by the State Board of Health, shall be deemed to be adulterated within the meaning of this chapter.

(16 Del. C. 1953, § 4106; 56 Del. Laws, c. 465, § 6.)

§ 4105 Misbranded.

Any mixtures or preparations shall be deemed to be misbranded if they are marked or labelled as any frozen dessert for which a definition or standard of identity has been promulgated but do not conform to such definition or standard of identity.

(16 Del. C. 1953, § 4107; 56 Del. Laws, c. 465, § 7.)

§ 4106 Penalties.

Any person and the officers or employees of any corporation violating this chapter shall for the first offense be fined not less than $50 and for each subsequent offense $100.

(16 Del. C. 1953, § 4108; 53 Del. Laws, c. 262.)

§ 4107 Enforcement agency.

The Department of Agriculture shall be charged with the enforcement of this chapter and may bring action in the Superior Court. Nothing contained in this section shall be construed to prevent any individual from prosecuting anyone violating this chapter or of rules or regulations made pursuant to § 4102 of this chapter in the Superior Court.

(16 Del. C. 1953, § 4109; 53 Del. Laws, c. 262; 57 Del. Laws, c. 764, § 30.)

Part IV
Food and Drugs
Chapter 43
SOFT DRINKS AND NONALCOHOLIC BEVERAGES

§ 4301 License for manufacture of soft drinks for sale in bottles.

(a) No person shall manufacture for sale in bottles or jugs any soft drink or other nonalcoholic beverage (except apple cider) within this State without having first applied for and having received a license from the Department of Health and Social Services.

(b) The application shall contain the name of the applicant, the applicant's address and the location of the applicant's manufacturing plant or plants, the name of the beverage or beverages to be manufactured and such other pertinent information as shall be prescribed by the Department of Health and Social Services in pursuance of this chapter.

(c) The application shall be accompanied by a fee of $25, upon receipt of which application and fee the Department of Health and Social Services shall issue to the applicant a license for the manufacture of the beverages mentioned in this section.

(d) The license shall be for the fiscal year ending June 30, unless sooner revoked, as provided in this chapter, and shall be renewed annually thereafter.

(Code 1915, § 780A; 33 Del. Laws, c. 55, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 63; 34 Del. Laws, c. 69, § 1; 35 Del. Laws, c. 52, § 1; Code 1935, § 841; 16 Del. C. 1953, § 4301; 70 Del. Laws, c. 149, §§ 177, 178; 70 Del. Laws, c. 186, § 1.)

§ 4302 Denial of license.

A license applied for pursuant to § 4301 of this title may be denied at the time of application if the establishment of the applicant is known to be in an unsanitary condition or if the water supply is known to be dangerously polluted.

(Code 1915, § 780A; 33 Del. Laws, c. 55, § 1; 34 Del. Laws, c. 63; 35 Del. Laws, c. 52, § 1; Code 1935, § 841; 16 Del. C. 1953, § 4302.)

§ 4303 Soft drinks sold but not manufactured in this State; inspection, registration and license.

No soft drink or other nonalcoholic beverage (except apple cider) not manufactured in this State shall be sold or offered for sale in this State unless such drink or beverage is first inspected and registered with the Department of Health and Social Services. A license fee of $57.50, which may be renewed annually, shall be paid by the manufacturer or the manufacturer's agent or dealer to the Department of Health and Social Services.

(Code 1915, § 780A; 33 Del. Laws, c. 55, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 63; 34 Del. Laws, c. 69, § 1; 35 Del. Laws, c. 52, § 1; Code 1935, § 841; 16 Del. C. 1953, § 4303; 67 Del. Laws, c. 260, § 1; 70 Del. Laws, c. 149, §§ 179, 180; 70 Del. Laws, c. 186, § 1.)

§ 4304 Disposition by Department of moneys collected.

All moneys collected by the Department of Health and Social Services under this chapter shall be paid into the State Treasury.

(Code 1915, § 780F; 33 Del. Laws, c. 55, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 842; 16 Del. C. 1953, § 4304; 70 Del. Laws, c. 149, § 181.)

§ 4305 Form of license.

All licenses granted shall be numbered and bear the name of the town or city and the street address where the establishment is located.

(Code 1915, § 780D; 33 Del. Laws, c. 55, § 1; Code 1935, § 844; 16 Del. C. 1953, § 4305.)

§ 4306 Display of license.

A licensee shall display the license in a conspicuous place on the licensed premises.

(Code 1915, § 780D; 33 Del. Laws, c. 55, § 1; Code 1935, § 844; 16 Del. C. 1953, § 4306; 70 Del. Laws, c. 186, § 1.)

§ 4307 Delivery trucks.

All delivery trucks and wagons maintained by persons holding licenses shall be kept clean and shall bear the license number and the name of the town or city where the licensed establishment is located.

(Code 1915, § 780D; 33 Del. Laws, c. 55, § 1; Code 1935, § 844; 16 Del. C. 1953, § 4307.)

§ 4308 Revocation of licenses.

(a) The Department of Health and Social Services may revoke any license issued under this chapter whenever it is determined by itself or the Pathologist and Bacteriologist, Chemist or other properly qualified official that this chapter has been violated.

(b) Any person whose license has been revoked shall discontinue the manufacture or sale within this State of soft drinks, syrups or other nonalcoholic beverages until this chapter has been complied with and a new license issued.

(c) The Department of Health and Social Services may revoke a license either temporarily until there is a compliance with such conditions as it may prescribe or permanently for the unexpired period of the license.

(Code 1915, § 780E; 33 Del. Laws, c. 55, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 845; 16 Del. C. 1953, § 4308; 70 Del. Laws, c. 149, §§ 182, 183.)

§ 4309 Procedure for revocation.

Before revoking any license the Department of Health and Social Services shall give written notice to the licensee affected, stating that it contemplates the revocation of the same and giving its reason therefor. The notice shall appoint a time of hearing before the Department of Health and Social Services or its deputies, and shall be mailed by registered mail to the licensee. On the day of hearing the licensee may present such evidence to the Department of Health and Social Services as the licensee deems fit, and after hearing all the testimony, the Department of Health and Social Services shall decide the question in such a manner as to it appears just and right.

(Code 1915, § 780B; 33 Del. Laws, c. 55, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 846; 16 Del. C. 1953, § 4309; 70 Del. Laws, c. 149, §§ 184, 185; 70 Del. Laws, c. 186, § 1.)

§ 4310 Appeal from Department's decision.

Any licensee or applicant for a license may appeal within 10 days from an adverse decision of the Department of Health and Social Services to the Superior Court of the county where the licensee or applicant resides and issue shall be framed in that Court and a trial had. The decision of the Superior Court shall be final.

(Code 1915, § 780G; 33 Del. Laws, c. 55, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 847; 16 Del. C. 1953, § 4310; 70 Del. Laws, c. 149, § 186.)

§ 4311 Regulations governing licensed establishments.

Persons granted a license to manufacture soft drinks or other nonalcoholic beverages must comply with the following requirements:

(1) Every building, room, basement or cellar occupied or used for the preparation for sale, manufacture, packing, storage, sale or distribution of any drink products shall be properly lighted, drained, plumbed and ventilated and conducted with due regard for the purity and wholesomeness of the products therein produced, and with strict regard to the influence of such conditions upon the health of the operatives, employees, clerks or other persons therein employed. The term "drink products" as used in this section includes all waters, beverages, soft drinks and like products, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof.

(2) The floors, side walls, ceilings, furniture, receptacles, implements and machinery of every establishment where drink products are manufactured, packed, stored, sold or distributed shall at all times be kept in a clean, healthful and sanitary condition.

(3) Drink products in the process of manufacture, preparation, packing, storing, sale or distribution must be securely protected from flies, dust, dirt, and, as far as may be necessary, from all other foreign or injurious contamination.

(4) All refuse, dirt and waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling and distribution of drink products must be removed from the premises daily.

(5) All bottling establishments shall be equipped with adequate and sufficient machinery for the automatic soaking, cleaning and rinsing of bottles. All bottles prior to refilling shall be cleansed and sterilized by soaking in a solution of not less than 3 1/2 percent caustic alkali for a period of not less than 3 minutes and at a temperature not lower than 120° Fahrenheit, to be followed by spraying and rinsing with water from the same source as used in filling, where practicable, or in any case by water of an accepted degree of purity and safety. Bottles too large for the machine shall be washed in the hot alkali solution and rinsed until free from any trace of alkali before refilling. All capping machines shall be provided with automatic crown feed. The reuse of caps, crowns or corks is prohibited. Such caps, crowns and corks shall be at all times so kept or stored as to be shielded from infection and contamination. All containers for the preparation or storage of syrups, fruit juices, extracts and flavors used in the manufacture of beverages shall be of glass, glazed-lined metal or stoneware. This shall not apply to those preparations not removed from the manufacturer's shipping package. In no case shall receptacles of galvanized iron be used for liquids to be bottled. Containers shall be covered at all times. The construction of pumps and piping used for conveying syrups, fruit juices and similar liquids shall be such as to permit of ready disconnection and cleaning. Linings of lead or zinc are prohibited. Proper receptacles shall be provided for solid wastes. Floors, walls, ceilings, doors, windows, window ledges, etc., shall be kept clean and free from dust. All fixtures, machinery, utensils and piping shall be maintained in clean condition, using for this purpose hot water, live steam and such chemical agents as may be approved by the Department of Health and Social Services.

(6) The clothing of operatives, employees, clerks or other persons must be clean.

(7) The side walls and ceilings in that part of bottling establishments in which the beverages or syrups are manufactured shall be kept oil painted or well limewashed, and all interior woodwork in every bottling establishment shall be kept washed and cleansed with soap and water, and every building, room, basement or cellar occupied for use in the preparation, manufacture, packing, storage,

sale or distribution of drink products shall have an impermeable floor made of cement or tile, laid in cement, brick or other suitable nonabsorbent material which can be flushed and washed clean with water.

(8) The floors, windows and other openings of syrup rooms or any part of a bottling establishment used in the manufacture or mixing of syrups and extracts, etc., shall be fitted with self-closing screen doors and wire window screens made with wire not less than 14 meshes to the inch.

(9) No employer shall knowingly permit, require or suffer any person to work in a bottling establishment who is afflicted with any contagious or infectious disease, or with any skin disease.

(10) Every bottling establishment shall be provided with or have available for use a convenient washroom and toilet of sanitary construction, but such toilet shall be entirely separate and apart from any room used for the manufacture or storage of drink products.

(Code 1915, § 780C; 33 Del. Laws, c. 55, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; 35 Del. Laws, c. 52, §§ 2, 3; Code 1935, § 843; 16 Del. C. 1953, § 4311; 70 Del. Laws, c. 149, § 187.)

§ 4312 Artificial sweeteners.

The Department of Health and Social Services shall have authority to approve artificial sweeteners for use in carbonated beverages. Such approval shall be in writing and the Department of Health and Social Services will publish a list of such approved artificial sweeteners. Bottles or other containers filled with carbonated beverage to which artificial sweetener approved by the Department of Health and Social Services has been added shall be labeled "DIETETIC." The label of each container shall also have printed thereon the name of the artificial sweetener used and the amount of the same which has been added.

(Code 1915, § 780H; 33 Del. Laws, c. 55, § 1; Code 1935, § 848; 16 Del. C. 1953, § 4312; 49 Del. Laws, c. 122; 50 Del. Laws, c. 271, § 1; 70 Del. Laws, c. 149, §§ 188, 189.)

§ 4313 Ingredients of beverage.

(a) All soft drinks or other nonalcoholic beverages, except nonalcoholic fruit juices, shall consist of a beverage made from pure cane or beet sugar syrup or such other sweetening liquids or substances as shall be permitted by the regulations of the Department of Health and Social Services, containing pure flavoring material with or without added fruit acid, and with or without added color.

(b) Nothing in this chapter shall prohibit the use of any other harmless ingredient in the manufacture of soft drinks or other nonalcoholic beverages.

(c) This section shall not apply to nonalcoholic beverages, made in imitation of beer, bitter drinks and other similar drinks.

(d) When artificial coal tar colors are used nothing but the certified colors as approved by the federal government are permissible.

(Code 1915, § 780I; 33 Del. Laws, c. 55, § 1; 33 Del. Laws, c. 57, § 4; 34 Del. Laws, c. 69, § 1; Code 1935, § 849; 16 Del. C. 1953, § 4313; 70 Del. Laws, c. 149, § 190.)

§ 4314 Information on caps or labels.

If any drink product as defined in subdivision (1) of § 4311 of this title contains artificial color or flavor, such fact shall be put on the cap or label. Such cap or label shall also bear the name and address of the bottler or manufacturer of such product, except that where the name of the bottler or manufacturer of such product has been blown in the bottle or other container, the bottler or manufacturer shall be exempt from putting the name and address of the bottler or manufacturer of such product on the cap itself.

(Code 1915, § 780L; 35 Del. Laws, c. 52, § 4; Code 1935, § 851; 16 Del. C. 1953, § 4314; 70 Del. Laws, c. 186, § 1.)

§ 4315 Using containers bearing another's label or name.

No person shall fill or refill any glass, jar, bottle or any other container with soda water, mineral water or any other drink or fluid, with intent to sell or vend such water, drink or fluid, which bears the label of any other person or which has blown in such glass, bottle or other container the name of any person without the consent of such person.

(Code 1915, § 780C; 33 Del. Laws, c. 55, § 1; 35 Del. Laws, c. 52, § 3; Code 1935, § 843; 16 Del. C. 1953, § 4315.)

§ 4316 Exemption of soda fountains.

This chapter shall not apply to persons operating a soda fountain, if the soft drinks there manufactured are used on the premises.

(Code 1915, § 780K; 33 Del. Laws, c. 55, § 1; Code 1935, § 850; 16 Del. C. 1953, § 4316.)

§ 4317 Penalties.

Whoever violates this chapter shall be fined not less than $50 nor more than $100.

(Code 1915, § 780M; 37 Del. Laws, c. 61, § 2; Code 1935, § 852; 16 Del. C. 1953, § 4317.)

Part IV
Food and Drugs
Chapter 45
FOOD STORAGE

§§ 4501 -4511. Definition of food; applicability; marking date of receipt of food for storage or refrigerating; removing food without marking storage date; storage longer than 12 months; inspection and supervision by health boards; rules and regulations; quarterly report by warehousepersons; report of food stored longer than 12 months; certificate of board of health authorizing delivery; extension of time for delivery; transfer from 1 refrigerating warehouse to another; disposition of food kept longer than prescribed time; disposal of cold storage poultry, game or eggs; penalties.

Repealed by 71 Del. Laws, c. 85, § 7, eff. June 26, 1997.

Part IV
Food and Drugs
Chapter 47
UNIFORM CONTROLLED SUBSTANCES ACT
Subchapter I
Definitions

§ 4701 Definitions.

As used in this chapter:

(1) "Addicted" or "addiction" shall mean dependence upon a drug in the following manner:

a. Psychological dependence upon a drug in the sense that the user lacks the ability to abstain from taking or using the drug or experiences a compulsive need to continue its use; and

b. A tolerance to the effects of the drug which leads the user to require larger and more potent doses; and

c. Such physical dependence upon the drug that the user suffers withdrawal symptoms if the user is deprived of its dosage.

(2) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:

a. A practitioner (or, in the practitioner's presence, by the practitioner's authorized agent); or

b. The patient or research subject at the direction and in the presence of the practitioner.

(3) "Administration" means the Drug Enforcement Administration, United States Department of Justice or its successor agency.

(4) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseperson or employee of the carrier or warehouseperson.

(5) "Anabolic steroid" means any of the controlled substances defined in § 4718(f) of this title.

(6) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of subchapter II of this chapter. For purposes of the crimes set forth in subchapters IV and V of this chapter, and of forfeiture set forth in § 4784 of this title, "controlled substance" includes "designer drug", as defined in paragraph (9) of this section.

(7) "Counterfeit controlled substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(8) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(9) "Designer drug" means a substance that has a chemical structure substantially similar to that of a controlled substance or that was specifically designed to or may produce an effect substantially similar to that of a controlled substance. Examples of chemical classes in which "designer drugs" are found include, but are not limited to, the following: Phenethylamines, N-substituted piperidines, morphinans, ecgonines, quinazolinones, substituted indoles, arylcycloalkylamines, cannabinoids, cathinones, and any synthetic analogue of a controlled substance. "Designer drug" does not include any substance that was manufactured, delivered or dispensed in conformance with an approved new drug application, or an exemption for investigating use within the meaning of § 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355), or that was manufactured, delivered or dispensed in conformance with a registration issued by the Attorney General of the United States within the meaning of §§ 301-304 of the Federal Controlled Substances Act (21 U.S.C. §§ 821-824).

(10) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing for a legitimate medical purpose by an individual practitioner in the usual course of the practitioner's professional practice, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(11) "Dispenser" means a practitioner who dispenses.

(12) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(13) "Distributor" means a person who distributes.

(14) "Dose" means an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual. A dose includes, but is not limited to: a pill; a capsule; a tablet; or a vial.

(15) "Drug" means (i) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary or any supplement to any of them; (ii) substances intended for use

in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (iii) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (iv) substances intended for use as a component of any article specified in clause (i), (ii) or (iii) of this subsection. It does not include devices or their components, parts or accessories.

(16) "Drug Detection Animal Trainer" means all persons, not classified as a practitioner, pharmacy, distributor, manufacturer or researcher, but under the classification of "Other Controlled Substance Registrants". This registrant shall have formal training and may train animals for drug detection using controlled substances listed under the registration. These registrants shall have equipment and a site appropriate for registration.

(17) "Drug paraphernalia" shall mean all equipment, products and materials of any kind which are used, intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, re-packaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body, a controlled substance the manufacture, delivery, possession or use of which is in violation of this chapter. The term "drug paraphernalia" includes, but is not limited to:

a. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance, the use, cultivation, delivery or possession of which is in violation of this chapter or from which such a controlled substance can be derived;

b. Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;

c. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance, the use, manufacture, delivery or possession of which is in violation of this chapter;

d. Testing equipment used, intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;

e. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;

f. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose or lactose, which are used, intended for use or designed for use in cutting controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;

g. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or otherwise cleaning or refining, marijuana;

h. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;

i. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;

j. Containers or other objects used, intended for use or designed for use in storing or concealing controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter;

k. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances, the use, manufacture, delivery or possession of which is in violation of this chapter; and

l. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Roach clips or objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

6. Miniature cocaine spoons, and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. Electric pipes;

10. Air-driven pipes;

11. Chillums;

12. Bongs; and

13. Ice pipes or chillers.

(18) "Finished product" means any material, compound, mixture or preparation which contains any quantity of a controlled or noncontrolled substance.

(19) "Human growth hormone" is synonymous with the term "human chorionic gonadotropin."

(20) "Immediate precursor" means a substance which the Secretary has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(21) "Isomer" means the optical isomer, except as used in § 4714(d) of this title and § 4716(b)(4) of this title. As used in § 4714(d) of this title, the term "isomer" means the optical positional or geometric isomer. As used in § 4716(b)(4) of this title, the term "isomer" means the optical or geometric isomer.

(22) "Knowingly" means a person acts knowingly with respect to any delivery, possession, use or consumption within the meaning of this chapter when the person knows or is aware of such delivery, possession, use or consumption. The person's knowledge may be inferred by the trier of fact from the surrounding circumstances, considering whether a reasonable person in the defendant's circumstances would have had such knowledge. A prima facie case of knowledge is established upon the introduction of some evidence of the surrounding circumstances from which a reasonable juror might infer the defendant's knowledge.

(23) "Lawful prescription or order" means a prescription or order that is issued for a legitimate medical purpose by a licensed and registered practitioner pursuant to a "patient-practitioner relationship" as defined in this section, that is not obtained by misrepresentation, fraud, forgery, deception or subterfuge, and is distributed or dispensed in conformity with § 4739 of this title.

(24) "Licensed practitioner" means any individual who is authorized by law to prescribe drugs in the course of professional practice or research in any state.

(25) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging or labeling of a controlled substance:

a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for delivery.

(26) "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(27) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis:

a. Opium opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation. Such term does not include isoquinoline alkaloids of opium.

b. Poppy straw and concentrate of poppy straw.

c. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine or their salts have been removed.

d. Cocaine, its salts, optical and geometric isomers, and salts of isomers.

e. Ecgonine, its derivatives, their salts and salts of isomers.

f. Any compound, mixture or preparation which contains any quantity of any of the substances referred to in paragraphs (27)a. through e. of this section.

(28) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under § 4711 of this title, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(29) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(30) "Other Controlled Substance Registrants" means all persons and firms, except persons or firms exempt from registration, who are not classified as pharmacies, distributors, manufacturers, practitioners or researchers. Examples of persons or firms in this classification include, but are not limited to, analytical laboratories and drug detection animal trainers, having a legitimate need to use "controlled substances" as defined in this section.

(31) "Patient-practitioner relationship" means, with respect to prescribing drugs for a patient, that the practitioner is a licensed practitioner who:

a. Has conducted at least 1 in-person medical evaluation of the patient and performed a medical history and physical examination sufficient to establish a diagnosis and to identify underlying conditions of, or contraindications to, the treatment recommended or provided; or

b. Personally knows the patient and the patient's general health status through an existing patient-practitioner relationship; or

c. Provides treatment in consultation with or upon referral of another practitioner who has an existing patient-practitioner relationship with the patient and who has agreed to supervise the patient's treatment, including follow-up care and use of the prescribed medications; or

d. Provides treatment to the patient through an on-call or cross-coverage situation for another practitioner who has an existing patient-practitioner relationship with the patient; or

e. Provides continuing medications on a short-term basis for a new patient prior to the first appointment; or

f. Provides treatment based upon admission orders for a newly hospitalized patient.

(32) "Person" means individual, corporation, government or governmental subdivision or agency, statutory trust, business trust, estate, trust, partnership or association, or any other legal entity.

(33) "Poppy straw" means all parts, except the seeds of the opium poppy, after mowing.

(34) "Possession," in addition to its ordinary meaning, includes location in or about the defendant's person, premises, belongings, vehicle or otherwise within the defendant's reasonable control.

(35) "Practitioner" means:

a. A physician, dentist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of its professional practice or research in this State.

(36) "Prescribe" means to give an order for medication or other therapy by authorized personnel which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user.

(37) "Prescription drug" means any drug required by federal or state law or regulation to be dispensed only by or on the prescription of a practitioner licensed to prescribe drugs, or which is restricted to use by practitioners only.

(38) "Prescription drug order" means any written or verbal order of a practitioner for a prescription drug.

(39) "Production" includes the manufacturing, planting, cultivating, growing or harvesting of a controlled substance.

(40) "'Protected park, recreation area, church, synagogue or other place of worship " means:

a. Any building, structure, athletic playing field, playground, or other land contained on the property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in any "parkland" as defined in § 8110(a)(2) of Title 9 or any church, synagogue or other place of worship; or

b. Any area accessible to the public located within 300 feet of the property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in any "parkland" as defined in § 8110(a)(2) of Title 9 or any church, synagogue or place of worship, or any parked vehicle located within 300 feet of the property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in any "parkland" as defined in § 8110(a)(2) of Title 9 or any church, synagogue or place of worship.

For the purposes of this section an "area accessible to the public" shall include: sidewalk; streets; parking lots; parks; playgrounds; stores and restaurants; and any other outdoor locations such as front porches or front yards.

(41) "Protected school zone" means:

a. Any building, structure, athletic playing field, playground, or other land contained on the property of a public or private kindergarten, elementary, secondary, or vocational-technical school; or

b. Any area accessible to the public located within 300 feet of the property of a public or private kindergarten, elementary, secondary, or vocational-technical school, or any parked vehicle located within 300 feet of the property of a public or private kindergarten, elementary, secondary, or vocational-technical school.

For the purposes of this section, an "area accessible to the public" shall include: sidewalks; streets; parking lots; parks; playgrounds; stores and restaurants; and any other outdoor locations such as front porches or front yards.

(42) "Purported controlled substance" means any substance that is:

a. Expressly or impliedly represented to be a controlled substance; or

b. Expressly or impliedly represented to be of such nature that another person will be able to distribute or use the substance as a controlled substance.

(43) "Researcher" means all persons and firms, not a practitioner, who routinely performs scholarly or scientific investigations or inquiries.

(44) "Secretary" means Secretary of the Department of State or the Secretary's designee in paragraph (19) of this section; §§ 4711; 4713; 4715; 4717; 4718(l); 4719; 4720(c); 4721; 4731; 4732; 4733; 4734(a) and (b); 4735 (b), (c) and (d); 4736(a) and (b); 4737; 4738; 4739(b); 4762(e)(2); 4781(1); 4782; 4783(b); 4785; 4786; 4787(b), (c), (d), (e) and 4791(d) of this title.

(45) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

(46) "Ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

(47) "Vehicle" shall have the same definition as that set forth in § 101(80) of Title 21.

(16 Del. C. 1953, § 4701; 58 Del. Laws, c. 424, § 1; 59 Del. Laws, c. 132, § 1; 60 Del. Laws, c. 583, § 1; 62 Del. Laws, c. 250, § 3; 62 Del. Laws, c. 252, § 1; 65 Del. Laws, c. 287, §§ 1-3; 67 Del. Laws, c. 384, §§ 3-6; 70 Del. Laws, c. 81, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 288, §§ 1, 12; 73 Del. Laws, c. 329, § 59; 74 Del. Laws, c. 288, § 2; 75 Del. Laws, c. 350, § 193(b); 76 Del. Laws, c. 81, § 35; 77 Del. Laws, c. 155, §§ 1-3; 78 Del. Laws, c. 13, §§ 21-29; 78 Del. Laws, c. 61, § 1; 78 Del. Laws, c. 204, §§ 1, 2[1]; 79 Del. Laws, c. 66, § 1; 79 Del. Laws, c. 164, § 1.)

Subchapter II

Standards and Schedules

§ 4711 Administration.

The Secretary shall administer this chapter. Except as otherwise provided in this chapter, the Secretary may delete or reschedule substances enumerated in the schedules of controlled substances only if:

(1) Such substances have been deleted from or rescheduled within the federal schedules of controlled substances by the Attorney General of the United States pursuant to 21 USC § 811, et seq.; and

(2) The findings required by this chapter for placement of substances in the schedules of controlled substances have been made.

(16 Del. C. 1953, § 4711; 58 Del. Laws, c. 424, § 1; 60 Del. Laws, c. 583, § 2.)

§ 4712 Nomenclature.

The controlled substances listed or to be listed in the schedules in §§ 4714, 4716, 4718, 4720 and 4722 are included by whatever official, common, usual, chemical or trade name designated.

(16 Del. C. 1953, § 4712; 58 Del. Laws, c. 424, § 1.)

§ 4713 Schedule I tests.

The Secretary shall place a substance in Schedule I if the Secretary finds that the substance:

(1) Has high potential for abuse; and

(2) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(16 Del. C. 1953, § 4713; 58 Del. Laws, c. 424, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4714 Schedule I.

(a) The controlled substances listed in this section are included in Schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetylmethadol;

(2) Allylprodine;

(3) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or "LAAM");

(4) Alphameprodine;

(5) Alphamethadol;

(6) Benzethidine;

(7) Betacetylmethadol;

(8) Betameprodine;

(9) Betamethadol;

(10) Betaprodine;
(11) Clonitazene;
(12) Dextromoramide;
(13) Dextrorphan;
(14) Diampromide;
(15) Diethylthiambutene;
(16) Dimenoxadol;
(17) Dimepheptanol;
(18) Dimethylthiambutene;
(19) Dioxaphetyl butyrate;
(20) Dipipanone;
(21) Ethylmethylthiambutene;
(22) Etonitazene;
(23) Etoxeridine;
(24) Furethidine;
(25) Hydroxypethidine;
(26) Ketobemidone;
(27) Levomoramide;
(28) Levophenacylmorphan;
(29) Morpheridine;
(30) Noracymethadol;
(31) Norlevorphanol;
(32) Normethadone;
(33) Norpipanone;
(34) Phenadoxone;
(35) Phenampromide;
(36) Phenomorphan;
(37) Phenoperidine;
(38) Piritramide;
(39) Proheptazine;
(40) Properidine;
(41) Racemoramide;
(42) Trimeperidine;
(43) Difenoxin;
(44) Propiram;
(45) Tilidine;
(46) Alpha-Methylfentanyl;
(47) 3-Methylfentanyl (N-[3-methyl-1(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide) , its salts and salts of isomers;
(48) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts and salts of isomers;
(49) 1-[2-phenylethyl]-4-phenyl-4-acetyoxypiperdine (PEPAP), its optical isomers, salts and salts of isomers;
(50) N-[1-(1-methyl-2-phenyl) ethyl-4-piperidinyl]-N-phenylacetamide (Acetyl-alpha-methylfentanyl), its optical isomers, salts and salts of isomers;
(51) N-[1-methyl-2-(2-thienyl) ethyl-4-piperidyl]-N-phenylpropanamide (Alpha-Methylthiofentanyl), its optical isomers, salts and salts of isomers;
(52) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (Benzylfentanyl), its optical isomers, salts and salts of isomers;
(53) N-[1-(2-hydroxy-2-phenyl) ethyl-4-piperidinyl]-N-phenylpro pa ni mide (Beta-hydroxyfentanyl), its optical isomers, salts and salts of isomers;
(54) N-[3-methyl-1-(2-hydroxy-2-phenyl) ethyl-4-piperidinyl]-N-phenyl propanamide (Beta-hydroxy-3- methylfentanyl), its optical and geometric isomers, salts and salts of isomers;
(55) N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanimi de (3-methylthiofentanyl), its optical and geometric isomers, salts and salts of isomers;

(56) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (Thienylfentanyl), its optical isomers, salts and salts of isomers;

(57) N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (Thiofentanyl), its optical isomers, salts and salts of isomers; and

(58) N-[1-(2-phenylethyl)-4-piperidyl]-n(4-flourophenyl)-propanamide (Para-Flourofentanyl), its optical isomers, salts and salts of isomers.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Etorphine;

(10) Heroin;

(11) Hydromorphinol;

(12) Methyldesorphine;

(13) Methyldihydromorphine;

(14) Morphine methylbromide;

(15) Morphine methylsulfonate;

(16) Morphine-N-Oxide;

(17) Myrophine;

(18) Nicocodeine;

(19) Nicomorphine;

(20) Normorphine;

(21) Pholcodeine;

(22) Thebacon; and

(23) Drotebanol.

(d) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;

(2) 5-methoxy-3,4-methylenedioxy amphetamine;

(3) 3,4,5-trimethoxy amphetamine;

(4) Bufotenine;

(5) Diethyltryptamine;

(6) Dimethyltryptamine;

(7) 4-methyl-2,5-dimethoxylamphetamine;

(8) Ibogaine;

(9) Lysergic acid diethylamide;

(10) Mescaline;

(11) Peyote;

(12) N-ethyl-3-piperidyl benzilate;

(13) N-methyl-3-piperidyl benzilate;

(14) Psilocybin;

(15) Psilocyn;

(16) Thiophene Analog of Phencyclidine;

(17) Ethylamine Analog of Phencyclidine;

(18) Pyrrolidine Analog of Phencyclidine;

(19) Any material, compound, combination, mixture, synthetic substitute or preparation which contains any quantity of marijuana or any tetrahydrocannabinols, their salts, isomers or salts of isomers;

(20) Parahexyl

(21) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;

(22) 2, 5-Dimethoxy-4-ethylamphetamine (DOET);

(23) Alpha-ethyltrytamine;

(24) Salvia divinorum;

(25) Salvinorin A; and

(26) Synthetic cannabanoid, which means a substance containing 1 or more of the following chemical compounds:

a. JWH-015;

b. JWH-018;

c. JWH-019;

d. JWH-073;

e. JWH-081;

f. JWH-122;

g. JWH-200;

h. JWH-250;

i. JWH-251;

j. JWH-398;

k. HU-210;

l. HU-211;

m. HU-308;

n. HU-331;

o. CP 55,940;

p. CP 47,497 and its homologues;

q. WIN 55212-2;

r. AM-2201;

s. AM-694;

t. JWH-203;

u. RCS-4; and

v. RCS-8.

(e) Any material, compound, mixture or preparation which contains any quantity of the following depressant substances, including their salts, isomers and salts of isomers unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific designation:

(1) Methaqualone.

(2) Gamma Hydroxybutyrate (GHB).

(f) Any material, compound, mixture or preparation which contains any quantity of the following stimulant substances, including their salts, isomers and salts of isomers unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific designation:

(1) Fenethylline;

(2) N-Ethylamphetamine;

(3) Cathinone;

(4) Methcathinone;

(5) Aminorex; and

(6) Synthetic cathinone, which means a substance containing 1 or more of the following chemical compounds:

a. Mephedrone (also known as 4-MMC; 4-Methylephedrone; and 2-(methylamino)-1-(4-methylphenyl)-1-propanone);

b. MDPV (also known as Methylenedioxy Pyrovalerone; 3,4-methylenedioxypyrovalerone; and 1-(1,3-benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-pentanone);

c. Methylone (also known as M1; bk-MDMA; 3,4-Methylenedioxy-N-methylcathinone; and 1-(1,3-benzodioxol-5-yl)-2-(methylamino)-1-propanone);

d. Naphyrone (also known as O-2482; NRG-1; Naphpyrovalerone; #-Naphyrone; and 1-(2-naphthalenyl)-2-(1-pyrrolidinyl)-1-pentanone);

e. Flephedrone (also known as 4-FMC; and 1-(4-fluorophenyl)-2-(methylamino)propan-1-one);

f. Methedrone (also known as 4-Methedrone; Methoxyphedrine; PMMC; para-Methoxymethcathinone; 4-methoxymethcathinone; and 1-(4-methoxyphenyl)-2-(methylamino)-1-propanone; 4-methoxy methcathinone);

g. Ethcathinone (also known as Ethylpropion, N-ethylcathinone and 2-ethylaminopropiophenone; #k-Ethylamphetamine; 2-ethylaminopropiophenone; and 2-ethylamino-1-phenyl-propan-1-one, N-ethylcathinone);

h. Ethylone (also known as 3,4-methylenedioxy-*N*-ethylcathinone; MDEC; #k-MDEA; and (*RS*)-1-(1,3-benzodioxol-5-yl)-2-(ethylamino)propan-1-one);

i. Butylone (also known as #-keto MBDB; and 1-(1,3-benzodioxol-5-yl)-2-(methylamino)-1-butanone);

j. Metamfepramone (also known as N,N-Dimethylcathinone; and 2-(dimethylamino)-1-phenyl-1-propanone);

k. Alpha-PPP (also known as #-Pyrrolidinopropiophenone; and 1-phenyl-2-(1-pyrrolidinyl)-1-propanone);

l. MOPPP (also known as 4'-Methoxy-#-pyrrolidinopropiophenone; and 1-(4-methoxyphenyl)-2-(pyrrolidin-1-yl)propan-1-one);

m. MDPPP (also known as 3',4'-Methylenedioxy-#-pyrrolidinopropiophenone; and 1-(1,3-benzodioxol-5-yl)-2-(1-pyrrolidinyl)-1-propanone);

n. Alpha-PVP (also known as #-Pyrrolidinopentiophenone; #-PVP; O-2387; alpha-PVP; and 1-phenyl-2-(1-pyrrolidinyl)-1-pentanone);

o. 3-FMC (also known as 3-Fluoromethcathinone; and 1-(3-fluorophenyl)-2-(methylamino)propan-1-one);

p. MPBP (also known as 4'-Methyl-#-pyrrolidinobutiophenone; and (*RS*)-1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-butanone); and

q. Methcathinone (also known as #-methylamino-propiophenone; Ephedrone (Europe); and (*RS*)-2-(methylamino)-1-phenyl-propan-1-one).

(16 Del. C. 1953, § 4714; 58 Del. Laws, c. 424, § 1; 61 Del. Laws, c. 261, §§ 1, 2; 71 Del. Laws, c. 295, § 3; 75 Del. Laws, c. 256, §§ 2, 3; 77 Del. Laws, c. 110, §§ 1, 2; 78 Del. Laws, c. 61, § 2; 15 DE Reg. 577 (Emergency); 78 Del. Laws, c. 204, §§ 2[2], 3.)

§ 4715 Schedule II tests.

The Secretary shall place a substance in Schedule II if the Secretary finds that:

(1) The substance has high potential for abuse;

(2) The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) The abuse of the substance may lead to severe psychic or physical dependence.

(16 Del. C. 1953, § 4715; 58 Del. Laws, c. 424, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4716 Schedule II.

(a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Dihydrocodeine;

(5) Diphenoxylate;

(6) Fentanyl;

(7) Isomethadone;

(8) Levo-alphacetylmethodol (also known as levo-alpha-acetyl meth adol, levomethadyl acetate, "LAAM")

(9) Levomethorphan;
(10) Levorphanol;
(11) Metazocine;
(12) Methadone;
(13) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(14) Moramide-Intermediate 2-methyl-3-morpholino-1, 1-diphenyl- pro pane-carboxylic acid;
(15) Pethidine;
(16) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(17) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxy late;
(18) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-car box y lic acid;
(19) Phenazocine;
(20) Piminodine;
(21) Racemethorphan;
(22) Racemorphan;
(23) Sufentanil; and
(24) Alfentanil.

(d) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers and salt of its optical isomers;
(2) Phenmetrazine and its salts;
(3) Any substance which contains any quantity of methamphetamine including its salts, isomers and salts of isomers; and
(4) Methylphenidate.

(e) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Methaqualone and its salts;
(2) Amobarbital;
(3) Secobarbital;
(4) Pentobarbital;
(5) Phencyclidine;
(6) Phencyclidine Immediate Precursors:
a. 1-Phenylcyclohexylamine; and
b. 1-Piperidinocylohexane Carbonitrile (PCC); and
(7) Glutethimide.

(f)(1) Immediate Precursor to Amphetamine and Methamphetamine.
(2) Phenylacetone (P-2-P).

(g) [Deleted.]

(16 Del. C. 1953, § 4716; 58 Del. Laws, c. 424, § 1; 59 Del. Laws, c. 59, § 1; 66 Del. Laws, c. 66, § 1; 67 Del. Laws, c. 201, § 2.)

§ 4717 Schedule III tests.

The Secretary shall place a substance in Schedule III if the Secretary finds that:

(1) The substance has a potential for abuse less than the substances listed in Schedules I and II;
(2) The substance has currently accepted medical use in treatment in the United States; and
(3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(16 Del. C. 1953, § 4717; 58 Del. Laws, c. 424, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4718 Schedule III.

(a) The controlled substances listed in this section are included in Schedule III.

(b) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing limited quantities of any stimulant drugs or any salts, isomers or salts of isomers thereof and 1 or more active medicinal ingredients not having a stimulant effect on the central nervous system and in such combinations, quantity, proportion or concentration that reduce the potential abuse of the substances which have a stimulant effect on the central nervous system.

(c) Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

(2) Chlorhexadol;

(3) Lysergic acid;

(4) Lysergic acid amide;

(5) Methyprylon;

(6) [Rescheduled];

(7) Sulfondiethylmethane;

(8) Sulfonethylmethane; and

(9) Sulfonmethane.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(8) Not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and combinations:

(1) Boldenone;

(2) Chlorotestosterone (4-dihydrotestosterone);

(3) Clostebol;

(4) Dehydrochlormethyltestosterone;

(5) Dihydrotestosterone (4-dihydrotestosterone);

(6) Drostanolone;

(7) Ethylestrenol;

(8) Fluoxymesterone;

(9) Formebulone (formebulone);

(10) Mesterolone;

(11) Methandienone;

(12) Methandranone;

(13) Methandriol;

(14) Methandrostenolone;

(15) Methenolone;

(16) Methyltestosterone;

(17) Mibolerone;

(18) Nandrolone;

(19) Norethandrolone;

(20) Oxandrolone;

(21) Oxymesterone;

(22) Oxymetholone;

(23) Stanolone;

(24) Stanozolol;

(25) Testolactone;

(26) Testosterone;

(27) Trenbolone; and

(28) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

(g) Clortermine.

(h) Benzphetamine.

(i) Chlorphentermine.

(j) Phendametrazine.

(k) Ketamine.

(l) The Secretary may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(m) Any anabolic steroid, as listed in subsection (f), which is a combination of estrogen and anabolic steroid and which is expressly intended for administration to hormone-deficient women, shall be exempt from the provisions of this chapter. If any person prescribes, dispenses or distributes an anabolic steroid which is a combination of estrogen and anabolic steroid for use by persons who are not hormone-deficient women, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this chapter.

(n) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product.

(16 Del. C. 1953, § 4718; 58 Del. Laws, c. 424, § 1; 67 Del. Laws, c. 201, § 1; 70 Del. Laws, c. 81, § 2; 71 Del. Laws, c. 50, § 1; 71 Del. Laws, c. 295, § 1.)

§ 4719 Schedule IV tests.

The Secretary shall place a substance in Schedule IV if the Secretary finds that:

(1) The substance has a low potential for abuse relative to substances in Schedule III;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

(16 Del. C. 1953, § 4719; 58 Del. Laws, c. 424, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4720 Schedule IV.

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Ethchlorvynol;

(5) Ethinamate;

(6) Methohexital;

(7) Meprobamate;

(8) Methylphenobarbital;

(9) Paraldehyde;

(10) Petrichloral;

(11) Phenobarbital;

(12) Chlordiazepoxide;

(13) Diazepam;

(14) Oxazepam;

(15) Clorazepate;
(16) Flurazepam;
(17) Clonazepam;
(18) Lorazepam;
(19) Mebutamate;
(20) Prazepam;
(21) Temazepam;
(22) Halazepam;
(23) Alprazolam;
(24) Triazolam;
(25) Quazepam;
(26) Midazolam; and
(27) Zolpidem.

(c) The Secretary may except by rule any compound, mixture or preparation containing any depressant substance listed in subsection (b) from the application of all or any part of this chapter if the compound, mixture or preparation contains 1 or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantities, proportions or concentrations that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(d) Fenfluramine.

(e) Dextropropoxyphene, and any compound, mixture or preparation which contains any of this substance, including its salts.

(f) Phentermine and any compound, mixture or preparation which contains any of this substance, including its salts.

(g) Pentazocine, and any material, compound, mixture or preparation which contains any of this substance.

(h) Diethylpropion.

(i) Pemoline (including organometallic complexes and chelates thereof).

(j) A compound mixture or preparation containing not more than 1 milligram of Difenoxin and not less than 25 micrograms of Atropine Sulfate per dosage unit.

(k) Mazindol.

(l) Flunitrazepam.

(16 Del. C. 1953, § 4720; 58 Del. Laws, c. 424, § 1; 71 Del. Laws, c. 295, § 2.)

§ 4721 Schedule V tests.

The Secretary shall place a substance in Schedule V if the Secretary finds that:

(1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) The substance has currently accepted medical use in treatment in the United States; and

(3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

(16 Del. C. 1953, § 4721; 58 Del. Laws, c. 424, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4722 Schedule V.

(a) The controlled substances listed in this section are included in Schedule V.

(b) Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains 1 or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(6) Not more than 0.5 milligram and no less than 24 micrograms of atropine sulfate per dosage unit.

(c) Buprenorphine and its salts.

(16 Del. C. 1953, § 4722; 58 Del. Laws, c. 424, § 1.)

§ 4723 Republishing of schedules.

Repealed by 60 Del. Laws, c. 583, § 3, eff. July 21, 1976.

Subchapter III

Regulation of Manufacture, Distribution and Dispensing of Controlled Substances

§ 4731 Rules; fees; Controlled Substance Advisory Committee.

(a) The Secretary may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this State.

(b) The Secretary shall appoint a council to act in an advisory capacity to the Secretary and other state agencies on all matters relating to this chapter. The advisory council shall be named the Controlled Substance Advisory Committee and may serve as the Secretary's designee in any hearing under this chapter.

(16 Del. C. 1953, § 4731; 58 Del. Laws, c. 424, § 1; 79 Del. Laws, c. 164, § 1.)

§ 4732 Registration requirements; exemptions; inspections.

(a) Any pharmacy, distributor, manufacturer, practitioner, researcher or other controlled substance registrant who has or proposes to engage in activities accordingly within this State must obtain biennially a registration issued by the Secretary in accordance with the Secretary's rules.

(b) Any pharmacy, distributor, manufacturer, researcher or other controlled substance registrant is limited to those substances to the extent authorized by their registration and in conformity with the other provisions of this subchapter.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) Any agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment;

(2) A common or contract carrier or warehouseperson, or any employee thereof, whose possession of any controlled substance is in the usual course of business or employment; and

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The Secretary may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if the Secretary finds it consistent with the public interest.

(e) A separate registration is required at each principal place of business or professional practice where the applicant, including other controlled substance registrants, manufactures, distributes, dispenses or conducts research with controlled substances.

(f) The Secretary or the Secretary's representative may inspect the establishment of any registrant or applicant for registration in accordance with the Secretary's rules.

(g) Every registrant under this chapter shall be required to report any change of professional or business address in such a manner as the Secretary may require by rule.

(h) As a condition of biennial renewal of registration, an applicant shall demonstrate, in such a form and by such evidence as the Secretary deems appropriate, that the applicant, if a licensed practitioner, as defined in this chapter, or such officer or employee of the applicant, if a corporation, partnership, or other business entity, as is required to be registered as an individual, has completed continuing professional education relating to:

(1) The prescribing, distributing, dispensing or delivery of controlled substances, as defined in this chapter; or

(2) The detection and recognition of symptoms, patterns of behavior, or other characteristics of impairment and dependency resulting from the abusive or illegal use of controlled substances; and

(3) Other topics as the Secretary deems appropriate.

(16 Del. C. 1953, § 4732; 58 Del. Laws, c. 424, § 1; 65 Del. Laws, c. 501, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 288, § 7; 79 Del. Laws, c. 164, § 1; 79 Del. Laws, c. 193, § 3.)

§ 4733 Registration; rights of registrants.

(a) The Secretary shall register an applicant as a pharmacy, distributor, manufacturer, practitioner, researcher or other controlled substance registrant for purposes of manufacturing, distributing or dispensing, some or all of the controlled substances included in Schedules I-V who has an active, relevant underlying professional license in the State unless the Secretary determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Secretary shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(2) Compliance with applicable federal, state and local law, including but not limited to such requirements as having a license to practice as a practitioner or having documented training and continuing education as a drug detection animal trainer;

(3) Any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute, prescribe, dispense or research controlled substances as authorized by federal law;

(7) Any professional license disciplined in any jurisdiction; and

(8) Any other factors relevant to the public interest.

(b) Registration under subsection (a) does not entitle a registrant to manufacture, research and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this State. The Secretary need not require separate registration under this subchapter for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this subchapter in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this State upon furnishing the Secretary evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

(16 Del. C. 1953, § 4733; 58 Del. Laws, c. 424, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 288, § 8; 79 Del. Laws, c. 164, § 1.)

§ 4734 Denial, revocation and suspension of registration; order to show cause proceedings before the Secretary.

(a) A registration under § 4733 of this title may be denied, suspended or revoked by the Secretary upon a finding that the registrant's DEA registration or underlying practitioner license has been suspended or revoked, or the registrant has failed to comply with any mandatory continuing education requirements established by the Secretary's rules.

(b) Before denying, suspending or revoking a registration, the Secretary shall serve upon the applicant or registrant an order to show cause why registration should not be denied, suspended or revoked. The order to show cause shall contain a statement of the basis therefore and shall call upon the applicant or registrant to appear before the Secretary at a time and place not more than 30 days after the date of service of the order. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(16 Del. C. 1953, §§ 4734, 4735; 58 Del. Laws, c. 424, § 1; 60 Del. Laws, c. 583, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 88, § 9; 79 Del. Laws, c. 164, § 1.)

§ 4735 Investigations; written complaints; grounds for limitation, suspension or revocation of registration.

(a) All complaints shall be received and investigated by the Division of Professional Regulation in accordance with § 8735 of Title 29, and the Division of Professional Regulation shall be responsible for issuing a final written report at the conclusion of its investigation.

(b) The Secretary, after due notice and hearing may limit, suspend, fine or revoke the registration of any registrant who:

(1) Has failed to maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(2) Has failed to comply with applicable federal, state or local law;

(3) Has been convicted under any federal or state law relating to any controlled substances;

(4) Has furnished any false or fraudulent material in any application filed under this chapter;

(5) Has had any federal registration to manufacture, distribute, prescribe, dispense or research controlled substances as authorized by federal law suspended or revoked;

(6) Has violated a provision of this chapter, or violated an order or rule of the Secretary related to controlled substances;

(7) Has been disciplined by a professional licensing board in any jurisdiction; or

(8) Has engaged in any conduct the Secretary finds to be relevant and inconsistent with the public interest.

(c) The Secretary may limit revocation or suspension of a registration to particular controlled substances.

(d) The Secretary may fine any registrant in an amount not to exceed $1,000 per violation of this chapter or the rules promulgated hereunder.

(e) If the Secretary suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court upon application therefore orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the State.

(f) The Secretary shall promptly notify the Administration of all orders suspending or revoking registration and all forfeitures of controlled substances.

(16 Del. C. 1953, § 4735; 58 Del. Laws, c. 424, § 1; 60 Del. Laws, c. 583, § 5; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 164, § 1.)

§ 4736 Hearings before the Secretary; subpoenas; judicial review.

(a) Any registrant complained against under this chapter may appear personally or by counsel at the hearing and produce any competent evidence on the registrant's behalf in answer to the complaint. Hearings shall be conducted in accordance with the Administrative Procedures Act [Chapter 101 of Title 29]. The Secretary shall be authorized to administer oaths, examine witnesses and issue notices of hearings or subpoenas requiring the testimony of witnesses and the production of books, records or other documents relevant to any matter involved in such hearing, and subpoenas shall also be issued at the request of the applicant or person complained against. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the county in which the hearing is held shall have jurisdiction, upon application of the Secretary to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(b) Any registrant aggrieved by a decision of the Secretary to deny, suspend, limit, revoke or refuse to renew registration under this chapter may appeal such decision to Superior Court. Such appeal shall be governed by the Administrative Procedures Act. When notified of an appeal under this section, the Secretary shall forward to Superior Court a certified and complete copy of the written transcripts of evidence adduced at the hearing before the Secretary together with a written copy of the Secretary's findings and rulings and the Secretary's reasons therefor.

(16 Del. C. 1953, § 4735; 58 Del. Laws, c. 424, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 164, § 1.)

§ 4737 Temporary suspension.

(a) In the event of a formal or informal complaint concerning the activity of a registrant that alleges an imminent danger to the public health, safety or welfare, the Secretary may temporarily suspend any registration, pending a hearing, by written order. An order temporarily suspending a registration may not be issued unless the registrant or the registrant's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the registrant or the registrant's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended registrant requests a continuance of the hearing date. If the temporarily suspended registrant requests a continuance, the order of temporary suspension remains in effect until the conclusion of all proceedings.

(b) A registrant whose registration has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the registrant or registrant's counsel or sent by certified mail, return receipt requested, to the registrant's last known address. The Secretary will hold a hearing on the complaint giving rise to the temporary suspension within 60 days of the date of the issuance of the order of temporary suspension.

(c) A registrant whose registration has been temporarily suspended pursuant to this section may request an expedited hearing. The Secretary shall schedule the hearing within 15 days of receipt of any expedited hearing request, provided that the request is received within 5 calendar days from the date the registrant received notification of the decision to temporarily suspend the registration.

(79 Del. Laws, c. 164, § 1.)

§ 4738 Records of registrants; order forms.

(a) Persons registered to prescribe, manufacture, distribute or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal and state law and with any rules the Secretary issues.

(b) Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with federal law respecting order forms shall be deemed compliance with this section.

(16 Del. C. 1953, §§ 4736, 4737; 58 Del. Laws, c. 424, § 1; 60 Del. Laws, c. 583, § 5; 79 Del. Laws, c. 164, § 1.)

§ 4739 Prescriptions [Effective until Jan. 1, 2015]

(a) Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the Secretary, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of this chapter. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than 5 times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(16 Del. C. 1953, § 4738; 58 Del. Laws, c. 424, § 1; 60 Del. Laws, c. 583, § 5; 79 Del. Laws, c. 164, § 1.)

§ 4739 Prescriptions [For application of the section, see 79 Del. Laws, c. 409, § 3] [Effective Jan. 1, 2015]

(a) Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the Secretary, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of this chapter. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than 5 times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) An ultimate user shall be permitted to prohibit or limit a person other than the ultimate user from receiving a prescription on the ultimate user's behalf from a pharmacy.

(16 Del. C. 1953, § 4738; 58 Del. Laws, c. 424, § 1; 60 Del. Laws, c. 583, § 5; 79 Del. Laws, c. 164, § 1; 79 Del. Laws, c. 409, § 1.)

§ 4739A Practitioners.

Except for pharmacies and persons licensed, registered, or otherwise authorized to conduct research, no practitioner shall dispense controlled substances beyond the amount deemed medically necessary for a 72-hour supply.

(79 Del. Laws, c. 92, § 2.)

§ 4740 Sale of pseudoephedrine or ephedrine.

(a) Beginning January 1, 2014, before completing a sale of an over-the-counter material, compound, mixture, or preparation containing any detectable quantity of pseudoephedrine or ephedrine, its salts or optical isomers, or salts of optical isomers a pharmacy or retailer shall electronically submit the information required pursuant to subsection (b) of this section to the National Precursor Log Exchange system ("NPLEx") administered by the National Association of Drug Diversion Investigators; provided that the National Precursor Log Exchange is available to pharmacies or retailers in the State without a charge for accessing the system. The pharmacy or retailer shall not complete the sale if the NPLEx system generates a stop sale alert. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(b) The pharmacy or retailer shall maintain a written or electronic log of required information for each sale of a nonprescription product containing pseudoephedrine or ephedrine, including:

(1) The date and time of any transaction;

(2) The name, address, and date of birth of the person purchasing or obtaining the substance;

(3) The type of government-issued identification provided by the person purchasing or obtaining the substance and identification number;

(4) The government agency issuing the identification used; and

(5) The name of the compound, mixture, or preparation and the amount.

The pharmacy or retailer shall require every person purchasing or obtaining the substance to sign a written or electronic log attesting to the validity of the information.

(c) If a pharmacy or retailer selling an over-the-counter product containing the substance experiences mechanical or electronic failure of the electronic tracking system and is unable to comply with the electronic sales tracking requirement under this section, the pharmacy or retailer shall maintain a written log or an alternative electronic record keeping mechanism until such time as the pharmacy or retailer is able to comply with the electronic sales tracking requirement.

(d) Any material, compound, mixture, or preparation as defined in subsection (a) of this section shall be dispensed, offered for sale, sold, or distributed only from behind a checkout counter, pharmacy counter, or in a locked storage container where the public is not permitted.

(e) A licensed pharmacist, sales clerk, or pharmacy technician shall require that any person purchasing, receiving, or otherwise acquiring any such substance shall be age 18 or older, produce a photo identification showing the date of birth of the person, and sign a written log or receipt showing the date of the transaction, name of the person, and the amount of such substance. The written log or electronic log shall be retained for at least 12 months.

(f) No person, other than pharmacy or retail establishment, shall purchase, receive, or otherwise acquire more than 9 grams of any such substance within any 30-day period.

(g) A violation of this section is a class A misdemeanor.

(h) The National Association of Drug Diversion Investigators shall forward Delaware transaction records in the NPLEx to the Drug Diversion Unit of the Delaware State Police weekly and provide real-time access to the NPLEx information through the NPLEx online portal to law enforcement in the State as authorized by the State Police; provided that the State Police execute a memorandum of understanding with the National Association of Drug Diversion Investigators governing access to the information; provided further that the State Police shall establish the electronic tracking system in conjunction with the State's existing narcotics tracking system no later than January 1, 2014.

(75 Del. Laws, c. 52, § 1; 75 Del. Laws, c. 217, § 1; 77 Del. Laws, c. 334, § 1; 79 Del. Laws, c. 175, § 1.)

Subchapter III-A
Safe Internet Pharmacy Act

§ 4741 Short title.

This subchapter shall be known as the "Safe Internet Pharmacy Act."

(76 Del. Laws, c. 410, § 1.)

§ 4742 Legislative findings and intent; construction of this subchapter.

The General Assembly has determined that the sale and delivery of prescription drugs by Internet sites which are not licensed pharmacies and which dispense prescription drugs to patients without the existence of a bona fide patient-practitioner relationship constitutes an extreme danger to the safety and welfare of Delaware residents. The General Assembly has also determined that existing laws are not sufficiently punitive to deter these Internet sites, and the unscrupulous practitioners and pharmacists who help them, from unlawfully selling and delivering prescription drugs to the residents of this State. The intent of this subchapter is to completely stop these rogue Internet pharmacies from delivering prescription drugs into this State and, therefore, the provisions of this subchapter shall be liberally construed to effect its remedial purpose.

(76 Del. Laws, c. 410, § 1.)

§ 4743 Definitions.

The following definitions shall be applicable to this subchapter:

(1) "Board" means the Delaware State Board of Pharmacy;

(2) "Delaware patient" means any person residing within or outside of this State who requests an Internet pharmacy deliver a prescription drug order to a location within this State;

(3) "Electronic mail" or "e-mail" shall mean any message transmitted through the Internet including, but not limited to, messages transmitted to or from any address affiliated with an Internet site;

(4) "Internet" means collectively the international network of interconnected government, educational and commercial computer networks, including equipment and operating software;

(5) "Internet pharmacy" means any person or entity maintaining an Internet site which solicits or receives, or offers to solicit or receive, prescription drug orders to be dispensed and delivered to patients, including Delaware patients, by means of the United States Postal Service or any other delivery service. The term "Internet pharmacy" does not include a pharmacy which has been issued a valid permit or license by the Board;

(6) "Internet site" means a specific location on the Internet that is determined by Internet protocol numbers, domain name, or both, including, but not limited to, domain names that use the designations ".com", ".edu", ".gov", ".net" and ".org."

(7) "Licensed Delaware pharmacist" means a pharmacist licensed by the Board to engage in the practice of pharmacy in this State;

(8) "Link", with respect to the Internet, means 1 or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command:

a. To move from viewing 1 portion of a page on such site to another portion of the page; or

b. To move from viewing 1 page on such site to another page on such site; or

c. To move from viewing a page on 1 Internet site to a page on another Internet site.

(76 Del. Laws, c. 410, § 1; 78 Del. Laws, c. 13, §§ 30, 31.)

§ 4744 Prohibited practices; penalties.

(a)(1) An Internet pharmacy shall not sell, dispense, distribute or deliver or offer to sell, dispense, distribute or deliver or participate in the sale, distribution, dispensing or delivery of any prescription drug to a Delaware patient unless the practitioner issuing the prescription drug order to be filled or dispensed by the Internet pharmacy is a licensed practitioner who has a patient-practitioner relationship with the Delaware patient; and

(2) An Internet pharmacy or any owner or operator thereof who knowingly violates this subsection is guilty of a class D felony and shall be fined not less than $2,500 nor more than $25,000 for each offense; provided, however, that if an Internet pharmacy or any owner or operator thereof knowingly violates this subsection and the substance or prescription drug dispensed causes death or serious

physical injury to a Delaware patient, the Internet pharmacy or any owner or operator thereof is guilty of a class B felony and shall be fined not less than $25,000 nor more than $100,000 for each offense.

(b)(1) An Internet pharmacy or any owner or operator thereof shall not advertise or represent by advertisement, sales presentation or direct communication with any person within this State, including by telephone, facsimile, electronic mail or otherwise, that a prescription drug may be obtained by a Delaware patient based on an Internet consultation, questionnaire or medical history form submitted to the Internet pharmacy through an Internet site. This subsection shall not apply to any Internet pharmacy or Internet site which advises in a clear and visible manner on each page of its Internet site, or by link to a separate page, that it will not deliver or ship prescription drugs to a location within this State.

(2) An Internet pharmacy or any owner or operator thereof who knowingly violates this subsection is guilty of a class D felony and shall be fined not less than $2,500 nor more than $25,000 for each offense.

(c)(1) A practitioner or any person acting as a practitioner within or outside of this State shall not issue a prescription drug order, by e-mail or otherwise, to or on behalf of a Delaware patient through an Internet pharmacy unless the person is a licensed practitioner who has a patient-practitioner relationship with the Delaware patient.

(2) A practitioner or any person acting as a practitioner who knowingly violates this subsection is guilty of a class D felony and shall be fined not less than $2,500 nor more than $25,000 for each offense; provided, however that if a practitioner or any person acting as a practitioner knowingly violates this subsection and the substance or prescription drug dispensed causes death or serious physical injury to a Delaware patient, then the practitioner or person acting as a practitioner is guilty of a class B felony and shall be fined not less than $25,000 nor more than $100,000 for each offense.

(3) The provisions of this subsection shall not apply to a licensed practitioner who inadvertently allows that licensed practitioner's own respective license or permit to lapse for a period of less than 60 days.

(d)(1) A licensed Delaware pharmacist practicing within or outside of this State shall not dispense or authorize the dispensing of a prescription drug order, by e-mail or otherwise, to or on behalf of a Delaware patient through an Internet pharmacy if:

a. The licensed Delaware pharmacist knows that the prescription order was issued solely on the basis of an Internet consultation or questionnaire or medical history form submitted to an Internet pharmacy through an Internet site; or

b. The licensed Delaware pharmacist knows that the prescription order was issued by a practitioner who is not a licensed practitioner or by a licensed practitioner who does not have a patient-practitioner relationship with the Delaware patient.

(2) Any licensed Delaware pharmacist who violates this subsection is guilty of a class F felony and shall be fined not less than $1,000 nor more than $10,000 for each offense.

(e)(1) No person within or outside of this State shall purchase, attempt to purchase, offer to purchase or submit an order to purchase, by e-mail or otherwise, any prescription drug from an Internet pharmacy to be delivered to a location within this State unless the person has been issued a valid prescription drug order from licensed practitioner with whom the person has a patient-practitioner relationship.

(2) A person who knowingly violates this subsection shall be guilty of a class A misdemeanor and shall be fined not less than $100 nor more than $1,000 for each offense.

(f) The Superior Court shall have exclusive jurisdiction over any offense defined in this subchapter. In any prosecution for an offense prohibited by this subchapter, the delivery of a prescription drug to a location within this State shall constitute a result occurring within this State for purposes of establishing jurisdiction under § 204 of Title 11.

(g) In any prosecution for an offense defined in this subchapter it shall not be a defense that a Delaware patient or any recipient or intended recipient of a prescription drug order is not prosecuted, convicted or punished based upon the same act or transaction.

(h) Nothing in this section shall be construed to limit or prevent the Attorney General or applicable professional board from taking any civil or administrative action permitted by law against an Internet pharmacy, practitioner, pharmacist or other person violating the provisions of this subchapter.

(76 Del. Laws, c. 410, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4745 Seizure of unlawfully delivered prescription drugs.

(a) Any prescription drug which is ordered, sold, dispensed or delivered in violation of this subchapter is hereby declared to be contraband and may be seized by any peace officer authorized to enforce the provisions of this subchapter.

(b) Any prescription drugs seized pursuant to this subchapter shall be subject to forfeiture pursuant to the provisions and procedures set forth in § 4784 of this title.

(76 Del. Laws, c. 410, § 1.)

Subchapter IV
Offenses and Penalties

§ 4751 Prohibited acts A; penalties.

(67 Del. Laws, c. 130, § 15; 70 Del. Laws, c. 80, §§ 1-3; 76 Del. Laws, c. 108, §§ 1-3; repealed by 78 Del. Laws, c. 13, § 32, eff. Sept. 1, 2011.)

§ 4751A Aggravating factors related to drug offenses.

For the purposes of this subchapter:

(1) Each of the following shall be an "aggravating factor" within the meaning of the offenses in this subchapter:

a. The offense was committed within a protected school zone, as defined in § 4701 of this title;

b. The offense was committed within a protected park or recreation area, or church, synagogue or other place of worship, as defined in § 4701 of this title;

c. The offense occurred in a vehicle, as defined in § 4701 of this title;

d. The defendant was an adult, that is, a person who had reached his or her eighteenth birthday, and the offense involved a juvenile, that is, a person who had not reached his or her eighteenth birthday, as a co-conspirator or accomplice, or as the intended or actual recipient of the controlled substances, and the defendant was more than 4 years older than the juvenile; and

e. The defendant, during or immediately following the commission of any offense in this title:

1. Intentionally prevented or attempted to prevent a law-enforcement officer, as defined in § 222(15) of Title 11, from effecting an arrest or detention of the defendant by use of force or violence towards the law-enforcement officer; or

2. Intentionally fled in a vehicle from a law-enforcement officer, as defined in § 222(15) of Title 11, while the law-enforcement officer was effecting an arrest or detention of the defendant, thereby creating a substantial risk of physical injury to other persons.

(2) When the aggravating factors "protected school zone" and "protected park, recreation area, church, synagogue or other place of worship" of paragraphs (1)a. and (1)b. of this section are both present, both may be alleged and proven, but they shall only count as 1 aggravating factor in determining which offense the defendant committed.

(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there are more aggravating factors present than are required to prove the offense, all may be alleged and proven.

(78 Del. Laws, c. 13, § 33; 70 Del. Laws, c. 186, § 1.)

§ 4751B Prior qualifying Title 16 convictions.

For the purposes of this subchapter:

(1) A "prior qualifying Title 16 conviction" means any prior adult felony conviction for a Title 16 offense where the conviction was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was, at the time of conviction, a class C or higher felony; or where the conviction was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction specified in the controlled substances law of any other state, local jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§ 4761(a) and (b), 4763 and 4764 of this title, a "prior qualifying Title 16 conviction" means any prior adult conviction, including both felony and misdemeanor, under this title, if the new offense occurs within 5 years of the date of conviction for the earlier offense, or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date.

(2) "Two prior qualifying Title 16 convictions" means 1 "prior qualifying Title 16 conviction", as defined in paragraph (1) of this section, and an additional prior adult felony conviction or a juvenile adjudication for a Title 16 offense, where the conviction or juvenile adjudication was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was at the time of conviction or juvenile adjudication a class C or higher felony, or where the conviction or adjudication was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction or juvenile adjudication specified in the controlled substances law of any other state, local jurisdiction, the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 10 years of the date of conviction or juvenile adjudication for the additional prior adult felony conviction or juvenile adjudication or the date of termination of all periods of incarceration or confinement imposed pursuant to the earlier conviction or juvenile adjudication, whichever is the later date, and the sentence or disposition following an adjudication of delinquency for the additional prior adult felony conviction or juvenile adjudication was imposed before the offense which is the basis for the prior qualifying Title 16 conviction was committed. For a juvenile adjudication to count as the additional prior adult felony conviction or juvenile adjudication, the juvenile must have reached his or her sixteenth birthday by the date the criminal act was committed which forms the basis for the juvenile adjudication.

(3) In any offense involving a "prior qualifying Title 16 conviction" or "2 prior qualifying Title 16 convictions", the prior qualifying Title 16 conviction or convictions, including any juvenile adjudication, shall be proved in accordance with § 4215 of Title 11.

(4) *Penalties.* —

a. In any case in which a defendant has a "prior qualifying Title 16 conviction", the defendant shall be sentenced as follows:

1. A defendant convicted of § 4753(1) of this title shall be sentenced as though the defendant was convicted of § 4752(2) of this title.

2. A defendant convicted of § 4753(4) of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.

3. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4753(2) of this title.

4. A defendant convicted of § 4754(2) of this title shall be sentenced as though the defendant was convicted of § 4752(4) of this title.

5. A defendant convicted of § 4754(3) of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.

6. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4753(4) of this title.

7. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4754(3) of this title.

8. A defendant convicted of § 4757(c)(1) of this title shall be sentenced as though the defendant was convicted of § 4757(c)(2) of this title.

9. A defendant convicted of § 4761(a) of this title shall be sentenced as though the defendant was convicted of § 4761(b) of this title.

10. A defendant convicted of § 4761(c) of this title shall be sentenced as though the defendant was convicted of § 4761(d) of this title.

11. A defendant convicted of § 4763(b) of this title shall be sentenced as though the defendant was convicted of § 4763(c) of this title.

12. A defendant convicted of § 4764(b) of this title shall be sentenced as though the defendant was convicted of § 4764(a) of this title.

b. In any case in which a defendant has "2 prior qualifying Title 16 convictions", the defendant shall be sentenced as follows:

1. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4752 of this title.

2. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.

3. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.

(78 Del. Laws, c. 13, § 34; 70 Del. Laws, c. 186, § 1.)

§ 4751C Quantity tiers related to drug offenses.

For the purposes of this subchapter:

(1) "Tier 5 Controlled Substances Quantity" means:

a. 25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 5000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 25 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or

i. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(2) "Tier 4 Controlled Substances Quantity" means:

a. 20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 4000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 50 or more doses or 10 or more grams or 10 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;

i. 50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(3) "Tier 3 Controlled Substances Quantity" means:

a. 15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 3000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or

i. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(4) "Tier 2 Controlled Substances Quantity" means:

a. 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 1500 grams or more of marijuana, as described in § 4701(26) of this title;

d. 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 25 or more doses or 5 or more grams or 5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;

i. 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(5) "Tier 1 Controlled Substances Quantity" means:

a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 175 grams or more of marijuana, as described in § 4701(26) of this title;

d. 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or

i. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(78 Del. Laws, c. 13, § 35; 78 Del. Laws, c. 204, §§ 4-8.)

§ 4751D Knowledge of weight or quantity not an element of the offense; proof of weight or quantity.

(a) In any prosecution under this subchapter, in which the weight or quantity of a controlled substance is an element of the offense, the State need not prove that the defendant had any knowledge as to the weight or quantity of the substance possessed. The State need only prove that the defendant knew that the substance was possessed; and, that the substance was that which is alleged, and that the substance weighed a certain amount or was in a certain quantity.

(b) In any prosecution under this subchapter, in which the quantity of a controlled substance is an element of the offense, and the controlled substance is alleged to be a prescription drug as defined in § 4701(37) of this title, and the alleged prescription drug consists of multiple doses that appear to be substantially identical, evidence that a chemist or other qualified witness properly tested one dose, and found the presence of a controlled substance, shall be prima facie evidence that the "substantially identical doses" each contained the controlled substance that is a prescription drug for purposes of determining whether the State has proven the number of doses constituting the Tier quantities set forth in § 4751C(2)j. or (4)j. of this title. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting evidence offered pursuant to this subsection.

(78 Del. Laws, c. 13, § 36.)

§ 4752 Drug dealing—Aggravated possession; class B felony.

Except as authorized by this chapter, any person who:

(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 4 quantity;

(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;

(3) Possesses a controlled substance in a Tier 5 quantity;

(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or

(5) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a.-i., of this title. and there are 2 aggravating factors,

shall be guilty of a class B felony.

(78 Del. Laws, c. 13, § 38.)

§ 4752A Unlawful delivery of noncontrolled substance.

(62 Del. Laws, c. 252, § 1; 63 Del. Laws, c. 72, § 1; 67 Del. Laws, c. 130, § 9; 70 Del. Laws, c. 80, § 4; repealed by 78 Del. Laws, c. 13, § 37, eff. Sept. 1, 2011.)

§ 4753 Drug dealing—Aggravated possession; class C felony.

Except as authorized by this chapter, any person who:

(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity;

(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance, and there is an aggravating factor;

(3) Possesses a controlled substance in a Tier 4 quantity as defined in any of § 4751C(2)a.-i. of this title;

(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a.-i. of this title; and there is an aggravating factor; or

(5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors,

shall be guilty of a class C felony.

(78 Del. Laws, c. 13, § 40.)

§ 4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3, 4-methylenedioxymethamphetamine (MDMA)

(63 Del. Laws, c. 134, § 1; 63 Del. Laws, c. 359, § 1; 64 Del. Laws, c. 87, §§ 1, 2; 65 Del. Laws, c. 317, §§ 1-3; 65 Del. Laws, c. 485, § 1; 67 Del. Laws, c. 115, §§ 1-16; 67 Del. Laws, c. 130, § 9; 67 Del. Laws, c. 427, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 235, § 1; 73 Del. Laws, c. 216, § 1; 73 Del. Laws, c. 253, §§ 1, 2, 3; 74 Del. Laws, c. 106, §§ 13-17; 74 Del. Laws, c. 288, §§ 1, 3-5; 76 Del. Laws, c. 108, § 5; 77 Del. Laws, c. 46, § 2; repealed by 78 Del. Laws, c. 13, § 39, eff. Sept. 1, 2011.)

§ 4754 Drug dealing—Aggravated possession; class D felony.

Except as authorized by this chapter, any person who:

(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;

(2) Possesses a controlled substance in a Tier 3 quantity; or

(3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor,

shall be guilty of a class D felony.

(78 Del. Laws, c. 13, § 42.)

§ 4754A Possession and delivery of non-controlled prescription drug.

[Repealed by 78 Del. Laws, c. 13, § 41, and substantially reenacted by § 57 of that act as present § 4761 of this title, effective September 1, 2011.]

§ 4755 Aggravated possession; class E felony.

Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a.-i. of this title, shall be guilty of a class E felony.

(78 Del. Laws, c. 13, § 47.)

§ 4756 Aggravated possession; class F felony.

Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 1 quantity shall be guilty of a class F felony.

(78 Del. Laws, c. 13, § 54.)

§ 4757 Miscellaneous drug crimes; class B, C and F felony.

(a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 4738 of this chapter;

(2) To use in the course of the manufacture, distribution, prescribing, dispensing or research of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person;

(3) To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge;

(4) To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

(5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;

(6) To acquire or attempt to or obtain possession of a controlled substance by theft; or

(7) To prescribe, or administer to another, any anabolic steroid, as defined in § 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.

(b) Any person who violates paragraphs (a)(1) through (a)(7) of this section upon conviction shall be guilty of a class F felony.

(c) *Solicitation of multiple prescription drug crimes; penalties. —*

(1) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of this section shall be guilty of a class C felony.

(2) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of this section, and there is an aggravating factor in connection with at least 1 of the times shall be guilty of a class B felony.

(3) Paragraphs (c)(1) and (2) of this section shall constitute an offense if any of the defendant's conduct or any of the violations of subsection (a) of this section occur within Delaware, or as otherwise provided pursuant to § 204 of Title 11.

(16 Del. C. 1953, § 4756; 58 Del. Laws, c. 424, § 1; 60 Del. Laws, c. 583, § 7; 65 Del. Laws, c. 504, §§ 1-4; 67 Del. Laws, c. 130, § 9; 67 Del. Laws, c. 350, § 19; 71 Del. Laws, c. 288, § 10; 78 Del. Laws, c. 13, §§ 51-53.)

§ 4758 Unlawful dealing in a counterfeit or purported controlled substance; class E felony.

(a) Any person who knowingly manufactures, delivers, attempts to manufacture or deliver, or possesses with the intent to manufacture or deliver a counterfeit or purported controlled substance shall be guilty of a class E felony.

(b) It is no defense to prosecution under this section that the substance actually is a controlled substance or that the accused believed the substance was a controlled substance.

(78 Del. Laws, c. 13, § 55.)

§ 4759 Registrant crimes.

(a) It is unlawful for any person:

(1) Who is subject to subchapter III of this chapter to distribute or dispense a controlled substance in violation of § 4739 of this title;

(2) Who is a registrant, to manufacture a controlled substance not authorized by the person's registration or to distribute or dispense a controlled substance not authorized by the person's registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter; or

(4) To refuse an entry into any premises for any inspection authorized by this chapter.

(b) Any person who violates paragraph (a)(1), (a)(2), or (a)(4) of this section shall be guilty of a class F felony. Any person who violates paragraph (a)(3) of this section shall be guilty of a class A misdemeanor.

(16 Del. C. 1953, § 4755; 58 Del. Laws, c. 424, § 1; 65 Del. Laws, c. 500, § 1; 67 Del. Laws, c. 130, § 9; 67 Del. Laws, c. 350, § 18; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 13, § 46.)

§ 4760 Maintaining a drug property; class F felony.

Any person who is the owner, landlord, or tenant of a property, including a dwelling, a building, a store or a business, and who knowingly consents to the use of the property by another for the manufacture of, delivery of, or possession with the intent to manufacture or deliver, controlled substances, shall be guilty of a class F felony.

(78 Del. Laws, c. 13, § 56.)

§ 4760A Operating or attempting to operate clandestine laboratories; cleanup; penalties.

(a) Any person who knowingly operates or attempts to operate a clandestine laboratory is guilty of a class C felony.

(b) Any person convicted of a violation of subsection (a) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine laboratory and any costs associated with the cleanup of any substances or materials or hazardous waste, and for the cleanup of any other site resulting from the operation or disposal of substances or materials from a clandestine laboratory.

(c) *Definitions.* — As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) "Clandestine laboratory" means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof which are intended to be used to or have been used to unlawfully manufacture a controlled substance or other substance in violation of the provisions of this chapter.

(2) "Cleanup" means any action reasonably necessary to contain, collect, control, identify, analyze, disassembly, treat, remove, or otherwise disperse any substances or materials in or from a clandestine laboratory, including those found to be hazardous waste and any contamination caused by those substances or materials.

(3) "Remediation" means any emergency response, act, or process to temporarily or permanently remedy and make safe.

(d) Nothing in this section shall be construed to preclude a prosecution for the same or similar activity under this chapter.

(79 Del. Laws, c. 176, § 1.)

§ 4761 Illegal possession and delivery of noncontrolled prescription drugs.

(a) Any person who knowingly or intentionally possesses, uses or consumes any prescription drug that is not a controlled substance but for which a prescription is required shall be guilty of an unclassified misdemeanor, unless:

(1) The possession, use or consumption of such substance was by a person who obtained the substance directly from, or pursuant to, a valid prescription or order of a licensed practitioner;

(2) The possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

a. Pharmacists.

b. Practitioners.

c. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

d. Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

e. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

f. Common carriers.

g. Manufacturers, wholesalers, and distributors.

h. Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal investigation.

(3) The possession or transfer is otherwise authorized by this chapter.

(b) Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

(c) Any person who violates subsection (a) of this section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class G felony.

(d) Any person who violates subsection (b) of this section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class F felony.

(e) *Affirmative defenses.* —

(1) In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed by the person while transporting the prescription drug to a member of the person's household who possessed a valid prescription for the drug, and the prescription was in the original container in which it was dispensed or packaged, a pill box, or other daily pill container.

(2) In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed or consumed within the residence of the person, that a member of the person's household possessed a valid prescription for the drug, that the possession or consumption by the person was for the purpose of treating an illness and that the drug in question was approved for the specific illness.

(f) *Proof.* — In any prosecution under this section, proof that a substance is a particular prescription drug may be inferred from its labeling and any representations on the substance. Proof by testimony from a scientist is not required.

(63 Del. Laws, c. 445, § 1; 67 Del. Laws, c. 130, § 9; 67 Del. Laws, c. 384, §§ 1, 2; 70 Del. Laws, c. 81, § 4; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 13, §§ 41, 57.)

§ 4761A Purchase of drugs from minors; penalties.

(71 Del. Laws, c. 234, § 1; repealed by 78 Del. Laws, c. 13, § 57, eff. Sept. 1, 2011.)

§ 4762 Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; penalties.

(a) A licensed pharmacist, or pharmacist intern or pharmacy student under the supervision of a pharmacist, may provide hypodermic syringes or hypodermic needles, including pen needles for the administration of prescription medications by injection in the State of Delaware without a prescription, but only to persons who have attained the age of 18 years and who will self-administer prescription medications by injection or administer prescription medications to a minor child for whom they are the parent or legal guardian. When providing hypodermic syringes or hypodermic needles without a prescription, the above-mentioned pharmacist, pharmacist intern or pharmacy student must require proof of identification that validates the individual's age.

(b) Every person who lawfully possesses an instrument described in subsection (a) of this section shall, before disposal, destroy such instrument in such a manner as to render it unfit for reuse in any manner.

(c) Any person who delivers, disposes of or gives away any instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle or any instrument adapted for the use of narcotic drugs by parenteral injection except in the manner prescribed in this section, shall be guilty of a class G felony.

(d) Nothing in this section shall prohibit the delivery, furnishing, sale, purchase or possession of an instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle used or to be used solely and exclusively for treating poultry or livestock and such delivery, furnishing, sale, purchase, possession or use shall be governed by rules and regulations to be prescribed by the Department of Agriculture.

(e) This section does not apply to:

(1) The sale at wholesale by pharmacies, drug jobbers, drug wholesalers and drug manufacturers or manufacturers and dealers in surgical instruments to practitioners;

(2) The furnishing or obtaining of hypodermic syringes or hypodermic needles for uses which the Secretary determines are industrial. Notwithstanding the other provisions of this section, a person may obtain such instruments, without a written order or oral order reduced to writing, for such industrial uses; and

(3) Any person licensed under the Delaware Board of Nursing who may provide syringes or hypodermic needles in the course of patient teaching, discharge teaching, or routine patient care to indigent clients in in-patient, out-patient, and/or community settings.

(16 Del. C. 1953, § 4757; 58 Del. Laws, c. 424, § 1; 59 Del. Laws, c. 33, § 1; 59 Del. Laws, c. 291, § 1; 60 Del. Laws, c. 583, §§ 8-12; 67 Del. Laws, c. 130, § 9; 67 Del. Laws, c. 350, §§ 20, 21; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 13, § 50; 79 Del. Laws, c. 66, § 1.)

§ 4763 Possession of controlled substances or counterfeit controlled substances; class A or B misdemeanor.

(a) It shall be unlawful for any person to knowingly or intentionally possess, use, or consume a controlled substance or a counterfeit controlled substance (except a controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title) unless:

(1) The possession, use or consumption of such substance was by a person who obtained the substance directly from or pursuant to, a lawful prescription or order; or

(2) The possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

a. Pharmacists.

b. Practitioners.

c. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

d. Hospitals and healthcare facilities that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

e. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

f. Common carriers.

g. Manufacturers, wholesalers, and distributors.

h. Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal investigation.

(3) The possession or transfer is otherwise authorized by this chapter.

(b) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor.

(c) Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a class A misdemeanor.

(78 Del. Laws, c. 13, § 58.)

§ 4764 Possession of marijuana; class B or unclassified misdemeanor.

(a) Any person who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

(b) Any person who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than $575 and imprisoned not more than 3 months.

(78 Del. Laws, c. 13, § 61.)

§ 4765 Penalties under other laws are additional.

Any penalty imposed for violation of this chapter is in addition to and not in lieu of any civil or administrative penalty or sanction otherwise authorized by law.

(16 Del. C. 1953, § 4759; 58 Del. Laws, c. 424, § 1; 78 Del. Laws, c. 13, § 45.)

§ 4766 Conviction of lesser offense.

In any prosecution for any violation of the following sections of this chapter, the defendant may be convicted under any 1 of the following respective sections of this chapter in accordance with the table set forth below establishing lesser included offenses:

(1) The lesser-included offenses under § 4752 are §§ 4753, 4754, 4755, 4756, 4758, 4763, and 4764 of this title.

(2) The lesser-included offenses under § 4753 are §§ 4754, 4755, 4756, 4758, 4763, and 4764 of this title.

(3) The lesser-included offenses under § 4754 are §§ 4755, 4756, 4758, 4763, and 4764 of this title.

(4) The lesser-included offenses under § 4755 are §§ 4756, 4763, and 4764 of this title.

(5) The lesser-included offenses under § 4756 are §§ 4763 and 4764 of this title.

(16 Del. C. 1953, § 4762; 58 Del. Laws, c. 424, § 1; 78 Del. Laws, c. 13, §§ 48, 49.)

§ 4767 First offenders controlled substances diversion program.

(a) Any person who:

(1) Has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state thereof relating to narcotic drugs, marijuana, or stimulant, depressant, hallucinogenic drug or other substance who is charged through information or indictment with possession or consumption of a controlled substance under § 4763 or § 4764 or § 4761(a) or (b) of this title; and

(2) Has not previously been afforded first offender treatment under this section or its predecessor, may qualify for the first offense election at the time of the person's arraignment, except that no person shall qualify for such first offense election where the offense charged under § 4763, § 4764 or § 4761(a) or (b) of this title arises from the same transaction, factual setting or circumstances as those contained in any indictment returned against the defendant alleging violation of any provisions contained within § 4752, § 4753, or § 4754 of this title.

(b) At time of arraignment any person qualifying under subsection (a) of this section as a first offender and who elects treatment under this section shall admit possession or consumption of a controlled substance by entering a plea of guilty, as a first offender. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation for a period of not less than 1 1/2 years, the terms and conditions of which shall include but not be limited to:

(1) Revocation of the person's driver's license and/or privileges within this State for a period of not less than 6 months, restoration of which shall be contingent upon successful completion of all mandatory terms and conditions required of probation to be completed during the term of revocation. Upon entry of a plea of guilty, as a first offender under this section, the clerk of the court or other person designated by the court shall forthwith report that fact to the Division of Motor Vehicles for action consistent with the provisions of this subsection. The Division of Motor Vehicles may issue a conditional license during this period of revocation upon written certification by the person's probation officer that a narrowly drawn conditional license is necessary for the limited purpose of performing the terms and conditions of probation.

(2) Performance of a minimum of 20 hours of community service work monitored by the court or probation office, performance of which shall be accomplished on at least 3 separate days and shall not, in any event consist of segments lasting more than 8 hours in succession. Community service performed pursuant to the terms of this paragraph shall be in addition to all other community service ordered and no community service ordered or performed pursuant to the terms of this section shall be performed or served concurrently with any other court ordered or approved community service.

(3) Completion of a 16-hour first-offender drug rehabilitation program, licensed by the Secretary of the Department of Health and Social Services and paid for by the first offender.

(4) Other such terms and conditions as the court may impose.

(c) If a term or condition of probation is violated, or if the defendant is found to have illegally possessed or consumed any controlled substance within 1 1//i2 years of the entry of a plea under this section, the probation officer shall file with the court a written report of same, and the defendant shall be brought before the court and upon determination by the court that the terms have been violated or that the defendant has possessed or consumed any such controlled substance, the court shall enter an adjudication of guilt upon the record and proceed as otherwise provided under this title.

(d) Upon fulfillment of the terms and conditions of probation, including, but not limited to, paying of all costs and fees, and performance of all required community service, the court shall discharge the person and dismiss the proceedings against the person and shall simultaneously therewith submit to the Attorney General a report thereof which shall be retained by the Attorney General for use in future proceedings, if required. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Any person who elects to be treated as a first offender under this section shall, by so doing, agree to pay the costs of the person's prosecution as a condition. There may be only 1 discharge and dismissal under this section with respect to any person.

(67 Del. Laws, c. 347, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 6; 75 Del. Laws, c. 167, § 2; 78 Del. Laws, c. 13, § 60.)

§ 4768 Medical and/or psychiatric examination and/or treatment.

After a conviction and prior to sentencing for violation of § 4761(a) or (b), § 4763, or § 4764 of this title, or prior to conviction if the defendant consents, the court may order the defendant to submit to a medical and/or psychiatric examination and/or treatment. The court may order such examination by the Department of Health and Social Services or by a private physician, hospital or clinic and the court

may make such order regarding the term and conditions of such examination and/or treatment and the payment therefor by the defendant as a court in its discretion shall determine. The Department of Health and Social Services or the private physician, hospital or clinic shall report to the court within such time as the court shall order, not more than 90 days from the date of such order. After such report and upon conviction of such violation, the court shall impose sentence or suspend sentence and may impose probation and/or a requirement of future medical and/or psychiatric examination and/or treatment including hospitalization or outpatient care upon such terms and conditions and for such period of time as the court shall order.

(16 Del. C. 1953, § 4765; 58 Del. Laws, c. 424, § 1; 78 Del. Laws, c. 13, § 44.)

§ 4769 Criminal immunity for persons who suffer or report an alcohol or drug overdose or other life threatening medical emergency.

(a) For purposes of this chapter:

(1) "Medical provider" means the person whose professional services are provided to a person experiencing an overdose or other life-threatening medical emergency by a licensed, registered or certified health care professional who, acting within his or her lawful scope of practice, may provide diagnosis, treatment or emergency services.

(2) "Overdose" means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of an ethyl alcohol, a controlled substance, another substance with which a controlled substance was combined, a noncontrolled prescription drug, or any combination of these, including any illicit or licit substance; provided that a person's condition shall be deemed to be an overdose if a layperson could reasonably believe that the condition is in fact an overdose and requires medical assistance.

(b) A person who is experiencing an overdose or other life-threatening medical emergency and anyone (including the person experiencing the emergency) seeking medical attention for that person shall not be arrested, charged or prosecuted for an offense for which they have been granted immunity pursuant to subsection (c) and/or (d) of this section, or subject to the revocation or modification of the conditions of probation, if:

(1) The person seeking medical attention reports in good faith the emergency to law enforcement, the 9-1-1 system, a poison control center, or to a medical provider, or if the person in good faith assists someone so reporting; and

(2) The person provides all relevant medical information as to the cause of the overdose or other life-threatening medical emergency that the person possesses at the scene of the event when a medical provider arrives, or when the person is at the facilities of the medical provider.

(c) The immunity granted shall apply to all offenses in this chapter that are not class A, B, or C felonies, including but not limited to the following offenses:

(1) Miscellaneous drug crimes as described in § 4757(a)(3), (6), and (7) of this title;

(2) Illegal possession and delivery of noncontrolled prescription drugs as described in § 4761 of this title;

(3) Possession of controlled substances or counterfeit controlled substances, as described in § 4763 of this title;

(4) Possession of drug paraphernalia as described in §§ 4762(c) and 4771 of this title;

(5) Possession of marijuana as described in § 4764 of this title.

(d) The immunity granted shall apply to offenses relating to underage drinking as described in § 904(b), (c), (e), and (f) of Title 4.

(e) Nothing in this section shall be interpreted to prohibit the prosecution of a person for an offense other than an offense for which they have been granted immunity pursuant to subsection (c) and/or (d) of this section or to limit the ability of the Attorney General or a law-enforcement officer to obtain or use evidence obtained from a report, recording, or any other statement provided pursuant to subsection (b) of this section to investigate and prosecute an offense other than an offense for which they have been granted immunity pursuant to subsection (c) and/or (d) of this section.

(f) Forfeiture of any alcohol, substance, or paraphernalia referenced in this section shall be allowed pursuant to § 4784 of this title and Chapter 11 of Title 4.

(79 Del. Laws, c. 85, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter V

Drug Paraphernalia

§ 4771 Drug paraphernalia.

(a) It is unlawful for any person to use, or possess with intent to use, drug paraphernalia as defined in § 4701(17) of this title.

(b) It is unlawful for any person to deliver, possess with intent to deliver, convert, manufacture, convey, sell or offer for sale drug paraphernalia, as defined in § 4701(17) of this title, knowing or under circumstances where one should reasonably know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, re-pack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.

(c) [Repealed.]

(62 Del. Laws, c. 250, § 6; 67 Del. Laws, c. 130, § 9; 67 Del. Laws, c. 350, § 24; 73 Del. Laws, c. 359, § 1; 78 Del. Laws, c. 13, §§ 62, 63.)

§ 4772 Consideration of factors.

In determining whether or not an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically-relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object, concerning its use;

(2) The proximity of the object, in time and space, to a direct violation of this chapter;

(3) The proximity of the object to controlled substances;

(4) The existence of any residue of a controlled substance on the object;

(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom the owner knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;

(6) Instructions (oral or written) provided with the object, concerning its use;

(7) Descriptive materials accompanying the object which explain or depict its use;

(8) National and local advertising concerning its use;

(9) The manner in which the object is displayed for sale;

(10) Whether or not the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(11) Direct or circumstantial evidence of the ratio of sales of the suspect object to the total sales of the business enterprise;

(12) The existence and scope of legitimate uses for the object in the community; and

(13) Expert testimony concerning its use.

(62 Del. Laws, c. 250, § 6; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 359, § 2.)

§ 4773 Exemptions.

This subchapter will not apply to:

(1) Any person authorized by local, state or federal law to manufacture, possess or distribute such items; or

(2) Any item that in the normal lawful course of business is imported, exported, transported or sold and traditionally intended for use with tobacco products, including any pipe, paper or accessory.

(73 Del. Laws, c. 359, § 3.)

§ 4774 Penalties.

(a) *Possession.* — Any person who uses or possesses with intent to use drug paraphernalia is guilty of a class B misdemeanor.

(b) *Manufacture and sale.* — Any person who delivers, possesses with the intent to deliver, conveys, offers for sale, converts, or manufactures with the intent to deliver drug paraphernalia is guilty of a class G felony.

(c) *Delivery to a minor.* — Any person 18 years of age or older who violates § 4771 of this title by delivering or selling drug paraphernalia to a person under 18 years of age is guilty of a class E felony.

(d) It is unlawful for any person to place in a newspaper, magazine, handbill or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of an unclassified misdemeanor.

(62 Del. Laws, c. 250, § 6; 67 Del. Laws, c. 130, § 9; 67 Del. Laws, c. 350, § 27; 73 Del. Laws, c. 359, § 4; 78 Del. Laws, c. 13, § 64.)

§ 4775 Consideration of factors.

Transferred to § 4772 of this title by 73 Del. Laws, c. 359, § 2, effective July 8, 2002.

Subchapter VI

Enforcement and Administrative Provisions

§ 4781 Powers of enforcement personnel.

Any officer or employee of the Secretary designated by the Secretary shall:

(1) Execute and serve administrative inspection warrants, subpoenas and summonses issued under the authority of this State;

(2) Make seizures of property pursuant to this chapter;

(3) Have all powers of constables and other police officers of the State, counties and other subdivisions of the State; and

(4) Suppress all acts of violence and enforce this chapter.

(16 Del. C. 1953, § 4766; 58 Del. Laws, c. 424, § 1; 60 Del. Laws, c. 583, §§ 14, 15; 62 Del. Laws, c. 250, § 4.)

§ 4782 Administrative inspections and warrants.

(a) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any person authorized to issue search warrants in this State may, within the person's jurisdiction and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or justice of the peace and establishing the grounds for issuing the warrant. If the judge or justice of the peace is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection and, if appropriate, the type of property to be inspected, if any. The warrant shall:

a. State the grounds for its issuance, and the name of each person whose affidavit has been taken in support thereof;

b. Be directed to a person authorized by § 4781 to execute it;

c. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

d. Identify the item or types of property to be seized, if any; and

e. Direct that it be served during normal business hours and designate the judge or justice of the peace to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least 1 credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or justice of the peace who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the Prothonotary in the county in which the inspection was made.

(b) The Secretary may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

a. Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

b. Places including factories, warehouses, establishments and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a), an officer or employee designated by the Secretary, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the Secretary may:

a. Inspect and copy records required by this chapter to be kept;

b. Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b)(5), all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and

c. Inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

a. If the owner, operator or agent in charge of the controlled premises consents;

b. In situations presenting imminent danger to health or safety;

c. In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

d. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

e. In all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

(16 Del. C. 1953, § 4767; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 4; 70 Del. Laws, c. 186, § 1.)

§ 4783 Cooperative arrangements and confidentiality.

(a) The Secretary shall cooperate with federal and other state agencies in discharging the Secretary's responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, the Secretary may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalogue, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the State, and make the information available for federal, state and local law-enforcement purposes. The Secretary, in cooperation with the bureau, shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c); and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

(b) Results, information and evidence received from the Bureau relating to the regulatory functions of this chapter, including results of inspections conducted by it, may be relied and acted upon by the Secretary in the exercise of the Secretary's regulatory functions under this chapter.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the Secretary nor may the practitioner be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

(16 Del. C. 1953, § 4768; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 4; 70 Del. Laws, c. 186, § 1.)

§ 4784 Forfeitures.

(a) The following shall be subject to forfeiture to the State and no property rights shall exist in them:

(1) All controlled substances which have been manufactured, distributed, possessed, dispensed or acquired in violation of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of this chapter;

(3) Any property which is used, or intended for use, as a container for property described in paragraph (1), (2) or (6) of this subsection;

(4) Any conveyances, including aircraft, vehicles, or vessels which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, or possession with intent to deliver property described in paragraph (a)(1) or (2) of this section except that:

a. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless the owner or other person in charge of the vehicle is a consenting party or privy to a violation of the Controlled Substances Act;

b. No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

c. A vehicle is not subject to forfeiture for a violation of § 4761(a) or (b), § 4763 or § 4764 of this title; and

d. A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the secured party if the party neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials including formulas, microfilm, tapes and data which are used or intended for use in violation of this chapter;

(6) All drug paraphernalia as defined in § 4701(17) of this title;

(7) All moneys, negotiable instruments, securities or any other thing of value furnished, or intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of this chapter; all profits or proceeds traceable to securities, assets or interest used, or intended to be used, to facilitate any violation of this chapter. However, no property interest or an owner, by reason of any act or omission established by the owner to be committed or omitted without the owner's knowledge or consent shall be forfeited in the items listed in this paragraph:

a. All moneys, negotiable instruments or securities found in close proximity to forfeitable controlled substances, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph. The burden of proof is upon claimant of the property to rebut this presumption.

b. All moneys, negotiable instruments or securities found to have trace amounts of controlled substances on them are presumed to be forfeitable under this paragraph. The burden of proof is upon the claimant of the property to rebut this presumption.

c. To the extent that assets, interests, profits and proceeds forfeitable under this paragraph (i) cannot be located, (ii) have been transferred, sold to or deposited with third parties, or (iii) have been placed beyond the jurisdiction of the State, the court, following conviction of the individual charged, may direct forfeiture of such other assets of the defendant as may be available, limited in value to those assets that would otherwise be forfeited under this paragraph. Upon petition of the defendant, the court may authorize redemption of assets forfeited under this paragraph, provided the assets described in this paragraph are surrendered or otherwise remitted by such defendant to the jurisdiction of the court; and

(8) Any real property which is used, or is intended for use, to store, grow, manufacture, compound, process, deliver, import or export any controlled substance in violation of this chapter except that:

a. No real property is subject to forfeiture under this section by reason of any act or omission established by any owner thereof to have been committed or omitted without the owner's knowledge or consent;

b. No real property being leased out by its owner shall be subject to forfeiture under this section unless the owner of the real property is a consenting party or privy to the violation of the Controlled Substances Act;

c. No real property shall be subject to forfeiture for a violation of § 4759, § 4761(a) or (b), § 4763 or § 4764 of this title; and

d. A forfeiture of real property encumbered by a bona fide security interest of the secured party if the party neither had knowledge of nor consented to the act or omission.

(b) Notwithstanding any other provisions of the laws of this State or rules of court, the procedures listed in subsections (c)-(j) of this section are applicable to the administrative forfeiture of property subject to forfeiture under this section.

(c) Property subject to forfeiture under this chapter may be seized by the Secretary upon process issued by any Superior Court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure made is pursuant to subchapter I of Chapter 23 of Title 11 or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal, injunction or forfeiture proceeding based upon this chapter;

(3) The Secretary has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The Secretary has probable cause to believe that the property was used or intended to be used in violation of this chapter.

(d) In the event of seizure pursuant to subsection (c) of this section, proceedings under subsections (e) and (j) of this section shall be instituted promptly.

(e) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the Secretary subject only to the orders and decrees of the Superior Court. When property is seized under this chapter, the Secretary may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the Secretary; or

(3) Require the Department of Safety and Homeland Security to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(f) When property is forfeited under this chapter, the Secretary may:

(1) Retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

(3) Allow the arresting agency or any other law enforcement division to use the property for the purpose of law enforcement provided that any proceeds remaining after the payment of expenses and any other money forfeited or realized from forfeited property shall be deposited to the Special Law Enforcement Assistance Fund for the use of the State for the purposes as established by the Attorney General with the concurrence of the Director of the Office of Management and Budget and the Controller General;

(4) Require the Department of Safety and Homeland Security to take custody of the property and remove it for disposition in accordance with law; or

(5) Forward it to the Administration for disposition.

(g) Controlled substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the State. Controlled substances listed in Schedule I, the owners of which are unknown, which are seized or come into the possession of the State are contraband and shall be summarily forfeited to the State.

(h) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the State.

(i) The failure, upon demand by the Secretary or the Secretary's authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that the person is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(j) Property seized pursuant to this section that is not summarily forfeited pursuant to subsection (f) of this section shall be automatically forfeited to the State upon application to the Superior Court if, within 45 days of notification of seizure to all known parties having possessory interest in the seized property by registered or certified mail to the last known post-office address of the parties in interest and by publication in a newspaper of general circulation in this State, the person or persons claiming title to the seized property do not institute proceedings in the Superior Court to establish:

(1) That they have the lawful possessory interest in the seized property; and

(2) The property was unlawfully seized or not subject to forfeiture pursuant to this section.

(16 Del. C. 1953, § 4769; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, §§ 2, 4; 64 Del. Laws, c. 246, §§ 2, 3; 67 Del. Laws, c. 260, § 1; 67 Del. Laws, c. 450, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 288, § 11; 73 Del. Laws, c. 349, § 20; 75 Del. Laws, c. 88, § 21(8); 75 Del. Laws, c. 350, § 193(c); 78 Del. Laws, c. 13, § 65.)

§ 4785 Burden of proof; liabilities.

(a) It is not necessary for the State to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. The burden of going forward with the evidence to establish any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, such person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(c) No liability is imposed by this chapter upon any authorized state, county or municipal officer engaged in the lawful performance of the officer's duties.

(16 Del. C. 1953, § 4770; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 4; 70 Del. Laws, c. 186, § 1.)

§ 4786 Judicial review.

All final determinations, findings and conclusions of the Secretary under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the Superior Court. Findings of fact by the Secretary, if supported by substantial evidence, are conclusive.

(16 Del. C. 1953, § 4771; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 4.)

§ 4787 Education and research.

(a) The Secretary shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs the Secretary may:

(1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) Evaluate procedures, projects, techniques and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them;

(6) Assist in the education and training of state and local law-enforcement officials in their efforts to control misuse and abuse of controlled substances; and

(7) Require such evidence of completion of courses of professional education requirements needed for registration, or subsequent renewal of registration, as the Secretary deems appropriate.

(b) The Secretary shall encourage research on misuse and abuse of controlled substances. In connection with the research and in furtherance of the enforcement of this chapter the Secretary may:

(1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) Make studies and undertake programs of research to:

a. Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

b. Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

c. Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and

(3) Enter into contracts with public agencies, institutions of higher education and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

(c) The Secretary may enter into contracts for educational and research activities without performance bonds.

(d) The Secretary may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The Secretary may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

(16 Del. C. 1953, § 4772; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 4; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 193, § 4.)

Subchapter VII

Miscellaneous

§ 4791 Pending proceedings.

(a) Prosecution for any violation of law occurring prior to the effective date of any amendment to this chapter is not affected or abated by any amendment to this chapter.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of any amendment to this chapter are not affected by any amendment to this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by any amendment to this chapter shall be continued and brought to a final determination in accord with the laws or rules in effect prior to the effective date of any amendment to this chapter.

(d) This chapter and any amendments thereto apply to any violation of law, seizure and forfeiture, injunctive proceeding, administrative proceeding or investigation which occurs or is commenced following the effective date of this chapter and any amendments thereto.

(16 Del. C. 1953, § 4773; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 5; 78 Del. Laws, c. 13, § 66.)

§ 4792 Continuation of rules.

Any orders and rules promulgated under any law affected by this chapter and in effect on the effective date of this chapter and not in conflict with it continue in effect until modified, superseded or repealed.

(16 Del. C. 1953, § 4774; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 5.)

§ 4793 Uniformity of interpretation.

This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

(16 Del. C. 1953, § 4775; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 5.)

§ 4794 Short title.

This chapter may be cited as the "Controlled Substances Act."

(16 Del. C. 1953, § 4776; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 5; 78 Del. Laws, c. 13, § 67.)

§ 4795 Jurisdiction.

(a) The Superior Court shall have original and exclusive jurisdiction over any violation of this chapter by persons 18 years of age or older.

(b) The provisions of subsection (a) of this section or any other law to the contrary notwithstanding, the Court of Common Pleas shall have original jurisdiction over any violation of:

(1) Section 4764 of this title;

(2) Section 4771 of this title,

by persons 18 years of age or older.

(c) The Family Court shall have original and exclusive jurisdiction over violations of this chapter by persons under age 18.

(16 Del. C. 1953, § 4777; 58 Del. Laws, c. 424, § 1; 58 Del. Laws, c. 480, § 3; 61 Del. Laws, c. 261, § 4; 62 Del. Laws, c. 250, § 5; 71 Del. Laws, c. 63, §§ 2, 3; 71 Del. Laws, c. 176, § 25; 78 Del. Laws, c. 13, § 68.)

§ 4796 Authority of the Attorney General.

Nothing in this chapter shall be interpreted as limiting the authority or responsibility of the Attorney General of this State to enforce the laws of this State.

(16 Del. C. 1953, § 4778; 58 Del. Laws, c. 424, § 1; 62 Del. Laws, c. 250, § 5.)

§ 4797 Statewide authorized tamper resistant prescription forms.

(a) Effective October 1, 2010, every prescription written in this State by a practitioner shall be written on a statewide authorized tamper-resistant prescription form. This section shall not apply to prescriptions generated within a licensed medical facility that results in the internal dispensing of prescription drugs to any patient receiving treatment in that facility, nor to tamper-resistant prescription forms electronically generated within a licensed medical facility that meet the criteria established by the committee created under this section.

(b) "Statewide tamper-resistant prescription pads" shall be defined as a prescription pad, which has been authorized by the State for use, and meets the following criteria:

(1) Prevention of unauthorized copying,

(2) Prevention of erasure or modification; and

(3) An ability to prevent counterfeit prescription forms.

(c) The Secretary of the Delaware Department of Safety and Homeland Security (DSHS), or the Secretary's designee, shall form a committee consisting of representatives of state agencies and private sector interests. The purpose of the committee is to establish a statewide prescription form with specific criteria pursuant to this section to eliminate or significantly reduce prescription fraud. The committee shall develop the standard format and identifying markers on the front and back of the prescription form to be used by practitioners throughout the State. "Markers" shall be defined as the specific criteria under this subsection which shall be authorized by the State to be used on a statewide prescription form. The committee shall further develop a request for proposal which shall contain the adopted format and criteria approved by the committee to be submitted for bid to the State. The committee shall also have the authority to promulgate rules and regulations for the implementation of the provisions of this subsection. The committee shall be comprised of the following members:

(1) The Secretary of the Department of Safety and Homeland Security or the Secretary's designee;

(2) A representative from the State Police Drug Diversion Unit to be appointed by the Secretary of the Department of Safety and Homeland Security;

(3) A representative from the Medical Society of Delaware to be appointed by the Governor;

(4) A representative from the pharmaceutical industry to be appointed by the Governor;

(5) The Director of the Division of Professional Regulation or the Director's designee;

(6) A representative of the Delaware Healthcare Facilities Association to be appointed by the Governor;

(7) The Director of Medicaid and Medical Assistance or the Director's designee;

(8) A representative of the Board of Pharmacy to be appointed by the Director of the Division of Professional Regulation;

(9) A representative from the Delaware Healthcare Association to be appointed by the Governor;

(10) A representative from the Office of Controlled Substances to be appointed by the Director of the Division of Professional Regulation;

(11) A representative from the Delaware Pharmacists Society to be appointed by the Governor;

(12) Two members at-large to be appointed by the Governor of the State.

(76 Del. Laws, c. 352, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 159, § 1; 78 Del. Laws, c. 155, § 6.)

§ 4798 The Delaware Prescription Monitoring Program.

(a) It is the intent of the General Assembly that the Delaware Prescription Monitoring Act established pursuant to this section serves as a means to promote public health and welfare and to detect the illegal use of controlled substances. The Delaware Prescription Monitoring Act shall have the dual purpose of reducing misuse and diversion of controlled substances in the State while promoting improved professional practice and patient care.

(b) *Definitions.* —

(1) "Administer" or "administration" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(2) "Chemical dependency professional" means a person who uses addiction counseling methods to assist an individual or group to develop an understanding of alcohol and drug dependency problems, define goals, and plan action reflecting the individual's or group's interest, abilities and needs as affected by addiction problems.

(3) "Controlled substance" means any substance or drug defined, enumerated or included in this chapter and Title 21, Code of Federal Regulations.

(4) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug or, including the preparation and delivery of a drug to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(5) "Dispenser" means a person authorized by this State to dispense or distribute to the ultimate user any controlled substance or drug monitored by the program, but shall not include any of the following: a licensed health care facility pharmacy that dispenses, distributes

or administers any controlled substance, or drug monitored by the program, for the purposes of inpatient care, or any emergency department dispensing a controlled substance for immediate use.

(6) [Repealed.]

(7) "Drug" means any of the following:

a. Any substance recognized as a drug in the official compendium, or supplement thereto, designated by the Office of Controlled Substances for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans.

b. Any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or pain in humans.

c. Any substance other than food intended to affect the structure or any function of the body of humans.

(8) "Drugs of concern" means drugs other than controlled substances as defined by rule which demonstrate a potential for abuse or diversion.

(9) "Licensed professional counselor of mental health" means an individual licensed as a professional counselor of mental health who publicly offers to render to individuals, groups, organizations or the general public a service involving the application of clinical counseling principles, methods or procedures and the diagnosis and treatment of mental and emotional disorders to assist individuals in achieving more effective personal and social adjustment.

(10) "Patient" means the person who is the ultimate user of a controlled substance or drug monitored by the program for whom a prescription is issued and for whom a controlled substance or drug is dispensed.

(11) "Prescriber" means a licensed health care professional with the authority to write and issue prescriptions, except it shall not include:

a. A prescriber or other authorized person who administers such controlled substance or drug upon the lawful order of a prescriber.

b. A prescriber or other authorized person who, in providing emergency patient care in a healthcare facility, causes the administration of a controlled substance for immediate relief of symptoms arising from an acute condition.

c. A prescriber or other authorized person who prescribes up to a 72-hour supply of a controlled substance for on call services or emergency care.

d. A veterinarian who prescribes for the purpose of providing veterinary services.

(12) "Prescription monitoring information" means data submitted to and maintained by the prescription monitoring program established under this section.

(13) "Prescription Monitoring Program" or "PMP" means the electronic program established by this section.

(c) The Office of Controlled Substances shall establish and maintain a PMP program to monitor the prescribing and dispensing of all Schedule II, III, IV and V controlled substances by prescribers in this State, and to research the prescribing and dispensing of drugs of concern. The PMP shall not interfere with the legal use of a controlled substance or drug of concern. The PMP shall be:

(1) Used to provide information to prescribers, dispensers, and patients to help avoid the illegal use of controlled substances;

(2) Used to assist law enforcement to investigate illegal activity related to the prescribing, dispensing and consumption of controlled substances or drugs of concern; and

(3) Designed to minimize inconvenience to patients and prescribing medical practitioners while effectuating the collection and storage of prescription monitoring information.

(d) A dispenser including those dispensing an amount deemed medically necessary for a 72-hour supply, shall submit the required information regarding each prescription dispensed for a controlled substance, in accordance with the transmission methods and frequency established by regulation issued by the Office of Controlled Substances. When needed for bona fide research purposes and in accordance with applicable regulation, the Office of Controlled Substances may require a dispenser to submit the required information regarding each prescription dispensed for a drug of concern, but in no event should dispensers be required to submit such information any more frequently than that required for controlled substances. The following information shall be submitted for each prescription:

(1) Pharmacy name;

(2) Dispenser DEA registration number;

(3) Date drug was dispensed;

(4) Prescription number;

(5) Whether prescription is new or a refill;

(6) NDC code for drug dispensed;

(7) Quantity dispensed;

(8) Approximate number of days supplied;

(9) Patient name and date of birth;

(10) Patient address;

(11) Prescriber DEA registration number and name;

(12) Date prescription issued by prescriber.

(e) When a dispenser has a reasonable belief that a patient may be seeking a controlled substance listed in Schedule II, III, IV or V for any reason other than the treatment of an existing medical condition, the dispenser shall obtain a patient utilization report regarding the patient for the preceding 12 months from the Prescription Monitoring Program before dispensing the prescription.

(f) A prescriber, or other person authorized by the prescriber, shall obtain, before writing a prescription for a controlled substance listed in Schedule II, III, IV or V for a patient, a patient utilization report regarding the patient for the preceding 12 months from the computerized program established by the Office of Controlled Substances when the prescriber has a reasonable belief that the patient may be seeking the controlled substance, in whole or in part, for any reason other than the treatment of an existing medical condition. The prescriber shall review the patient utilization report to assess whether the prescription for the controlled substance is necessary.

(g) A licensed chemical dependency professional or licensed professional counselor of mental health may obtain a patient utilization report from the Prescription Monitoring Program for patients enrolled in substance abuse treatment programs receiving treatment from, or under the direction of, the chemical dependency professional or professional counselor of mental health.

(h) The Chief Medical Examiner or licensed physician designee may obtain a patient utilization report from the Prescription Monitoring Program for the purpose of investigating the death of an individual.

(i) The Office of Controlled Substances may issue a waiver to a prescriber who is unable to access prescription information by electronic means. A prescriber who is unable to access prescription information by electronic means shall obtain a waiver from the OCS on annual basis until such time they can access the prescription information by electronic means.

(j) Unless a court of competent jurisdiction makes a finding of gross negligence, malice or criminal intent, the Office of Controlled Substances, any other state agency, any prescriber or dispenser, or any person or entity in proper possession of information pursuant to this statute is not subject to civil liability, administrative action or other legal or equitable relief for any of the following acts or omissions:

(1) Furnishing information pursuant to this section.

(2) Receiving, using or relying on, or not using or relying on, information received pursuant to this section.

(3) Information that was not furnished to the Office of Controlled Substances.

(4) Information that was factually incorrect or that was released by the Office of Controlled Substance to the wrong person or entity.

(k) Prescription information submitted to the PMP is protected health information, not subject to public or open records law, and not subject to disclosure, except as otherwise provided in this section.

(l) The Office of Controlled Substances shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed, except as provided for in this section.

(1) If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the Office of Controlled Substances shall notify the appropriate law enforcement or professional licensure, certification, or regulatory agency or entity and shall provide prescription information required for an investigation.

(2) The Office of Controlled Substances may provide data in the prescription monitoring program in the form of a report to the following persons:

a. A prescriber, or other person authorized by the prescriber, or a dispenser, or other person authorized by the dispenser, who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide patient;

b. An individual who requests the individual's own prescription monitoring information in accordance with procedures established pursuant to regulations;

c. A designated representative of any Board or Commission pursuant to § 8735(a) of Title 29 responsible for the licensure, regulation, or discipline of prescribers, dispensers or other persons authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

d. A local, state, or federal law-enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of the laws governing controlled substances and who is involved in a bona fide specific drug-related investigation in which a report of suspected criminal activity involving controlled substances by an identified suspect has been made, and provided that such information be relevant and material to such investigation, limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought, and include identifying information only if nonidentifying information could not be used;

e. The Delaware Department of Health and Social Services regarding Medicaid program recipients;

f. A properly convened grand jury pursuant to a subpoena properly issued for the records;

g. Personnel of the Division of Professional Regulation for purposes of administration and enforcement of this section;

h. A licensed chemical dependency professional or licensed professional counselor of mental health who requests information and certifies that the requested information is for a patient enrolled in a substance abuse treatment program receiving treatment from, or under the direction of the chemical dependency professional or professional counselor of mental health.

i. The Chief Medical Examiner or licensed physician designee who requests information and certifies the request is for the purpose of investigating the death of an individual.

j. Qualified personnel for the purpose of bona fide research or education; however, data elements that would reasonably identify a specific recipient, prescriber or dispenser must be deleted or redacted from such information prior to disclosure; and further provided that, release of the information may be made only pursuant to a written agreement between qualified personnel and the Office of Controlled Substances in order to ensure compliance with this subsection.

(m) The Division of Professional Regulation may contract with another agency of this State or with a private vendor, as necessary, to ensure the effective operation of the prescription monitoring program. A contractor shall comply with the provisions regarding confidentiality of prescription information under this section is subject to the penalties specified in this section for any unlawful acts.

(n) The Office of Controlled Substances may promulgate regulations setting forth the procedures and methods for implementing this section.

(o) The Office of Controlled Substances shall design and implement an evaluation component to identify cost-benefits of the Prescription Monitoring Program, including its effect on diversion and abuse of controlled substances and drugs of concern, and other information relevant to policy, research and education involving controlled substances and drugs of concern monitored by the Prescription Monitoring Program.

(1) The Office of Controlled Substances shall report to the General Assembly the information obtained pursuant to this subsection on an annual basis.

(2) To the extent such information is made available to the Office of Controlled Substances, the report may include information and data, including surveys, polls, or other data from multi-disciplinary experts and stakeholders, relating to the negative or positive impact of the prescription monitoring program on appropriate prescribing practices of controlled substances and drugs of concern.

(p) The Office of Controlled Substances may exchange prescription information submitted to the PMP through an interstate commission with an authorized member state.

(q) A dispenser who fails to submit prescription monitoring information to the Office of Controlled Substances PMP as required by this section, or who knowingly submits incorrect prescription information, shall be subject to disciplinary sanction pursuant to Title 24.

(r) A person or persons authorized to have prescription monitoring information pursuant to this section who knowingly discloses this information in violation of this section is guilty of a class G felony and, upon conviction, shall be fined not more than $5,000 nor imprisoned more than 2 years, or both.

(s) A person authorized to have prescription monitoring information pursuant to this section who intentionally uses this information in the furtherance of other crimes is guilty of a class E felony and, upon conviction, shall be fined not more than $10,000 nor imprisoned more than 5 years, or both.

(t) A person or persons not authorized to have prescription monitoring information pursuant to this section who obtain such information fraudulently is guilty of a class E felony and, upon conviction, shall be fined not more than $10,000 nor imprisoned more than 5 years, or both.

(u) All prescribers who hold a registration pursuant to § 4732 of this title shall register with the Prescription Monitoring Program on or before January 1, 2014. All dispensers located in the State of Delaware that hold a registration pursuant to § 4732 of this title shall ensure that all pharmacists dispensing at the registrant's place of business are registered with the Prescription Monitoring Program on or before January 1, 2014. A violation of this subsection may serve as a basis for discipline pursuant to § 4735 of this title.

(77 Del. Laws, c. 396, § 2; 79 Del. Laws, c. 92, § 2; 79 Del. Laws, c. 164, § 2.)

Part IV
Food and Drugs
Chapter 48
LICENSING OF DRUG ABUSE PREVENTION, CONTROL, TREAT- MENT AND EDUCATION PROGRAMS

§§ 4801 -4813. Definitions; duties of bureau; hospital and outpatient facilities for drug dependents; application for license, fee; review and action upon license applications; expiration of license, renewal, conditional permit; denial, revocation or suspension of license, procedure; reinstatement of revoked or suspended license; injunctive proceedings; right of entry and inspection; Methadone Treatment Medication Units; annual reports; exceptions.

Repealed by 73 Del. Laws, c. 358, § 1, eff. July 8, 2002.

Part IV
Food and Drugs
Chapter 48A

SUBSTANCE ABUSE REHABILI- TATION, TREATMENT, EDUCATION AND PREVENTION FUND

§ 4801A Fund created.

The General Assembly, in order to help provide funding for substance abuse rehabilitation, treatment coordination, prevention and education, hereby creates a special "Substance Abuse Rehabilitation, Treatment Coordination, Prevention and Education Fund."

(67 Del. Laws, c. 210, § 1; 68 Del. Laws, c. 443, §§ 2, 3.)

§ 4802A Source of funds.

(a) In addition to and at the same time as any fine is assessed to any criminal defendant, or juvenile adjudicated delinquent for any violations of §§ 4751-4758, 4761 or 4771-4774 of this title or § 4177 of Title 21, there shall be levied an additional penalty, in addition to the penalty assessment as provided in § 9012 of Title 11, of 15% of every fine, penalty and forfeiture imposed and collected by the courts for such criminal offenses. When a fine, penalty or forfeiture is suspended in whole or in part, the penalty assessment shall not be suspended.

(b) Upon collection of the penalty assessment, the same shall be paid over to the agency, Prothonotary or clerk of the court as the case may be, who shall collect it and transmit it to the State Treasurer to be deposited in a separate account designated "Substance Abuse Rehabilitation, Treatment, Education and Prevention Fund."

(67 Del. Laws, c. 210, § 1; 68 Del. Laws, c. 443, §§ 4, 5; 69 Del. Laws, c. 131, § 1.)

§ 4803A Use of fund.

(a) The State Treasurer shall have the power to invest the assets of the Substance Abuse Rehabilitation, Treatment, Education and Prevention Fund in a prudent manner. Any profits and interest from such investment shall remain in the Fund and become part of the principal thereof.

(b) The funds raised by this chapter shall be used only for the provision of and coordination of substance abuse rehabilitation treatment, education and/or prevention services and shall be administered by the permanent treatment access committee of SENTAC; provided that any expenditures therefrom must be approved by the Delaware State Clearinghouse Committee.

(67 Del. Laws, c. 210, § 1; 68 Del. Laws, c. 443, §§ 5, 6.)

§ 4804A Annual reports.

The State Treasurer shall transmit to the Governor, State Auditor and the General Assembly an annual report describing the status of this Fund.

(67 Del. Laws, c. 210, § 1.)

Part IV
Food and Drugs
Chapter 49
NATURAL FOOD SUBSTANCES

§ 4901 Manufacture, delivery, possession and use of laetrile.

The manufacture, delivery, possession and use of laetrile (amygdalin, Vitamin B-17) is lawful within the State. No person, however, shall manufacture, sell or deliver laetrile (amygdalin, Vitamin B-17) for purposes of transporting such substances to any other state, district or territory beyond the borders of Delaware.

(61 Del. Laws, c. 90, § 2.)

§ 4902 Sale or distribution of laetrile; labeling requirement.

Laetrile (amygdalin, Vitamin B-17) may be distributed or sold by any person, and no special license or prescription shall be required for the sale or distribution of such substance. The label or other device affixed to a container containing laetrile (amygdalin, Vitamin B-17) shall include a statement that such substance has not yet been approved as a treatment or cure for cancer by the Food and Drug Administration of the United States Department of Health, Education and Welfare.

(61 Del. Laws, c. 90, § 2.)

§ 4903 Duties of Department.

The Department of Health and Social Services shall:

(1) Adopt regulations which prescribe minimum standards for manufacturers in preparing, compounding, processing or packaging laetrile (amygdalin, Vitamin B-17);

(2) Conduct inspections of manufacturers of laetrile (amygdalin, Vitamin B-17);

(3) Establish reasonable fees, to be collected from the manufacturer, for the purpose of paying the costs of the inspections.

(61 Del. Laws, c. 90, § 2; 70 Del. Laws, c. 149, § 197.)

§ 4904 Prescribing or administering of laetrile.

(a) No hospital nor health facility may interfere with the physician-patient relationship by restricting or forbidding the use of laetrile (amygdalin, Vitamin B-17) when prescribed or administered by a physician, surgeon, osteopath or other person engaged in the practice of medicine, as that term is defined in § 1702(9) of Title 24 and/or when requested by a patient, unless the substance as prescribed or administered by the physician or medical practitioner is found to be harmful by the Board of Medical Licensure and Discipline in a public hearing which complies with the Freedom of Information Act.

(b) No physician, surgeon, osteopath or other person engaged in the practice of medicine, as that term is defined in § 1702(9) of Title 24 shall be subject to disciplinary action solely for the prescribing or administering of laetrile (amygdalin, Vitamin B-17) to a patient under the physician's, surgeon's, osteopath's or other person's care who has requested the substance.

(c) Under this section laetrile shall not be considered a medical drug, but shall be considered a natural food substance.

(61 Del. Laws, c. 90, § 2; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 141, § 2; 77 Del. Laws, c. 319, § 1.)

§ 4905 Distribution by pharmacists.

A pharmacist shall not be subject to any penalty for filling a prescription for laetrile (amygdalin, Vitamin B-17) if the prescription is issued to a patient by a physician, surgeon, osteopath or other person engaged in the practice of medicine, as that term is defined in subsection (b) of § 1703 of Title 24.

(61 Del. Laws, c. 90, § 2.)

Part IV
Food and Drugs
Chapter 49A
THE DELAWARE MEDICAL MARIJUANA ACT

§ 4901A Findings.

(a) Marijuana's recorded use as a medicine goes back nearly 5,000 years. Modern medical research has confirmed the beneficial uses for marijuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions, including cancer, multiple sclerosis, and HIV/AIDS, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

(b) Studies published since the 1999 Institute of Medicine report have continued to show the therapeutic value of marijuana in treating a wide array of debilitating medical conditions. These include relief of the neuropathic pain caused by multiple sclerosis, HIV/AIDS, and other illnesses that often fails to respond to conventional treatments and relief of nausea, vomiting, and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the chances of patients continuing on life-saving treatment regimens. Specifically, in February 2010, the Center for Medicinal Cannabis Research released a lengthy report that summarized 15 recent studies clearly demonstrating marijuana's medical efficacy for a broad range of conditions. These studies, many of which were double blind, placebo-controlled trials, included neuropathic pain trials published in the Journal of Pain, Neuropsychopharmacology and Neurology, a study on the analgesic efficacy of smoked marijuana published in Anesthesiology, a study on the mechanisms of cannabinoid analgesia in rats published in Pain, and a study on vaporization as a "smokeless" marijuana delivery system published in Clinical Pharmacology & Therapeutics.

(c) Marijuana has many currently accepted medical uses in the United States, having been recommended by thousands of licensed physicians to at least 350,000 patients in states with medical marijuana laws. Marijuana's medical utility has been recognized by a wide range of medical and public health organizations, including the American Academy of HIV Medicine, the American College of Physicians, the American Nurses Association, the American Public Health Association and the Leukemia and Lymphoma Society.

(d) Data from the Federal Bureau of Investigation's Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marijuana arrests in the U.S. are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill patients who have a medical need to use marijuana.

(e) Alaska, Arizona, California, Colorado, the District of Columbia, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, New Jersey, Oregon, Vermont, Rhode Island, and Washington have removed state-level criminal penalties from the medical use of marijuana. Delaware joins in this effort for the health and welfare of its citizens.

(f) States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this chapter does not put the State of Delaware in violation of federal law.

(g) State law should make a distinction between the medical and nonmedical uses of marijuana. Hence, the purpose of this chapter is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

(78 Del. Laws, c. 23, § 1.)

§ 4902A Definitions.

In this chapter, unless the context otherwise requires, the following definitions shall apply:

(1) "Cardholder" means a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card.

(2) "Compassion center agent" means a principal officer, board member, employee, or agent of a registered compassion center who is 21 years of age or older and has not been convicted of an excluded felony offense for drug misdemeanor within 5 years.

(3) "Debilitating medical condition" means one or more of the following:

a. Cancer, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, decompensated cirrhosis, amyotrophic lateral sclerosis, agitation of Alzheimer's disease, post-traumatic stress disorder, or the treatment of these conditions;

b. A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe, debilitating pain, that has not responded to previously prescribed medication or surgical measures for more than 3 months or for which other treatment options produced serious side effects; intractable nausea; seizures; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis;

c. Any other medical condition or its treatment added by the Department, as provided for in § 4906A of this title.

(4) "Department" means the Delaware Department of Health and Social Services or its successor agency.

(5) "Designated caregiver" means a person who:

a. Is at least 21 years of age;

b. Has agreed to assist with a patient's medical use of marijuana;

c. Has not been convicted of an excluded felony offense; and

d. Assists no more than 5 qualifying patients with their medical use of marijuana.

(6) "Enclosed, locked facility" means a greenhouse, building, or other enclosed area equipped with locks or other security devices that is on a registered compassion center's property and permits access only the compassion center agents working for the registered compassion center.

(7) "Excluded felony offense" means:

a. A violent crime defined in § 4201(c) of Title 11, that was classified as a felony in the jurisdiction where the person was convicted; or

b. A violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted, not including:

1. An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed 10 or more years earlier; or

2. An offense that consisted of conduct for which this chapter would likely have prevented a conviction, but the conduct either occurred prior to July 1, 2011, or was prosecuted by an authority other than the State of Delaware.

(8) "Marijuana" has the meaning given that term in § 4701(23) of this title.

(9) "Medical use" means the acquisition; administration; delivery; possession; transportation; transfer; transportation; or use of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

(10) "Physician" means a properly licensed physician subject to Chapter 17 of Title 24 except as otherwise provided in this paragraph. If the qualifying patient's debilitating medical condition is post-traumatic stress disorder, the physician must also be a licensed psychiatrist. In relation to a visiting qualifying patient, "physician" means a person who is licensed with authority to prescribe drugs to humans and who may issue a written certifications or its equivalent in the state of the patient's residence.

(11) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(12) "Registered compassion center" means a not-for-profit entity registered pursuant to § 4914A of this title that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, or dispenses marijuana, paraphernalia, or related supplies and educational materials to registered qualifying patients who have designated the dispenser to cultivate marijuana for their medical use and the registered designated caregivers of these patients.

(13) "Registered safety compliance facility" means a nonprofit entity registered under § 4915A of this title by the Department to provide 1 or more of the following services: testing marijuana produced for medical use for potency and contaminants; and training cardholders and prospective compassion center agents. The training may include, but need not be limited to, information related to one or more of the following:

a. The safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana;

b. Security and inventory accountability procedures; and

c. Up-to-date scientific and medical research findings related to medical marijuana.

(14) "Registry identification card" means a document issued by the Department that identifies a person as a registered qualifying patient or registered designated caregiver.

(15) "Safety compliance facility agent" means a principal officer, board member, employee, or agent of a registered safety compliance facility who is 21 years of age or older and has not been convicted of an excluded felony offense.

(16) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, other preparations, but does not include the seeds, stalks, and roots of the plant. It does not include the weight of any non-marijuana ingredients combined with marijuana, such as ingredients added to prepare a topical administration, food, or drink.

(17) "Verification system" means a phone or Web-based system that is available to law-enforcement personnel and compassion center agents on a 24-hour basis for verification of registry identification cards.

(18) "Visiting qualifying patient" means a person who:

a. Has been diagnosed with a debilitating medical condition;

b. Possesses a valid registry identification card, or its equivalent, that was issued pursuant to the laws of another state, district, territory, commonwealth, insular possession of the United States or country recognized by the United States that allows the person to use marijuana for medical purposes in the jurisdiction of issuance; and

c. Is not a resident of Delaware or who has been a resident of Delaware for less than 30 days.

(19) "Written certification" means a document dated and signed by a physician, stating that in the physician's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's

debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification shall be made only in the course of a bona fide physician-patient relationship where the qualifying patient is under the physician's care for her or his primary care or for her or his debilitating medical condition after the physician has completed an assessment of the qualifying patient's medical history and current medical condition. The bona fide physician-patient relationship may not be limited to authorization for the patient to use medical marijuana or consultation for that purpose. The written certification shall specify the qualifying patient's debilitating medical condition.

(78 Del. Laws, c. 23, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4903A Protections for the medical use of marijuana.

(a) A registered qualifying patient shall not be subject to arrest, prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marijuana pursuant to this chapter, if the registered qualifying patient does not possess more than 6 ounces of usable marijuana.

(b) A registered designated caregiver shall not be subject to arrest, prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau:

(1) For assisting a registered qualifying patient to whom he or she is connected through the Department's registration process with the medical use of marijuana if the designated caregiver does not possess more than 6 ounces of usable marijuana for each qualifying patient to whom he or she is connected through the Department's registration process; and

(2) For receiving compensation for costs associated with assisting a registered qualifying patient's medical use of marijuana if the registered designated caregiver is connected to the registered qualifying patient through the Department's registration process.

(c) A visiting qualifying patient shall not be subject to arrest, prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marijuana pursuant to this chapter if the visiting qualifying patient does not possess more than 6 ounces of usable marijuana.

(d) A registered qualifying patient, visiting qualifying patient, or registered designated caregiver shall not be subject to prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for possession of seeds and stalks.

(e) A registered qualifying patient, visiting qualifying patient, or registered designated caregiver shall not be subject to arrest, prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for giving marijuana to a registered qualifying patient, a registered compassion center, or a registered designated caregiver for a registered qualifying patient's medical use where nothing of value is transferred in return, or for offering to do the same, if the person giving the marijuana does not knowingly cause the recipient to possess more marijuana than is permitted by this section.

(f)(1) There shall be a presumption that a qualifying patient is engaged in, or a designated caregiver is assisting with, the medical use of marijuana in accordance with this chapter if the qualifying patient or designated caregiver:

a. Is in possession of a valid registry identification card; and

b. Is in possession of an amount of marijuana that does not exceed the amount allowed under subsections (a)-(c) of this section.

(2) The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition in compliance with this chapter.

(g) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Delaware Medical Board or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition or for refusing to provide such written certifications or statements, provided that nothing in this chapter shall be deemed to release a physician from the duty to exercise a professional standard of care for evaluating or treating a patient's medical condition.

(h) No person may be subject to arrest, prosecution, or denial of any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

(1) Selling marijuana paraphernalia to a cardholder upon presentation of an unexpired registry identification card in the recipient's name or to a compassion center agent or safety compliance facility agent upon presentation of an unexpired copy of the entity's registration certificate;

(2) Being in the presence or vicinity of the medical use of marijuana as allowed under this chapter; or

(3) Assisting a registered qualifying patient with using or administering marijuana.

(i) A registered compassion center shall not be subject to prosecution; search or inspection, except by the Department pursuant to § 4919A(u) of this title; seizure; or penalty in any manner, or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or business licensing board or entity, for:

(1) Acting pursuant to this chapter and Department regulations to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell, or dispense marijuana or related supplies and educational materials to registered qualifying patients and visiting qualifying patients who have designated the compassion center to provide for them, to registered designated caregivers on behalf of the registered qualifying patients who have designated the registered compassion center, or to other registered compassion centers;

(2) Selling or transferring marijuana seeds to entities that are licensed or registered in another jurisdiction to dispense marijuana for medical purposes; or

(3) Transferring marijuana to and from a registered safety compliance facility for the purposes of analytical testing.

(j) A compassion center agent shall not be subject to prosecution, search, or penalty in any manner, or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or business licensing board or entity, for working or volunteering for a registered compassion center pursuant to this chapter and Department regulations to perform the actions on behalf of a registered compassion center that are authorized by this chapter.

(k) A registered safety compliance facility and safety compliance facility agents acting on behalf of a registered safety compliance facility shall not be subject to prosecution; search, except by the Department pursuant to § 4919A(u) of this title; seizure; or penalty in any manner, or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or business licensing board or entity, solely for acting in accordance with this chapter and Department regulations to provide the following services:

(1) Acquiring or possessing marijuana obtained from registered compassion centers;

(2) Returning the marijuana to the same registered compassion centers;

(3) Transporting marijuana that was produced by registered compassion centers to or from those registered compassion centers;

(4) Cultivating, manufacturing, and possessing marijuana for training and analytical testing;

(5) The production or sale of educational materials related to medical marijuana;

(6) The production, sale, or transportation of equipment or materials other than marijuana to registered compassion centers, including lab equipment and packaging materials, that are used by registered compassion centers;

(7) Testing of medical marijuana samples, including for potency and contamination;

(8) Providing training to prospective compassion center agents and compassion center agents, provided that only compassion center agents and safety compliance facility agents may be allowed to possess or cultivate marijuana and any possession or cultivation of marijuana must occur on the location registered with the Department; and

(9) Receiving compensation for actions allowed under this section.

(l) A visiting qualifying patient or an entity that is registered to dispense marijuana for medical use in other jurisdictions shall not be subject to prosecution; search or inspection, except by the Department pursuant to § 4919A(u) of this title; seizure; or penalty in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or business licensing board or entity, for providing marijuana seeds to registered compassion centers.

(m) Any marijuana, marijuana paraphernalia, licit property, or interest in licit property that is possessed, owned, or used in connection with the medical use of marijuana as allowed under this chapter, or acts incidental to such use, shall not be seized or forfeited. This chapter shall not prevent the seizure or forfeiture of marijuana exceeding the amounts allowed under this chapter nor shall it prevent seizure or forfeiture if the basis for the action is unrelated to the marijuana that is possessed, manufactured, transferred, or used pursuant to this chapter.

(n) Mere possession of, or application for, a registry identification card or registration certificate shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person, property, or home of the person possessing or applying for the registry identification card. The possession of, or application for, a registry identification card shall not preclude the existence of probable cause if probable cause exists on other grounds.

(o) For the purposes of Delaware state law, the medical use of marijuana by a cardholder or registered compassion center shall be considered lawful as long as it is in accordance with this chapter.

(p) Where a state-funded or locally funded law-enforcement agency encounters an individual who, during the course of the investigation, credibly asserts that he or she is a registered cardholder, or encounters an entity whose personnel credibly assert that it is a registered compassion center, the law-enforcement agency shall not provide any information from any marijuana-related investigation of the person to any law-enforcement authority that does not recognize the protection of this chapter and any prosecution of the individual, individuals, or entity for a violation of this chapter shall be conducted pursuant to the laws of this State.

(78 Del. Laws, c. 23, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4904A Limitations.

This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:

(1) Undertaking any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice;

(2) Possessing marijuana, or otherwise engaging in the medical use of marijuana:

a. In a school bus;

b. On the grounds of any preschool or primary or secondary school; or

c. In any correctional facility.

d. In any health care or treatment facility operated by the Department or funded contractually through the Department.

(3) Smoking marijuana:

a. In any form of transportation; or

b. In any public place.

(4) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana, except that a registered qualifying patient or visiting qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana.

(5) Using marijuana if that person does not have a serious or debilitating medical condition.

(6) Transferring marijuana to any person who is not allowed to possess marijuana under this chapter.

(78 Del. Laws, c. 23, § 1.)

§ 4905A Discrimination prohibited.

(a)(1) No school or landlord may refuse to enroll or lease to, or otherwise penalize, a person solely for his or her status as a registered qualifying patient or a registered designated caregiver, unless failing to do so would cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulations.

(2) For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marijuana in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician, and shall not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed medical care.

(3) Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either of the following:

a. The person's status as a cardholder; or

b. A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

(b) A person otherwise entitled to custody of or visitation or parenting time with a minor shall not be denied such a right, and there shall be no presumption of neglect or child endangerment, for conduct allowed under this chapter, unless the person's actions in relation to marijuana were such that they created an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

(c) No school, landlord, or employer may be penalized or denied any benefit under state law for enrolling, leasing to, or employing a cardholder.

(78 Del. Laws, c. 23, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4906A Addition of debilitating medical conditions.

Once the regulations have been adopted pursuant to this chapter, any citizen may petition the Department to add conditions or treatments to the list of debilitating medical conditions listed in § 4902A(3) of this title. The Department shall consider petitions in the manner required by Department regulation, including public notice and hearing, as provided by § 4923A of this title. The Department shall approve or deny a petition within 180 days of its submission. The approval or denial of any petition is a final decision of the Department subject to judicial review. Jurisdiction and venue are vested in the Superior Court.

(78 Del. Laws, c. 23, § 1.)

§ 4907A Acts not required, acts not prohibited.

(a) Nothing in this chapter requires:

(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana;

(2) Any person or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to smoke marijuana on or in that property; or

(3) An employer to allow the ingestion of marijuana in any workplace or to allow any employee to work while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana.

(4) A physician to provide a written certification or otherwise recommend marijuana to a patient.

(b) Nothing in this chapter prohibits an employer from disciplining an employee for ingesting marijuana in the workplace or working while under the influence of marijuana.

(c) Nothing in this chapter shall be construed to prevent the arrest or prosecution of a registered qualifying patient for reckless driving or driving under the influence of marijuana where probable cause exists.

(78 Del. Laws, c. 23, § 1.)

§ 4908A Registration of qualifying patients and designated caregivers.

(a) The Department shall issue registry identification cards to qualifying patients who submit the following, in accordance with the Department's final regulations:

(1) A written certification issued by a physician within 90 days immediately preceding the date of an application, except that in the case of a visiting qualifying patient, the visiting qualifying patient shall submit a copy of the visiting qualifying patient's registry identification card or its equivalent that was issued pursuant to the laws of the jurisdiction of the person's residence, proof of residency in the jurisdiction where the registry identification card or its equivalent was issued; and a certification by the visiting qualifying patient's physician that he or she has a debilitating qualifying condition;

(2) The application or renewal fee;

(3) The name, address, and date of birth of the qualifying patient, except that if the applicant is homeless no address is required;

(4) The name, address, and telephone number of the qualifying patient's physician; and

(5) The name, address, and date of birth of the designated caregiver, if any, chosen by the qualifying patient, except that a visiting qualifying patient shall not have a designated caregiver;

(6) The name of the registered compassion center the qualifying patient designates, if any;

(7) A statement signed by the qualifying patient, pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter; and

(8) A signed statement from the designated caregiver, if any, agreeing to be designated as the patient's designated caregiver and pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

(b) Registry identification card applications shall be available no later than the day the Department publishes final regulations.

(78 Del. Laws, c. 23, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4909A Issuance of registry identification cards.

(a) Except as provided in subsection (b) of this section, the Department shall:

(1) Verify the information contained in an application or renewal submitted pursuant to this chapter, and shall approve or deny an application or renewal within 45 days of receiving a completed application or renewal application.

(2) Issue registry identification cards to a qualifying patient and his or her designated caregiver, if any, within 30 days of approving the application or renewal. A designated caregiver must have a registry identification card for each of his or her qualifying patients.

(3) Enter the registry identification number of the registered compassion center the patient designates into the verification system.

(b) The Department shall not issue a registry identification card to a qualifying patient who is younger than 18 years of age.

(78 Del. Laws, c. 23, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4910A Denial of registry identification cards.

(a) The Department shall deny an application or renewal of a qualifying patient's registry identification card only if the applicant:

(1) Did not provide the required information and materials;

(2) Previously had a registry identification card revoked; or

(3) Provided false or falsified information.

(b) The Department shall deny an application or renewal for a designated caregiver chosen by a qualifying patient whose registry identification card was granted only if:

(1) The designated caregiver does not meet the requirements of § 4902A(5) of this title;

(2) The applicant did not provide the information required;

(3) The designated caregiver previously had a registry identification card revoked; or

(4) The applicant or the designated caregiver provides false or falsified information.

(c) The Department shall conduct a background check of the prospective designated caregiver in order to carry out this provision.

(d) The Department shall notify the qualifying patient who has designated someone to serve as his or her designated caregiver if a registry identification card will not be issued to the designated caregiver.

(e) Denial of an application or renewal is considered a final Department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

(78 Del. Laws, c. 23, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4911A Registry identification cards.

(a) Registry identification cards shall contain all of the following:

(1) The name of the cardholder;

(2) A designation of whether the cardholder is a designated caregiver or qualifying patient;

(3) If the cardholder is a visiting qualifying patient, a designation as such, including the state of the patient's residence;

(4) The date of issuance and expiration date of the registry identification card;

(5) A random 10-digit alphanumeric identification number, containing at least 4 numbers and at least 4 letters, that is unique to the cardholder; and

(6) If the cardholder is a designated caregiver, the random 10-digit alphanumeric identification number of the qualifying patient the designated caregiver is receiving the registry identification card to assist.

(b)(1) Except as provided in this subsection, the expiration date shall be 1 year after the date of issuance.

(2) If the physician stated in the written certification that the qualifying patient would benefit from marijuana until a specified earlier date, then the registry identification card shall expire on that date.

(3) If the patient is a visiting qualifying patient whose permission to use medical marijuana in the person's home jurisdiction would expire sooner than 1 year after the issuance date, then the registry identification card shall expire on the date their home jurisdiction documentation would expire.

(c) The Department may, at its discretion, electronically store in the card all of the information listed in subsection (a) of this section, along with the address and date of birth of the cardholder, to allow it to be read by law-enforcement agents.

(78 Del. Laws, c. 23, § 1.)

§ 4912A Notifications to Department and responses; civil penalty.

(a) The following notifications and Department responses are required:

(1) A registered qualifying patient shall notify the Department of any change in his or her name or address, or if the registered qualifying patient ceases to have his or her debilitating medical condition, within 10 days of the change.

(2) A registered designated caregiver shall notify the Department of any change in his or her name or address, or if the designated caregiver becomes aware the qualifying patient passed away, within 10 days of the change.

(3) Before a registered qualifying patient changes his or her designated caregiver, the qualifying patient must notify the Department.

(4) If a cardholder loses his or her registry identification card, he or she shall notify the Department within 10 days of becoming aware the card has been lost.

(b) When a cardholder notifies the Department of items listed in subsection (a) of this section, but remains eligible under this chapter, the Department shall issue the cardholder a new registry identification card with a new random 10-digit alphanumeric identification number within 10 days of receiving the updated information and pay a $20 fee. If the person notifying the Department is a registered qualifying patient, the Department shall also issue his or her registered designated caregiver, if any, a new registry identification card within 10 days of receiving the updated information.

(c) If a registered qualifying patient ceases to be a registered qualifying patient or changes his or her registered designated caregiver, the Department shall promptly notify the designated caregiver. The registered designated caregiver's protections under this chapter as to that qualifying patient shall expire 15 days after notification by the Department.

(d) A cardholder who fails to make a notification to the Department that is required by this section is subject to a civil infraction, punishable by a penalty of no more than $150.

(e) A registered qualifying patient shall notify the Department before changing his or her designated registered compassion center and pay a $20 fee. The Department must, within 30 business days of receiving the notification, update the registered qualifying patient's entry in the identification registry system to reflect the change in designation and notify the patient that the change has been processed.

(f) If the registered qualifying patient's certifying physician notifies the Department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card shall become null and void. However, the registered qualifying patient shall have 15 days to dispose of his or her marijuana or give it to a registered compassion center where nothing of value is transferred in return.

(78 Del. Laws, c. 23, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4913A Affirmative defense and dismissal for medical marijuana.

(a) Except as provided in § 4904A of this title and this section, an individual may assert a medical purpose for using marijuana as a defense to any prosecution of an offense involving marijuana intended for the patient's medical use, and this defense shall be presumed valid and the prosecution shall be dismissed where the evidence shows that:

(1) A physician states that, in the physician's professional opinion, after having completed a full assessment of the individual's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from marijuana to treat or alleviate the individual's serious or debilitating medical condition or symptoms associated with the individual's serious or debilitating medical condition; and

(2) The individual was in possession of no more than 6 ounces of usable marijuana; and

(3) The individual was engaged in the acquisition, possession, use, or transportation of marijuana, paraphernalia, or both, relating to the administration of marijuana to treat or alleviate the individual's serious or debilitating medical condition or symptoms associated with the individual's serious or debilitating medical condition.

(b) The defense and motion to dismiss shall not prevail if the prosecution proves that

(1) The individual had a registry identification card revoked for misconduct; or

(2) The purposes for the possession of marijuana were not solely for palliative or therapeutic use by the individual with a serious or debilitating medical condition who raised the defense.

(c) An individual is not required to possess a registry identification card to raise the affirmative defense set forth in this section.

(d) If an individual demonstrates the individual's medical purpose for using marijuana pursuant to this section, except as provided in § 4909A of this title, the individual shall not be subject to the following for the individual's use of marijuana for medical purposes:

(1) Disciplinary action by an occupational or professional licensing board or bureau; or

(2) Forfeiture of any interest in or right to nonmarijuana, licit property.

(e)(1) This section shall only apply for arrests made after July 1, 2011, until 75 days after registration for qualified patients is available, and

(2) Thereafter, for arrests made after a valid an application for a qualifying patient has been submitted and before the registry identification card has been received.

(78 Del. Laws, c. 23, § 1.)

§ 4914A Registration of compassion centers.

(a) Compassion centers may only operate if they have been issued a valid registration certificate from the Department. When applying for a compassion center registration certificate, the applicant shall submit the following in accordance with Department regulations:

(1) An application fee in an amount determined by the Department's regulations.

(2) The proposed legal name of the compassion center.

(3) The proposed physical address of the compassion center and the proposed physical address of any additional locations, if any, where marijuana will be cultivated, harvested, packaged, labeled, or otherwise prepared for distribution by the compassion center.

(4) The name, address, and date of birth of each principal officer and board member of the compassion center, provided that all such individuals shall be at least 21 years of age.

(5) Any instances in which a business or not-for-profit that any of the prospective board members managed or served on the board of was convicted, fined, censured, or had a registration or license suspended or revoked in any administrative or judicial proceeding.

(6) Proposed operating bylaws that include procedures for the oversight of the compassion center and procedures to ensure accurate record keeping and security measures that are in accordance with the regulations issued by the Department pursuant to this chapter. The by-laws shall include a description of the enclosed, locked facility where medical marijuana will be grown, cultivated, harvested, packaged, labeled, or otherwise prepared for distribution by the compassion center.

(7) Any information required by the Department to evaluate the applicant pursuant to the competitive bidding process described in subsection (b) of this section.

(b) The Department shall evaluate applications for compassion center registration certificates using an impartial and numerically scored competitive bidding process developed by the Department in accordance with this chapter. The registration considerations shall consist of the following criteria:

(1) Documentation of not-for-profit status, consistent with § 4919A(a) of this title.

(2) The suitability of the proposed location or locations, including but not limited to compliance with any local zoning laws and the geographic convenience to patients from throughout the State of Delaware to compassion centers if the applicant were approved.

(3) The principal officer and board members' character and relevant experience, including any training or professional licensing related to medicine, pharmaceuticals, natural treatments, botany, or marijuana cultivation and preparation and their experience running businesses or not-for-profits.

(4) The proposed compassion center's plan for operations and services, including its staffing and training plans, whether it has sufficient capital to operate, and its ability to provide an adequate supply of medical marijuana to the registered patients in the State.

(5) The sufficiency of the applicant's plans for record keeping.

(6) The sufficiency of the applicant's plans for safety, security, and the prevention of diversion, including proposed locations and security devices employed.

(7) The applicant's plan for making medical marijuana available on an affordable basis to registered qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or Social Security Disability Insurance.

(8) The applicant's plan for safe and accurate packaging and labeling of medical marijuana, including the applicant's plan for ensuring that all medical marijuana is free of contaminants.

(c) No later than July 1, 2012, the Department shall issue a request for applications for compassion center registration certificates. The Department shall issue a compassion center registration certificate to the highest scoring applicant in each county by January 1, 2013. If there are only applicants from 1 or 2 counties, no later than January 1, 2013, the Department shall issue a compassion center registration certificate to the highest scoring applicant in each county with an applicant. If the revenue received from the fees generated by this chapter and donations covers the cost of implementing the program established by this chapter, certificates will be awarded.

(d) By January 1, 2014, the Department shall issue additional registration certifications to at least 3 of the highest scoring applicants not already awarded a registration certificate, provided a sufficient number of qualified additional applicants have applied. If the Department determines, after reviewing the report issued pursuant to § 4922A of this title, that additional compassion centers are needed to meet the needs of registered qualifying patients throughout the State, the Department shall issue registration certificates to the corresponding number of applicants who score the highest.

(e)(1) At any time after July 1, 2013, that the number of outstanding and valid registered compassion center certificates is lower than the number of registration certificates the Department is required to issue pursuant to subsection (d) of this section, the Department shall accept applications for compassion centers and issue registration certificates to the corresponding number of additional applicants who score the highest while ensuring at least 1 compassion center is registered in each county.

(2) Notwithstanding subsections (c), (d), and paragraph (e)(1) of this section, an application for a compassion center registration certificate must be denied if any of the following conditions are met:

a. The applicant failed to submit the materials required by this section, including if the applicant's plans do not satisfy the security, oversight, or recordkeeping regulations issued by the Department;

b. The applicant would not be in compliance with local zoning regulations issued in accordance with § 4917A of this title;

c. The applicant does not meet the requirements of § 4919A of this title;

d. One or more of the prospective principal officers or board members has been convicted of an excluded felony offense or has been convicted of a misdemeanor drug offense, as provided in Title 16 or an equivalent offense from another jurisdiction, within 5 years from the date of application that is not excluded by § 4902A(7)b.2 of this title.; and

e. One or more of the prospective principal officers or board members has served as a principal officer or board member for a registered compassion center that has had its registration certificate revoked; and

f. One or more of the principal officers or board members is younger than 21 years of age.

(f) Before a compassion center is approved, it shall submit a registration fee to the Department in the amount determined by the Department's regulations and, if a physical address had not been finalized when it applied, it shall submit a complete listing of all its physical addresses.

(g) When issuing a compassion center registration certificate, the Department shall also issue a renewable registration certificate with an identification number.

(78 Del. Laws, c. 23, § 1.)

§ 4915A Registration and certification of safety compliance facilities.

(a) Safety compliance facilities may only operate if they have been issued a valid registration certificate from the Department. When applying for a safety compliance facility registration certificate, the applicant shall submit the following in accordance with Department regulations:

(1) A nonrefundable application fee in an amount determined by the Department's regulations;

(2) The proposed legal name of the safety compliance facility;

(3) The proposed physical address of the safety compliance facility;

(4) The name, address, and date of birth of each principal officer and board member of the safety compliance facility, provided that all such individuals shall be at least 21 years of age;

(5) Any instances in which a business or not-for-profit that any of the prospective board members managed or served on the board of was convicted, fined, censured, or had a registration or license suspended or revoked in any administrative or judicial proceeding; and

(6) Any information required by the Department to evaluate the applicant pursuant to the competitive bidding process described in subsection (b) of this section.

(b) The Department shall evaluate applications for safety compliance facility registration certificates using an impartial and numerically scored competitive bidding process developed by the Department in accordance with this chapter. The registration considerations shall consist of the following criteria:

(1) The proposed principal officers' and board members' relevant experience, including any training or professional licensing related to analytical testing, medicine, pharmaceuticals, natural treatments, botany, or marijuana cultivation, preparation, and testing and their experience running businesses or not-for-profits;

(2) The suitability of the proposed location, including compliance with any local zoning laws and the geographic convenience to compassion centers from throughout the State of Delaware to registered safety compliance facilities if the applicant were approved;

(3) The sufficiency of the applicant's plans for safety, security, and the prevention of diversion, including proposed locations and security devices employed; and

(4) The proposed safety compliance facility's plan for operations and services, including its staffing and training plans, and whether it has sufficient capital to operate.

(c) The Department shall issue at least 1 safety compliance facility registration certificate to the highest scoring applicant by January 1, 2013, if the revenue received from the fees generated by this chapter and donations covers the cost of implementing the program established by this chapter.

(d)(1) The Department may issue additional safety compliance facility registration certificates to the highest scoring applicant or applicants. If the Department determines, after reviewing the report issued pursuant to § 4922A of this title, that additional safety compliance facilities are needed to meet the needs of cardholders and registered compassion centers throughout the State, the Department shall issue registration certificates to the corresponding number of applicants who score the highest.

(2) Notwithstanding subsection (c) and paragraph (d)(1) of this section, an application for a safety compliance facility registration certificate must be denied if any of the following conditions are met:

a. The applicant failed to submit the materials required by this section, including if the plans do not satisfy the security, oversight, or recordkeeping regulations issued by the Department;

b. The applicant would not be in compliance with local zoning regulations issued in accordance with § 4917A of this title;

c. The applicant does not meet the requirements of § 4919A of this title;

d. One or more of the prospective principal officers or board members has been convicted of an excluded felony offense or has been convicted of a misdemeanor drug offense, as provided in Title 16 or an equivalent offense from another jurisdiction, within 5 years from the date of application that is not excluded by § 4902A(7)b.2. of this title;

e. One or more of the prospective principal officers or board members has served as a principal officer or board member for a registered safety compliance facility or registered compassion center that has had its registration certificate revoked; and

f. One or more of the principal officers or board members is younger than 21 years of age.

(e) Before a safety compliance facility is approved, it shall submit a registration fee paid to the Department in the amount determined by Department regulation and, if a physical address had not been finalized when it applied, its physical address.

(f) When issuing a safety compliance facility registration certificate, the Department shall also issue a renewable registration certificate with an identification number. The Department shall also provide the registered safety compliance facility with the contact information for the verification system.

(78 Del. Laws, c. 23, § 1.)

§ 4916A Compassion center and safety compliance facilities renewal.

Registration certificates may be renewed every 2 years. The registered compassion center or registered safety compliance facility may submit a renewal application beginning 90 days prior to the expiration of its registration certificate. The Department shall grant a renewal application within 30 days of its submission if the following conditions are all satisfied:

(1) The registered compassion center or registered safety compliance facility submits a renewal application and the required renewal fee, which shall be refunded within 30 days if the renewal application is rejected;

(2) The Department has not suspended the registered compassion center or registered safety compliance facility's registration certificate for violations of this chapter or regulations adopted pursuant to this chapter; and

(3) The inspections authorized by § 4919A(u) of this title and the annual report, provided pursuant to § 4922A of this title, do not raise serious concerns about the continued operation of the registered compassion center or registered safety compliance facility applying for renewal.

(4) The applicant still complies with the qualifications required in §§ 4914A and 4915A of this title.

(78 Del. Laws, c. 23, § 1.)

§ 4917A Local ordinances.

Nothing shall prohibit local governments from enacting ordinances or regulations not in conflict with this chapter or with Department regulations regulating the time, place, and manner of registered compassion center operations and registered safety compliance facilities, provided that no local government may prohibit registered compassion center operation altogether, either expressly or though the enactment of ordinances or regulations which make registered compassion center and registered safety compliance facility operation unreasonably impracticable in the jurisdiction.

(78 Del. Laws, c. 23, § 1.)

§ 4918A Compassion center and safety compliance facility agents.

(a)(1) Registered compassion centers and registered safety compliance facilities shall conduct a background check into the criminal history of every person seeking to become a principal officer, board member, agent, volunteer, or employee before the person begins working at the registered compassion centers or registered safety compliance facility.

(2) A registered compassion center may not employ any person who:

a. Was convicted of an excluded felony offense;

b. Is under 21 years of age;

c. Has been convicted of a misdemeanor drug offense, as provided in Title 16 or an equivalent offense from another jurisdiction, within 5 years from the date of the application that is not excluded in § 4902A(7)b.2. of this title.

(b) A registered compassion center or safety compliance facility agent must have documentation when transporting marijuana on behalf of the registered safety compliance facility or registered compassion center that specifies the amount of marijuana being transported, the date the marijuana is being transported, the registry ID certificate number of the registered compassion center or registered safety compliance facility, and a contact number to verify that the marijuana is being transported on behalf of the registered compassion center or registered safety compliance facility.

(78 Del. Laws, c. 23, § 1.)

§ 4919A Requirements, prohibitions, penalties.

(a) A registered compassion center shall be operated on a not-for-profit basis. The bylaws of a registered compassion center shall contain such provisions relative to the disposition of revenues to establish and maintain its not-for-profit character. A registered compassion center need not be recognized as tax-exempt by the Internal Revenue Service and is not required to incorporate pursuant to Title 8.

(b) The operating documents of a registered compassion center shall include procedures for the oversight of the registered compassion center and procedures to ensure accurate recordkeeping.

(c) A registered compassion center and a registered safety compliance facility shall implement appropriate security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.

(d) A registered compassion center and a registered safety compliance facility may not be located within 500 feet of the property line of a preexisting public or private school.

(e) A registered compassion center is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying, or dispensing marijuana for any purpose except to assist registered qualifying patients with the medical use of marijuana directly or through the qualifying patients' designated caregivers.

(f) All cultivation of marijuana for registered compassion centers must take place in an enclosed, locked location at the physical address or addresses provided to the Department during the registration process, which can only be accessed by compassion center agents working or volunteering for the registered compassion center.

(g) A registered compassion center may not purchase usable marijuana or mature marijuana plants from any person other than another registered compassion center.

(h) Before marijuana may be dispensed to a designated caregiver or a registered qualifying patient, a compassion center agent must determine that the individual is a current cardholder in the verification system and must verify each of the following:

(1) That the registry identification card presented to the registered compassion center is valid;

(2) That the person presenting the card is the person identified on the registry identification card presented to the compassion center agent; and

(3) That the registered compassion center is the designated compassion center for the registered qualifying patient who is obtaining the marijuana directly or via his or her designated caregiver.

(i) A registered compassion center shall not dispense more than 3 ounces of marijuana to a registered qualifying patient, directly or via a designated caregiver, in any 14-day period. Registered compassion centers shall ensure compliance with this limitation by maintaining internal, confidential records that include records specifying how much marijuana is being dispensed to the registered qualifying patient and whether it was dispensed directly to the registered qualifying patient or to the designated caregiver. Each entry must include the date and time the marijuana was dispensed. These records must be maintained by the compassion centers for a minimum of 3 years.

(j) A registered compassion center or compassion center agent shall only dispense marijuana to a visiting qualifying patient if he or she possesses a valid Delaware registry identification card and if the procedures in subsections (h) and (i) of this section are followed.

(k) No person may advertise medical marijuana sales in print, broadcast, or by paid in-person solicitation of customers. This shall not prevent appropriate signs on the property of the registered compassion center, listings in business directories including phone books, listings in trade or medical publications, or the sponsorship of health or not-for-profit charity or advocacy events.

(l) A registered compassion center shall not share office space with nor refer patients to a physician.

(m) A physician shall not refer patients to a registered compassion center or registered designated caregiver, advertise in a registered compassion center, or, if the physician issues written certifications, hold any financial interest in a registered compassion center.

(n) No person who has been convicted of an excluded felony offense or has been convicted of a misdemeanor drug offense, as provided in Title 16 or an equivalent offense from another jurisdiction, within 5 years from the date of application that is not excluded by § 4902A(7)b.2. of this title may be a compassion center agent.

(o) The Department shall issue a civil fine of up to $3,000 for violations of this section.

(p) The Department shall suspend or revoke a registration certificate for serious or multiple violations of this chapter and regulations issued in accordance with this chapter. A registered compassion center may continue to cultivate and possess marijuana plants during a suspension, but it may not dispense, transfer, or sell marijuana.

(q) The suspension or revocation of a certificate is a final Department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

(r) Any cardholder who sells marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter shall have his or her registry identification card revoked and shall be subject to other penalties for the unauthorized sale of marijuana.

(s) Any registered qualifying patient, registered designated caregiver, compassion center agent, or safety compliance facility agent, including a principal owner, board member, employee or volunteer who has access to compassion center or safety compliance facility records, who sells marijuana to someone who is not allowed to use marijuana for medical purposes or who fails to maintain, fraudulently maintains, or fraudulently represents to the Department records required by this chapter or rules promulgated pursuant to this chapter, for the purposes of selling marijuana to someone who is not allowed to use marijuana for medical purposes under this chapter is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000, or both, in addition to any other penalties for the distribution of marijuana.

(t) The Department shall revoke the registry identification card of any cardholder who knowingly commits multiple or serious violations of this chapter.

(u) Registered compassion centers are subject to random and reasonable inspection by the Department. The Department shall give reasonable notice of an inspection under this paragraph.

(v) Fraudulent representation to a law-enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be a class B misdemeanor which may be punishable by up to 6 months incarceration at Level V under § 4204 of Title 11 and a fine of up to $1,150, as the Court deems appropriate which shall be in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use undertaken pursuant to this chapter and jurisdiction for prosecution shall be exclusively in Superior Court.

(w) Registration cards issued pursuant to § 4909A of this title shall be in the possession of the registrant while in possession of medical marijuana outside the registrant's residence and may be subject to prosecution for failure to do so. If the registrant is unable to produce a valid § 4909A of this title registration card within 2 weeks of the summons, the penalty for a violation of this section shall be an unclassified misdemeanor and jurisdiction shall be exclusively in Superior Court.

(x) For registered qualifying patients and designated caregivers, medical marijuana shall be contained, when not being prepared for ingestion or ingested and outside the registrant's residence, within, sealed, tamperproof containers issued by compassion centers pursuant to Department regulations and may be subject to prosecution for failure to do so. If the registrant is unable to produce a sealed, tamperproof container within 2 weeks of the summons, the penalty for a violation of this section shall be an unclassified misdemeanor.

(78 Del. Laws, c. 23, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4920A Confidentiality.

(a) The following information received and records kept by the Department for purposes of administering this chapter are confidential and exempt from the Delaware Freedom of Information Act [Chapter 100 of Title 29], and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of the State of Delaware to perform official duties pursuant to this chapter:

(1) Applications and renewals, their contents, and supporting information submitted by qualifying patients and designated caregivers, including information regarding their designated caregivers and physicians.

(2) Applications and renewals, their contents, and supporting information submitted by or on behalf of compassion centers and safety compliance facilities in compliance with this chapter, including their physical addressees.

(3) The individual names and other information identifying persons to whom the Department has issued registry identification cards.

(4) Any dispensing information required to be kept under § 4919A of this title or Department regulation shall identify cardholders and registered compassion centers by their registry identification numbers and not contain names or other personally identifying information.

(5) Any Department hard drives or other data-recording media that are no longer in use and that contain cardholder information must be destroyed. The Department shall retain a signed statement from a Department employee confirming the destruction.

(b) Nothing in this section precludes the following:

(1) Department employees shall notify law-enforcement about falsified or fraudulent information submitted to the Department if the employee who suspects that falsified or fraudulent information has been submitted.

(2) The Department shall notify state or local law-enforcement about apparent criminal violations of this chapter.

(3) Compassion center agents shall notify the Department of a suspected violation or attempted violation of this chapter or the regulations issued pursuant to it.

(4) The Department shall verify registry identification cards pursuant to 4921A of this title.

(5) The submission of the § 4922A of this title report to the legislature.

Information obtained pursuant to this chapter is subject to the same protections and penalties afforded other health information under the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Part 160, 162 and 164.

(78 Del. Laws, c. 23, § 1.)

§ 4921A Registry identification and registration certificate verification.

(a) The Department shall maintain a confidential list of the persons to whom the Department has issued registry identification cards and their addresses, phone numbers, and registry identification numbers.

(b) The Department shall maintain a verification system which shall be established by January 1, 2013. The verification system must allow law-enforcement personnel, compassion center agents, and safety compliance facility agents to enter a registry identification number to determine whether or not the number corresponds with a current, valid registry identification card. The system shall only disclose whether the identification card is valid; whether the cardholder is a registered qualifying patient or a registered designated caregiver; the registry identification number of the registered compassion center designated to serve the registered qualifying patient; and, if the cardholder is a registered designated caregiver, the registry identification number of the registered qualified patient who is assisted by the cardholder.

(c) The Department shall, with a cardholder's permission, confirm his or her status as a registered qualifying patient or registered designated caregiver to a landlord, employer, school, medical professional, or court.

(d) The Department shall disclose the names of any person whose registry identification card was revoked to any court where the person is seeking to assert the protections of 4913A of this title.

(78 Del. Laws, c. 23, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4922A Annual reports.

(a)(1) The legislature shall appoint a 9-member oversight committee comprised of: 1 member of the House of Representatives; 1 representative of the Department; 1 member of the Senate; 1 physician with experience in medical marijuana issues; 1 nurse; 1 board member or principal officer of a registered safety compliance facility; 1 individual with experience in policy development or implementation in the field of medical marijuana; and 3 registered patients.

(2) The oversight committee shall meet at least 2 times per year for the purpose of evaluating and making recommendations to the legislature and the Department regarding:

a. The ability of qualifying patients in all areas of the State to obtain timely access to high-quality medical marijuana.

b. The effectiveness of the registered compassion centers, individually and together, in serving the needs of qualifying patients, including the provision of educational and support services, the reasonableness of their fees, whether they are generating any complaints or security problems, and the sufficiency of the number operating to serve the registered qualifying patients of Delaware.

c. The effectiveness of the registered safety compliance facility or facilities, including whether a sufficient number are operating.

d. The sufficiency of the regulatory and security safeguards contained in this chapter and adopted by the Department to ensure that access to and use of marijuana cultivated is provided only to cardholders authorized for such purposes.

e. Any recommended additions or revisions to the Department regulations or this chapter, including relating to security, safe handling, labeling, and nomenclature.

f. Any research studies regarding health effects of medical marijuana for patients.

(b) The Department shall submit to the legislature an annual report that does not disclose any identifying information about cardholders, registered compassion centers, or physicians, but does contain, at a minimum, all of the following information:

(1) The number of applications and renewals filed for registry identification cards;

(2) The number of qualifying patients and designated caregivers approved in each county;

(3) The nature of the debilitating medical conditions of the qualifying patients;

(4) The number of registry identification cards revoked for misconduct;

(5) The number of physicians providing written certifications for qualifying patients,

(6) The number of registered compassion centers, and

(7) Specific accounting of fees and costs.

(78 Del. Laws, c. 23, § 1.)

§ 4923A Department to issue regulations.

Not later than July 1, 2012, the Department shall promulgate regulations:

(1) Governing the manner in which the Department shall consider petitions from the public to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in § 4902A(3) of this title, including public notice of and an opportunity to comment in public hearings on the petitions;

(2) Establishing the form and content of registration and renewal applications submitted under this chapter;

(3) Governing the manner in which it shall consider applications for and renewals of registry identification cards; and

(4) Governing the following matters related to registered compassion centers and security compliance facilities, with the goal of protecting against diversion and theft, without imposing an undue burden on the registered compassion centers or compromising the confidentiality of cardholders:

a. Minimum oversight requirements for registered compassion centers;

b. Minimum recordkeeping requirements for registered compassion centers;

c. Minimum security requirements for registered compassion centers, which shall include that each registered compassion center location must be protected by a fully operational security alarm system;

d. The competitive scoring process addressed in §§ 4914A and 4915A of this title;

e. Procedures for suspending or terminating the registration certificates or registry identification cards of cardholders, registered compassion centers, and registered safety compliance facilities that commit multiple or serious violations of the provisions of this chapter or the regulations promulgated pursuant to this section; and

f. The design and security features of medical marijuana containers to be provided by the compassion centers.

(5) Requiring application and renewal fees for registry identification cards, and registered compassion center registration certificates, according to the following:

a. The total fees collected must generate revenues sufficient to offset all expenses of implementing and administering this chapter, except that fee revenue may be offset or supplemented by private donations;

b. The total amount of revenue from application, renewal, and registration fees for compassion centers and security compliance facilities shall be sufficient to implement and administer the compassion center and safety compliance facility provisions of this chapter;

c. The Department may establish a sliding scale of patient application and renewal fees based upon a qualifying patient's household income; and

d. The Department may accept donations from private sources to reduce application and renewal fees.

e. The total amount of revenue from application, renewal, and registration fees for compassion centers, security compliance facilities, and registry identification cards will be deposited to a special account within the Department for the operation of the program created by this chapter and shall be used as necessary to support program operations and growth.

(78 Del. Laws, c. 23, § 1.)

§ 4924A Enforcement of this chapter.

If the Department fails to adopt regulations to implement this chapter within the times provided for in this chapter, any citizen may commence an action in Superior Court to compel the Department to perform the actions mandated pursuant to the provisions of this chapter.

(78 Del. Laws, c. 23, § 1.)

§ 4925A Severability.

Any section of this chapter being held invalid as to any person or circumstance shall not affect the application of any other section of this chapter that can be given full effect without the invalid section or application.

(78 Del. Laws, c. 23, § 1.)

§ 4926A Date of effect.

This chapter shall take effect on the first day of the fiscal year following its enactment into law. If, however, the chapter, is not enacted before July 1, 2011, then the effective date shall be 90 days from enactment. [The chapter became effective on July 1, 2011.]

(78 Del. Laws, c. 23, § 1.)

Part V
Mental Health
Chapter 50
INVOLUNTARY COMMITMENT OF PERSONS WITH MENTAL CONDITIONS; DISCHARGE; PROCEDURE

§ 5001 Definitions.

Except where the context indicates otherwise, as used in this chapter:

(1) "Credentialed mental health screener" means an individual who is:

a. A psychiatrist; or

b. A licensed mental health professional who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition; or

c. An unlicensed mental health professional who works under the direct supervision of a psychiatrist and who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition; or

d. A physician with a valid State of Delaware license to practice medicine and who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition.

(2) "Court" means the Superior Court or the Family Court of the State, both of which courts shall have jurisdiction and responsibility for the implementation of this chapter.

(3) "Dangerous to others" means that by reason of mental condition there is a substantial likelihood that the person will inflict serious bodily harm upon another person within the immediate future. This determination shall take into account a person's history, recent behavior and any recent act or threat.

(4) "Dangerous to self" means that by reason of mental condition there is a substantial likelihood that the person will imminently sustain serious bodily harm to oneself. This determination shall take into account a person's history, recent behavior, and any recent act or threat.

(5) "Department" means the State of Delaware Department of Health and Social Services. "Department" shall also mean the Department of Services to Children, Youth, and their Families for individuals under the age of 18 or otherwise are in custody of the Department of Services to Children, Youth, and their Families or receiving financial assistance from the Department of Services to Children, Youth, and their Families.

(6) "Designated psychiatric treatment facilities" means all facilities designated by the Secretary to provide psychiatric emergency care for individuals believed to have a mental condition and whose behavior is believed to be dangerous to self or dangerous to others; such facilities include psychiatric hospitals operated by the State of Delaware, privately operated psychiatric hospitals, any psychiatric emergency receiving facilities that provide mental health screenings, evaluations, treatment, and referral services, or other facilities as may be designated by the Department by regulation.

(7) "Designated transport personnel" means such personnel as designated by the Secretary to transport persons with mental conditions to and from needed health-care services provided in hospitals and designated psychiatric treatment facilities, pursuant to this chapter; these personnel include peace officers, private ambulance staff, state employees and contracted transportation staff as approved by the Department. Any peace officer involved may mandate the manner and method of transportation of persons who require such transport when required to ensure public safety.

(8) "Emergency detention" and "emergently detained" means the process whereby an adult who appears to have a mental condition, and whose mental condition causes the person to be dangerous to self or dangerous to others, and who is unwilling to be admitted to a facility voluntarily for assessment or care, is involuntarily detained for such evaluation and treatment for 24 hours in a designated psychiatric facility because other less restrictive, more community integrated services are not appropriate or available to meet the person's current mental health-care needs. Emergency detention shall also mean the process whereby a minor who appears to have a mental condition, and whose mental condition causes the person to be dangerous to self or dangerous to others, and who is unwilling to be admitted to a facility voluntarily for assessment or care, is involuntarily detained for such evaluation and treatment for 24 hours unless the parent or legal guardian is unavailable to the Department during that 24-hour period; in such instances the time period may be extended to 72 hours.

(9) "Hospital" means the Delaware Psychiatric Center and any hospital in this State which is certified by the Secretary of the Department of Health and Social Services as being an appropriate facility for the diagnosis, care and treatment of persons with mental conditions 18 years of age or older. "Hospital" shall also mean any hospital in this State which is certified by the Secretary of the Department of Services for Children, Youth and Their Families as being an appropriate facility for the diagnosis, care and treatment of persons with mental conditions under 18 years of age.

(10) "Involuntary patient" means a person admitted pursuant to emergency detention, provisional admission, a complaint for involuntary civil commitment, a probable cause hearing or an involuntary inpatient commitment hearing to the custody of a designated psychiatric treatment facility or hospital for observation, diagnosis, care and treatment.

(11) "Juvenile mental health screener" means a person authorized by the Department of Services for Children, Youth and Their Families to assess individuals under the age of 18 for emergency detention. Juvenile mental health screeners shall have the same duties, authority, rights, and protections, including the immunity provisions of this chapter, as "credentialed mental health screeners" when the term "credentialed mental health screeners" is utilized throughout this chapter. The Department of Services for Children, Youth and Their Families is authorized to establish regulations concerning the credentialing process and criteria for juvenile mental health screeners.

(12) "Licensed independent practitioner" means employees of designated psychiatric treatment facilities, in addition to psychiatrists, who hold credentials and privileges to admit persons into care and write orders to treat said persons in that facility. Licensed independent practitioners can include but are not limited to staff that hold licenses as psychologists, advanced practices nurses, and physician assistants or such other health-care providers as may be designated to work independently pursuant to the regulations of the Department.

(13) "Mental condition" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior, or capacity to recognize reality. Unless it results in the severity of impairment described herein, "mental condition" does not mean simple alcohol intoxication, transitory reaction to drug ingestion, dementia due to various nontraumatic etiologies or other general medical conditions, Alzheimer's disease, or intellectual disability. The term "mental condition" is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

(14) "Peace officer" means any public officer authorized by law to make arrests in a criminal case.

(15) "Psychiatrist" means an individual who possesses a valid State of Delaware license to practice medicine and has completed a residency training program approved by the Accreditation Council for Graduate Medical Education in psychiatry.

(16) "Secretary" means the Secretary of the State of Delaware Department of Health and Social Services. "Secretary" shall also mean the Secretary of the Department of Services to Children, Youth, and their Families for individuals under the age of 18 or otherwise are in custody of the Department of Services to Children, Youth, and their Families or receiving financial assistance from the Department of Services to Children, Youth, and their Families.

(17) "Serious bodily harm" means physical injury which creates a substantial risk of death, significant and prolonged disfigurement, significant impairment of health, or significant impairment of the function of any bodily organ.

(18) "Voluntary patient" means a person who voluntarily seeks treatment at, and is admitted to, a designated psychiatric treatment facility or hospital for inpatient treatment of a mental condition.

(19) "Working day" means any day other than a Saturday, Sunday and legal holiday; and "day" means a calendar day.

(60 Del. Laws, c. 95, § 1; 62 Del. Laws, c. 300, § 1; 66 Del. Laws, c. 424, § 2; 68 Del. Laws, c. 309, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, §§ 1-4; 78 Del. Laws, c. 179, §§ 168-172; 79 Del. Laws, c. 442, § 1.)

§ 5002 Determination of mental condition and of procedural compliance as prerequisites to involuntary hospitalization.

No person shall be involuntarily admitted to or confined as an involuntary patient at a designated psychiatric treatment or hospital, and no designated psychiatric treatment facility or hospital shall involuntarily admit or confine as an involuntary patient any person, unless such person is determined to be a person with a mental condition and found to be dangerous to self or dangerous to others in accordance with the procedures prescribed by this chapter, and unless the procedural requirements of this chapter are complied with. A person may not be admitted to or confined as an involuntary patient at a designated psychiatric treatment facility or hospital unless it is determined that such placement is the least restrictive intervention reasonably available and the person has declined voluntary treatment. No person shall be deemed "involuntarily committed" for any legal purpose until the court deems the person an "involuntarily committed" person at the conclusion of a probable cause hearing held pursuant to this chapter.

(60 Del. Laws, c. 95, § 1; 78 Del. Laws, c. 179, §§ 173, 174; 79 Del. Laws, c. 442, § 1.)

§ 5003 Voluntary admission procedure.

(a) The Department may establish, under the direction and supervision of the Delaware Psychiatric Center, criteria for voluntary admissions to designated psychiatric treatment facilities and hospitals that differ from the criteria for involuntary admissions to designated psychiatric treatment facilities and hospitals.

(b) A psychiatrist or licensed independent practitioner who is credentialed and authorized by the Division of Substance Abuse and Mental Health may admit to a designated psychiatric treatment facility or hospital for observation, diagnosis, care and treatment any individual who is a person with an apparent mental condition or who has symptoms of a mental condition and who requests admission subject to the payment of charges for care, maintenance and support as provided in § 5020 of this title.

(c) Prior to admitting a person on a voluntary basis, the designated psychiatric treatment facility or hospital must notify the person verbally and in writing of the legal consequences of voluntary admission in language that is understandable to the person, and reasonably believe that the person comprehends such consequences, including but not limited to:

(1) The person will not to be allowed to leave the hospital grounds without permission of the treating psychiatrist;

(2) If the person seeks discharge prior to the discharge recommended by the person's treatment team, the person's treating psychiatrist may initiate the involuntary inpatient commitment process if the psychiatrist believes the individual presents a danger to self or danger to others; and

(3) Unless the involuntary commitment process is initiated, the person will not have the hospitalization reviewed by the court.

(d) The attending psychiatrist shall discharge a voluntary patient when in-patient treatment is no longer clinically indicated.

(e) A voluntary patient may make a written request to the attending psychiatrist to be discharged at any time. Upon the receipt of such request, the attending psychiatrist shall discharge the person within 72 hours from the receipt of the request, except if a psychiatrist or licensed independent practitioner certifies that the voluntary patient is currently demonstrating behaviors believed to be dangerous to self or dangerous to others and these behaviors are documented in the medical record, an emergency detention may be initiated for the person. No person may be involuntarily hospitalized unless in compliance with the emergency detention procedures set forth in § 5004 of this title.

(f) If any applicant is under the age of 18 years old, the following provisions shall apply:

(1) In the case of voluntary admission to a designated psychiatric treatment facility or hospital, consent to treatment shall be given only by a parent or legal guardian. The request for admission to the designated psychiatric treatment facility or hospital shall be signed by either the applicant's parent or legal guardian.

(2) A voluntary patient or the voluntary patient's parent or legal guardian may make a written request to the attending psychiatrist to be discharged at any time.

a. The provisions of subsection (e) of this section shall apply in such instances, except that the voluntary patient's discharge may be conditioned upon the consent of the voluntary patient's parent or legal guardian.

b. If the parent or legal guardian of a voluntary patient requests the patient's discharge from a treatment facility against the advice of the treatment team and administrator of the facility, the facility may initiate involuntary treatment procedures as provided for under this chapter. The provisions of this paragraph shall apply as if the patient had made the request.

(3) *Voluntary outpatient treatment.* — A person between 14 and 18 years of age, who is in need of mental health treatment, may request voluntary outpatient treatment from a licensed treatment facility or community provider. If the individual in need of treatment is a minor under 14 years of age, a parent, legal custodian, or legal guardian shall make the request for voluntary outpatient mental health treatment and give written consent for treatment.

a. If a minor is 14 years of age or over, then either the minor, or a parent, legal custodian, or legal guardian may give written consent to a treatment facility or community provider for voluntary, outpatient treatment.

b. Consent so given by a minor 14 years of age or over shall, notwithstanding the minor's minority, be valid and fully effective for all purposes and shall be binding upon such minor, the minor's parents, custodian, and legal guardian as effectively as if the minor were of full legal age at the time of giving such written consent. The consent of no other person or court shall be necessary for the treatment rendered such minor.

c. A minor's consent is not necessary when a parent, legal custodian, or legal guardian of an individual less than 18 years of age provides consent to voluntary outpatient mental health treatment on behalf of the minor.

d. A minor, including those age 14 and older, may not abrogate consent provided by a parent, legal custodian, or legal guardian on the minor's behalf. Nor may a parent, legal custodian, or legal guardian abrogate consent given by a minor age 14 and older on his or her own behalf.

e. This section does not authorize a minor to receive psychotropic drugs without the consent of the minor's parent, legal custodian, or legal guardian. Only a parent, legal guardian, or legal custodian may provide consent for the administration of such medication.

(4) A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review to determine whether an applicant who receives financial assistance from such Department or who is in the custody of such Department is appropriate for voluntary hospitalization.

(g) Notwithstanding any other section of the Delaware Code, the Medical Director of the Department's Division of Substance Abuse and Mental Health shall have the independent authority to discharge persons at the Delaware Psychiatric Center.

(h) The Department will pay for a voluntary admission of a patient to a designated psychiatric treatment facility or hospital pursuant to the same Departmental criteria as an involuntary admission or community placement.

(79 Del. Laws, c. 442, § 1.)

§ 5004 Emergency detention of a person with a mental condition; justification; procedure.

(a) Any person who believes that another person's behavior is both the product of a mental condition and is dangerous to self or dangerous to others may notify a peace officer or a credentialed mental health screener or juvenile mental health screener and request assistance for said person. Upon the observation by a peace officer or a credentialed mental health screener or juvenile mental health screener that such individual with an apparent mental condition likely constitutes a danger to self or danger to others, such person with an apparent mental condition shall be promptly taken into custody for the purpose of an emergency detention by any peace officer in the State without the necessity of a warrant. Any such observation shall be described in writing and shall include a description of the behavior and

symptoms which led the peace officer or credentialed mental health screener or juvenile mental health screener to such conclusion. The documentation required herein shall set forth any known relationship between the person making the complaint and any other connection to the person with an apparent mental condition and, if known, the name of the nearest known relative.

(b) An emergency detention may only be initiated by a credentialed mental health screener or, if the individual is under the age of 18, by a juvenile mental health screener. An individual may be held on an emergency detention if it reasonably appears to a credentialed mental health screener or juvenile mental health screener that the person is acting in a manner that appears to be dangerous to self or dangerous to others. The credentialed mental health screener or juvenile mental health screener shall verify this finding in writing and complete the Department-approved emergency detention form; this documentation shall include the credentialed mental health screener or juvenile mental health screener's rationale for the detention, including specific information regarding the alleged mental condition and dangerous behaviors observed. Once the emergency detention form is completed, designated transportation personnel shall be directed by the Department to transport the person to a designated psychiatric treatment facility to for an evaluation. The emergency detention does not start until the person is presented to a designated psychiatric treatment facility.

(c) An emergency detention will result in admission to a designated psychiatric treatment facility for psychiatric observation, assessment, acute treatment, and any recommendations for referral for other services. Any referral for an emergency detention shall include a review of any advance health-care directive as set forth in this title or any other similar agreement relating to the person's wishes regarding potential hospitalization, care, treatment, and notifications to others if known to the credentialed mental health screener and available for review at the time of such referral.

(d) Individuals under the age of 18 may be emergently detained when the minor's parent or legal guardian is unwilling to consent to the individual being admitted to a facility voluntarily for assessment or care, or whose parent or legal guardian cannot be identified and located. A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review of a determination that a person under 18 years of age admitted to a designated psychiatric treatment facility or hospital pursuant to an emergency detention is dangerous to self or dangerous to others.

(e) Once an individual is emergently detained in a designated psychiatric treatment facility pursuant to subsection (c) of this section, a psychiatrist shall review all documentation, conduct an examination of the individual, and document the findings of examination within the emergency detention time period both in the person's medical record and the emergency detention findings form. If the examining psychiatrist finds that the individual with an apparent mental condition is not dangerous to self and is not dangerous to others the psychiatrist shall certify these specific findings in writing and the individual who has been emergently detained shall be discharged from custody forthwith. All documentation required by this section will be recorded and retained in the medical record of that individual and reported to the Delaware Division of Substance Abuse and Mental Health, or if the individual is a minor to the Division of Prevention and Behavioral Health Services, upon the discharge of the individual.

(f) If, at any time, an individual who is emergently detained agrees to go to a designated psychiatric treatment facility for further observation, a voluntary admission will be sought to fulfill the needed evaluation and the emergency detention order will become void. If a physician affiliated with an emergency department has completed an emergency medicine health assessment, as determined solely by such physician, and refers the patient to a credentialed mental health screener or juvenile mental health screener, with or without consultation with a psychiatrist, such a referral constitutes an appropriate discharge plan and after such discharge the physician affiliated with an emergency department will have no further responsibility for the evaluation and disposition of the patient.

(g) In the event that the psychiatrist at a designated psychiatric treatment facility determines that the person who has been emergently detained meets the criteria for further care and treatment and that such required care cannot be provided in an available, less restrictive, more community-integrated setting, such psychiatrist shall immediately initiate the provisional admission process as set forth in § 5005 of this title. Any such determination must be based upon observed and evaluated behavior and, if available, reliable information provided by other sources regarding the person's mental condition. Any involuntary commitment of said person shall be only to a hospital designated by the Secretary to provide such care and treatment.

(h) A designated psychiatric treatment facility that receives a minor on an emergency detention shall promptly make a reasonable and good-faith effort to contact that person's parent or legal guardian.

(i) All professional personnel employed by the State or private providers are mandated to disclose any potential or apparent conflicts of interest regarding their participation in the emergency detention of any individual with an apparent mental condition to any psychiatric facility. Such conflicts of interest shall be disclosed on the emergency detention form and may include, but are not limited to, employment by a privately operated psychiatric facility, a personal relationship with the individual being detained or committed involuntarily, a relationship with family or significant others of the individual being detained or committed involuntarily, or being the victim of a crime by the person being detained or committed involuntarily.

(j) No person will be detained or otherwise involuntarily committed to a designated psychiatric treatment facility unless a credentialed mental health screener or juvenile mental health screener determines that such detention or commitment is the least restrictive and most community-integrated means to adequately treat the person that is immediately available.

(k) The Department is authorized to establish regulations consistent with this chapter. These regulations shall include rules regarding the disclosure by credentialed mental health screeners and juvenile mental health screeners of potential conflicts of interest.

(79 Del. Laws, c. 442, § 1.)

§ 5005 Provisional hospitalization by psychiatrist's certification.

(a) No person will be involuntarily admitted to a hospital as a patient until the person is detained for observation pursuant to the procedure set forth in § 5004 of this title. At the completion of the emergency detention period, the person shall not be admitted to a hospital except pursuant to the written certification of a psychiatrist that based upon the psychiatrist's examination of such person:

(1) Appears to be a person with a mental condition;

(2) The person has been offered voluntary inpatient treatment and has declined such care and treatment or lacks the capacity to knowingly and voluntarily consent to such care and treatment;

(3) As a result of the person's apparent mental condition, the person poses a present threat, based upon manifest indications, of being dangerous to self or dangerous to others; and

(4) Less restrictive alternatives have been considered and determined to be clinically inappropriate at the present time.

(b) The psychiatrist's certificate shall state with particularity the behavior and symptoms upon which the psychiatrist's opinion is based, shall include (where available) the name and address of the spouse or other nearest relative or person of close relationship to the alleged person with a mental condition, and shall state that such person is not willing to accept hospital care and treatment on a voluntary basis or that the person is incapable of voluntarily consenting to such care and treatment. The certificate shall also set forth the date of the psychiatrist's determination. The hospital shall thereupon advise the involuntary patient of the patient's rights under this chapter in language that is understandable to the individual. Upon completion of the psychiatrist's certificate, the individual shall be detained for an additional 48-hour period.

(c) If the examining psychiatrist at the hospital determines that the involuntary patient no longer meets the criteria for provisional admission, the psychiatrist shall so certify in writing and the hospital shall immediately discharge the person. Prior to such discharge, the hospital shall provide the person with a copy of the certificate stating that the person was not involuntarily committed for any legal purpose.

(d) If the person seeks voluntary care and treatment after being provisionally admitted under this section, the provisional admission will terminate and the person shall be voluntarily admitted to a hospital without delay.

(e) The 48-hour observation period prescribed in this section shall be referred to as "provisional admission." An individual who is provisionally admitted pursuant to this chapter shall not be considered "involuntarily committed" for any legal purpose.

(60 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 175; 79 Del. Laws, c. 442, § 1.)

§ 5006 Duties of hospital upon provisional admission.

During the 48-hour period of provisional admission:

(1) The hospital shall try to evaluate the involuntary patient to assess the person's psychological and physical needs, and may provide treatment to the involuntary patient as clinically appropriate and consistent with the State's Mental Health Patients' Bill of Rights pending the involuntary patient's probable cause hearing;

(2) A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may, at any time prior to the commencement of judicial proceedings to determine the mental condition of a minor or an individual over the age of 18 who is receiving financial assistance or is in the custody of the Department, conduct an independent review of a determination that such a person is a person with a mental condition. If the psychiatrist determines that such person is not a person with a mental condition, the Department may withhold financial assistance for the diagnosis, care or treatment of such person;

(3) The hospital shall document in the patient's medical record whether or not the involuntary patient can afford counsel and an independent psychiatrist or other licensed mental health professional to serve as an expert witness on the individual's behalf.

(60 Del. Laws, c. 95, § 1; 66 Del. Laws, c. 424, §§ 3, 4; 68 Del. Laws, c. 310, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 177, 178; 79 Del. Laws, c. 442, § 1.)

§ 5007 Procedural rights of involuntary patients.

When a designated treatment facility, hospital or outpatient treatment provider seeks to require an individual to be involuntarily hospitalized pursuant to a probable cause hearing or an involuntary inpatient commitment hearing, or seeks to have the individual placed on involuntary outpatient treatment over objection, or engage in a specific mode of treatment without the individual's consent, the individual shall be entitled:

(1) To notice, including a written statement, of the factual grounds upon which the proposed hospitalization, outpatient treatment over objection, or treatment without consent is predicated and the reasons for the necessity of such course of action.

(2) To hearings before the court and to judicial determinations of whether or not the individual satisfies the requirements for a probable cause hearing, involuntary inpatient commitment, outpatient treatment over objection, or treatment without consent pursuant to the criteria set out in the relevant sections of this chapter. Such hearings shall be without jury and not open to the public, shall be preceded by written notice to the individual, and the individual shall be entitled to be present at all such hearings.

(3) To be represented by counsel at all judicial proceedings, such counsel to be court-appointed if the individual cannot afford to retain counsel; and to be examined by an independent psychiatrist or other qualified medical expert and to have such psychiatrist or other expert testify as a witness on the individual's behalf, such witness to be court appointed if the involuntary patient cannot afford to retain such witness.

(4) To conduct discovery, to summon and cross-examine witnesses, to present evidence on the person's own behalf and to avail the individual's own self of all other procedural rights afforded litigants in civil causes. The privilege against self-incrimination shall be applicable to all proceedings under this chapter.

(5) To have a full record made of the proceedings, including findings adequate for review. All records and pleadings shall remain confidential unless the court for good cause orders otherwise.

(6) To be notified in writing of the right to appeal a decision made by the court pursuant to § 5014 of this title.

(60 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 179; 79 Del. Laws, c. 442, § 1.)

§ 5008 Probable cause complaint.

(a) If an involuntary patient has not been discharged by the hospital by the end of the 48-hour provisional admission period, the hospital shall file a verified complaint for involuntary civil commitment in the Superior Court or in the Family Court if the involuntary patient would otherwise be amenable to Family Court jurisdiction under other provisions of law. The complaint shall set forth in detail facts to show that the hospital, as petitioner, reasonably and in good faith believes that the involuntary patient (who shall be named as respondent) is a person who meets the standard for involuntary inpatient commitment set forth in § 5011 of this title, and who should be continued as a patient at the hospital pursuant to this chapter until the patient is determined no longer to meet the criteria for involuntary inpatient hospitalization. The complaint shall also aver that the involuntary patient has been advised of the patient's rights under this chapter. Copies of the emergency detention certificate and the provisional admission certificate shall be attached to the complaint. A notarized affidavit indicating that a hospital official has reviewed each complaint shall be filed, with the original copy sent to the court to be maintained in the patient's file.

(b) The hospital's affidavit filed with the complaint shall indicate whether the involuntary patient is able to afford counsel and whether the patient requested an independent psychiatric witness.

(60 Del. Laws, c. 95, § 1; 62 Del. Laws, c. 300, §§ 2-5; 68 Del. Laws, c. 310, §§ 2, 3; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 180; 79 Del. Laws, c. 442, § 1.)

§ 5009 Probable cause hearing.

Upon the filing of the probable cause complaint the court shall forthwith:

(1) Schedule a probable cause hearing to determine whether probable cause exists for the involuntary patient's confinement, and, where necessary, appoint counsel to represent the involuntary patient. Such probable cause hearing shall be held as soon as practicable, but no later than 8 working days from the filing of the complaint. Hearings may be conducted using electronic means, such as video conferencing.

(2) Direct that notice of the probable cause hearing and copies of the pleadings be supplied to the involuntary patient, the patient's counsel and to the involuntary patient's spouse, other relative, close personal friend of the patient or any other person identified by the patient, provided that the patient is given the opportunity to agree, prohibit, or restrict the disclosure.

(3) Enter such other orders as may be appropriate, including an order authorizing the continued provisional confinement of the involuntary patient until further order of the court.

(4) If, pursuant to the probable cause hearing, the court determines that probable cause does not exist for involuntary inpatient commitment, the involuntary patient shall be immediately discharged. If the court determines that probable cause does exist for involuntary inpatient commitment, it shall schedule an involuntary inpatient commitment hearing, pursuant to § 5011 of this title, for the earliest practicable date, and no later than 8 working days after the probable cause hearing; and where necessary, it shall appoint an independent psychiatrist or other qualified medical expert to examine the involuntary patient and act as an expert witness on the involuntary patient's behalf. Notice of the hearing shall be given to the involuntary patient and the patient's counsel.

(5) If the court determines that probable cause does not exist for involuntary inpatient commitment, but finds that an individual meets the criteria for outpatient treatment over objection, the court may order that an individual be placed on outpatient treatment over objection, pursuant to § 5013 of this title, and the next hearing shall be scheduled for 3 months after the probable cause hearing. The court may only place an individual on outpatient treatment over objection at a probable cause hearing if the issue has been appropriately noticed.

(6) For good cause shown, the court may order that judicial proceedings under this chapter take place in the court in and for a county other than the county in which the action was initiated.

(7) For purposes of this chapter and for any other legal purpose, no person shall be considered "involuntarily committed" until the court so orders following a probable cause hearing held pursuant to the requirements of this chapter.

(60 Del. Laws, c. 95, § 1; 62 Del. Laws, c. 300, § 6; 68 Del. Laws, c. 310, § 4; 78 Del. Laws, c. 179, § 181; 79 Del. Laws, c. 442, § 1.)

§ 5010 Discharge by the hospital.

Notwithstanding the pendency of the action or any order previously entered by the court, if at any time after the complaint is filed the hospital determines that the involuntary patient no longer meets the criteria for provisional admission or involuntary inpatient commitment,

the hospital shall so certify in writing and immediately discharge the person and advise the court of its determination and the discharge. Upon receipt of such certification, the court shall dismiss the action. A person involuntarily hospitalized pursuant to the emergency detention, provisional admission or involuntary commitment sections of this chapter may be discharged pursuant to this section without further order of the court.

(60 Del. Laws, c. 95, § 1; 78 Del. Laws, c. 179, § 182; 79 Del. Laws, c. 442, § 1.)

§ 5011 Involuntary inpatient commitment hearing and procedure.

(a) An individual shall be involuntarily committed for inpatient treatment only if all of the following criteria are met by clear and convincing evidence:

(1) The individual is a person with a mental condition;

(2) Based upon manifest indications, the individual is:

a. Dangerous to self; or

b. Dangerous to others;

(3) All less restrictive alternatives have been considered and determined to be clinically inappropriate at the time of the hearing; and

(4) The individual has declined voluntarily inpatient treatment, or lacks the capacity to knowingly and voluntarily consent to inpatient treatment. When evaluating capacity, the court shall consider an individual's ability to understand the significant consequences, benefits, risks, and alternatives that result from the individual's decision to voluntarily request or decline inpatient treatment.

(b) The court shall set out specific findings of facts and conclusions of law which address each of the required criteria for involuntary commitment and which support its decision to involuntarily commit or discharge the individual.

(c) If the court determines that an individual meets the criteria for involuntary commitment, the court shall enter an order of disposition which shall not exceed 3 months based upon the court's individualized assessment of the facts and circumstances at the time of the hearing.

(d) Upon the expiration of the court order pursuant to subsection (c) of this section, if the individual has not been discharged by the hospital, and the hospital believes that the individual continues to require involuntary commitment, the court shall schedule a subsequent hearing which will be held in compliance with § 5007 of this title and this section. The individual shall be entitled to at least 14 working days' notice of any subsequent hearings. As long as an individual receives involuntary inpatient treatment, the court must convene a hearing in compliance with § 5007 of this title and this section at least once every 3 months to review whether continued involuntary inpatient treatment is necessary.

(e) An individual, if represented by counsel, may waive, orally or in writing, any hearing under this section. The waiver must be submitted in writing to the court or be orally presented in open court.

(60 Del. Laws, c. 95, § 1; 68 Del. Laws, c. 310, §§ 6-8; 78 Del. Laws, c. 179, § 186; 79 Del. Laws, c. 442, § 1.)

§ 5012 Waiver of rights; voluntary hospitalization.

(a) An involuntary patient may waive any of the rights provided by this chapter if:

(1) The court determines that such waiver is voluntary and with the involuntary patient's knowing and intelligent consent; or

(2) Where the involuntary patient is incapable of knowingly and intelligently consenting, the court, upon application by counsel and after appropriate inquiry and finding of facts, approves such waiver for good cause shown.

If the hearing provided for in § 5011 of this title is waived, the court shall enter an order of disposition in accordance with § 5011(c) of this title.

(b) If prior to any hearing the court determines that the involuntary patient has knowingly and voluntarily applied for, and has been accepted for hospitalization pursuant to § 5003 of this title, the action shall be dismissed, and § 5003 of this title shall govern.

(c) A legal guardian may not waive any right of an adult, including any right related to admission and judicial review, under this chapter.

(60 Del. Laws, c. 95, § 1; 79 Del. Laws, c. 442, § 1.)

§ 5013 Involuntary outpatient treatment over objection.

(a) A person shall be involuntarily committed by the court for outpatient treatment over objection only if all of the following criteria are satisfied by clear and convincing evidence:

(1) The person is 18 years of age or older.

(2) The person has a documented mental condition.

(3) The person is reasonably expected to become dangerous to self or dangerous to others or otherwise unlikely to survive safely in the community without treatment for the person's mental condition.

(4) The person is currently refusing to voluntarily participate in the treatment plan recommended by the person's mental health treatment provider or lacks the capacity to determine whether such treatment is necessary.

(5) The person has a documented history of lack of adherence with recommended treatment for the mental condition, or poses an extreme threat of danger to self or danger to others based upon recent actions, that has either:

a. Resulted in a deterioration of functioning that was observed to be dangerous to the individual's personal health and safety; or

b. Resulted in a deterioration of functioning that was observed to be imminently dangerous to self or dangerous to others, including but not limited to suicidal ideation, violent threats, or violence towards others.

(6) All less restrictive treatment options have been considered and have either been determined to be clinically inappropriate at this time or evidence is offered to show that the person is not likely to adhere to such options.

(b) The court shall set out specific findings of facts and conclusions of law which address each of the required criteria for involuntary outpatient treatment over objection and which support its decision to involuntarily commit or discharge the individual.

(c) If the court determines that an individual meets the criteria for involuntary outpatient treatment over objection, the court shall enter an order of disposition which shall not exceed 3 months based upon the court's individualized assessment of the facts and circumstances at the time of the hearing.

(d) The Department is responsible for ensuring the provision of all necessary services and supports to fully implement the court order, or for informing the court as quickly as possible if such services are not available and providing the court with an explanation of why such services are not available and when they are anticipated to become available.

(e) Notwithstanding an order entered by the court pursuant to this section, an individual may be discharged by the individual's treating psychiatrist at any time if the treating psychiatrist determines that the individual no longer meets the clinical criteria for involuntary outpatient commitment. Upon such determination the psychiatrist shall so certify in writing and advise the court of its determination and the discharge. Upon the receipt of such certification, the court shall dismiss the action.

(f) An individual or the individual's counsel may waive, orally or in writing, any hearing under this section. The waiver must be submitted in writing to the court or be orally presented in open court.

(g) Should an individual committed by the court to involuntary outpatient treatment over objection engage in behavior in the community that is dangerous to self or dangerous to others, an emergency detention, consistent with § 5004 of this title, may be initiated. No individual may be involuntarily hospitalized unless the individual is initially emergently detained and is given the due process protections provided for in this chapter.

(79 Del. Laws, c. 442, § 1.)

§ 5014 Appeal; habeas corpus; rules of procedure.

(a) Any party to the proceedings may appeal an order of disposition issued by a Commissioner to either a Superior Court Judge or Family Court Judge as appropriate within 10 days of the entry of such order. The appeal shall not operate as a stay of the order of disposition unless the Commissioner or Judge so directs. A decision by a Superior Court Judge or a Family Court Judge may be appealed to the Supreme Court within 30 days of the entry of such order. The appeal shall not operate as a stay of the order of disposition unless the court or the Supreme Court so directs.

(b) After any order of disposition becomes final, the involuntary patient shall be entitled to petition the court for a writ of habeas corpus for release on the grounds:

(1) That the proceeding which led to the patient's commitment was illegal; provided, that that issue has not been previously determined; or

(2) That although the original confinement was legal, continued confinement is not warranted.

(c) The Superior Court and the Family Court shall adopt such rules of procedure as may be required to implement the procedural requirements of this chapter.

(60 Del. Laws, c. 95, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 442, § 1.)

§ 5015 Enlargement of time.

The court may enlarge the time for the performance of acts by the hospital or respondent's attorney pursuant to this chapter, and of scheduling hearings thereunder, for good cause shown, for a reasonable period, consistent with the rights of the respondent.

(62 Del. Laws, c. 300, § 7; 79 Del. Laws, c. 442, § 1.)

§ 5016 Payment of transportation and medical costs.

(a) The State Treasurer shall pay peace officers or other transportation providers under contract with the Department of Health and Social Services for transportation services under this chapter at an agreed-upon rate, including a custody fee and mileage traveled.

(b) The State Treasurer shall pay third-party medical and dental providers at a contractually agreed-upon rate for services rendered for the medically necessary treatment of persons receiving mental health treatment and services pursuant to this chapter.

(68 Del. Laws, c. 309, § 3; 75 Del. Laws, c. 349, § 1; 78 Del. Laws, c. 179, § 187; 79 Del. Laws, c. 442, § 1.)

§ 5017 Immunity.

(a) *Initial assessment.* — No peace officer, medical doctor, credentialed mental health screener, juvenile mental health screener, or facility in which a medical doctor or credentialed mental health screener or juvenile mental health screener practices shall be subject to civil damages or criminal penalties for any harm resulting from the performance of their functions under this section unless such harm was intentional or the result of wilful or wanton misconduct on their part. This immunity is limited to the mental health assessment, resulting

clinical decision, and involuntary hold necessary until the person is presented to a designated psychiatric treatment facility that is able to provide such psychiatric health-care services for the emergency detention described in § 5001(8) of this title.

(b) *Emergency detention.* — After the person presents to the designated psychiatric treatment facility and during the emergency detention period described in § 5001(8) of this title, no medical doctor or designated psychiatric treatment facility shall be subject to civil damages or criminal penalties for any harm to the person with a mental condition resulting from the performance of functions under § 5004(e) of this title unless such harm was the result of negligent, reckless, wilful, wanton and/or intentional misconduct.

(c) *Subsequent care.* — After the person is voluntarily admitted, provisionally admitted or involuntarily committed, no peace officer or medical doctor shall be subject to civil damages or criminal penalties for any harm to the person with a mental condition resulting from the performance of the officer's or doctor's own functions of this title unless such harm was the result of negligent, reckless, wilful, wanton and/or intentional misconduct on the officer's or doctor's own part.

(d) Nothing in this section is intended to waive the State's sovereign immunity or the privileges and immunities set forth at Chapter 40 of Title 10.

(79 Del. Laws, c. 442, § 1.)

§ 5018 Discharge of patients from hospitals.

(a) Hospitals shall examine every involuntary patient and voluntary patient present in its facility as frequently as practicable, but not less often than every 3 months. If pursuant to such examination a person's treating psychiatrist determines that a person no longer satisfies the criteria for involuntary hospitalization pursuant to the emergency detention, provisional admission or involuntary court commitment sections of this chapter, or as established for voluntary treatment under § 5003(a) of this title, the patient shall be discharged. A person involuntarily hospitalized pursuant to the emergency detention, provisional admission or involuntary court commitment sections of this chapter may be discharged pursuant to this subsection without further order of the court.

(b) The certificate of discharge shall state the basis for the discharge. Prior to discharge, the hospital shall prepare a written continuing care plan developed in consultation with interdisciplinary staff, identified post-discharge community mental health providers and the patient, and, if the patient is a minor, with the patient's parent or legal guardian. At a minimum, community-based services staff shall be consulted prior to the discharge of patients in hospitals. The continuing care plan shall be consistent with the discharge planning requirements set out in § 5161 of this title, the Mental Health Patients' Bill of Rights. The continuing care plan shall include: a realistic assessment of the patient's post-discharge social, financial, vocational, housing and treatment needs; identification of available support services and provider linkages necessary to meet the assessed needs; and identification and a timetable of discrete, predischarge activities necessary to promote the patient's successful transition to the community-based services system or to another appropriate post-discharge setting.

(79 Del. Laws, c. 442, § 1.)

§ 5019 Liability for maintenance of patient; collection remedies.

(a) Any adult committed to or placed in a designated psychiatric treatment facility or hospital shall be liable for the cost of care, treatment, or both to the extent authorized by § 7940 of Title 29. If a minor is committed to or placed in a designated psychiatric treatment facility or hospital, liability for costs of care, treatment, or both shall conform to § 9019 of Title 29.

(b) The Department of Health and Social Services and Department of Services for Children, Youth and Their Families shall keep an account of the cost of care, treatment, or both and credit against the account all moneys received from the patient or other persons on the patient's behalf.

(c) In the event of nonpayment, the Department of Health and Social Services and Department of Services for Children, Youth and Their Families may pursue collection remedies authorized by §§ 7940 and 9019, respectively, of Title 29.

(79 Del. Laws, c. 442, § 1.)

§ 5020 Expenses of examination and removal of indigent patients.

The expenses of the examination of an indigent person alleged to be suffering from a mental condition and the transportation of such person, by a peace officer or credentialed mental health screener or juvenile mental health screener to a designated psychiatric treatment facility or hospital able to provide further evaluation or care and treatment, shall be paid by the State Treasurer.

(79 Del. Laws, c. 442, § 1.)

§ 5021 Veterans Administration hospitals.

The provisions in the Delaware Code pertaining to the admission, commitment, care and discharge of persons diagnosed with a mental condition at state institutions shall apply with the same force and effect to persons entitled to the services of hospitals for people with a mental condition operated by the Veterans Administration. Persons so entitled may be transferred from state institutions to such Veterans Administration hospitals subject to the statutory provisions affording interested parties the right to have the status of the person with a mental condition determined as provided by law.

(79 Del. Laws, c. 442, § 1.)

§ 5022 Return of patients; order; notice; custody.

(a) If an inpatient of a state-operated hospital escapes or is on unauthorized leave, its director may issue an order for the patient's immediate rehospitalization. The director or the director's designee may notify such patient of the existence of a rehospitalization order by any reasonable means of communication open to the director. Such an order, irrespective of the patient's actual receipt, shall authorize any peace officer to take the patient into custody for rehospitalization.

(b) If an involuntarily committed inpatient or a person detained involuntarily under this chapter from a nonstate-operated hospital certified under § 5026 of this title escapes or is on unauthorized leave, that hospital's director shall immediately notify the Director of the Division of Substance Abuse and Mental Health or the Director's designee if the patient is 18 years of age or older or the Division of Prevention and Behavioral Health Services if the patient is under 18 years of age. Upon receipt of such notification, the Division Director or the Director's designee may issue notice and a rehospitalization order in conformity with subsection (a) of this section. Such an order, irrespective of the patient's actual receipt, shall authorize any peace officer to take the patient into custody for rehospitalization.

(79 Del. Laws, c. 442, § 1.)

§ 5023 Unwarranted hospitalization in Delaware Psychiatric Center or denial of rights; penalties.

(a) Any person who wilfully causes, or conspires with or assists another to cause:

(1) The unwarranted hospitalization of any individual in the Delaware Psychiatric Center under this chapter; or

(2) The denial to any individual of any of the rights accorded to said individual under this chapter shall be punished by a fine not exceeding $500 or imprisonment not exceeding 1 year, or both.

(b) The Superior Court shall have jurisdiction of offenses under this section.

(79 Del. Laws, c. 442, § 1.)

§ 5024 Examinations of persons relative to parole, pardon or commutation of sentence in case of certain crimes.

Whenever the Director of the Division of Substance Abuse and Mental Health or the Director of the Division of Developmental Disabilities Services receives a request from the Commissioner of the Department of Correction, relative to parole, pursuant to § 4353 of Title 11, or relative to pardon or commutation of sentence, pursuant to § 4362 of Title 11, for psychiatric examination and psychological clinical studies, and a report containing an opinion of the prisoner's condition and of the probability of the prisoner's again committing crimes similar to the 1 for which the prisoner was incarcerated, or other crimes, the Director shall cause such examination and studies to be made at the correctional institution or the Delaware Psychiatric Center, and copies of the report shall be delivered to each member of the Parole Board or the Board of Pardons, as the case may be; and in cases of pardons and commutations of sentence, a copy to the Governor.

(79 Del. Laws, c. 442, § 1.)

§ 5025 Minors.

(a) Except as otherwise provided, the provisions of this chapter pertaining to the care and release of persons age 18 and older shall apply with the same force and effect to persons under 18 years of age admitted to a designated psychiatric treatment facility or hospital, certified by the Secretary of the Department of Services for Children, Youth and Their Families as being appropriate for the diagnosis, care, and treatment of persons with mental illness under 18 years of age.

(b) All substantive and procedural rights provided to individuals pursuant to this chapter shall automatically transfer to the individual's parents or legal guardian if the individual is a minor, unless specifically stated otherwise in this chapter. Even when such a transfer of rights occurs, all reasonable efforts shall be made to ensure the relevant rights and procedures are explained to the minor in language understandable to the minor.

(c) A psychiatrist or Emergency Detention of Juveniles Review Board designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review of a determination that a person under 18 years of age admitted to a designated psychiatric treatment facility or hospital pursuant to an emergency detention on the basis of the appearance of a mental condition, and whose mental condition causes the individual to be dangerous to self or dangerous to others. Such review may include an examination of the determinations made by juvenile mental health screeners in individual cases or in aggregate. The Department for Children, Youth and Their Families is authorized to establish regulations concerning the process and criteria for such determinations.

(79 Del. Laws, c. 442, § 1.)

§ 5026 Additional facilities for adults.

The Secretary of the Department of Health and Social Services, upon voluntary application of a private or public hospital, may certify such hospital as an appropriate facility for the detention, diagnosis, care and treatment of adults with a mental condition under this chapter. If so certified, on a case-by-case basis, any such hospital shall be authorized to serve in addition to the Delaware Psychiatric Center under this chapter.

(79 Del. Laws, c. 442, § 1.)

Part V
Mental Health
Chapter 51
THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
Subchapter I
General Provisions

§ 5101 Definitions.

As used in this title:

(1) "Department" or "Department of Mental Health" shall mean Department of Health and Social Services unless otherwise designated.

(2) "Hospital" and "mental hospital," as used in this chapter, shall mean the Delaware Psychiatric Center or such other hospital in this State which is certified by the Secretary of the Department of Health and Social Services as being an appropriate facility for the diagnosis, care and treatment of mentally ill persons 18 years of age or older. "Hospital" and "mental hospital" shall also mean any hospital in this State which is certified by the Secretary of the Department of Services for Children, Youth and Their Families as being an appropriate facility for the diagnosis, care and treatment of mentally ill persons under 18 years of age.

(3) The "State Board of Trustees of the Delaware Psychiatric Center" or "Board of Trustees" or "State Board" or "State Board of Trustees" or "State Board of Trustees of the Hospital" or "Board of Trustees of the Hospital" or the "Board" or the "Board of Trustees of the Department of Mental Health" shall mean the Department of Health and Social Services.

(4) "Superintendent," except in this chapter, or "Commissioner" or "Commissioner of the Department of Mental Health" or "Assistant Superintendent" shall mean Secretary of the Department of Health and Social Services.

(16 Del. C. 1953, § 5101; 54 Del. Laws, c. 279, § 2; 57 Del. Laws, c. 591, § 22; 66 Del. Laws, c. 424, § 5; 70 Del. Laws, c. 550, §§ 1, 5, 6.)

§ 5102 Authorization to receive federal fund; disposition.

The Department may apply for and receive such funds as may be made available from any agency of the federal government as grants-in-aid of programs for mental health or for the mentally retarded. All moneys so received shall be paid into the State Treasury and may be used only for the purposes for which they were granted.

(16 Del. C. 1953, § 5104; 54 Del. Laws, c. 279, § 2; 64 Del. Laws, c. 108, § 25.)

§ 5103 Property; acquisition; holdings; disposition.

The Department shall take, receive and hold for the State all properties previously held by the Board of Trustees of the Delaware Psychiatric Center, including the property of the Delaware Psychiatric Center, the Governor Bacon Health Center at Delaware City, the Stockley Center, the Day Care Center at Dover and the Mental Hygiene Clinic at Fernhook, together with all additions, other buildings and lands at any time appurtenant thereto, as well as all funds, credits, rights, fixtures, equipment or supplies heretofore belonging to the Board of Trustees of the Delaware Psychiatric Center. Additional property may not be purchased and land, buildings or property may not be sold, except by authorization of the General Assembly.

(16 Del. C. 1953, § 5105; 54 Del. Laws, c. 279, § 2; 70 Del. Laws, c. 550, § 1; 73 Del. Laws, c. 97, § 1.)

§ 5104 Donations of property; form of a devise or gift; the use of such property.

Any person may give, grant, devise or bequeath to the State any property, real, personal or mixed, for the use of the Department or of any institution or agency operated by the Department, and the Department may receive, collect, take and hold, for the use and benefit of the named Department, institution or agency, any and all property so given, granted, devised or bequeathed, and shall manage and use the same for the benefit of the named Department or such institution or agency in accordance with such grants, devises or bequests and with the laws creating and governing the Department and its institutions and agencies. Nothing contained in this section shall be construed as authorizing or empowering the Department to hold in its name any real estate for the use of the Department or any institution or agency thereof. The legal title to such real estate should be in the name of the State.

(16 Del. C. 1953, § 5106; 54 Del. Laws, c. 279, § 2.)

§ 5105 Accounting by Department.

The Department shall keep or have kept a full, true and accurate account of all moneys received by the various institutions and agencies under their supervision, for the board, care and attention of the patients, commonly known as "pay patients," and all moneys received from any other source than the annual appropriation made to the institutions and agencies by the State. All such moneys, except as excluded by subsection (a) of § 6102 of Title 29, shall be considered as revenue to the General Fund of the State and shall be paid over to the State Treasurer on or before the tenth day of the month following the receipt of all such moneys together with a full statement of the same.

(16 Del. C. 1953, § 5107; 54 Del. Laws, c. 279, § 2; 55 Del. Laws, c. 186.)

§ 5106 Cost of maintaining Department, institutions and agencies.

The cost of maintenance of the Department and its divisions, institutions and agencies shall be borne by the State and shall be paid for by the State Treasurer on orders or vouchers signed by the Secretary. The State Treasurer shall pay these vouchers or orders with funds appropriated annually by the General Assembly for that purpose, based on a budget request made by the Department. All accounts are to be audited according to state law.

(16 Del. C. 1953, § 5108; 54 Del. Laws, c. 279, § 2; 57 Del. Laws, c. 591, § 23.)

§ 5107 Sale of products made in institutions.

The Department shall operate the various properties and shops connected with the institutions or agencies of the Department for the benefit of the patients, shall sell any products resulting from such operations which are not needed by such institutions or agencies and shall pay the net proceeds from such sales into the General Fund of the State.

(16 Del. C. 1953, § 5109; 54 Del. Laws, c. 279, § 2.)

§ 5108 Operation of commissaries.

The Department shall operate commissaries in the various institutions for the benefit of patients.

(16 Del. C. 1953, § 5110; 54 Del. Laws, c. 279, § 2.)

§ 5109 Secretary of the Department of Health and Social Services; duties; heads of institutions and agencies.

(a) The Secretary of the Department of Health and Social Services is responsible for the total adult mental health program supported by the State, including inpatient, outpatient, day care and emergency services, public education and information and the performance of such other duties as may be delegated to the Secretary.

(b) The Secretary shall organize a central office for the Department, comprising such assistants, consultants and stenographic help as may be necessary to perform adequately the duties of the Department.

(c) The Secretary shall appoint a Director for the Delaware Psychiatric Center. The Director shall be qualified in the field of mental health and have administrative experience. The Director shall be the chief administrative officer of the Center. The Director shall have all the powers, duties and functions under this chapter heretofore vested in the Superintendent.

(d) The Secretary shall appoint an Executive Director for the Stockley Center. The Executive Director shall be qualified in the field of mental retardation/developmental disabilities and have administrative experience. The Executive Director shall be the chief administrative officer of the center.

(e) The Secretary shall appoint a Superintendent of the Governor Bacon Health Center. The Superintendent shall be qualified in the field of child and adolescent psychiatry or psychology, and have administrative experience. The Superintendent shall be the chief administrative officer of the center.

(f) The Secretary shall appoint a Director of Community Mental Retardation Programs, who shall have appropriate educational training and experience in mental retardation and program administration. This Director shall be the chief administrative officer of all community mental retardation programs of the Department.

(g) The Secretary may delegate to the chief administrative officer of each institution and agency the authority to hire such personnel as may be necessary for the proper operation of the institution or agency within budgetary limits.

(h) The employment of any superintendent, director or other employee of the Department may be terminated by the Secretary at any time or in any manner, provided that such termination does not violate the legal rights of the employee in question and provided it does not conflict with any directive or procedure prescribed by the Department.

(i) An annual report shall be prepared in each institution and agency not later than 4 months after the close of the fiscal year, to be presented to the Governor, members of the General Assembly, the Legislative Council, members of the executive branch of the state government and copies shall be made available to the press and public and private agencies.

(j) In July of each year, the chief administrative officer of each institution and agency shall submit to the Secretary a budget request for the next fiscal year. The Secretary shall review the combined budgets of the Department and submit them to the Director of the Budget.

(16 Del. C. 1953, § 5111; 54 Del. Laws, c. 279, § 2; 57 Del. Laws, c. 243; 58 Del. Laws, c. 124; 59 Del. Laws, c. 253, § 4; 62 Del. Laws, c. 209, § 1; 64 Del. Laws, c. 108, § 26; 70 Del. Laws, c. 550, § 7; 75 Del. Laws, c. 285, § 3.)

Subchapter II

Admission, Maintenance and Discharge of Patients

§ 5121 Voluntary admission procedure.

The Department may establish, under the direction and supervision of the Delaware Psychiatric Center, a voluntary admission procedure for the observation, study, psychiatric diagnosis and treatment of persons suffering from mental and nervous diseases.

(19 Del. Laws, c. 644, §§ 1-6; Code 1915, § 2598; 36 Del. Laws, c. 243, § 1; Code 1935, § 3074; 45 Del. Laws, c. 219, § 1; 16 Del. C. 1953, § 5121; 54 Del. Laws, c. 279, § 3; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 360, § 1.)

§ 5121A Emergency detention of a person with a mental condition; justification; procedure.

(a) Until July 1, 2013, and in conjunction with § 5122 of this title, an alleged mentally ill person shall be taken by the peace officer, with all reasonable promptness, to a medical doctor licensed to practice medicine or surgery in the State for examination. The written complaint shall be delivered to the doctor who shall, if reasonably possible, give telephonic notice of the examination to the nearest relative as shown on the complaint, unless such person has signed the complaint. If it reasonably appears to the doctor that the alleged mentally ill person is a dangerous mentally ill person, the said doctor shall so certify in writing and the alleged mentally ill person shall be transported by the peace officer or, in the sole discretion of the examining physician, by designated transport personnel to the Delaware Psychiatric Center or other hospital as defined in § 5101 of this title with all reasonable promptness and delivered to the officials of the said hospital, together with the complaint and the certificate of the examining doctor. If the examining doctor finds that the alleged mentally ill person is not a dangerous mentally ill person, the said doctor shall so certify in writing, the alleged mentally ill person shall be discharged from custody forthwith and the doctor shall forward the complaint and the doctor's certificate to the Delaware Psychiatric Center. The doctor's certificate shall set forth a description of the behavior and symptoms of the alleged mentally ill person which led the doctor to the doctor's conclusion. It shall also set forth whether or not the nearest known relative was notified of the examination. On and after July 1, 2013, this subsection ceases to have effect and, pursuant to § 5122 of this title, only a psychiatrist or credentialed mental health screener may complete the steps necessary to institute the 24-hour detention for evaluation.

(b) Until July 1, 2013, and in conjunction with § 5122 of this title, upon receiving an alleged mentally ill person at the Delaware Psychiatric Center or other hospital as defined in § 5101 of this title, the Superintendent shall detain, care for and treat as medically appropriate, the said patient for a period not to exceed 24 hours; provided, however, that this period shall be 72 hours for minors admitted in conformity with § 5135 of this title. If it appears that the nearest known relative has not received prior notice of the proceedings, the Superintendent shall, if reasonably possible, promptly give such notice. Unless the patient is discharged from the hospital within that period, then at the termination of the period the person shall be discharged unless the person is admitted or committed to the said hospital under some other provision of law. A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review of a determination that a person under 18 years of age admitted to any mental health facility pursuant to this chapter is a dangerously mentally ill person. A psychiatrist designated by the Secretary of the Department of Health and Social Services may conduct an independent review of a determination that a person 18 years of age or older admitted to any mental health facility pursuant to this chapter is a dangerously mentally ill person. On and after July 1, 2013, this subsection ceases to have effect.

(c) Until July 1, 2013, the term "dangerous mentally ill person" means that an individual meets the criteria of either "dangerous to self" or "dangerous to others" as defined in § 5122 of this title.

(36 Del. Laws, c. 242, § 1; Code 1935, § 3072; 42 Del. Laws, c. 134, § 2; 16 Del. C. 1953, § 5122; 55 Del. Laws, c. 229; 61 Del. Laws, c. 447, § 1; 66 Del. Laws, c. 424, § 6; 68 Del. Laws, c. 308, §§ 1-3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, §§ 1, 8-10; 75 Del. Laws, c. 349, § 2; 78 Del. Laws, c. 360, § 1.)

§ 5122 Emergency detention of a person with a mental condition; justification; procedure.

(36 Del. Laws, c. 242, § 1; Code 1935, § 3072; 42 Del. Laws, c. 134, § 2; 16 Del. C. 1953, § 5122; 55 Del. Laws, c. 229; 61 Del. Laws, c. 447, § 1; 66 Del. Laws, c. 424, § 6; 68 Del. Laws, c. 308, §§ 1-3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, §§ 1, 8-10; 75 Del. Laws, c. 349, § 2; 78 Del. Laws, c. 360, § 1; 79 Del. Laws, c. 7, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

§ 5123 Voluntary hospitalization of patients at Delaware Psychiatric Center; authority to receive; procedure; discharge.

(a) A licensed psychiatrist or licensed independent practitioner who is credentialed and authorized by the Delaware Psychiatric Center may admit for observation, diagnosis, care and treatment any individual who is a person with an apparent mental condition or who has symptoms of a mental condition and who requests admission subject to the payment of charges for care, maintenance and support as provided in § 5127 of this title [repealed]. The Delaware Psychiatric Center may establish criteria for voluntary admission that differ from the criteria for involuntary admissions.

(b) If any applicant is under the age of 18 years, the request for admission to a designated psychiatric treatment facility shall also be signed by either of the applicant's parents, spouse or legal guardian.

(c) The attending psychiatrist or licensed independent practitioner who is appropriately credentialed and authorized by the Delaware Psychiatric Center shall discharge any voluntary patient who has recovered or whose hospitalization the attending psychiatrist determines is no longer clinically indicated.

(d) A voluntary patient who requests the patient's own discharge or whose discharge is requested, in writing, by the patient's legal guardian, parent, spouse or adult next of kin shall be discharged within 5 days from the receipt of the request, except that:

(1) If the request for discharge is made by a person other than the patient, discharge may be conditioned upon the agreement thereto of the patient;

(2) If the patient is under the age of 18 years, the patient's discharge may be conditioned upon the consent of the patient's parent, spouse or guardian; and

(3) If it has been observed and documented that the person currently admitted voluntarily is currently demonstrating behaviors believed to be dangerous to self or others and these behaviors are documented in the medical record, the attending psychiatrist may initiate involuntary commitment status as set forth in Chapter 50 of this title.

(e) A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review to determine whether an applicant under 18 years of age who receives financial assistance from such Department or who is in the custody of such Department is appropriate for voluntary hospitalization. A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review to determine whether a voluntary patient under 18 years of age who receives financial assistance from such Department or who is in the custody of such Department is appropriate for voluntary hospitalization.

(f) A psychiatrist designated by the Secretary of the Department of Health and Social Services may conduct an independent review to determine whether an applicant 18 years of age or older who receives financial assistance from the Department or who is in the custody of the Department is appropriate for voluntary hospitalization. A psychiatrist designated by the Secretary of the Department of Health and Social Services may conduct an independent review to determine whether a voluntary patient 18 years of age or older who receives financial assistance from the Department or who is in the custody of the Department is appropriate for voluntary hospitalization.

(g) Nothing contained in subsection (d) of this section shall require the discharge of a voluntary patient if within the 5-day period from receipt of the request for discharge the patient is admitted or committed to the said Psychiatric Center under some other provision of law.

(h) Notwithstanding any other section of the Delaware Code, the Director of the Department's Division of Substance Abuse and Mental Health shall have the independent authority to discharge persons at the Delaware Psychiatric Center.

(19 Del. Laws, c. 644, §§ 1-6; Code 1915, § 2598; 36 Del. Laws, c. 243, § 1; Code 1935, § 3074; 45 Del. Laws, c. 219, § 1; 16 Del. C. 1953, § 5123; 55 Del. Laws, c. 227; 58 Del. Laws, c. 218; 58 Del. Laws, c. 511, §§ 31, 32; 62 Del. Laws, c. 207, § 1; 66 Del. Laws, c. 424, §§ 7, 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 360, § 1; 79 Del. Laws, c. 442, § 2.)

§ 5127 Liability for maintenance of patient; collection remedies.

(18 Del. Laws, c. 553, § 6; 19 Del. Laws, c. 125, § 1; 19 Del. Laws, c. 126; Code 1915, § 2600; 28 Del. Laws, c. 212, § 1; 37 Del. Laws, c. 189; Code 1935, § 3076; 16 Del. C. 1953, § 5127; 54 Del. Laws, c. 279, § 3; 55 Del. Laws, c. 212; 58 Del. Laws, c. 151; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 360, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

§ 5128 Expenses of examination and removal of indigent patients.

(18 Del. Laws, c. 553, § 6; 19 Del. Laws, c. 125, § 1; 19 Del. Laws, c. 126; Code 1915, § 2600; 28 Del. Laws, c. 212, § 1; 37 Del. Laws, c. 189; Code 1935, § 3076; 16 Del. C. 1953, § 5128; 57 Del. Laws, c. 228, § 6; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 360, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

§ 5129 [Reserved]

§ 5130 Veterans Administration hospitals.

(16 Del. C. 1953, § 5131; 50 Del. Laws, c. 310, § 1; 78 Del. Laws, c. 360, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

§ 5131 Discharge of patients at Delaware Psychiatric Center; release on convalescent status; continued responsibility; review of convalescent status.

(16 Del. C. 1953, § 5132; 55 Del. Laws, c. 225, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 360, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

§ 5132 Return of patients; order; notice; custody.

(16 Del. C. 1953, § 5133; 55 Del. Laws, c. 225, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 11; 73 Del. Laws, c. 41, § 1; 77 Del. Laws, c. 327, § 210(a); 78 Del. Laws, c. 360, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

§ 5133 Unwarranted hospitalization in Delaware Psychiatric Center or denial of rights; penalties.

(16 Del. C. 1953, § 5134; 55 Del. Laws, c. 226; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 360, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

§ 5134 Examinations of persons relative to parole, pardon or commutation of sentence in case of certain crimes.

(16 Del. C. 1953, § 5135; 57 Del. Laws, c. 593, § 1; 64 Del. Laws, c. 467, § 6; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 73 Del. Laws, c. 41, § 1; 75 Del. Laws, c. 285, §§ 8-10; 78 Del. Laws, c. 360, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

§ 5135 Minors [Repealed].

(66 Del. Laws, c. 424, § 9; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 360, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

§ 5136 Additional facilities for adults.

(68 Del. Laws, c. 308, § 4; 70 Del. Laws, c. 550, § 1; 78 Del. Laws, c. 360, § 1; repealed by 79 Del. Laws, c. 442, § 2, eff. Oct. 14, 2014.)

Subchapter II-A

Criminal Background Checks; Mandatory Drug Testing

§ 5137 Legislative intent; definitions.

(a) *Legislative intent.* — The General Assembly's purpose in requiring criminal background checks and drug testing of Department of Health and Social Services' employees working at the Delaware Psychiatric Center is to protect the safety and well-being of the patients and staff of such facility. The provisions of this subchapter shall be broadly construed to accomplish this purpose.

(b) *Definitions.* —

(1) "Applicant" means any of the following:

a. A person seeking employment with the Department in any position at the Delaware Psychiatric Center; or

b. A current Department employee who seeks a promotion or transfer to any position at the Delaware Psychiatric Center; or

c. A former employee who consents prior to leaving employment to periodic review of his or her criminal background for a fixed period of time.

(2) "Background Check Center (BCC)" means the electronic system which combines the data streams from various sources within and outside the State of Delaware in order to assist an employer in determining the suitability of a person for employment.

(3) "Criminal history" means a report from the Department of Health and Social Services regarding its review of the applicant's entire federal criminal history from the Federal Bureau of Investigation, pursuant to Public Law 92-544 as amended (28 U.S.C. § 534) and his or her Delaware record from the State Bureau of Identification.

(4) "Department" means the Department of Health and Social Services;

(5) "Grandfathered employee" means an employee of a the Delaware Psychiatric Center, who was not fingerprinted pursuant to this statute because the employment commenced before June 15, 2010, and no requirement for fingerprinting has since applied (see paragraph (b)(1) of this section above).

(6) "Reasonable suspicion" means the Department, acting through its supervisory personnel, has a reasonable basis to suspect that a Delaware Psychiatric Center employee:

a. Has been convicted of a disqualifying crime since becoming employed; or

b. Is impaired by an illegal drug.

(77 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 303, § 4.)

§ 5138 Criminal background checks.

(a) The Department shall not hire or employ an applicant for any position at the Delaware Psychiatric Center without first obtaining a report of the person's criminal history.

(b) The Department shall promulgate regulations establishing the criteria for unsuitability for employment, including the types of criminal convictions which shall automatically disqualify a person from working at the Delaware Psychiatric Center and, as to other criminal convictions, the criteria for determining whether a particular individual is unsuitable for employment at the Delaware Psychiatric Center.

(c) *Conditional hire.* — The requirements of subsection (a) of this section may be suspended for 60 days if the employer wishes to employ the applicant on a conditional basis. Before an employer may offer conditional employment, the employer must receive verification that the applicant has been fingerprinted by the SBI for purposes of the criminal history. No criminal history will be issued if the applicant fails to provide information to the Department regarding the status or disposition of an arrest within 45 days from the date of notice from the Department of an open criminal charge.

(d) The Department shall immediately terminate the employment any Delaware Psychiatric Center employee who is, or has been, convicted of any disqualifying crime upon notification of such conviction.

(e) The criminal history information provided to the employer, is strictly confidential. It may be used solely to determine the suitability of an applicant for employment or continued employment at the Delaware Psychiatric Center.

(f) Before an applicant is permitted to be employed at the Delaware Psychiatric Center, the applicant must, upon request:

(1) Provide accurate information sufficient to get a criminal history;

(2) Execute a full release to enable the employer to secure a criminal history and to periodically update the criminal history while employed;

(g) An applicant who fails to comply with subsection (f) of this section is subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(h) All grandfathered employees must be fingerprinted by the SBI within 120 days from the date of BCC (see § 7972(a) of Title 29) implementation. SBI:

(1) Shall use the fingerprints to establish the grandfathered employee's identity and to assign an SBI identification number for the sole purpose of enabling the person's criminal record to be monitored for new arrests while the grandfathered employee continues to work at a nursing facility or similar facility.

(2) Shall not run a state or federal background check of the grandfathered employee, unless the grandfathered employee is also an applicant as defined in § 5137(b) of this title above;

(3) Shall comply with § 1911 of Title 11.

(77 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 303, § 4.)

§ 5139 Drug testing required.

(a) *Preemployment testing.* — The Department shall not hire or employ an applicant for any position at the Delaware Psychiatric Center without first obtaining the results of such applicant's mandatory drug screening.

(b) *Reasonable suspicion testing.* — The Department, acting through its supervisory personnel, may also conduct a drug test based on a reasonable suspicion that a Delaware Psychiatric Center employee is impaired by an illegal drug.

(c) Any person applying for employment with the Department in a position at the Delaware Psychiatric Center shall be required to submit to mandatory drug screening pursuant to this section and the regulations promulgated by the Department. Such regulations shall require drug testing for the following controlled substances:

(1) Marijuana/cannabis;

(2) Cocaine;

(3) Opiates;

(4) Phencyclidine ("PCP");

(5) Amphetamines;

(6) Any other controlled substances specified by the Department in the regulations promulgated pursuant to this subchapter.

(d) *Conditional hire.* — Notwithstanding the provisions of this section, whenever exigent circumstances exist, and the Department must fill a position in order to maintain an appropriate level of patient care, the Department may hire an applicant on a conditional basis when the Department receives evidence that the applicant has actually had the appropriate drug screening. The final employment of any applicant conditionally hired pursuant to this subsection shall be contingent upon receipt of the results of the drug screening. In addition, all applicants conditionally hired pursuant to § 5138 of this title shall be informed and acknowledge in writing that the results of those applicants' drug screens have been requested. Under no circumstances shall an applicant hired on a conditional basis pursuant to this subchapter remain employed on a conditional basis for more than 2 months.

(e) Any applicant who wilfully fails to comply with the requirements of this section shall be subject to a civil penalty of not less than $1,000 nor more than $5,000.

(f) The Department shall adopt policies and procedures for imposing sanctions, which may include suspension and termination, upon any Delaware Psychiatric Center employee whose drug screen indicates that such employee has consumed an illegal drug or drugs. However, no such employee shall be sanctioned when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.

(77 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 303, § 4.)

Subchapter III

Mental Hygiene Clinic

§ 5141 Establishment and composition.

The Department may maintain mental hygiene clinics which shall be composed of such professional assistants as may be recommended by the Secretary.

(36 Del. Laws, c. 241, § 1; Code 1935, § 3073; 16 Del. C. 1953, § 5141; 53 Del. Laws, c. 84, § 2; 54 Del. Laws, c. 279, § 3; 57 Del. Laws, c. 591, § 24.)

§ 5142 Duties and powers of clinic.

(a) The mental hygiene clinic shall examine all public or private school children within the State who are 2 or more years retarded, when so requested by the superintendent or other executive head of such school.

(b) The clinic shall likewise undertake and carry on a continuous survey and examination of all mentally retarded persons.

(c) The clinic may observe, examine, study and treat the inmates of any institution supported in whole or in part by the State, or any county thereof and may likewise observe, examine, study and treat any person charged with any offense in, or subject to the jurisdiction of, any court within the State, when requested to do so by a judge or judges thereof.

(d) The clinic may likewise, when requested, extend its psychiatric services to all social agencies of the State, general hospitals and all institutions for the mentally retarded for the purpose of the discovery and treatment of mental disorders.

(e) The clinic may, through the State Psychiatrist and Criminologist, apply for the commitment of any person to the Delaware Psychiatric Center under any laws of the State relating to such commitments.

(36 Del. Laws, c. 241, §§ 1, 2; Code 1935, § 3073; 16 Del. C. 1953, § 5142; 55 Del. Laws, c. 212; 70 Del. Laws, c. 550, § 1.)

Subchapter IV

Persons With Criminally Mental Conditions

§ 5151 Establishment of department for persons with criminally mental conditions.

The Department shall establish at the Delaware Psychiatric Center a department for persons with criminally mental conditions who are adults regardless of their mental capacity. The term "persons with criminally mental conditions" as used herein shall be defined as any incarcerated individual, charged with or convicted of any criminal offense under this Code who also meets the definition set forth at § 5001(7) of this title [repealed]. The department shall be established on the present grounds of the Psychiatric Center.

(Code 1935, c. 76; 46 Del. Laws, c. 190, § 1; 16 Del. C. 1953, § 5151; 49 Del. Laws, c. 57, § 1; 54 Del. Laws, c. 279, § 3; 55 Del. Laws, c. 212; 70 Del. Laws, c. 550, § 1; 76 Del. Laws, c. 322, §§ 7, 8; 78 Del. Laws, c. 179, §§ 189-191; 79 Del. Laws, c. 442, § 1.)

§ 5152 Commitment by courts.

(a) All persons with criminally mental conditions who are adults shall be admitted to the department for persons with criminally mental conditions at the Delaware Psychiatric Center for evaluation and/or treatment when committed by any court of this State having jurisdiction over the persons committed.

(b) All criminally inclined juveniles amenable to the processes of Family Court shall be committed to treatment programs for criminally inclined juveniles established by the Department of Services for Children, Youth and Their Families when committed by any court of this State having jurisdiction over the persons committed.

(c) Jurisdiction to order and review commitments under this subchapter is conferred upon any court:

(1) Which presides over any active matter in which the person with a criminally mental condition is a defendant or respondent; or

(2) Which entered the most recent sentencing order regarding the person with a criminally mental condition.

(Code 1935, c. 76; 46 Del. Laws, c. 190, § 2; 16 Del. C. 1953, § 5152; 49 Del. Laws, c. 57, § 1; 66 Del. Laws, c. 424, § 10; 70 Del. Laws, c. 550, § 1; 76 Del. Laws, c. 322, §§ 9-12; 78 Del. Laws, c. 179, §§ 192-196.)

§ 5153 Commitment from other institutions.

The governing authorities of any institution of this State, including but not limited to those facilities maintained by the Department of Correction, to which an adult or juvenile who is nonamenable to the processes of Family Court who classifies for admission under the terms of this subchapter already has been committed may request an order to temporarily remove an inmate of the institution to the department for persons with criminally mental conditions at the Delaware Psychiatric Center or other authorized institutions for suitable for nonamenable juveniles as follows:

(1) By petition to any court of competent jurisdiction in the State; or

(2) In the case of any individual within the custody of the Department of Correction, by certification of the Commissioner of Correction, Bureau Chief of Prisons, Bureau Chief of Community Correction, or Director of Healthcare Services, that:

a. The inmate or offender is currently suffering from a mental disease or condition which requires such person to be observed and treated at a mental hospital for the person's own welfare and which both:

1. Renders such person unable to make responsible decisions with respect to the person's health; and

2. Poses a real and present threat, based upon manifest indications, that such person is likely to commit or suffer serious harm to that person's own self or others or to property if not given immediate hospital care and treatment;

b. The inmate or offender is currently recommended by correctional medical staff for immediate or emergent psychiatric care or stabilization;

c. That the Department of Correction cannot provide the level of care required to treat the inmate or offender; and

d. The inmate or offender has received all of the process due to the inmate or offender under the Department of Correction policies and/or procedures.

(3) Upon receipt of any inmate or offender into the department for persons with criminally mental conditions by the process stated herein, the inmate or offender shall be treated as a provisional admittee and may only be housed at the location designated for the housing of persons with criminally mental conditions. The Department of Health and Social Services shall proceed under Chapter 50 of this title with respect to any decision to commit offenders transferred from the Department of Correction on an emergency basis.

(Code 1935, c. 76; 46 Del. Laws, c. 190, § 3; 16 Del. C. 1953, § 5153; 49 Del. Laws, c. 57, § 1; 57 Del. Laws, c. 591, § 25; 66 Del. Laws, c. 424, § 10; 70 Del. Laws, c. 550, § 1; 76 Del. Laws, c. 322, § 13; 78 Del. Laws, c. 179, §§ 197, 198.)

§ 5154 Liability for cost of maintenance and care.

The expenses of the removal of an adult with a criminally mental condition or a criminally inclined juvenile and of the adult's or juvenile's admission to a hospital under this subchapter, and the charges and expense for the maintenance and care at such hospital shall be paid by the institution which had charge of such case. Where such persons are committed by the proper courts otherwise than from an institution of the State, the State Treasurer shall pay such hospital for such removal, admission, maintenance and care. If any such adult with a criminally mental condition or criminally inclined juvenile has any real or personal estate, the Department of Health and Social Services or the Department of Services for Children, Youth and Their Families shall have, for the expenses and charges incurred, the same remedy as is provided in § 5127 of this title [repealed].

(Code 1935, c. 76; 46 Del. Laws, c. 190, § 4; 16 Del. C. 1953, § 5154; 49 Del. Laws, c. 57, § 1; 55 Del. Laws, c. 85, § 35B; 57 Del. Laws, c. 228, § 7; 66 Del. Laws, c. 424, § 10; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 199, 200; 79 Del. Laws, c. 442, § 2.)

Subchapter V

Mental Health Patients' Bill of Rights

§ 5161 Rights of patients in mental health hospitals or residential centers.

(a) As used in this section:

(1) "Department " means the Department of Health and Social Services, except that Department means the Department of Services for Children, Youth and Their Families for facilities certified under §§ 5135 [repealed] and 5001(9) of this title.

(2) "Protection and advocacy agency" means the Community Legal Aid Society, Inc. or successor agency designated the state protection and advocacy system pursuant to the following:

a. Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. § 10801 et seq.);

b. Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 15001 et seq.); or

c. Protection and Advocacy for Individual Rights (29 U.S.C. § 794(e)).

(3) For purposes of persons admitted pursuant to Chapter 55 of this title, the term "treatment" includes habilitation and the term "patient" means resident.

(b) Any hospital or residential center that admits persons pursuant to Chapter 50, 51, or 55 of this title shall prominently post in English and Spanish the list of patients rights set forth in this subsection. In addition to the posting, the Department shall distribute a copy of the list to each patient and to other persons, as provided in Department regulations. Each patient shall have the rights listed below, which shall be liberally construed to fulfill their beneficial purposes. Furthermore, in defining the scope or extent of any duty imposed by this section, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments as well as certification standards of accrediting agencies may be considered.

(1) Each patient shall receive care and treatment suited to the patient's needs, skillfully, safely and humanely administered with full respect for the patient's dignity and personal integrity. The care and treatment shall be provided in a setting and under conditions that restrict the patient's personal liberty only to the extent required by the patient's treatment needs, applicable law and judicial orders.

(2) Each patient shall have an outcome-oriented, individualized, written treatment plan; treatment based on such plan; periodic review or revision of the plan consistent with treatment progress; and a description of treatment and other support services that may be needed upon discharge.

(3) Each patient, and, if the patient is a minor, the patient's parents or legal guardian shall have the right to ongoing participation in a manner appropriate to the patient's capabilities, in the development and revision of an individualized treatment plan. In furtherance of this right, each patient, and, if the patient is a minor, the patient's parents or legal guardian shall minimally be provided with a reasonable explanation of the following:

a. The patient's general mental condition and, if a facility has provided a physical examination, the patient's general physical condition;

b. The objectives of treatment and the reasons why a particular treatment is considered appropriate;

c. The expected benefits and risks of recommended treatments, including all significant potential adverse effects and the steps which may be taken to obviate or ameliorate such effects;

d. The nature, duration and expected benefits and risks of any alternative treatments that are available.

(4) Prior to discharge, the facility shall prepare a written continuing care plan developed in consultation with interdisciplinary staff, anticipated post-discharge providers and the patient, and, if the patient is a minor, with the patient's parents or legal guardian. At a minimum, Departmental community-based services staff shall be consulted for adult patients in Departmental facilities. The continuing care plan shall include:

a. A realistic assessment of the patient's post-discharge social, financial, vocational, housing and treatment needs;

b. Identification of available support services and provider linkages necessary to meet the assessed needs; and

c. Identification and a timetable of discrete, predischarge activities necessary to promote the patient's successful transition to the community-based services system or to another appropriate post-discharge setting.

(5) Absent a patient's informed, voluntary, written consent to a mode or course of treatment, each patient shall have the right not to receive the mode or course of treatment established pursuant to a treatment plan, except as follows:

a. During an emergency situation, if such treatment is pursuant to and documented contemporaneously by the written order of a physician; or

b. As authorized under applicable law or court order in the case of a person involuntarily committed to the facility; or

c. In the case of a minor, as authorized by a parent or legal guardian.

(6) Each patient shall have the right to be free from the following:

a. Abuse, mistreatment and neglect, as proscribed by Chapters 9 and 11 of this title.

b. Unjustifiable force, as defined by 11 Del. C. § 468;

c. Seclusion, physical restraint, drugs or other interventions administered primarily for purposes of staff convenience; provided, however, that restraint or seclusion may be administered pursuant to and documented contemporaneously by the written order of an authorized, licensed mental health professional to the extent necessary to prevent physical harm to self or others. Administration of restraint under this subsection shall include the following safeguards:

1. Authorizing orders shall specify the form, duration, and conditions of restraint based on a deliberative determination that the restraint is the least restrictive alternative intervention to prevent physical harm to the patient or others;

2. The patient shall receive a medical examination within an hour of initiation of restraint by a physician, or, if a physician is not available, a nurse;

3. During the course of restraint the patient shall be closely monitored to assess well-being and facilitate prompt discontinuation of restraint when no longer necessary to prevent physical harm to the patient or others;

4. Subsequent to administration of restraint, an interactive clinical assessment shall be undertaken, which includes the patient, and, at the request of the patient, a representative of the protection and advocacy agency, to review catalysts resulting in the necessity of the restraint and appropriateness of revision to the individualized treatment plan.

(7) Each patient shall be advised of the availability of any internal and external systems for reporting abuse, neglect and mistreatment, including those established by Chapters 9 and 11 of this title and the protection and advocacy agency.

(8) The hospital or residential center shall require:

a. Careful reexamination and evaluation of each patient not less than every 6 months;

b. Periodic physical examination of each patient by a physician at least once a year;

c. An order of a staff member, operating within the scope of a professional authority and based upon appropriate examination, before any treatment is administered;

d. Written, informed consent by the patient, or, if the patient is a minor, a parent or legal guardian, for surgery, electro-convulsive therapy, major medical treatment in the nature of surgery or the use of research, investigational or experimental drugs or procedures; and

e. Notation in the patient's clinical record, signed by the personnel involved, of periodic examinations, individualized treatment programs, evaluations, reevaluations and of orders for treatment and specific therapies.

(9) Each patient shall be entitled to communicate freely and privately with persons and groups inside and outside the facility, consistent with the safety and welfare of other patients and with avoiding serious harassment of others. Correspondence initiated to others by the patient shall be sent along promptly without being opened. The facility shall establish procedures to insure that patients have a full opportunity to conduct correspondence, to have reasonable and confidential access to telephones, and, subject to treatment team limitation based on a clinical determination of serious patient harm, to have frequent and convenient opportunities to meet with visitors. Any treatment team's limitation of such patient communication shall be documented in the patient's treatment plan and shall include the team's specific rationale.

(10) A patient's right to retain reasonable personal belongings shall be respected, except that the facility may temporarily retain custody of a patient's personal property for the patient's protection; provided, that such property is used or conserved for the support of the patient. The patient is entitled to a receipt for any personal property over which the facility retains temporary custody. Nothing in this paragraph shall be construed to relieve any patient from the obligations arising out of § 5127 of this title [repealed].

(11) Each patient shall have the right to participate in available vocational rehabilitation, community care or release programs consistent with the patient's treatment plan. It is recognized that work programs can be therapeutic and, therefore, may be included in a patient's individualized treatment plan provided that the following conditions are met:

a. The facility must document in the individualized treatment plan the patient's need or desire for work;

b. The individualized treatment plan must specify the nature of the work to be performed and whether the work is to be voluntary or paid;

c. The patient must consent to the work program described in the treatment plan; and

d. The patient must be aware that the patient may withdraw consent to the work program at any time.

To the extent specifically authorized by the Department of Labor, workers' compensation law and unemployment insurance law shall not apply to any patient engaged in work programs pursuant to this paragraph.

(12) Each patient who, but for a mental disability, would be entitled to attend a public school shall receive the same training and education that the patient would otherwise be entitled to receive in the patient's local school district. The facility shall arrange for such training and education, which shall be consistent with the mental ability of the patient, and shall arrange for suitable resources and equipment to address the needs of those patients with visual or hearing impairments.

(13) The hospital or residential center shall maintain a clinical record for each patient admitted. The clinical record shall contain complete information on all matters relating to the admission, legal status, care and treatment of the patient, and shall include all pertinent documents relating to the patient. Copies of informed consent forms signed by patients or guardians pursuant to paragraph (b)(8)d. of this section shall be kept with each patient's ward chart. The Department shall, by regulation, determine the scope and method of recording information maintained on the clinical records. Those regulations shall ensure the completeness and accuracy of data pertaining to admission, legal matters affecting the patient, records and notations of the course of care and treatment, therapies, the patient's progress if in research and adverse or other reactions thereto, restrictions on the patient's rights, periodic examinations and other information required by the Department.

No information reported to the Department and no clinical records maintained with respect to patients shall be public records. Such information and records shall not be released to any person or agency outside of the Department except in conformity with existing law and as follows:

a. To patients, or, if the patient is a minor, to a parent or legal guardian, except that access to specific records may be refused when a clinical determination is made and documented in the patient's individualized treatment plan that such access would be seriously detrimental to the patient's health or treatment progress. In the latter case, such material may be made available to a licensed mental health professional selected by the patient, and that professional may, in the exercise of professional judgment, provide the patient with access to any or all parts of the denied material or otherwise disclose the information contained therein. Whenever records are released in accordance with this paragraph, the recipient shall have the right to review the record with a mental health professional furnished by the facility;

b. Pursuant to an order of a court of record;

c. To attorneys representing the patient;

d. To rights-protection agencies otherwise entitled to access under applicable federal or state law or implementing interagency agreement, including the Office of the Long-Term Care Ombudsman and the protection and advocacy agency;

e. With the consent of the patient, or, if the patient is a minor, with the consent of a parent or legal guardian;

f. To Departmental contractors to the extent necessary for professional consultation or services;

g. To the State Bureau of Identification pursuant to § 8509 of Title 11 and to the Federal Bureau of Investigation, National Instant Criminal Background Check System pursuant to § 1448A of Title 11; and

h. As requested by the Child Death, Near Death and Still Birth Commission pursuant to an investigation or review; and

i. As otherwise required by law.

(14) The Delaware Psychiatric Center and any other hospital as defined in § 5001(9) of this title shall, pursuant to § 1448A of Title 11, cause to be submitted to the Federal Bureau of Investigation, National Instant Criminal Background Check System such information as may be required to comply with federal laws and regulations relating to background checks for the purchase or transfer of firearms. Such information shall include only names and other nonclinical identifying information of persons so committed.

(15) Each patient, and, if the patient is a minor, the minor's parent or legal guardian, shall have the right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure provided for or by the facility. Without diminution of such right, the facility may also establish a supplemental mediation system to resolve grievances. The Department shall establish the grievance system for the Delaware Psychiatric Center, through regulation, which shall include the following features:

a. Availability of patient assistance in preparation and submission of grievance;

b. Right to present grievance in person or with the assistance of a representative, including the protection and advocacy agency, to an individual or group impartial decision-maker;

c. Right to decision on routine grievance within reasonable time not to exceed 15 calendar days;

d. Availability of expedited processing for urgent or time-sensitive grievance; and

e. Availability of patient appeal to impartial review officer selected by the Department from an approved list compiled by the State Council for Persons with Disabilities and submitted to the Department.

(16) Each patient, and, if the patient is a minor, the minor's parent or legal guardian, shall have a right to confidential access to any internal rights protection office established by the facility and to any state or federally authorized mental health ombudsperson or rights protection agency.

(17) Each patient shall have the right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.

(18) Nothing in this section or in any rule or regulation adopted pursuant thereto shall be construed to deny treatment by spiritual means through prayer for any patient detained for evaluation or treatment who desires spiritual treatment, or to a minor, if the minor's parent or guardian desires such treatment.

(19) Consistent with the nature of the right and applicable law, a right may devolve to the patient's guardian.

(20) The rights described above are in addition to, and not in derogation of, any other statutory or constitutional rights.

(59 Del. Laws, c. 571, § 1; 60 Del. Laws, c. 204, § 1; 64 Del. Laws, c. 421, §§ 1, 2; 64 Del. Laws, c. 467, § 2; 66 Del. Laws, c. 424, § 11; 69 Del. Laws, c. 224, §§ 1, 4; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 222, § 1; 70 Del. Laws, c. 550, § 1; 75 Del. Laws, c. 361, § 8; 77 Del. Laws, c. 386, §§ 1-7; 78 Del. Laws, c. 137, §§ 1, 2; 79 Del. Laws, c. 442, §§ 1, 2.)

§ 5162 Notification of critical incidents and deaths, report forms.

(a) As used in this section:

(1) "Covered facility" means a hospital or residential center as defined in § 5161 of this title.

(2) "Critical incident" means the occurrence, within a covered facility, of the following events:

a. Attempted suicide;

b. Seclusion exceeding 15 minutes;

c. Physical restraint exceeding 5 minutes or involving injury; and

d. Victimization prompting solicitation of police intervention or investigation.

(3) "Death" means the demise of a current patient or resident of a covered facility. "Death" shall also include the demise of such a patient or resident within 14 calendar days of transfer to a medical or hospice facility.

(4) "Protection and advocacy agency" means the Community Legal Aid Society, Inc., or successor agency designated the state protection and advocacy system pursuant to the following:

a. Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. § 10801 et seq.);

b. Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. § 15001 et seq.); or

c. Protection and advocacy for individual rights (29 U.S.C. § 794e).

(b) Notwithstanding any other provision of law, each covered facility shall notify the protection and advocacy agency in writing or electronically within 72 hours of all critical incidents and, upon request, facilitate protection and advocacy agency contact with the patient, resident, or authorized representative of the patient or resident.

(c) Notwithstanding any other provision of law, each covered facility shall notify the protection and advocacy agency within 72 hours of the date of any patient or resident death. Such notice shall include brief identifying information; contact information for the next of kin, administrator, or estate executor; the age of the patient or resident; the condition of the patient's or resident's health prior to death; and apparent cause of death.

(d) No person or covered facility shall be liable in any civil action by reason of provision of notice of a critical incident or death to the protection and advocacy agency in conformity with this section.

(e) Each covered facility shall cooperate with any assessment or investigation of a critical incident or death by the protection and advocacy agency. In furtherance of this duty, no covered facility shall discharge, discriminate, or retaliate against any person who provides the protection and advocacy agency with information or assistance in connection with an assessment or investigation of a critical incident or death.

(77 Del. Laws, c. 202, § 1.)

§ 5163 Enforcement of rights; Court of Chancery.

This subchapter shall be enforceable by the Attorney General or by any interested citizen. Within the meaning of this section, "interested citizen" shall include any individual, voluntary association of individuals or corporate body having a bona fide interest in furthering enforcement of the rights created by this subchapter. Notwithstanding 10 Del. C. § 342, the Court of Chancery shall have jurisdiction over all actions, including those requesting declaratory relief, to enforce or resolve disputes concerning the rights arising out of this subchapter.

(59 Del. Laws, c. 571, § 1; 70 Del. Laws, c. 222, § 2; 77 Del. Laws, c. 202, § 1.)

Subchapter VI

Pharmaceutical Research

§ 5171 Definitions.

As used in subchapter:

(1) "Department" shall mean the Department of Health and Social Services or its successor.

(2) "Double blind research" shall mean research in which neither the patient nor the physician knows whether the patient is receiving medication or a placebo.

(3) "Hospital" means the Delaware Psychiatric Center or such other hospital in this State which is certified by the Secretary of the Department of Health and Social Services as being an appropriate facility for the diagnosis, care and treatment of mentally ill persons.

(4) "Informed consent" means the consent of a patient to the performance of health care services by a health care provider who has informed the patient both verbally and in writing, to an extent reasonably comprehensible to general lay understanding, of the nature of the proposed procedure or treatment and of the risks and alternatives to treatment which a reasonable patient would consider material to the decision whether or not to undergo the treatment.

(5) "Mentally ill person" means a person suffering from a mental disease or condition which requires such person to be observed and treated at the hospital for the person's own welfare.

(6) "Patient" means any patient at the hospital.

(7) "Psychiatrist" means a physician licensed to practice medicine specializing in the field of psychiatry or a physician employed by the hospital, registered with the Medical Council of Delaware and certified by the hospital medical director to the Medical Council of Delaware as being qualified in the diagnosis and treatment of mentally ill persons.

(64 Del. Laws, c. 421, § 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1.)

§ 5172 Rules and regulations.

(a) Prior to the participation of any patient in pharmaceutical research, the Department shall adopt rules and regulations governing such research. Such rules and regulations shall conform to the requirements of the Food and Drug Administration and to this chapter. In the course of promulgating such rules and regulations, the Department shall request the assistance of the Food and Drug Administration and the State Police Drug Diversion Unit and shall hold at least 1 public hearing. The Department shall review the rules and regulations pertaining to pharmaceutical research annually.

(b) Department rules and regulations governing pharmaceutical research shall include, but not be limited to, the following provisions:

(1) No patient should be approached to participate in a pharmaceutical research program where the most recent certification by a psychiatrist indicates that the patient is incapable of voluntary consent to care or treatment, is unable to make responsible decisions regarding hospitalization or is mentally incompetent to waive legal rights. Patients who show marked improvement should be reevaluated only by psychiatrists who will receive no financial benefit from the research as to whether the patient is now fully competent before being approached about participation in research.

(2) Diagnosis of a patient's condition prior to the patient's participation in pharmaceutical research shall be done only by psychiatrist(s) who will receive no financial benefit from the research.

(3) Prior to the inclusion of a patient on a research project, examining psychiatrist(s) shall consider whether the patient would respond to accepted pharmaceutical or other therapies.

(4) To ensure that patients retain their capacity to freely consent to participate in research, patients shall be monitored by psychiatrists who will receive no financial benefit from the research.

(5) If any patient participating in a research project shall be found not to be mentally ill, the patient shall be removed from the research immediately.

(c) Any indemnification agreement which purports to bind the hospital shall be approved by a deputy attorney general representing the Department and by the Department before signature by the research psychiatrist.

(d) The use of state time shall be adequately documented so that research compensated by private companies is properly segregated from that time.

(64 Del. Laws, c. 421, § 3; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 155, § 7.)

§ 5173 Institutional Review Board.

(a) The Department shall establish an Institutional Review Board which shall be composed of 12 members appointed by the Secretary of the Department. No more than 6 members shall be employed by the Department and no more than 3 members shall be employed by the hospital.

(b) The duties of the Institutional Review Board shall include, but not be limited to:

(1) Approval, modification or disapproval of all proposed pharmaceutical research programs and all written procedures and protocols governing such programs. Final approval of any program shall require an affirmative vote of 8 members. In evaluating any proposed research program, the Board shall consider whether the risks to patients are sufficiently outweighed by the potential benefits and the importance of the knowledge to be gained. In its deliberations, the Board shall be guided by the American Medical Association's "Ethical Guidelines for Clinical Investigation," the American Psychiatric Association's "Ethical and Professional Guidelines Governing Research With Human Subjects" or similar documents.

(2) Ensuring that no patient participates in research who fits any exclusion criteria established by the pharmaceutical protocol or by the Board itself.

(3) Actively monitoring all such research programs on a regular basis. Such monitoring shall include the review of the effects of the research on patients and the review of individual patient records to ensure the continued protection of patient rights and continued compliance with regulations.

(4) Ensuring that the provisions of § 5175 of this title are complied with for every patient who participates in pharmaceutical research.

(5) Evaluating, together with the administration of the hospital and the Food and Drug Administration, all reactions and incidents which occur to research participants to determine whether the research pharmaceuticals in any way affected the patient so as to cause the reaction or incident.

(c) In order that the Board be active and effective, notices of meetings shall be sent to all members, minutes shall be maintained and distributed prior to meetings and all records, documents and correspondence shall be retained by an officer of the Board at the hospital. The Division of Mental Health shall provide administrative and secretarial assistance to support the Board's functions.

(d) No member of the Board shall be permitted to vote on any research project in which the member has an active role or financial interest.

(64 Del. Laws, c. 421, § 3; 70 Del. Laws, c. 186, § 1.)

§ 5174 Patient participation restricted.

The following patients shall be ineligible to participate in pharmaceutical research:

(1) Any patient who has been placed in the jurisdiction of the hospital under Chapter 4 of Title 11 or § 5153 of this title; provided, however, that a patient placed in the jurisdiction of the hospital under Chapter 4 of Title 11 or § 5153 of this title shall be eligible with the prior approval of Superior Court, upon affidavit filed by the medical director of the hospital. Such affidavit shall state that the patient for whom eligibility to participate is sought has given the patient's informed consent and that, with respect to that patient, all provisions of this subchapter have been and will continue to be complied with. The Court may deny approval for failure to comply with any provision of this subchapter or for any other reason it deems appropriate. Any affidavit filed pursuant to this subdivision shall be served upon the Attorney General, and no action shall be taken by the Court for 10 days after the date of such service. Superior Court may by rule prescribe procedures for review of affidavits filed pursuant to this subdivision.

(2) Any patient who has been placed in the jurisdiction of the hospital under Chapter 50 of this title; provided, however, that a patient initially committed under Chapter 50 of this title shall be eligible if that patient has voluntarily applied for and has been accepted for hospitalization pursuant to § 5123 of this title.

(3) Any patient who has been released from the hospital on convalescent status under § 5131 of this title [repealed].

(4) Any patient who has been placed in the jurisdiction of the hospital under Chapter 57 of this title.

(64 Del. Laws, c. 421, § 3; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 442, § 2.)

§ 5175 Informed consent required.

(a) No patient may participate in any pharmaceutical research, investigation or experiment unless and until the patient has given the patient's informed consent.

(b) Informed consent shall be in writing and each patient shall be given a copy of the patient's signed consent form.

(c) Informed consent must be voluntary, that is, free of any coercion by anyone, including the hospital. Patients shall be advised both verbally and in writing that no threats, promises, special privileges or payments of any kind will be made for their participation in pharmaceutical research. Participating patients shall be informed both verbally and in writing that they may withdraw from the research at any time. No pressure of any kind shall be exerted upon any patient to continue research from which the patient wishes to withdraw.

(d) Any patient participating in double blind research shall be advised both verbally and in writing that the patient may receive a placebo for the duration of the research instead of medication. The term placebo shall be fully defined both verbally and in writing.

(e) Patients shall be encouraged to consult with family, friends and/or physicians prior to signing any consent form and entering the research program.

(f) No patient shall be approached to participate in pharmaceutical research if patient is incapable of understanding the nature and consequences of patient's consent.

(g) All discussions leading to the agreement of a patient to participate in research, including the signing of the consent form, shall be witnessed by at least 1 health care professional who will receive no financial benefit from the research. Such independent witness shall be qualified to determine whether the patient is competent to consent to participate and whether informed consent was freely given. The presence of the witness shall be noted on the consent form.

(h) The explanation of the proposed research to the patient shall include any explanation of the procedures to be followed and their purposes, a description of any attendant discomforts and risks reasonably to be expected, a description of any benefits reasonably to be expected, a disclosure of any appropriate alternative procedures that might be advantageous to the patient and an offer to answer any inquiries concerning the procedures.

(64 Del. Laws, c. 421, § 3; 70 Del. Laws, c. 186, § 1.)

§ 5176 Waiver of informed consent requirement.

Sections 5174(2) and 5175 of this title may be waived for a patient under the following conditions:

(1) An unsuccessful attempt has been made to secure the informed consent of the patient.

(2) No accepted pharmaceutical or other therapy exists for the type of illness affecting the patient or the patient has not responded to accepted pharmaceutical or other therapies.

(3) The performance of pharmaceutical research on the patient would be in the best interest of that patient.

(4) The proposed waiver has been approved in writing by the Institutional Review Board after thorough review of the patient's clinical records.

(5) The proposed waiver has the prior written approval of the patient's legal guardian or, if the patient has no guardian, patient's next-of-kin.

(6) The proposed waiver has been approved by Superior Court upon affidavit filed by the medical director of the hospital. Such affidavit shall state that, with respect to the patient for whom the waiver is sought, all provisions of this section and this subchapter have been and will continue to be complied with. The Court may deny approval for failure to comply with any provision of this section or this subchapter or for any other reason it deems appropriate. Superior Court may by rule prescribe procedures for review of affidavits filed pursuant to this section.

(64 Del. Laws, c. 421, § 3; 70 Del. Laws, c. 186, § 1.)

Subchapter VII
Community Mental Health Treatment Act

§ 5181 Definitions.

As used in this chapter:

(1) "Department" means the Department of Health and Social Services except that Department means the Department of Services for Children, Youth and Their Families in the context of a treatment facility serving minors.

(2) "Facility" or "treatment facility" means an entity, other than a licensed hospital, that provides care, supportive lodging or treatment to individuals with a mental condition. This section includes mental health providers serving individuals in both inpatient and outpatient settings, day treatment programs, and supervised apartments. "Facility" does not include the following:

a. A hospital or residential center as defined in § 5161(b) of this title;

b. Shelters or leased premises, apart from supervised apartments, solely providing housing without mental health provider services;

c. Outpatient practice offices of licensed independent practitioners, including, but not limited to, physicians, psychologists, social workers and counselors.

(3) "Mental condition" means a mental disorder as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders".

(4) "Mental health provider" means any professional who provides assessment, care, treatment, counseling, medication, case management, or therapeutic services to an individual with a mental condition, including but not limited to psychiatrists, psychologists, psychiatric nurses and social workers.

(5) "Patient" means any individual receiving involuntary or voluntary care, supportive lodging, treatment or other mental health provider services from a facility.

(6) "Patient representative" means an individual or entity authorized to act on the patient's behalf by operation of law or express appointment by the patient.

(7) "Protection and advocacy agency" means the Community Legal Aid Society, Inc. or successor agency designated the state protection and advocacy system pursuant to the following:

a. Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. § 10801 et seq.);

b. Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. § 15001 et seq.); or

c. Protection and Advocacy for Individual Rights (29 U.S.C. § 794(e)).

(77 Del. Laws, c. 387, § 1; 78 Del. Laws, c. 179, §§ 201-203.)

§ 5182 Community mental health patients' rights.

It is the intent of the General Assembly and purpose of this section to promote the interests and well being of residential and nonresidential mental health patients of treatment facilities. It is declared to be the public policy of this State that the interests of the patient shall be protected by a declaration of a patient's rights and by requiring that all facilities treat their patients in accordance with the following minimum rights:

(1) Every patient shall have the right to receive considerate, respectful and appropriate care, treatment and services in compliance with relevant federal and state laws and regulations, recognizing each person's basic personal and property rights, which include dignity and individuality.

(2) Upon request at the time of admission, and at mutually agreeable intervals thereafter, the facility shall provide each patient or patient's representative a written statement of facility services and net charges not covered by insurance or public benefits programs for which patient payment is expected. Such statements shall be provided in a format and language comprehensible to the ordinary layperson.

(3) Each patient or patient's representative shall receive from the attending or resident physician or staff of the facility complete and current information concerning the patient's diagnosis, treatment and prognosis in terms and language the patient or representative can reasonably be expected to understand. The patient or patient's representative shall participate in the planning of the patient's medical treatment, including attendance at treatment plan meetings, shall be informed of the medical consequences of all medication and treatment alternatives, and shall give prior written informed consent to participation in any experimental research after a complete disclosure of the goals, possible effects on the patient and whether or not the patient can expect any benefits or alleviation of the patient's condition.

(4) Upon request, the facility shall provide the name, address and telephone number of the primary staff person or physician responsible for the patient's care.

(5) Each patient or patient's representative shall receive respect and privacy in the patient's own medical care program. Case discussion, consultation, examination and treatment shall be confidential and shall be conducted discreetly. In the patient or patient's representative's discretion, persons not directly involved or participating in the patient's care shall not be permitted to be present during such discussions, consultations, examinations or treatment except with the consent of the patient or patient's representative. Personal and medical records shall be treated confidentially and shall not be made public without the consent of the patient or patient's representative, except such records as are needed for a patient's transfer to another health care institution or as required by law or third-party payment contract.

(6) Every patient shall be free from chemical and physical restraints imposed for purposes of discipline and convenience and not necessary to treat the patient's medical condition.

(7) Every patient or patient's representative shall receive from the administrator or staff of the facility a courteous, timely and reasonable response to requests and the facility shall make prompt efforts to resolve grievances. Responses to requests and grievances shall be made in writing upon written request by the patient or patient's representative.

(8) Upon request, every patient or patient's representative shall be provided with information as to any relationship the facility has with other health care and related institutions and/or service providers, including, but not limited to, pharmacy and rehabilitation services, to the extent the patient is offered care and/or services from these related entities. Such information shall be provided in writing upon admission and thereafter when additional services are offered.

(9) Upon request, every patient shall receive reasonable continuity of care.

(10) Within residential treatment facilities, every patient or patient's representative may send and shall receive mail promptly, and shall have access at any reasonable hour to a telephone where the patient may speak privately, and shall have access to writing instruments, stationary and postage when applicable.

(11) Each patient has the right to manage personal financial affairs. If a facility determines that a patient lacks the capacity to exercise this right, and no patient representative can be identified as provided in § 5183 of this title, the facility shall consult the Department to assess available options, including enrollment in money management or bill payment programs. Nothing in this section shall preclude a facility from serving as a representative payee through designation of a public agency or written authorization by a patient or patient's representative.

(12) Every patient or patient's representative has the right, personally or through other persons or in combination with others, to exercise the patient's rights; to present grievances; to recommend changes in facility policies or services on behalf of the patient or others; to present complaints or petitions to the facility's staff or administrator, to the Department of Health and Social Services, and, if the patient is a minor under the age of 18, to the Department of Services for Children, Youth and Their Families, or to other persons or groups without fear of reprisal, restraint, interference, coercion or discrimination.

(13) A patient or patient's representative shall not be required to perform services for the facility.

(14) Every patient or patient's representative shall have the right to inspect all records pertaining to that patient upon oral or written request. If a patient or patient's representative requests records to assist with preparation of any court hearing under this chapter, such records will be supplied on an expeditious basis.

(15) All patients shall be fully informed, in language they can understand, of their rights and all rules and regulations governing patient conduct and their responsibilities during the stay at the facility. Every patient shall be directed to a prominent place within the facility where a listing of the patient's rights is posted. The facility shall guarantee that a current list of patient rights is always posted in a highly visible and accessible place.

(16) Every patient shall have the right to receive information from agencies acting as client advocates, including the protection and advocacy agency, and be afforded the opportunity to contact those agencies without reprisal.

(17) Every patient 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.

(18) Every patient has the right to participate in an ongoing program of activities designed to meet, in accordance with personal assessments and plan of care, the patient's interests and physical, mental and psychosocial well being.

(19) Every patient shall have the right to participate in social, religious and community activities that do not interfere with the patient's treatment plan or the rights of other patients.

(20) Every patient eligible to vote under Delaware law shall be entitled to vote in primary and general elections. The facility shall offer affirmative assistance to enable patients to exercise voting rights, including assistance in accessing voter registration forms and applications for absentee ballots.

(21) Every patient shall have the right to request and receive the names and positions of staff members providing care to the patient.

(22) Every patient shall have the right to request and receive an organizational chart outlining the facility's chain of command for purposes of making requests and asserting grievances.

(23) A patient's care and treatment shall be provided in a setting and under conditions which restrict the patient's personal liberty only to the extent required by the patient's treatment needs, applicable law and judicial orders.

(24) The rights described in this subchapter are in addition to, and not in derogation of, any other constitutional, statutory or regulatory rights. Nothing in this subchapter shall be construed to limit patient enforcement of rights through a complaint to an administrative agency or court of competent jurisdiction.

(77 Del. Laws, c. 387, § 1.)

§ 5183 Devolution of rights.

Consistent with the nature of each right in § 5182 of this title, the entitlement may devolve to the patient representative. Authority to act on behalf of patients who are minors may be exercised by the minor's parent, guardian, or custodian. Authority to act on behalf of an adult patient may be exercised by a guardian acting within the scope of appointment or through an agent acting pursuant to a valid power of attorney, health care directive, or similar instrument. In the absence of such authorized representative, if the patient's physician determines that the patient is incapable of exercising rights under this subchapter due to mental or physical incapacity, authority to exercise such rights shall devolve to the patient's next of kin.

(77 Del. Laws, c. 387, § 1.)

§ 5184 Reporting requirements.

(a) Any employee of a facility or anyone who provides services to a patient of a facility on a regular or intermittent basis who has reasonable cause to believe that a patient in a facility has been abused, mistreated, neglected or financially exploited shall immediately report such abuse, mistreatment, neglect or financial exploitation to the Department by oral and written communication. The written report shall be filed by the employee or service provider within 48 hours after the employee or service provider first gains knowledge of the abuse, mistreatment, neglect or financial exploitation.

(b) Any person required by subsection (a) of this section to make an oral and a written report who fails to do so shall be liable for a civil penalty not to exceed $1,000 per violation.

(c) In addition to those persons subject to subsection (a) of this section, any other person may make such a report if such person has reasonable cause to believe that a patient of a facility has been abused, mistreated, neglected or financially exploited.

(d) No facility shall retaliate or discriminate against any patient or person facilitating submission of a report or cooperating with any investigation prompted by a report under this section.

(e) Any correspondence or other written communication from a patient to the Department, the Attorney General's office, the protection and advocacy agency and/or a law-enforcement agency shall, if delivered to or received by a facility, be promptly forwarded, unopened, by the facility to the agency to which it is written. Any correspondence or other written communication from the Department, the Attorney General's office and/or a law-enforcement agency to a patient shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to such patient. Failure to comply with this section shall result in a civil penalty not to exceed $1,000 per violation.

(77 Del. Laws, c. 387, § 1.)

§ 5185 Protection and advocacy agency.

(a) The protection and advocacy agency is authorized to complement the role of the Department in promoting the health, safety, and well being of patients under this subchapter through monitoring, investigation, and advocacy. In furtherance of this authority, the protection and advocacy agency may engage in the following functions:

(1) Solicit and receive oral and written reports and complaints of abuse, neglect, mistreatment or financial exploitation of facility patients; and

(2) Access a facility; interview patients, residents, facility staff and agents; and inspect and copy records pertaining to a patient with valid consent or as otherwise authorized by federal law.

(b) No facility shall retaliate or discriminate against any patient or person submitting a report to the protection and advocacy agency or cooperating with the agency's monitoring, investigation, or advocacy activities.

(77 Del. Laws, c. 387, § 1.)

§ 5186 Enforcement of rights.

This subchapter shall be enforceable by the Attorney General, the protection and advocacy agency, and aggrieved patients and patient representatives. Without limitation, notwithstanding § 342 of Title 10, the Court of Chancery shall have jurisdiction over actions, including those requesting declaratory relief, to enforce or resolve disputes concerning the rights arising out of this subchapter.

(77 Del. Laws, c. 387, § 1.)

Part V
Mental Health
Chapter 52
INTERSTATE COMPACT ON THE MENTALLY DISORDERED OFFENDER

§ 5201 Interstate Compact; enactment.

The Interstate Compact on the Mentally Disordered Offender, hereinafter called "the compact," is enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I

Purpose and Policy

Purpose and Policy

(a) The party states, desiring by common action to improve their programs for the care and treatment of mentally disordered offenders, declare that it is the policy of each of the party states to:

1. Strengthen their own programs and laws for the care and treatment of the mentally disordered offender.

2. Encourage and provide for such care and treatment in the most appropriate locations, giving due recognition to the need to achieve adequacy of diagnosis, care, treatment, after-care and auxiliary services and facilities and, to every extent practicable, to do so in geographic locations convenient for providing a therapeutic environment.

3. Authorize cooperation among the party states in providing services and facilities when it is found that cooperative programs can be more effective and efficient than programs separately pursued.

4. Place each mentally disordered offender in a legal status which will facilitate his care, treatment and rehabilitation.

5. Authorize research and training of personnel on a cooperative basis, in order to improve the quality or quantity of personnel available for the proper staffing of programs, services and facilities for mentally disordered offenders.

6. Care for and treat mentally disordered offenders under conditions which will improve the public safety.

(b) Within the policies set forth in this Article, it is the purpose of this compact to:

1. Authorize negotiation, entry into and operations under contractual arrangements among any two or more of the party states for the establishment and maintenance of cooperative programs in any one or more of the fields for which specific provision is made in the several articles of this compact.

2. Set the limits within which such contracts may operate, so as to assure protection of the civil rights of mentally disordered offenders, and protection of the rights and obligations of the public and of the party states.

3. Facilitate the proper disposition of criminal charges pending against mentally disordered offenders, so that programs for their care, treatment and rehabilitation may be carried on efficiently.

ARTICLE II

ARTICLE II

Definitions

As used in this compact:

(1) "Mentally disordered offender" means a person who has been determined, by adjudication or other method legally sufficient for the purpose in the party state where the determination is made, to be mentally ill and: A. is under sentence for the commission of crime; or B. who is confined or committed on account of the commission of an offense for which, in the absence of mental illness, such person would be subject to incarceration in a penal or correctional facility.

(2) "Patient" means a mentally disordered offender who is cared for, treated or transferred pursuant to this compact.

(3) "Sending state" means a state, party to this compact, in which the mentally disordered offender was convicted or the state in which he would be subject to trial and conviction of any offense, except for his mental condition, or, within the meaning of Article V of this compact, the state whose authorities have filed a petition in connection with an untried indictment, information or complaint.

(4) "Receiving state" means a state, party to this compact, to which a mentally disordered offender is sent for care, aftercare, treatment or rehabilitation, or within the meaning of Article V of this compact, the state in which a petition in connection with an untried indictment, information or complaint has been filed.

ARTICLE III Contracts

ARTICLE III Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the care and treatment of mentally disordered offenders, on behalf of a sending state, in facilities situated in receiving states, or for the participation of such mentally disordered offenders in programs of aftercare on conditional release administered by the receiving state. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for patient care, treatment and extraordinary services, if any.

3. Determination of responsibility for ordering or permitting the furnishing of extraordinary services, if any.

4. Participation in compensated activities, if any, available to patients, the disposition or crediting of any payment received by patients on account thereof, and the crediting of proceeds from or disposal of any products resulting therefrom.

5. Delivery and retaking of mentally disordered offenders.

6. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any facility for mentally disordered offenders or addition to such facility by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the facility or addition thereto, or for the inclusion therein of particular equipment or structures and for the reservation of a specific percentum of the capacity of the facility to be kept available for use by patients of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) A party state may contract with any one or more other party states for the training of professional or other personnel whose services, by reason of such training, would become available for, or be improved in respect of ability to participate in, the care and treatment of mentally disordered offenders. Such contracts may provide for such training to take place at any facility being operated, or to be operated, for the care and treatment of mentally disordered offenders; at any institution or facility having resources suitable for the offering of such training; or may provide for the separate establishment of training facilities, provided that no such separate establishment shall be undertaken unless it is determined that an appropriate existing facility or institution cannot be found at which to conduct the contemplated program. Any contract entered into pursuant to this paragraph shall provide for:

1. The administration, financing and precise nature of the program.

2. The status and employment or other rights of the trainees.

3. All other necessary matters.

(d) No contract entered into pursuant to this compact shall be inconsistent with any provision thereof.

ARTICLE IV Procedures and Rights

ARTICLE IV Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III of this compact, shall decide that custody, care and treatment in, or transfer of a patient to, a facility within the territory of another party state, or conditional release for aftercare in another party state, is necessary in order to provide adequate care and treatment or is desirable in order to provide an appropriate program of therapy or other treatment, or is desirable for clinical reasons, those officials may direct that the custody, care and treatment be within a facility or in a program of aftercare within the territory of such other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any facility in which it has a contractual right to secure care or treatment of patients for the purpose of inspection and visiting such of its patients as may be in the facility or served by it.

(c) Except as otherwise provided in Article VI of this compact, patients in a facility pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed for transfer to a facility within the sending state, for transfer to another facility in which the sending state may have a contractual or other right to secure care and treatment of patients, for release on aftercare or other conditional status, for discharge or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III of this compact.

(d) Each receiving state shall provide regular reports to each sending state on the patients of that sending state in facilities pursuant to this compact, including a psychiatric and behavioral record of each patient, and shall certify that record to the official designated by the sending state in order that each patient may have the benefit of his or her record in determining and altering the disposition of such patient, in accordance with the law which may obtain in the sending state, and in order that the same may be a source of information for the sending state.

(e) All patients who may be in a facility, or receiving aftercare from a facility, pursuant to the provisions of this compact shall be treated in a reasonable and humane manner; and shall be cared for, treated and supervised in accordance with the standards pertaining to the program administered at the facility.

The fact of presence in a receiving state shall not deprive any patient of any legal rights which that patient would have had, if in custody or receiving care, treatment or supervision as appropriate, in the sending state.

(f) Any hearing or hearings to which a patient present in a receiving state pursuant to this compact may be entitled by the laws of the sending state shall be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state.

The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. That record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this paragraph, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this paragraph shall be borne by the sending state.

(g) Any patient confined pursuant to this compact shall be released within the territory of the sending state unless the patient, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any patient pursuant to the terms of this compact shall be subject to civil process and shall have any and all rights to sue, be sued and participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if in any appropriate facility of the sending state or being supervised therefrom, as the case may be, located within such state.

(i) The parent, guardian, trustee or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any patient shall not be deprived of, or restricted in his exercise of, any power in respect to any patient pursuant to the terms of this compact.

ARTICLE V Disposition of Charges

ARTICLE V Disposition of Charges

(a) Whenever the authorities responsible for the care and treatment of a mentally disordered offender, whether convicted or adjudicated in the state or subject to care, aftercare, treatment or rehabilitation pursuant to a contract, are of the opinion that charges based on untried indictments, informations or complaints in another party state present obstacles to the proper care and treatment of a mentally disordered offender or to the planning or execution of a suitable program for him, such authorities may petition the appropriate court in the state where the untried indictment, information or complaint is pending for prompt disposition thereof. If the mentally disordered offender is a patient in a receiving state, the appropriate authorities of the sending state, upon recommendation of the appropriate authorities in the receiving state, shall, if they concur in the recommendation, file the petition contemplated by this paragraph.

(b) The court shall hold a hearing on the petition within 30 days of the filing thereof. Such hearing shall be only to determine whether the proper safeguarding and advancement of the public interest; the condition of the mentally disordered offender; and the prospects for more satisfactory care, treatment and the rehabilitation of him warrant disposition of the untried indictment, information or complaint prior to termination of the defendant's status as a mentally disordered offender in the sending state. The prosecuting officer of the jurisdiction from which the untried indictment, information or complaint is pending, the petitioning authorities and such other persons as the court may determine shall be entitled to be heard.

(c) Upon any hearing pursuant to this Article, the court may order such adjournments or continuances as may be necessary for the examination or observation of the mentally disordered offender, or for the securing of necessary evidence. In granting or denying any such adjournment or continuance, the court shall give primary consideration to the purposes of this compact and more particularly to the need for expeditious determination of the legal and mental status of a mentally disordered offender so that his care, treatment and discharge to the community only under conditions which will be consonant with the public safety may be implemented.

(d) The presence of a mentally disordered offender within a state wherein a petition is pending or being heard pursuant to this Article or his presence within any other state through which he is being transported in connection with such petition or hearing shall be only for the purposes of this compact and no court, agency or person shall have or obtain jurisdiction over such mentally disordered offender for any other purpose by reason of his presence pursuant to this Article. The mentally disordered offender shall at all times remain in the custody of the sending state. Any acts of officers, employees or agencies of the receiving state in providing or facilitating detention, housing or transportation for the mentally disordered offender shall be only as agents for the sending state.

(e) Promptly upon conclusion of the hearing, the court shall dismiss the untried indictment, information or complaint, if it finds that the purposes enumerated in paragraph (b) of this Article would be served thereby. Otherwise, the court shall make such order with respect to the petition and the untried indictment, information or complaint as may be appropriate in the circumstances and consistent with the status of the defendant as a mentally disordered offender in the custody of and subject to the jurisdiction of the sending state.

(f) No fact or other matter established or adjudicated at any hearing pursuant to this Article, or in connection therewith, shall be deemed established or adjudicated, nor shall it be admissible in evidence in any subsequent prosecution of the untried indictment, information or complaint concerned in a petition filed pursuant to this Article unless:

1. The defendant or his duly empowered legal representative requested or expressly acquiesced in the making of the petition and was afforded an opportunity to participate in person in the hearing; or

2. The defendant himself offers or consents to the introduction of the determination or adjudication at such subsequent proceedings.

ARTICLE VI

ARTICLE VI

Act Not Reviewable in Receiving State; Return

(a) Any decision of the sending state in respect to any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon, and not reviewable within, the receiving state, but if at the time the sending state seeks to remove a patient from the receiving state there is pending against the patient within such state any criminal charge, or if the patient is suspected of having committed within such state a criminal offense, the patient shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport patients pursuant to this compact through any and all states party to this compact without interference.

(b) A patient who escapes while receiving care and treatment, or who violates provisions of aftercare by leaving the jurisdiction, or while being detained or transported pursuant to this compact shall be deemed an escapee from the sending state and from the state in which the facility is situated or the aftercare was being provided. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for return shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VII Federal Aid

ARTICLE VII Federal Aid

Any state party to this compact may accept federal aid for use in connection with any facility or program the use of which is or may be affected by this compact or any contract pursuant thereto and any patient in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary regimen of the facility or program, the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VIII Entry Into Force

ARTICLE VIII Entry Into Force

This compact shall enter into force, and become effective and binding upon the states so acting, when it has been enacted into law by any 2 states from among the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. Thereafter, this compact shall enter into force and become effective and binding as to any other such states or any other state upon similar action by such state.

ARTICLE IX Withdrawal and Termination

ARTICLE IX Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing it and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in such statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed under this compact prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such patients as it may have in other party states pursuant to the provisions of this compact.

ARTICLE X

ARTICLE X

Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the custody, care, treatment, rehabilitation or aftercare of patients nor to repeal any other laws of a party state authorizing the making of cooperative arrangements.

ARTICLE XI Construction and Severability

ARTICLE XI Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(16 Del. C. 1953, § 5201; 57 Del. Laws, c. 685, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5202 Department of Health and Social Services; authority to contract.

The Department of Health and Social Services may negotiate and enter into contracts on behalf of this State pursuant to Article III of the compact and may perform such contracts, provided that no funds, personnel, facilities, equipment, supplies or materials shall be pledged for, committed or used on account of any such contract, unless legally available therefor.

(16 Del. C. 1953, § 5202; 57 Del. Laws, c. 658, § 1.)

Part V
Mental Health
Chapter 53
GOVERNOR BACON HEALTH CENTER
Subchapter I
General Provisions

§ 5301 Establishment.

(a) A state health and welfare center, to be known as "Governor Bacon Health Center," shall be maintained.

(b) The Center shall have the exclusive use of all buildings, structures, utilities and improvements erected on the tract of land on which it is located, as well as all equipment, supplies and other personal property located on or in any improvement erected thereon for the purposes of the Center as described in this chapter.

(Code 1935, § 3100A; 46 Del. Laws, c. 188, § 2; 46 Del. Laws, c. 311, § 1; 16 Del. C. 1953, § 5301.)

§ 5302 Mental hygiene clinic.

The Department of Health and Social Services may establish at the Center a mental hygiene clinic to be composed of such professional assistants as may be recommended by the Secretary of the Department of Health and Social Services. The Secretary shall be the directing head of the clinic.

(Code 1935, § 3100B; 46 Del. Laws, c. 188, § 2; 46 Del. Laws, c. 311, § 1; 16 Del. C. 1953, § 5303; 53 Del. Laws, c. 84, § 3; 57 Del. Laws, c. 591, § 26.)

§ 5303 Sections within Center.

(a) The Department of Health and Social Services may establish the following sections at the Center, under the direction of the Division of Substance Abuse and Mental Health:

(1) A section for adults who suffer from mental and physical disorders, but who are without frank psychosis and who require only nursing care.

(2) Any other section which the Department of Health and Social Services deems related to health and welfare problems of adults.

(b) The Department of Services for Children, Youth and Their Families may establish the following sections at the Center, under the direction of the Division of Prevention and Behavioral Health Services:

(1) A section for the evaluation, care and treatment of adolescents who are either seriously emotionally maladjusted or have mental conditions, who are amenable to modern cure and treatment and who appear to meet the admissions criteria for care and treatment. Evaluation may include social, psychological and psychiatric study and examination.

(2) Any other sections which the Department of Services for Children, Youth and Their Families deems related to mental health and welfare problems of children and youth.

(Code 1935, § 3100F; 46 Del. Laws, c. 188, § 2; 16 Del. C. 1953, § 5304; 51 Del. Laws, c. 290; 54 Del. Laws, c. 279, § 3; 62 Del. Laws, c. 208, § 1; 64 Del. Laws, c. 108, § 27; 64 Del. Laws, c. 467, § 2; 73 Del. Laws, c. 41, § 1; 77 Del. Laws, c. 327, § 210(b); 78 Del. Laws, c. 179, § 204.)

§ 5304 Powers of Department of Health and Social Services and Department of Services for Children, Youth and Their Families; cooperation of other state agencies.

The Department of Health and Social Services and Department of Services for Children, Youth and Their Families may determine the size and accommodations required for any section established by the respective Departments pursuant to § 5303 of this title; the medical treatment, training and education of patients or persons admitted to such sections; and any and all matters or programs related to the study, comfort, care and treatment of each patient or persons. The Department of Health and Social Services and Department of Services for Children, Youth and Their Families, in making any of the foregoing determinations, may call upon and receive the cooperation, advice and assistance of any other state department, institution, commission or agency performing education, health or welfare functions.

(Code 1935, § 3100F; 46 Del. Laws, c. 188, § 2; 16 Del. C. 1953, § 5305; 54 Del. Laws, c. 279, § 3; 64 Del. Laws, c. 108, § 28.)

§ 5305 Cost of maintenance supplied by State.

The costs of maintenance of the Center shall be borne by the State and shall be paid by the State Treasurer on orders or vouchers signed by the Secretary of the Department of Health and Social Services. The Department shall keep and maintain separate books of account for the Center.

(Code 1935, § 3100C; 46 Del. Laws, c. 188, § 2; 16 Del. C. 1953, § 5306; 57 Del. Laws, c. 591, § 27.)

§ 5306 Annual appropriation.

The General Assembly shall at every biennial session thereof provide an annual sum for the use and support of the Center which sum shall be paid by the State Treasurer as prescribed in § 5305 of this title.

(Code 1935, § 3100D; 46 Del. Laws, c. 188, § 2; 16 Del. C. 1953, § 5307.)

§ 5307 Restriction on offensive use of property within 3 miles.

(a) No person shall erect or cause to be erected any structure, or use or cause to be used any structure or premises within a radius of 3 miles of the Governor Bacon Health Center for any of the following manufacturing activities:

(1) Pyroxylin manufacture or processing or the manufacture of explosive or highly flammable cellulose products;

(2) Fireworks or explosives manufacture;

(3) Animal glue or animal gelatine manufacture;

(4) Reduction of garbage, offal, animals or fish on a commercial basis;

(5) Operation of a tannery;

(6) Organic fertilizer manufacture.

However, nothing in this section shall prohibit the raising of poultry or livestock and the processing of the same or the processing of farm produce or the erection of any structure or installation of any facilities or the use of any structure, facilities or premises, for a manufacturing or industrial use not specified herein.

(b) Whoever violates this section shall be guilty of maintaining a nuisance and shall be enjoined as hereinafter provided.

(c) Whenever such nuisance exists, the Attorney General of the State or any person who is a citizen of the county, or has an office therein, may bring an action in equity in the name of the State upon the relation of such Attorney General or person to abate such nuisance and to perpetually enjoin the person maintaining the same from further maintenance thereof.

(16 Del. C. 1953, § 5311; 49 Del. Laws, c. 35; 50 Del. Laws, c. 3, § 1.)

Subchapter II

Commitment, Custody, Maintenance and Discharge of Patients

§ 5321 Admission to Center.

No person shall be admitted to any department of the Center except as provided in § 5323 of this title or except as follows:

(1) Children between the ages of 3 and 18 years who are either seriously maladjusted or have mental conditions and who are amenable to modern care and treatment shall be admitted to the Center upon the application of the parents or the surviving parent or legal guardian of any such child or any institution or agency having the care and custody of any such child or by the commitment of any court of this State having jurisdiction over such children;

(2) Children with physical disabilities, including those with muscular disorders, cardiac disorders and those afflicted with infantile paralysis, shall be admitted to the Center upon the application of the parents or the surviving parent or legal guardian of such children and in the event that both parents of such children are deceased and no legal guardian has been appointed, upon the application of any physician, institution or agency treating or having the care or custody of such children;

(3) No child shall be admitted to the detention department of the Center unless a court having jurisdiction over dependent, neglected, delinquent or maladjusted children commits any such child for the sole purpose of social, psychological and psychiatric study and examination;

(4) A child awaiting assignment to a foster home shall only be admitted upon the application of any public or private agency having the authority or function to place such children in such homes;

(5) No person suffering from alcoholism or drug addiction but without psychosis, either acute or chronic, shall be admitted to the Center except upon the person's own application or the application of the person's parents, or the surviving parent or legal guardian or in the event of none such, upon the application of any physician or institution treating or having the care or custody of any such person or by the commitment of any court of this State having jurisdiction over any such person;

(6) No person with epilepsy but without psychosis shall be admitted to the Center except upon the person's own application or upon the application of the person's parents or the surviving parent or legal guardian or in the event of none such, upon the application of any physician or institution treating or having the care or custody of any such person;

(7) No aged person who is bedridden and without frank psychosis and needing nursing care only shall be admitted to the Center except upon the person's own application or the application of the person or persons responsible for the person's support and maintenance or upon the application of any institution whether public or private having the care and custody of any such person;

(8) Adults with physical disabilities, including those with muscular disorders and those afflicted with infantile paralysis, shall be admitted to the Center upon their own application or upon the application of any practicing physician in good standing, for the purpose of observation, study and treatment;

(9) In all other cases, no person shall be admitted to the Center except in accordance and in compliance with the rules and regulations which are adopted by the Department of Health and Social Services or Department of Services for Children, Youth and Their Families governing the admissions to their respective sections within the Center.

(Code 1935, § 3100G; 46 Del. Laws, c. 188, § 2; 16 Del. C. 1953, § 5321; 47 Del. Laws, c. 67, § 1; 64 Del. Laws, c. 108, § 29; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 205-209.)

§ 5322 Admission procedures; rules and regulations.

(a) Notwithstanding anything contained in this section and § 5321 of this title, no person shall be eligible for admission to the Center, except by commitment of a court having authority to commit any person to the Center, unless and until such person is determined to be eligible for admission by the Department of Health and Social Services or the Department of Services for Children, Youth and Their Families.

(b) The Department of Health and Social Services and Department of Services for Children, Youth and Their Families may make and adopt reasonable rules and regulations governing the admission of persons to their respective programs at the Center which are not inconsistent with this chapter.

(c) The Department of Health and Social Services and the Department of Services for Children, Youth and Their Families may also refuse the admission of any person to their respective programs at the Center, except such persons committed by a court having authority under law to make such commitment, when the Department to which any such person should be assigned is unable for any reason to accommodate any such person.

(Code 1935, § 3100G; 46 Del. Laws, c. 188, § 2; 16 Del. C. 1953, § 5322; 64 Del. Laws, c. 108, § 30.)

§ 5323 Veterans' preference.

The Department of Health and Social Services shall give veterans of World War I, World War II, the Korean Conflict and the Vietnam era who are eligible for admission to the Health Center a preference over other persons with respect to admission thereto.

(Code 1935, § 3100N; 46 Del. Laws, c. 188, § 2; 16 Del. C. 1953, § 5323; 66 Del. Laws, c. 139, § 1.)

§ 5324 Transfer to Center from other state institutions.

(a) Any institution of this State may transfer any person who is an inmate of any such institution to the Center if such person is eligible for transfer in accordance with this chapter. Any such transfer shall be subject to the rules and regulations governing the Center as made and adopted by the Department of Health and Social Services or Department of Services for Children, Youth and Their Families. If any such inmate has been committed to any institution by a court of this State, such institution shall apply to such court for authority to transfer any such person to the Center.

(b) No state institution shall be charged by the Center for the care or maintenance of any person who has been or may be transferred to the Center.

(c) The Center, upon application of the Superintendent of the Stockley Center, under the jurisdiction of the Department of Health and Social Services, shall also receive all persons with epilepsy and bedridden persons committed to the Stockley Center.

(Code 1935, § 3100H; 46 Del. Laws, c. 188, § 2; 47 Del. Laws, c. 70, § 1; 47 Del. Laws, c. 176, § 1; 16 Del. C. 1953, § 5324; 64 Del. Laws, c. 108, § 31; 73 Del. Laws, c. 97, § 1; 78 Del. Laws, c. 179, § 210.)

§ 5325 Liability for maintenance of patient; collection remedies; indigent persons.

(a) Any patient or person committed or admitted to the Center shall at all times be liable for the care, maintenance and support furnished to and received by any such person while a patient of the Center. Nothing in this section shall relieve from liability for the support of any such patient any person liable under any law of this State.

(b) The Department of Health and Social Services may collect from any such patient or out of the property, moneys and effects of any such person all moneys necessary to discharge and pay all liability of such patient for the patient's care, maintenance and support.

(c) The Department of Health and Social Services may also proceed for the recovery of the moneys necessary for care, maintenance and support in an action to be brought in any court of competent jurisdiction in the name of the Department, for the use of the Governor Bacon Health Center.

(d) The expenses of the care, treatment and maintenance of any indigent person admitted to the emergency hospital facilities of the Center shall be paid by the State Treasurer.

(Code 1935, § 3100I; 46 Del. Laws, c. 188, § 2; 46 Del. Laws, c. 311, § 1; 16 Del. C. 1953, § 5325; 57 Del. Laws, c. 228, § 8; 58 Del. Laws, c. 153; 70 Del. Laws, c. 186, § 1.)

§ 5326 Resident and nonresident pay patient; contracts.

(a) The Department of Health and Social Services may receive any person from any other state who is able to pay for the person's care, maintenance and support and who is otherwise eligible for admission to the Center under this chapter and in accordance with the rules and regulations governing admissions to the Center.

(b) The Department may also receive into the Center any person eligible for admission thereto who is a resident of this State and who is able to pay for the person's care, maintenance and support.

(c) The Department may make contracts in relation to the care, maintenance and support and may recover from the person with whom it contracts or from the person admitted the compensation agreed upon, or, in case no certain compensation was agreed upon, then it may recover a reasonable compensation in an action to be brought in the name of the Department for the use of the Governor Bacon Health Center.

(Code 1935, § 3100J; 46 Del. Laws, c. 188, § 2; 46 Del. Laws, c. 311, § 1; 16 Del. C. 1953, § 5326; 70 Del. Laws, c. 186, § 1.)

§ 5327 Release and discharge of patients.

The Department of Health and Social Services and Department of Services for Children, Youth and Their Families may make and adopt rules and regulations in respect to the release, whether temporary or permanent, of patients in their respective programs at the Center, except that any person committed to the Center by a court of this State shall not be released from the Center except upon an order from such court. When a person committed by any such court is eligible for release, the Department of Health and Social Services or the Department of Services for Children, Youth and Their Families may petition such court for the release of any such patient.

(Code 1935, § 3100K; 46 Del. Laws, c. 188, § 2; 16 Del. C. 1953, § 5327; 64 Del. Laws, c. 108, § 32.)

Part V
Mental Health
Chapter 54
MENTAL HEALTH SERVICES PROVIDERS

§ 5401 Definitions.

Except where the context indicates otherwise, as used in this chapter:

(1) "Licensed clinical social worker" means "licensed clinical social worker" as defined by Chapter 39 of Title 24.

(2) "Licensed counselor working in the field of mental health" means "licensed counselor working in the field of mental health" as defined by Chapter 30 of Title 24.

(3) "Licensed psychologist" means "licensed psychologist" as defined by Chapter 35 of Title 24.

(4) "Mental health services provider" means any physician, registered professional nurse, licensed counselor working in the field of mental health, psychologists and licensed clinical social workers as defined in this chapter.

(5) "Patient" means any person with whom the mental health services provider has established a patient-care provider relationship.

(6) "Physician" means "physician" as defined by Chapter 17 of Title 24.

(7) "Registered professional nurse" means "registered professional nurse" as defined by Chapter 19 of Title 24.

(68 Del. Laws, c. 387, § 1.)

§ 5402 Duty of mental health services providers to take precautions against threatened patient violence; duty to warn.

(a) Except as provided in subsection (d) of this section, no cause of action shall lie against a mental health services provider, nor shall legal liability be imposed, for inability to prevent harm to person or property caused by a patient unless:

(1) The patient has communicated to the mental health services provider an explicit and imminent threat to kill or seriously injure a clearly identified victim or victims, or to commit a specific violent act or to destroy property under circumstances which could easily lead to serious personal injury or death, and the patient has an apparent intent and ability to carry out the threat; and

(2) The mental health services provider fails to take the precautions specified in subsection (b) of this section in an attempt to prevent the threatened harm.

(b) Any duty owed by a mental health services provider to take reasonable precautions to prevent harm threatened by a patient is discharged, as a matter of law, if the mental health services provider, in a timely manner:

(1) Notifies a law enforcement agency near where the potential victim resides, or notifies a law enforcement agency near where the patient resides, and communicates the threat of death or serious bodily injury to the clearly identified victim or victims; or

(2) Arranges for the patient's immediate voluntary or involuntary hospitalization.

(c) Whenever a patient has explicitly threatened to cause serious harm to a person or property, or a mental health services provider otherwise concludes that the patient is likely to do so and the mental health services provider, for the purpose of reducing the risk of harm, discloses any confidential communication made by or relating to the patient, no cause of action, either criminal or civil, shall lie against the mental health services provider for making such disclosure.

(d) Whenever a patient within the custodial responsibility of a hospital or other facility has made or makes threats of the kind dealt with in subsection (a) of this section, the mental health services provider and institution, agency or hospital shall, prior to such patient's discharge, consider and evaluate previously made threats made by such patient. Under such circumstances, the mental health services provider may consider it prudent to inform appropriate law enforcement agencies or the previously threatened party as a measure of precaution. Subsections (a) and (c) of this section shall also apply to the hospital or facility.

(68 Del. Laws, c. 387, § 1.)

Part V
Mental Health
Chapter 55
PERSONS DIAGNOSED WITH INTELLECTUAL DISABILITIES AND OTHER SPECIFIC DEVELOPMENTAL DISABILITIES
Subchapter I
Declaration of General and Special Rights of Persons Diagnosed with Intellectual Disabilities and Other Specific Developmental Disabilities

§ 5501 Basic rights.

Persons diagnosed with intellectual disabilities or other specific developmental disabilities have the same basic rights as other citizens.

(61 Del. Laws, c. 270, § 3; 73 Del. Laws, c. 97, § 2; 78 Del. Laws, c. 179, § 213.)

§ 5502 Development of abilities.

Persons diagnosed with intellectual disabilities or other specific developmental disabilities have the right to proper medical care and physical restoration and to such education, training, habilitation and guidance as will enable them to develop their abilities and potentials to the fullest possible extent, no matter how severe their disability may be.

(61 Del. Laws, c. 270, § 3; 73 Del. Laws, c. 97, § 2; 78 Del. Laws, c. 179, § 214.)

§ 5503 Economic security and meaningful occupations.

Persons diagnosed with intellectual disabilities or other specific developmental disabilities have a right to strive for productive work in meaningful occupations, economic security and a decent standard of living.

(61 Del. Laws, c. 270, § 3; 73 Del. Laws, c. 97, § 2; 78 Del. Laws, c. 179, § 215.)

§ 5504 Normal living arrangements.

Persons diagnosed with intellectual disabilities or other specific developmental disabilities have a right to live with their families or with other care providers; to participate in all aspects of community life; and to have access to appropriate leisure time activities. If residence in an institution is the least restrictive environment and the most appropriate setting reasonably available, it should be in surroundings and under circumstances as close to normal living as possible.

(61 Del. Laws, c. 270, § 3; 73 Del. Laws, c. 97, § 2; 78 Del. Laws, c. 179, § 216.)

§ 5505 Qualified guardians.

Persons diagnosed with intellectual disabilities or other specific developmental disabilities have a right to a qualified guardian when this is required to protect their personal well-being and interests. No person or agency rendering direct services to a person diagnosed with an intellectual disability or other specific developmental disabilities shall also serve as such person's guardian.

(61 Del. Laws, c. 270, § 3; 73 Del. Laws, c. 97, § 2; 78 Del. Laws, c. 179, §§ 217, 218.)

§ 5506 Protection from exploitation and abuse.

Persons diagnosed with intellectual disabilities or other specific developmental disabilities have a right to protection from exploitation, abuse and degrading treatment. If accused, the person diagnosed with an intellectual disability or other specific developmental disabilities has a right to a fair trial with full recognition being given to the person's degree of responsibility.

(61 Del. Laws, c. 270, § 3; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 97, § 2; 78 Del. Laws, c. 179, §§ 219, 220.)

§ 5507 Due process.

Some persons diagnosed with intellectual disabilities or other specific developmental disabilities may be unable, due to the severity of their disability, to exercise for themselves all of their rights in a meaningful way. For others, modification of some or all of these rights is appropriate. The procedure used for modification or denial of rights must contain proper legal safeguards against every form of abuse; must be based on an evaluation of the social capability of the person diagnosed with an intellectual disability or other specific developmental disabilities by qualified experts; and must be subject to periodic reviews, and to the right of appeal to higher authorities.

(61 Del. Laws, c. 270, § 3; 73 Del. Laws, c. 97, § 2; 78 Del. Laws, c. 179, §§ 221-223.)

Subchapter II
Stockley Center

§ 5520 Liability for maintenance of patient; collection remedies.

(a) Any person committed to or placed in Stockley Center shall at all times be liable for the care, maintenance and support furnished to and received by such person while a patient of Stockley Center. Nothing in this section shall relieve from liability for the support of the patient, any person liable under any other law of this State.

(b) The Department of Health and Social Services shall keep an account of the cost of the care, maintenance and support furnished each patient while in Stockley Center and shall credit against the account all moneys received from the patient or from any other person for or on behalf of the patient.

(c) The Department may collect from any patient, or from the trustee for any patient, or out of the property, moneys and effects of any patient, all moneys necessary to discharge and pay all liability of the patient for the patient's care, maintenance and support.

(d) The Department may also proceed for the recovery of the moneys necessary for the care, maintenance and support in an action to be brought in any court of competent jurisdiction in the name of the Department of Health and Social Services or by petition to the Court of Chancery if the patient has been ascertained to be mentally incompetent or mentally retarded by inquisition duly held.

(16 Del. C. 1953, § 5506; 50 Del. Laws, c. 364, § 2; 50 Del. Laws, c. 534, §§ 1, 2; 58 Del. Laws, c. 152; 61 Del. Laws, c. 270, § 2; 62 Del. Laws, c. 209, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5521 Admission to Stockley Center.

The Department of Health and Social Services may establish voluntary admission procedures for residential services at the Stockley Center for individuals who meet the eligibility criteria established by the Division of Development Disabilities Services through regulations.

(29 Del. Laws, c. 172, § 8; Code 1935, § 2610; 16 Del. C. 1953, § 5521; 50 Del. Laws, c. 364, § 4; 50 Del. Laws, c. 534, § 2; 51 Del. Laws, c. 18, § 1; 62 Del. Laws, c. 209, § 1; 75 Del. Laws, c. 285, § 1.)

§ 5522 Centers for persons diagnosed with mental retardation or other specific developmental disabilities.

The Division of Developmental Disabilities Services may establish and operate centers for vocational, habilitative and social skill development for persons diagnosed with mental retardation or other specific developmental disabilities. The operation of such said centers shall be governed by the Division's rules and regulations.

(16 Del. C. 1953, § 5526; 51 Del. Laws, c. 288, § 1; 73 Del. Laws, c. 97, § 2; 75 Del. Laws, c. 285, § 2.)

§§ 5523 , 5524. Commitment of person confined in another state institution; procedure; commitment to a penal institution or a detention home; release.

Repealed by 75 Del. Laws, c. 285, § 2, effective June 15, 2006.

§ 5525 [Transferred.]

Subchapter III
Consent for Elective Surgery

§ 5530 Definitions.

(a) "Alternative decision maker" is a person identified to make decisions for an individual in that individual's best interest. In the absence of an assigned legal guardian of person or applicable advanced health care directive, power of attorney, or similar legal instrument, any member of the following classes of the patient's family who is reasonably available, in the descending order of priority, may act as alternative decision maker and shall be recognized as such by the supervising health care provider:

(1) The spouse;
(2) An adult child;
(3) A parent;
(4) An adult brother or sister;
(5) An adult grandchild;
(6) An adult aunt or uncle;
(7) An adult niece or nephew; or
(8) A grandparent.

(b) "Elective surgery" is a surgical medical or dental procedure, not including sterilization, for the purposes of nonlife-threatening treatment or diagnosis.

(c) "Informed consent" is the consent of a patient to the performance of health care services by a health care provider who has informed the patient both verbally and in writing, to an extent reasonably comprehensible to general lay understanding, of the nature of the proposed procedure or treatment and of the risks and alternatives to treatment which a reasonable patient would consider material to the decision whether or not to undergo the treatment. The patient must understand the information provided by the health care provider.

(d) "Persons receiving services from the Division of Developmental Disabilities Services (DDDS)" shall mean, for the purposes of this subchapter, those persons served within the residential program of the Division.

(e) Individuals specified in this subsection are disqualified from acting as an alternate decision maker if the person receiving services from DDDS has filed a petition for a protection from abuse order against the individual or if the individual is the subject of a civil or criminal order prohibiting contact with the person receiving services from DDDS.

(64 Del. Laws, c. 305, § 1; 73 Del. Laws, c. 97, § 3; 75 Del. Laws, c. 69, §§ 1, 2; 77 Del. Laws, c. 395, §§ 1-3, 9.)

§ 5531 Persons without legal guardians.

(a) Consent to perform elective surgery upon a person who is receiving services from the Division of Developmental Disabilities Services ("DDDS") may be given by the Division Director or such Director's designee if all of the following circumstances apply:

(1) The person receiving residential services cannot give his or her own informed consent;

(2) The person receiving services has no alternative decision maker; and

(3) The person receiving residential services has no legal guardian of the person, or applicable advanced health care directive, power of attorney, or similar legal instrument.

(b) Before giving such consent the Division Director or such Director's designee must:

(1) Be satisfied that the elective surgery is in the best interest of the person receiving services from DDDS and is an appropriate and least intrusive treatment for the existing condition;

(2) Obtain the written recommendation for elective surgery from at least 1 physician or 1 dentist, as applicable, who are not directly employed by the DDDS; and

(3) Ensure that the person receiving services from DDDS has been informed to the extent the person is able to understand about the medical treatment or procedure suggested.

(64 Del. Laws, c. 305, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 97, § 4; 77 Del. Laws, c. 395, §§ 4-8.)

§ 5532 Immunity from liability.

(a) No physician, dentist or other health care personnel or health care facility which acts pursuant to and in compliance with this subchapter shall be subject to civil liability for failure to obtain sufficient consent for the medical procedure performed.

(b) This section shall not insulate from civil liability a physician, dentist or other health care personnel or health care facility for negligence in the performance of medical procedures.

(64 Del. Laws, c. 305, § 1.)

Part V
Mental Health
Chapter 57
VOLUNTARY AND INVOLUNTARY STERILIZATION

§ 5701 Definitions.

(a) As used in this chapter, "informed consent" is the voluntary agreement by the person to be sterilized and shall minimally include the following elements:

(1) Full disclosure of the facts necessary to make an informed decision to include:

a. The risks that a reasonable person would consider pertinent to the decision to undergo or not undergo a sterilization procedure;

b. The risks that a prudent physician would disclose to a patient relative to sterilization;

c. The comparative benefits and risks of undergoing available sterilization procedures.

(2) Knowledge and understanding of the alternatives to sterilization;

(3) Ability of the patient to understand the information and deliberate about choices;

(4) Knowledge and understanding that the patient is free to give or withhold consent without fear of repercussion;

(5) Knowledge and understanding that the patient may withdraw consent at any time prior to the procedure without fear of repercussion.

(b) As used in this chapter, "sterilization" means any surgical or medical procedure intended to render a person permanently unable to procreate.

(65 Del. Laws, c. 148, § 1; 75 Del. Laws, c. 285, § 4.)

§ 5702 Scope of chapter.

(a) Nothing in this chapter shall be construed to require compliance with the procedures herein, or prevent the medical treatment of any person by any physician duly licensed to practice medicine in this State, when such treatment may result in an inability to procreate as a secondary effect; provided that such treatment is to remedy a substantial danger to life or health and under usual circumstances for elective surgery such secondary effect is explained to the person and the person gives informed consent thereto or that a bona fide emergency prevents such explanation and consent.

(b) Nothing in this chapter shall be construed to prevent the sterilization by any licensed physician of any person 18 or more years of age who voluntarily, knowingly and personally requests such treatment and gives informed consent thereto.

(c) Nothing in this chapter shall be construed to permit the involuntary sterilization of a person confined to any correctional institution on the basis of such confinement.

(d) All other sterilizations shall be in accordance with this chapter.

(65 Del. Laws, c. 148, § 1.)

§ 5703 Informed consent not presumed.

The following persons shall be presumed incapable of giving informed consent to sterilization:

(1) An individual who lives in an institution that serves persons with mental illness, mental retardation or other significant cognitive disability;

(2) A person known by the physician to be on convalescent leave or any other form of conditional discharge from any institution for the mentally ill or retarded;

(3) A person confined to any correctional institution;

(4) A person on whose behalf sterilization is requested by another person or agency;

(5) A person receiving residential services from the Department of Health and Social Services.

(65 Del. Laws, c. 148, § 1; 75 Del. Laws, c. 285, §§ 5, 6.)

§ 5704 Jurisdiction and venue.

Sterilization of any person presumed incapable of giving informed consent thereto may be performed only if the Court of Chancery in the county in which the person to be sterilized resides or in which the institution in which the person resides is located:

(1) Issues a declaratory judgment that the person has given informed consent; or

(2) Orders involuntary sterilization in compliance with this chapter.

(65 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5705 Filing petition.

(a) A petition for a declaratory judgment or for involuntary sterilization under this chapter may be filed in the Court of Chancery by:

(1) The chief executive officer of the institution in which the person to be sterilized resides;

(2) The head of the state agency responsible for such person if the person is not a resident of an institution;

(3) The parent or guardian of such person; or

(4) Any state agency which by virtue of the scope of its powers and jurisdiction has an interest in the sterilization of the person.

(b) A form of preliminary order setting the matter down for hearing and providing for the giving of the required notice shall be filed with the petition.

(65 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 285, § 7.)

§ 5706 Petition for declaratory judgment.

(a) Any petition for a declaratory judgment that the person to be sterilized has given informed consent shall be verified and shall:

(1) Identify the petitioner and the petitioner's relationship to the person for whom sterilization is sought;

(2) Name as respondent the person for whom sterilization is sought and set forth the respondent's age, sex, residence, marital status, mental condition and identify the respondent's parents, guardian, spouse, if any, and next-of-kin, if other than the petitioner;

(3) Identify the physician who will perform the sterilization and the hospital or clinic where such procedure will be performed;

(4) Identify the sterilization procedure to be performed;

(5) State whether, in the opinion of the petitioner, the person for whom sterilization has been sought has given informed consent to the sterilization procedure to be performed; and

(6) Pray for a declaratory judgment that the respondent has given informed consent to sterilization.

(b) Any petition under this section shall have annexed thereto a verified report of a psychiatrist or psychologist duly authorized to practice in the State stating that the psychiatrist or psychologist has examined the respondent and that the respondent is, in the psychiatrist's or psychologist's opinion, capable of giving informed consent to the sterilization procedure to be performed.

(65 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5707 Petition for involuntary sterilization.

(a) Any petition for the sterilization of any person presumed incapable of informed consent shall be verified and shall:

(1) Identify the petitioner and the petitioner's relationship to the person for whom sterilization is sought;

(2) Name as respondent the person for whom sterilization is sought and set forth the respondent's age, sex, residence, marital status, mental condition and identify the respondent's parents, guardian, spouse, if any, and next-of-kin, if other than the petitioner;

(3) Identify the physician who will perform the sterilization and the hospital or clinic where such procedure will be performed;

(4) Identify the sterilization procedure to be performed;

(5) State whether, in the opinion of the petitioner, the person for whom involuntary sterilization is sought is incapable of giving informed consent to the sterilization procedure to be performed; and

(6) Pray for an order authorizing the sterilization of the respondent.

(b) Any petition under this section shall have annexed thereto the affidavit of a psychiatrist or psychologist duly licensed to practice in the State, which affidavit shall set forth:

(1) The date he last examined the respondent;

(2) Whether or not the respondent is permanently incapable, or is and will in the affiant's opinion remain incapable for the foreseeable future, of giving informed consent to the sterilization procedure to be performed; and

(3) Whether, in the opinion of the affiant, it would or would not be meaningless or detrimental to the health of the respondent to serve a copy of the petition and notice of the hearing personally upon the respondent.

(c) Any petition under this section shall also have annexed thereto an affidavit or affidavits of the duly licensed physician or physicians, which affidavit or affidavits shall set forth:

(1) The date that he last examined the respondent;

(2) Whether or not the respondent, if not sterilized, is likely to procreate a child;

(3) The sterilization procedure to be performed and, if other than the least drastic means of sterilization is to be performed, why such procedure is medically or hygienically indicated;

(4) Whether, if the respondent is female, pregnancy would present a substantial danger to the life or health of the respondent;

(5) Whether, in the opinion of the affiant, the benefit to the respondent from the sterilization procedure outweighs any known medical contraindications to the procedure to be performed; and

(6) Whether, in the opinion of the affiant, it would or would not be meaningless or detrimental to the health of the respondent to serve a copy of the petition and notice of the hearing personally upon such person.

(65 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 285, § 11.)

§ 5708 Service of petition and notice.

(a) Upon the filing of a petition for a declaratory judgment or for involuntary sterilization under this chapter, service of the petition shall be made and notice shall be given as hereinafter provided.

(b) Service of the petition shall be made upon the person for whom sterilization is sought at least 10 days before the hearing date. Where the affidavits required by § 5706(b) of this title or § 5707(b) and (c) of this title recite that it would be meaningless or detrimental to the health of the respondent to serve the respondent personally, the required service shall be made upon the person in charge of the institution or home where the respondent resides. If the petitioner has the custody of the respondent and the affidavits required by § 5706(b) of this title or § 5707(b) and (c) of this title recite that service would be meaningless or detrimental, the required service shall be made on the spouse, parent or guardian, if any, or the next-of-kin of the respondent who are 18 years of age or older and who reside in the State. As to persons so served, the notice by mail provided in subsection (c) of this section is not required.

(c) Notice by registered or certified mail, return receipt requested, of the time, place and purpose of the hearing shall be given by or on behalf of the petitioner, to the spouse, parent or guardian, if any, and to the next-of-kin of the respondent who are 18 years of age or older. Notice need not be given to any person if the person shall consent in writing to the granting of the prayer of the petition or shall waive such notice.

(d) Proof of service and of notice shall be filed with the Register in Chancery prior to the hearing or shall be presented at the hearing.

(65 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5709 Interim action by court.

(a) Upon receipt of a petition, the Court shall appoint a guardian ad litem or attorney or both for the respondent.

(b) On the motion of the respondent or on its own motion, the Court may order an independent examination by a duly licensed physician, psychiatrist or psychologist not employed by the agency responsible for the care of the respondent. The Court may order that such examination be at State expense.

(65 Del. Laws, c. 148, § 1.)

§ 5710 Procedural rights of person to be sterilized.

Any person for whom sterilization is sought shall have the following procedural rights:

(1) The right to counsel;

(2) The right of cross-examination;

(3) The right to present the persons own evidence;

(4) The right to compel the attendance of witnesses; and

(5) All other rights of civil litigants in the Court of Chancery.

(65 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5711 Hearing on petition for declaratory judgment.

(a) The hearing upon the petition for a declaratory judgment under this chapter shall be by the Court.

(b) If the attorney for the respondent and the guardian ad litem, if any, agree and the Court is satisfied that the report required by § 5706(b) of this title demonstrates clearly and convincingly that the respondent has given informed consent to sterilization and there is no objection to the petition, the Court may grant it without requiring the petitioner to present other evidence.

(c) If there is objection to the petition, the Court will receive evidence at the hearing or, for good cause, adjourn the hearing to another date for the reception of evidence.

(d) The Court may issue a declaratory judgment after hearing if satisfied by clear and convincing evidence that the respondent has given informed consent to sterilization.

(65 Del. Laws, c. 148, § 1.)

§ 5712 Hearing on petition for involuntary sterilization.

(a) The hearing upon the petition for involuntary sterilization under this chapter shall be by the Court.

(b) The Court may order the involuntary sterilization of the respondent without requiring the petitioner to present other evidence:

(1) If there is no objection to the petition;

(2) If the attorney for the respondent and the guardian ad litem, if any, agree; and

(3) If the Court is satisfied that the affidavits required by § 5707(b) and (c) of this title demonstrate clearly and convincingly that:

a. The respondent is presently incapable of giving informed consent to sterilization;

b. The respondent is more likely than not to remain so incapable either permanently or for the foreseeable future and that all attempts to render the respondent capable of giving informed consent have been and are likely to remain ineffectual;

c. The benefit to the respondent from the sterilization outweighs any known medical contraindications to the procedure to be performed;

d. If the respondent is not sterilized, the respondent is more likely than not to procreate and all less drastic medically advisable alternative means to prevent procreation are or have been ineffective;

e. If the respondent is female, pregnancy would present a substantial danger to the life or health of the respondent; and

f. The procedure to be performed is the least drastic medically or hygienically indicated means of sterilizing the respondent.

(c) If there is objection to the petition, the Court will receive evidence at the hearing or, for good cause, adjourn the hearing to another date for the reception of evidence.

(d) The Court may issue an order authorizing the involuntary sterilization of the respondent after the hearing, if satisfied by clear and convincing evidence that the criteria set forth in subsection (b) of this section have been met.

(65 Del. Laws, c. 148, § 1; 75 Del. Laws, c. 285, § 12.)

§ 5713 Physician's certification.

(a) In all cases where the Court issues an order authorizing involuntary sterilization or a declaratory judgment that informed consent to sterilization has been given, the physician to perform the sterilization shall, prior to performing such procedure, certify that the physician was provided with a copy of the Court's order.

(b) The physician's certificate shall be filed with the Register in Chancery within 10 days of the performance of the sterilization procedure.

(65 Del. Laws, c. 148, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5714 Records.

A record shall be kept in every institution having the custody of any person operated upon under this chapter of such operation and of its effect upon the person operated upon and such records shall at all times be subject to inspection by the Department of Health and Social Services.

(33 Del. Laws, c. 62, § 3; Code 1935, § 3098; 16 Del. C. 1953, § 5705; 65 Del. Laws, c. 148, § 1.)

§ 5715 Limitation of liability.

(a) No physician who performs a sterilization in compliance with this chapter shall be held liable for the respondent's loss of procreative power.

(b) No hospital or clinic wherein a sterilization in compliance with this chapter is performed shall be held liable for the respondent's loss of procreative power.

(c) No physician, psychiatrist or psychologist who provides a report required by this chapter shall be held liable for the respondent's loss of procreative power.

(d) Nothing contained in this section shall be construed to excuse any physician, psychiatrist, psychologist, hospital or clinic from liability for malpractice.

(65 Del. Laws, c. 148, § 1.)

§ 5716 Costs.

(a) Any proceeding under this chapter shall be exempt from making a deposit for costs with the Register in Chancery.

(b) The Court may order that the costs of any proceeding under this chapter be paid for from resources available to the recipient of these proceedings. If such resources are not available, the Court may order that the costs of any proceeding under this chapter be borne by the State.

(c) The board or commission having custody of any person operated upon under this chapter shall pay out of its funds for the costs of the examination and the cost of performing the operation and hospital bills and transportation in connection therewith.

(33 Del. Laws, c. 62, § 2; Code 1935, § 3098; 16 Del. C. 1953, § 5704; 65 Del. Laws, c. 148, § 1.)

Part V
Mental Health
Chapter 59
TRAINING AND RESEARCH

§ 5901 Coordination of training and research activities and facilities with those of other states.

The State, through appropriate officers, shall seek in addition to the present arrangements with the University of Pennsylvania similar formal arrangements with Maryland, North Carolina and Virginia for the training of personnel in psychiatry, clinical psychology, psychiatric social work and psychiatric nursing on graduate level until adequate facilities for this purpose can be provided within the State.

The Governor Bacon Health Center is offered as a regional facility for training of child psychiatrists, clinical psychologists and psychiatric social workers.

Arrangements shall be effected with other states by which the Governor Bacon Health Center may assist other states in residential treatment of maladjusted children inasmuch as this type of facility is lacking in most of the other southern states.

Delaware will coordinate with other states engaged in similar treatment, its research in the study of cerebral palsy and other spastic diseases of children.

Delaware will coordinate with other states its research in the study of alcoholism by using its existing facilities at the Governor Bacon Health Center.

Delaware will increase the scope of its present research in schizophrenia, alcoholism, geriatrics and personality problems in children.

(16 Del. C. 1953, § 5901; 50 Del. Laws, c. 464, § 2.)

§§ 5902 , 5903. Board on Mental Health Training and Research; grants for research and training.

Repealed by 67 Del. Laws, c. 35, § 1, eff. June 21, 1989.

Part V
Mental Health
Chapter 60
PATIENTS' TRUST FUND

§ 6001 Definitions.

As used in this chapter:

(1) "Institution" means any institution operated, maintained or under the supervision of the Department of Health and Social Services.

(2) "Patient" means any person admitted, committed to or placed in any such institution for the purpose of treatment.

(16 Del. C. 1953, § 6001; 57 Del. Laws, c. 37.)

§ 6002 Commingling of funds.

Any institution which has funds belonging to any patient of the institution, or deposited for the benefit of any patient, may commingle the funds by depositing them with the State Treasurer in an interest bearing account to be invested relatively free of risk on behalf of the beneficiaries according to the State's Cash Management Policy. For the purpose of account reporting, an institution shall maintain supporting records that show the share each patient has in the account.

(16 Del. C. 1953, § 6002; 57 Del. Laws, c. 37; 75 Del. Laws, c. 270, § 1.)

§ 6003 Records of owners.

The ownership of the principal amount of the funds shall be continued in the respective patients and be accounted for on appropriate records of the institution.

(16 Del. C. 1953, § 6003; 57 Del. Laws, c. 37.)

§ 6004 Use of interest.

The interest or other income from the deposits earned shall be credited to the appropriate institution for distribution to individual patient accounts on a monthly basis. The interest or other income that results from an investment is the property of the beneficiary and may not be considered to be the property of the institution.

(16 Del. C. 1953, § 6004; 57 Del. Laws, c. 37; 75 Del. Laws, c. 270, § 2.)

§ 6005 Audit of funds.

The funds received or retained pursuant to this chapter shall be audited from time to time by the Auditor of Accounts.

(16 Del. C. 1953, § 6005; 57 Del. Laws, c. 37.)

Part V
Mental Health
Chapter 61
INTERSTATE COMPACT ON MENTAL HEALTH
Subchapter I
Interstate Compact on Mental Health

§ 6101 Interstate Compact on Mental Health.

The Interstate Compact on Mental Health is enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting States solemnly agree that:

ARTICLE I

ARTICLE I

The party States find that the proper and expeditious treatment of persons with mental conditions and mental disabilities can be facilitated by cooperative action to the benefit of the patients, their families and society as a whole. Further, the party States find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party States to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of persons with mental conditions and mental disabilities under a system that recognized the paramount importance of patient welfare and to establish the responsibilities of the party States in terms of such welfare.

ARTICLE II

ARTICLE II

As used in this compact:

(a) "Sending State" shall mean a party State from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving State" shall mean a party State to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party State or political subdivision thereof for the care and treatment of mental conditions or mental disabilities.

(d) "Patient" shall means any person subject to or eligible as determined by the laws of the sending State for institutionalization or other care, treatment or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental condition" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare or the welfare of others or of the community.

(g) "Mental disability" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party State shall be in need of institutionalization by reason of mental condition or mental disability, he shall be eligible for care and treatment in an institution in that State irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another State whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No State shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this Article unless the sending State has given advance notice of its intention to send the patient, furnished all available medical and other pertinent records concerning the patient, given the qualified medical or other appropriate clinical authorities of the receiving State an opportunity to examine the patient if said authorities so wish, and unless the receiving State shall agree to accept the patient.

(d) In the event that the laws of the receiving State establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

ARTICLE IV

(a) Whenever, pursuant to the laws of the State in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving State. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending State shall have reason to believe that after-care in another State would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving State to investigate the desirability of affording the patient such after-care in said receiving State, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending State and the appropriate authorities in the receiving State find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving State.

(c) In supervising, treating or caring for a patient on after-care pursuant to the terms of this Article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

ARTICLE V

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party State, that State shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the State where found pending disposition in accordance with law.

ARTICLE VI

ARTICLE VI

The duly accredited officers of any State party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all States party to this compact without interference.

ARTICLE VII

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving State shall have the effect of making the person a patient of the institution in the receiving State.

(b) The sending State shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party States may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the department, agencies and officers of and in the government of a party State or between a party State and its subdivision as to the payment of costs or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party State or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party State or subdivision thereof may be responsible to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party State and a nonparty State relating to institutionalization, care or treatment of persons with mental conditions or mental disabilities, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to

another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving State may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending State, the court of competent jurisdiction in the sending State shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving State may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending State in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this Article shall include any guardian, trustee, legal committee, conservator or other person or agency denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

ARTICLE IX

(a) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge or whose institutionalization is due to the commission of an offense for which, in the absence of a mental condition or mental disability, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of States party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental conditions or mental disabilities.

ARTICLE X

(a) Each party State shall appoint a "compact administrator" who, on behalf of his State, shall act as general coordinator of activities under the compact in his State and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by his State either in the capacity of sending or receiving State. The compact administrator or his duly designated representative shall be the official with whom other party States shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party States shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

ARTICLE XI

The duly constituted administrative authorities of any two or more party States may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the States concerned shall find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental conditions or mental disabilities No such supplementary agreement shall be construed so as to relieve any party State of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

ARTICLE XII

This compact shall enter into full force and effect as to any State when enacted by it into law and such State shall thereafter be a party thereto with any and all States legally joining therein.

ARTICLE XIII

ARTICLE XIII

(a) A State party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the Governors and compact administrators of all other party States. However, the withdrawal of any State shall not change the status of any patient who has been sent to said State or sent out of said State pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State party thereto, the compact shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters.

(16 Del. C. 1953, § 6101; 53 Del. Laws, c. 392; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 224-232.)

Subchapter II
Implementation

§ 6102 Compact administrator.

The Secretary of the Department of Health and Social Services shall be the compact administrator and, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the Compact. Said compact administrator shall serve subject to the pleasure of the Governor. The compact administrator shall cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact or of any supplementary agreement or agreements entered into by this State thereunder.

(16 Del. C. 1953, § 6102; 53 Del. Laws, c. 392; 54 Del. Laws, c. 185; 57 Del. Laws, c. 591, § 29.)

§ 6103 Supplementary agreements.

The compact administrator may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the Compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

(16 Del. C. 1953, § 6103; 53 Del. Laws, c. 392.)

§ 6104 Financial arrangements.

The compact administrator, subject to the approval of the Budget Commission, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into thereunder.

(16 Del. C. 1953, § 6104; 53 Del. Laws, c. 392.)

§ 6105 Authenticated copies of chapter sent to the state and federal officials.

Duly authenticated copies of this chapter shall, upon its approval, be transmitted by the Secretary of State to the governor of each state, the Attorney General and the Secretary of State of the United States, and the Council of State Governments.

(16 Del. C. 1953, § 6105; 53 Del. Laws, c. 392.)

Part VI
Safety
Chapter 63
EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

§ 6301 Establishment of State Emergency Response Commission.

All references to "State Emergency Response Commission" or "Commission" within this chapter shall refer to the State Emergency Response Commission established under Chapter 82 of Title 29 in compliance with Title III of the Federal Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Chapter 116, Emergency Planning and Community Right-to-Know) [42 U.S.C. § 11001].

(68 Del. Laws, c. 184, § 1; 71 Del. Laws, c. 208, § 6.)

§ 6302 Definitions.

For the purposes of this chapter, definitions for the following terms and phrases shall be as follows:

(1) *Administrator.* — The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(2) *Department.* — The term "Department" means the Department of Natural Resources and Environmental Control.

(3) *Environment.* — The term "environment" includes water, air and land and the interrelationship which exists among and between water, air and land and all living things.

(4) *Extremely hazardous substance.* — The term "extremely hazardous substance" means a substance included in the list established under § 6303 of this title.

(5) *Facility.* — The term "facility" means all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by or under common control with such person). "Facility" shall include man-made structures as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock and aircraft.

(6) *Hazardous chemical.* — The term "hazardous chemical" means any hazardous chemical as defined under § 1910.1200(c) [29 C.F.R. § 1910.1200(c)] of Title 29 of the Code of Federal Regulations, except that such term does not include the following substances:

a. Any food, food additive, color additive, drug or cosmetic regulated by the Food and Drug Administration.

b. Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

c. Any substance to the extent it is used for personal, family or household purposes or is present in the same form and concentration as a product packaged for distribution and use by the general public.

d. Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

e. Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

(7) *Local emergency planning committee.* — The term "local emergency planning committee" means the local emergency planning committee appointed by the State Emergency Response Commission.

(8) *Manufacture.* — The term "manufacture" means to produce, prepare, import or compound a toxic chemical.

(9) *Mixture.* — The term "mixture" means a heterogeneous association of substances where the various individual substances retain their identities and can usually be separated by mechanical means. The term includes solutions or compounds but does not include alloys or amalgams.

(10) *Motor vehicle fuel.* — The term "motor vehicle fuel" means a petroleum or petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol and is typically used in the operation of a motor engine.

(11) *Person.* — The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state or interstate body.

(12) *Present in the same form and concentration as a product packaged for distribution and use by the general public.* — This phrase means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public.

(13) *Process.* — The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce:

a. In the same form or physical state as or in a different form or physical state from that in which it was received by the person so preparing such chemical; or

b. As part of an article containing the toxic chemical.

(14) *Release.* — The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles) of any hazardous chemical, extremely hazardous substance or toxic chemical.

(15) *Secretary.* — The term "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(16) *Source reduction* — The term "source reduction" means any practice which:

a. Reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, energy recovery, treatment or disposal; and

b. reduces the hazards to public health and the environment associated with the release of such substances, pollutants or contaminants.

(17) *Toxic chemical.* — The term "toxic chemical" means a substance included on the list established under § 6307 of this chapter.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. The term does not include any practice which alters the physical, chemical or biological characteristics or the volume of a hazardous substance, pollutant or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(68 Del. Laws, c. 184, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 59, § 1.)

§ 6303 Emergency planning notifications.

(a) A list of extremely hazardous substances shall be established by the Secretary for the purposes of this chapter. In establishing this list, the Secretary shall take into account the toxicity, reactivity, volatility, dispersability, combustibility or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short-term or long-term health effect which may result from a short-term exposure to the substance. These substances will be the primary focus of community emergency planning activities to be conducted by the local emergency planning committees as set forth in 42 U.S.C. § 11003.

(b) The Secretary shall establish threshold planning quantities for each extremely hazardous substance established under subsection (a) taking into account the criteria described in subsection (a).

(c) The Secretary may revise the list and thresholds established under subsections (a) and (b) from time to time. Any revisions to the list shall take into account the criteria established in subsection (a).

(d) Any facility having an extremely hazardous substance present at the facility in an amount which equals or exceeds the threshold planning quantity established for such substance shall be subject to the requirements of this section.

(e) Not later than 6 months after June 16, 1997, the owner or operator of each facility, subject to the requirements of this section, shall notify the Department and the local emergency planning committee that such facility is subject to the requirements of this section. Thereafter, if a substance on the list of extremely hazardous substances becomes present at such facility in an amount which equals or exceeds the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in an amount which equals or exceeds the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the Department and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this section.

(f) Notification to the Department under subsection (e) of this section shall serve as notification to the State Emergency Response Commission as set forth under 42 U.S.C. § 11002 (c) and regulations established under that act.

(g) Notification under subsection (e) of this section must also include identification of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(h) The owner or operator of a facility subject to this section shall promptly inform the local emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(i) Upon request from the local emergency planning committee, the owner or operator of a facility subject to this section shall promptly provide information to such committee necessary for developing and implementing emergency plans.

(j) For purposes of emergency planning, the State Emergency Response Commission or the Secretary may designate additional facilities which shall be subject to the requirements of this section, if such designation is made after public notice and opportunity for comment. The Secretary shall notify the facility concerned of any facility designation under this subsection.

(71 Del. Laws, c. 59, § 1.)

§ 6304 Emergency release notifications.

(a) Emergency release notification requirements shall be as established under § 6028 of Title 7.

(b) [Deleted.]

(c) Concerning the requirements for immediate notice to the State Emergency Response Commission as established under 42 U.S.C. § 11004(b) and regulations established under that act, notification to the Department shall serve as notification to the State Emergency Response Commission.

(d) Concerning the requirements for submission of written followup reports to the State Emergency Response Commission as established under 42 U.S.C. § 11004(c) and regulations established under that act, submissions to the Department shall serve as submission to the State Emergency Response Commission.

(71 Del. Laws, c. 59, § 1; 74 Del. Laws, c. 33, §§ 1, 2.)

§ 6305 Material safety data sheets.

(a) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that act (29 U.S.C. § 651 et seq.) or the Delaware Hazardous Chemical Information Act and regulations promulgated under that act (Chapter 24 of Title 16) shall submit a material safety data sheet for each such chemical present at the facility in an amount which equals or exceeds the threshold quantities established under subsection (c) of this section or a list of such chemicals, as described in subsection (d) of this section, to the Department.

(b) Submission to the Department under this section shall serve as submission to the appropriate local emergency planning committee, the State Emergency Response Commission and the fire department with jurisdiction over the facility as set forth under 42 U.S.C. § 11021 and regulations established under that act.

(c) The threshold quantities for the purpose of this section shall be as follows:

(1) For substances identified as hazardous chemicals, except as provided in paragraphs (2) and (3) of this subsection, the threshold shall be 55 gallons or 500 pounds, whichever is lower.

(2) For substances included in the list of extremely hazardous substances under § 6303 of this title, the threshold shall be 55 gallons, 500 pounds or the threshold planning quantity, whichever is lower.

(3) For a substance used solely for the purpose of heating a building or buildings at a facility, the threshold for that substance at that facility shall be 10,000 pounds.

(4) For the purposes of requests under subsection (f) of this section, the threshold shall be zero.

(d) The list referred to under subsection (a) of this section shall include each of the following:

(1) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 and regulations promulgated under the act or the Delaware Hazardous Chemical Information Act and regulations promulgated under that act (Chapter 24 of Title 16), grouped in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under the act, or in such other categories as the Secretary may prescribe under subsection (e) of this section.

(2) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(3) Any hazardous component of each such chemical as provided on the material safety data sheet.

(e) For purposes of the list under subsection (d) of this section, the Secretary may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(f) Upon request by the local emergency planning committee or the Department, the owner or operator of a facility subject to this section shall submit the material safety data sheet for a chemical to the person making the request.

(g) The initial material safety data sheet or list required under this section shall be submitted before the later of:

(1) Twelve months after the date of the enactment of this requirement; or

(2) Three months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that act or the Delaware Hazardous Chemical Information Act and regulations promulgated under that act (Chapter 24 of Title 16); or

(3) Three months after a chemical requiring a material safety data sheet becomes present in an amount which equals or exceeds the threshold quantity.

(h) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted, a revised sheet shall be submitted.

(71 Del. Laws, c. 59, § 1.)

§ 6306 Emergency and hazardous chemical inventory reporting.

(a) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C. § 651 et seq.] and regulations promulgated under that act or the Delaware Hazardous Chemical Information Act and regulations promulgated under that act shall prepare and submit an emergency and hazardous chemical inventory form, hereafter in this chapter referred to as an "inventory form," for each such chemical present at the facility in an amount which equals or exceeds the threshold quantities established under subsection (d) of this section to the Department.

(b) Submission to the Department under this section shall serve as submission to the appropriate local emergency planning committee, the State Emergency Response Commission and the fire department with jurisdiction over the facility as set forth under 42 U.S.C. § 11022 and regulations established under that act.

(c) The inventory form shall be submitted on or before March 1 annually and shall contain data with respect to the preceding calendar year.

(d) The threshold quantities for the purpose of this section shall be as follows:

(1) For substances identified as hazardous chemicals, except as provided in paragraphs (2) and (3) of this subsection, the threshold shall be 55 gallons or 500 pounds, whichever is lower.

(2) For substances included in the list of extremely hazardous substances under § 6303 of this title, the threshold shall be 55 gallons, 500 pounds or the threshold planning quantity, whichever is lower.

(3) For a substance used solely for the purpose of heating a building or buildings at a facility, the threshold for that substance at that facility shall be 10,000 pounds.

(4) For the purposes of requests under subsection (h) of this section, the threshold shall be zero.

(e) A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under § 6305 of this title.

(f) Inventory forms shall contain the following information, as a minimum, for each hazardous chemical present at the facility:

(1) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(2) The categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 and regulations promulgated under that act. The Secretary may modify the categories of health and physical hazards by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) An estimate of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(4) An estimate of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(5) A brief description of the manner of storage of the hazardous chemical.

(6) The location at the facility of the hazardous chemical.

(7) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under § 6308(h) of this title.

(g) With the advice and consent of the State Emergency Response Commission, the Secretary shall publish a uniform format for inventory forms, and may include additional items on the inventory forms as necessary to support the needs of emergency planning and response organizations.

(h) Upon request by the local emergency planning committee, the fire department with jurisdiction over the facility, or the Department, the owner or operator of a facility subject to this section shall submit the inventory form for a chemical to the person making the request.

(71 Del. Laws, c. 59, § 1.)

§ 6307 Toxic chemical release reporting.

(a) The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (k) of this section for each toxic chemical listed under subsection (e) of this section that was manufactured, processed or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (i) of this section during the preceding calendar year at such facility. Such form shall be submitted to the Department annually, on or before July 1, and shall contain data reflecting releases during the preceding calendar year.

(b) The requirements of this section shall apply to owners and operators of facilities that have the equivalent of 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed or otherwise used a toxic chemical listed under subsection (e) of this section in excess of the quantity of that toxic chemical established under subsection (i) of this section during the calendar year for which a release form is required under this section.

(c) The Secretary may add or delete Standard Industrial Classification Codes for purposes of subsection (b) of this section, but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(d) The Secretary may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes or otherwise uses a toxic chemical listed under subsection (e) of this section if the Secretary determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Secretary deems appropriate.

(e) A list of toxic chemicals subject to the requirements of this section shall be established by the Secretary.

(f) The Secretary may add or delete a chemical from the list described in subsection (e) of this section at any time.

(g) *Additions.* — A chemical may be added if the Secretary determines, in the Secretary's judgment, that there is sufficient evidence to establish any 1 of the following:

(1) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous or frequently recurring releases.

(2) The chemical is known to cause or can reasonably be anticipated to cause in humans:

a. Cancer or teratogenic effects; or

b. Serious or irreversible:

1. Reproductive dysfunctions;

2. Neurological disorders;

3. Heritable genetic mutations; or

4. Other chronic health effects.

(3) The chemical is known to cause or can reasonably be anticipated to cause, because of:

a. Its toxicity;

b. Its toxicity and persistence in the environment; or

c. Its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Secretary, to warrant reporting under this section. The number of chemicals included on the list described in subsection (e) of this section on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this subsection shall be based on generally accepted scientific principles or laboratory tests or appropriately designed and conducted epidemiological or other population studies available to the Secretary.

(h) A chemical may be deleted if the Secretary determines there is not sufficient evidence to establish any of the criteria described in subsection (g) of this section.

(i) The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(1) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(2) With respect to a toxic chemical manufactured or processed at a facility, 25,000 pounds of the toxic chemical per year.

(j) The Secretary may establish a threshold amount for a toxic chemical different from the amount established by subsection (i) of this section. Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this subsection may, at the Secretary's discretion, be based on classes of chemicals or categories of facilities.

(k) The Secretary shall publish a uniform toxic chemical release form for facilities covered by this section. If the Secretary does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter postmarked on or before the date on which the form is due. Such form shall:

(1) Provide for the name and location of and principal business activities at the facility;

(2) Include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(3) Provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility at or above threshold amounts:

a. Whether the toxic chemical at the facility is manufactured, processed or otherwise used and the general category or categories of use of the chemical.

b. An estimate of the maximum amount (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

c. For each wastestream, the waste treatment or disposal methods employed and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

d. The annual quantity of the toxic chemical entering each environmental medium.

(l) Each owner or operator of a facility required to file an annual toxic chemical release form under this section for any toxic chemical shall include with each such annual filing a toxic chemical source reduction and recycling report for the preceding calendar year. The toxic chemical source reduction and recycling report required under this subsection shall set forth each of the following on a facility-by-facility basis for each toxic chemical:

(1) The quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, energy recovery, treatment or disposal during the calendar year for which the report is filed and the percentage change from the previous year. The quantity reported shall not include any amount reported under paragraph (8) of this subsection. When actual measurements of the quantity of a toxic chemical entering the waste streams are not readily available, reasonable estimates should be made on best engineering judgment.

(2) The amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year and the process of recycling used.

(3) The amount of the chemical from the facility which is used for energy recovery (at the facility or elsewhere) during such calendar year, the percentage change from the previous year and the process of energy recovery used.

(4) The source reduction practices used with respect to that chemical during such year at the facility. Such practices shall be reported in accordance with the following categories unless the Secretary finds other categories to be more appropriate:

a. Equipment, technology, process or procedure modifications.

b. Reformulation or redesign of products.

c. Substitution of raw materials.

d. Improvement in management, training, inventory control, materials handling or other general operational phases of industrial facilities.

(5) The amount expected to be reported under paragraphs (1) and (2) of this subsection for the 2 calendar years immediately following the calendar year for which the report is filed. Such amount shall be expressed as a percentage change from the amount reported in paragraphs (1) and (2) of this subsection.

(6) A ratio of production in the reporting year to production in the previous year. The ratio should be calculated to most closely reflect all activities involving the toxic chemical. In specific industrial classifications subject to this section, where a feedstock or some variable other than production is the primary influence on waste characteristics or volumes, the report may provide an index based on that primary variable for each toxic chemical.

(7) The techniques which were used to identify source reduction opportunities. Techniques listed should include, but are not limited to, employee recommendations, external and internal audits, participative team management and material balance audits. Each type of source reduction listed under paragraph (4) of this subsection should be associated with the techniques or multiples of techniques used to identify the source reduction technique.

(8) The amount of any toxic chemical released into the environment which resulted from a catastrophic event, remedial action or other 1-time event and is not associated with production processes during the reporting year.

(9) The amount of the chemical from the facility which is treated (at the facility or elsewhere) during such calendar year and the percentage change from the previous year.

(m) The Secretary may require the reporting of additional items of information as necessary to provide a comprehensive review of toxic chemical use, including the flow of toxic materials through a community to a facility; an understanding of the processes, release patterns and potential exposures within a facility; and an understanding of the final disposition of toxic materials.

(n) To simplify reporting, the Secretary may modify the form established under subsection (k) of this section to include the items of information established under subsections (k), (l) and (m) of this section.

(o) In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Secretary shall require that data be expressed in common units.

(71 Del. Laws, c. 59, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6308 Data collection and management.

(a) The Department is hereby designated as the state agency responsible for the collection and management of all information reported under the requirements established within this chapter.

(b) The Department is hereby authorized to assess reasonable charges for public requests for data collected under this chapter to cover the costs associated with filling such requests.

(c) The State Emergency Response Commission shall oversee the collection and management of information by the Department under subsection (a) of this section.

(d) The Department may establish procedures for the submission of information under this chapter by computerized and electronic methods, including, but not limited to, the submission of information on magnetic media. The submission of information in accordance with such procedures by owners or operators of facilities covered by the requirements of this chapter shall satisfy the associated requirement to submit the information in a paper format.

(e) The requirements of this chapter are intended to provide information to state and local government organizations to support emergency planning and response activities; to assist governmental agencies, researchers and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines and standards; and for other similar purposes. In addition, the reports and information collected under this chapter are to be made available to the public, including citizens of communities surrounding covered facilities, consistent with subsections (f), (g) and (h) of this section to promote public participation in identifying, preparing for and managing chemical risks in the community.

(f) With regard to a hazardous chemical, an extremely hazardous substance or a toxic chemical, any person required under this chapter to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification) providing such person successfully demonstrates, to the satisfaction of the Secretary and in accordance with regulations prescribed under § 6313 of this title, each of the following:

(1) Such person has not disclosed the information to any other person other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed or otherwise made available to the public under any other federal or state law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(g) Any person withholding information under subsection (f) of this section must submit to the Secretary the following:

(1) A copy of the relevant submittal.

(2) The information such person believes is entitled to be withheld under subsection (f) of this section.

(3) A detailed explanation of how such information meets the criteria established under subsection (f) of this section.

(h) Upon request by an owner or operator of a facility subject to the requirements of § 6306, the location of any specific chemical required to be contained in an inventory form under § 6306 shall be withheld from disclosure.

(i) Any such record, report or information accorded confidential treatment under this section may be disclosed or transmitted to other officers, employees or authorized representatives of federal, state or local government organizations, including local emergency planning and response organizations concerned with carrying out this chapter or when relevant in any proceeding to effectuate the intent of this chapter. Any such record, report or information may also be disclosed or transmitted to health care professionals as necessary for possible emergency medical situations.

(j) Any person to whom confidential information is provided under this section shall maintain the confidentiality of the information. Such persons may be required to agree in a written confidentiality agreement that the information will be used for no purpose other than to carry out the intent of this chapter.

(68 Del. Laws, c. 184, § 1; 71 Del. Laws, c. 59, § 1.)

§ 6309 Establishment of authority to collect fees.

The Department, with advice and consent of the State Emergency Response Commission, is hereby authorized to impose on and collect fees from facilities reporting under § 6306 of this title.

(68 Del. Laws, c. 184, § 1; 71 Del. Laws, c. 59, § 1.)

§ 6310 Reporting fees.

(a) Excluding reports on mixtures, the reporting fees shall be assessed as follows: A filing fee not to exceed $40 shall be assessed for each hazardous chemical reported on an inventory form under § 6306 of this title. A filing fee not to exceed $80 shall be assessed for each extremely hazardous substance reported on an inventory form under § 6306 of this title.

(b) For reports on mixtures, the reporting fees shall be assessed as follows: A filing fee not to exceed $40 shall be assessed for each mixture reported on an inventory form under § 6306 of this title containing extremely hazardous substances in a concentration of less than 10 percent by weight. A filing fee not to exceed $80 shall be assessed for each mixture reported on an inventory form under § 6306 of this title containing extremely hazardous substances in a concentration of 10 percent or more by weight.

(c) The maximum fee collected under this section shall not exceed $5,000 per year per facility.

(d) Using procedures established by the Department, the owner and/or operator of each facility, subject to the fee provisions of this section, must calculate the facility reporting fee and submit such fee along with the associated inventory form to the Department on or before the deadline for submission of such form.

(68 Del. Laws, c. 184, § 1; 71 Del. Laws, c. 59, § 1.)

§ 6311 Fee collection and management.

(a) The fees herein authorized shall be assessed and collected annually based on information required to be submitted under § 6306 of this title covering the previous calendar year.

(b) The fees herein authorized shall be appropriated to the State Emergency Response Commission through the Department primarily for the purpose of funding the local emergency planning committees and data collection and management activities related to this chapter. At the discretion of the State Emergency Response Commission, these fees may also be used to fund emergency response vehicles (including their purchase, as well as maintenance and repairs) and related equipment and supplies; and physical examinations and medical screenings for volunteer fire service members of decontamination teams. For the purposes of this section, the words "emergency response vehicles" include but are not limited to vehicles such as decontamination units (both tow vehicle and trailer).

(c) The Department shall oversee the assessment and collection of the fees herein authorized. These fees shall be placed in a liquid, interest-bearing account to be selected by the Commission.

(d) Fee monies obtained under this chapter shall remain available for the purposes of this chapter and shall not be subject to reversion.

(e) All local emergency planning committees and state agencies to be funded under this chapter shall submit to the State Emergency Response Commission for review and approval each year a budget worksheet for the next fiscal year.

(f) All revenue collected under the authority of § 301(c) [42 U.S.C. § 11001] of Title III, Superfund Amendment and Reauthorization Act of 1986 (SARA), for the SARA III Program shall be distributed to the local emergency planning committees.

(68 Del. Laws, c. 184, § 1; 68 Del. Laws, c. 270, §§ 1, 2; 71 Del. Laws, c. 59, § 1; 73 Del. Laws, c. 309, § 2; 73 Del. Laws, c. 371, § 1.)

§ 6312 Exemptions from reporting fee requirements.

(a) Federal, state, county and local government facilities and nonprofit organizations are exempt from the reporting fees under this chapter.

(b) Motor vehicle fuels at facilities which offer such fuels for retail sale shall also be exempt from the reporting fees under this chapter. However, hazardous chemicals or extremely hazardous substances at these facilities other than motor vehicle fuels for retail sale shall not be exempt from the reporting fees.

(68 Del. Laws, c. 184, § 1; 71 Del. Laws, c. 59, § 1.)

§ 6313 Regulations.

(a) The Secretary may prescribe such regulations as may be necessary to carry out this chapter.

(b) Regulations prepared by the Secretary under this chapter shall be subject to review and approval by the State Emergency Response Commission prior to promulgation.

(c) Concerning the list of extremely hazardous substances and threshold planning quantities established under § 6303 of this title and the list of toxic chemicals established under § 6307 of this title, the lists shall be established and maintained consistent with the corresponding lists of chemicals established and maintained by the administrator under 42 U.S.C. Chapter 116 [42 U.S.C. § 11001 et seq.]. In establishing regulations under this chapter, consideration shall be given to maintaining consistency with federal regulations established by the administrator under 42 U.S.C. Chapter 116 [42 U.S.C. § 11001 et seq.]

(d) With advice and consent of the State Emergency Response Commission, the Secretary may establish additional exemptions or alternate threshold amounts for specific chemical substances or situations of chemical use or storage, provided the reporting burden or the concerns posed by such substances or situations do not justify reporting per the requirements specified in this chapter. With the advice and consent of the State Emergency Response Commission, the Secretary may also establish variances from the reporting requirements and procedures specified within this chapter, provided such variances are intended to promote more efficient implementation and do not unnecessarily jeopardize the purposes of this chapter.

(68 Del. Laws, c. 184, § 1; 71 Del. Laws, c. 59, § 1.)

§ 6314 Enforcement; penalties.

(a) Any duly authorized designee of the State Emergency Response Commission or any duly authorized designee of the Secretary of the Department of Natural Resources and Environmental Control may, upon presentation of appropriate credentials at any reasonable time, enter upon any private or public property for the purpose of investigating compliance with or enforcing any requirement or regulation authorized by this chapter, including, but not limited to, the inspecting and copying of any records, reports or information relating to the purposes of this chapter.

(b) Upon any refusal of entry, inspection or copying pursuant to this section, any duly authorized designee of the State Emergency Response Commission or any duly authorized designee of the Secretary of the Department of Natural Resources and Environmental Control may apply for and obtain a warrant to allow such entry, inspection or copying in the manner established by the rules and law of criminal procedure.

(c) In the Secretary's discretion, the Secretary of the Department of Natural Resources and Environmental Control is hereby authorized to enforce this chapter and impose penalties as follows upon any person for violation of this chapter or any rule or regulation promulgated under this chapter relating thereto:

(1) Administrative penalties may be imposed as outlined in § 6005(b)(3) of Title 7.

(2) Civil penalties, notices of conciliation and orders may be imposed as outlined in § 6005(b)(1), (2) and (3) of Title 7.

(3) Public hearings concerning penalties imposed under paragraphs (1) and (2) of this subsection shall be conducted as outlined in § 6006 of Title 7.

(4) Appeals concerning penalties imposed under paragraphs (1) and (2) of this subsection shall be conducted as outlined in §§ 6008 and 6009 of Title 7.

(5) Simultaneous violations of the requirements of this chapter or any rule or regulation promulgated under this chapter relating thereto shall be treated as a single violation for each day.

(6) Criminal penalties may be pursued as outlined in § 6013 of Title 7.

(d) In addition to penalties established under subsection (c) of this section, interest of 1.5% per month may be assessed by the Secretary to firms that fail to remit the correct fee or the fee itself in accordance with this chapter or any rule or regulation promulgated under this chapter relating thereto.

(e) Any person found to have violated the requirements of this chapter or any rule or regulation promulgated under this chapter relating thereto, or the reporting fee requirements of this chapter or any rule or regulation promulgated under this chapter relating thereto, shall be liable for all expenses incurred by the Department of Natural Resources and Environmental Control in abating the violation as detailed in § 6005(c) of Title 7. Moneys collected under this subsection shall be appropriated to the Department of Natural Resources and Environmental Control to cover the costs associated with such activities.

(f) Moneys collected under subsections (c) and (d) of this section shall be placed in a liquid, interest-bearing account to be selected by the Commission.

(g) Moneys collected under subsections (c) and (d) of this section shall be appropriated to the State Emergency Response Commission (SERC) for the purpose of funding related emergency planning and community right-to-know activities, emergency response equipment and vehicles (including their purchase, as well as maintenance and repairs), and related equipment and supplies, and to fund physical examinations and medical screenings for decontamination team members or other response personnel as approved by SERC. These moneys shall be used at the discretion of SERC and shall not be subject to reversion. For purposes of this section, the words "emergency response vehicles" include but are not limited to vehicles such as decontamination units (both tow vehicle and trailer).

(h) Nothing in this chapter shall prevent the Department from making efforts to obtain voluntary compliance by way of warning, notice or other educational means; this does not, however, require that such voluntary methods be used before proceeding by way of compulsory enforcement.

(i) Compliance with this chapter shall not constitute a defense for a violation of any other law or regulation of the State.

(j) The Department shall establish a policy for the calculation and assessment of penalties authorized to be imposed under subsection (c) of this section. This policy shall be subject to review and approval by the Commission prior to implementation.

(68 Del. Laws, c. 184, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 59, § 1; 73 Del. Laws, c. 371, § 2.)

§ 6315 Implementation and reevaluation of reporting fees.

(a) Effective July 1, 1991, the fees herein established shall be assessed at a rate of 66 percent on reports submitted and/or required to have been submitted in 1991 covering the 1990 calendar year.

(b) For the following years, beginning with reports submitted under § 6306 of this title in 1992 covering activities during the 1991 calendar year, the fees herein established shall be assessed at a rate of 100 percent on reports submitted or required to have been submitted under § 6306 of this title by March 1 of each year covering the previous calendar year.

(c) At the conclusion of each 2-year period, the fees imposed under this chapter shall be reevaluated by the State Emergency Response Commission which shall propose to the General Assembly adjustments as necessary to meet current and future needs.

(68 Del. Laws, c. 184, § 1; 71 Del. Laws, c. 59, § 1.)

Part VI
Safety
Chapter 64
AMUSEMENT RIDES SAFETY INSPECTION AND INSURANCE ACT

§ 6401 Short title.

This chapter may be cited as the Amusement Ride Safety Inspection and Insurance Act.

(64 Del. Laws, c. 409, § 1.)

§ 6402 Definitions.

As used in this chapter:

(1) "Amusement ride" means any mechanical device or devices that carry or convey passengers along, around or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure or excitement, but such term does not include:

a. Any single-passenger coin-operated ride that is manually, mechanically or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator; or

b. Nonmechanized playground equipment, including but not limited to swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines and physical fitness devices.

(2) "Office" means the Office of the State Fire Marshal.

(64 Del. Laws, c. 409, § 1.)

§ 6403 Administration; enforcement.

The Fire Marshal shall administer and enforce this chapter. The Fire Marshal shall establish reasonable and necessary fees in an amount not to exceed $20 per year for each amusement ride covered by this chapter; provided, however, no owner shall have to pay a fee in excess of $100. Funds raised through said fees shall be deposited in the State Treasury and shall be credited to the account of the Fire Marshal for administration of this chapter.

(64 Del. Laws, c. 409, § 1.)

§ 6404 Amusement ride operation requirements.

A person may not operate an amusement ride unless the person:

(1) Has the amusement ride inspected at least once annually for safety by an insurer or a person with whom the insurer has contracted and obtains from that insurer or person a written certificate that the inspection has been made and that the amusement ride meets the standards for coverage and is covered by the insurance required by subdivision (2) of this section;

(2) Has an insurance policy currently in force written by an insurance company authorized to do business in this State, a surplus lines insurer, as defined by Chapter 19 of Title 18, or an independently procured policy in an amount of not less than $1,000,000 per occurrence insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride; and

(3) Files with the Fire Marshal in the manner required by this chapter, the inspection certificate and the insurance policy required by this section or a photocopy of such a certificate or policy authorized by the Fire Marshal.

(64 Del. Laws, c. 409, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6404A Requirements for commercial bungee jumping operations.

(a) A person operating a bungee jump for use by paying customers shall file with the office of the State Fire Marshal, in the manner required by this chapter, the inspection certificate and insurance policy required by this section, or a photocopy of such a certificate or policy authorized by the Fire Marshal.

(b) Any person operating a bungee jump for use by paying customers which has been registered with the Fire Marshal shall be periodically inspected by a representative of the office of the State Fire Marshal.

(c) The State Fire Prevention Commission shall promulgate regulations relating to safety standards for the operation of commercial bungee jumps.

(68 Del. Laws, c. 448, § 1; 77 Del. Laws, c. 444, § 1.)

§ 6405 Insurance filing requirements.

The documents required by subdivision (3) of § 6404 of this title must be filed with the Fire Marshal before June of each year, but if the amusement ride is inspected under subdivision (1) of § 6404 more than once a year, the inspection certificate must be filed not later than 15 days after each inspection and the insurance policy must be filed before June of each year.

(64 Del. Laws, c. 409, § 1.)

§ 6406 Insurance information request.

The Fire Marshal may request from the sponsor, lessor, landowner or other person responsible for an amusement ride being offered for use by the public, information concerning whether or not insurance in the amount required by this chapter is in effect on the amusement ride. The sponsor, lessor, landowner or other person to whom the information request is made shall respond to the Fire Marshal within 15 days after the request is made.

(64 Del. Laws, c. 409, § 1.)

§ 6407 Denial of entry to amusement rides.

The owner or operator of an amusement ride may deny entry to the ride to any person if in the owner's or operator's opinion the entry may jeopardize the safety of the person who desires to enter or the safety of other patrons of the amusement ride.

(64 Del. Laws, c. 409, § 1.)

§ 6408 Injunctions.

The Attorney General, on request of the Fire Marshal or 1 of the Fire Marshal's deputies, may seek an injunction against any person operating an amusement ride, including bungee jumps, in violation of this chapter, the State Fire Prevention Commission's regulations, or which are otherwise deemed by the Fire Marshal to present an imminent risk to public health and safety including, but not limited to, the risk to public health and safety posed by the interruption of traffic flow.

(64 Del. Laws, c. 409, § 1; 68 Del. Laws, c. 448, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 444, § 2.)

§ 6409 Penalties.

(a) A person commits an offense if the person fails to comply with any requirement under § 6404 or § 6405 of this title.

(b) A sponsor, lessor, landowner or other person responsible for an amusement ride being offered for use by the public commits an offense if the person fails to provide the required information or provides false information under § 6406 of this title.

(c) An offense under this chapter is a class C misdemeanor.

(d) Each day a violation of this chapter is committed constitutes a separate offense.

(64 Del. Laws, c. 409, § 1; 70 Del. Laws, c. 186, § 1.)

Part VI
Safety
Chapter 65
FIRES

§ 6501 Liability for negligent burning.

If any owner, tenant or occupier of land within the State sets fire to any brush or other combustible matter on such land for any purpose whatsoever, and in setting fire to such brush or other combustible matter omits to observe reasonable care and prudence, by reason whereof the property, real or personal, of any other person is destroyed or impaired, such owner, tenant or occupier is liable to pay the damage resulting therefrom, which may be recovered in a civil action brought in any court having jurisdiction. Damages to an amount not exceeding $200 may be recovered in an action before any justice of the peace of the county wherein the fire occurred. In case of a recovery before a justice of the peace, no further recovery shall be had by the plaintiff therein or the plaintiff's legal representatives of damages resulting from the same fire.

(16 Del. Laws, c. 380, § 1; Code 1915, § 3447; Code 1935, § 3907; 16 Del. C. 1953, § 6501; 70 Del. Laws, c. 186, § 1.)

§ 6502 Liability of railroads for burning.

If any railroad company owning or operating any railroad within this State suffers to remain on any part of the land owned or controlled by it for railroad purposes within this State any brush or other combustible matter, and if such brush or other combustible matter, from any cause whatsoever, is set on fire, and by reason thereof, the property, real or personal, of any person is destroyed or impaired, such railroad company is liable to pay the damages resulting therefrom, to be recovered in the same manner as provided in § 6501 of this title in the case of individuals liable for damages resulting from fire.

(16 Del. Laws, c. 380, § 2; Code 1915, § 3448; Code 1935, § 3908; 16 Del. C. 1953, § 6502.)

§ 6503 Spark arrester for traction engines; penalty.

(a) No owner of a traction engine shall use or operate such engine or suffer or permit the same to be used or operated unless there has been securely attached to the smokestack thereof a suitable and sufficient spark catcher or spark protector, which spark catcher or spark protector shall be of a conical or funnel shape and of a heavy wire material and of a mesh not larger than one eighth of an inch. No owner of a traction engine shall suffer or permit the engine to be operated without having the smokestack thereof securely protected by such spark protector.

(b) Any owner or operator of a traction engine failing or neglecting to provide the owner's or operator's engine with a spark protector shall be fined not more than $50.

(25 Del. Laws, c. 243, § 1; Code 1915, § 3450; Code 1935, § 3909; 16 Del. C. 1953, § 6503; 70 Del. Laws, c. 186, § 1.)

Part VI
Safety
Chapter 66
FIRE PREVENTION
Subchapter I
State Fire Prevention Commission

§ 6601 Objectives.

The objective of the State Fire Prevention Commission, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices.

(77 Del. Laws, c. 444, § 4.)

§ 6602 State Fire Prevention Commission — Appointment; qualifications; cause for removal; term of office; members to serve without compensation.

(a) The State Fire Prevention Commission shall consist of 7 persons who shall be qualified by experience and training to deal with the matters which are the responsibilities of the State Fire Prevention Commission. Three members of the State Fire Prevention Commission shall be appointed by the Governor and shall be representatives of industry from New Castle County, Kent County and Sussex County. Three members, 1 from each county, shall be members of paid or volunteer fire companies and shall be appointed by the Governor from a list of 3 names of members in good standing submitted by the Volunteer Firefighters' Association of the county in which a vacancy exists. The seventh member of the State Fire Prevention Commission shall be the immediate past President of the Delaware Volunteer Firefighters' Association and shall be appointed by the Governor.

(b) Members may be removed by the Governor for continued neglect of the duties required by this chapter, or for refusal to act, misconduct, incompetency, or other sufficient cause.

(c) Members of the State Fire Prevention Commission shall be appointed to serve for 6-year terms, but no member may be appointed to more than 2 successive full terms. Succeeding appointments shall be made, and any vacancy on the State Fire Prevention Commission shall be filled for the duration of the term, in the same manner as the prior appointment.

(d) Members shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(e) No member of the State Fire Prevention Commission, while serving on the State Fire Prevention Commission, shall be an officer (president/chairperson, president-elect, vice president, secretary or treasurer) of any state or county volunteer firemen's association, including but not limited to, the Delaware Volunteer Firefighter's Association, or any professional or trade association, or union representing an industry or service regulated by the State Fire Prevention Commission.

(16 Del. C. 1953, § 6601; 49 Del. Laws, c. 335; 52 Del. Laws, c. 5, § 1; 63 Del. Laws, c. 381, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6603 State Fire Prevention Commission — Organization and meetings.

(a) The State Fire Prevention Commission shall select a Chairperson and Vice Chairperson from among its members and shall hold regular meetings at least once a month. Special meetings may be called by the Chairperson, by the Vice Chairperson in the absence of the Chairperson, or by 3 members of the State Fire Prevention Commission.

(b) No business shall be transacted by the State Fire Prevention Commission in the absence of a quorum which shall be 4 members, 1 of which must be the Chairperson or Vice Chairperson.

(16 Del. C. 1953, § 6602; 49 Del. Laws, c. 335; 52 Del. Laws, c. 5, § 1; 63 Del. Laws, c. 381, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6604 State Fire Prevention Commission — Powers and duties.

The State Fire Prevention Commission shall have authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act (Chapter 101 of Title 29) of this State.

a. Such regulations shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, cities and political subdivisions of the State. Whenever such regulations and amendments require the issuance of permits or licenses, the State Fire Prevention Commission is authorized to issue such permits or licenses according to the provisions and schedules in § 6612 of this title. Such regulations and amendments shall not apply to existing installations, plants or equipment unless the State Fire Prevention Commission has duly found that the continuation thereof constitutes a hazard so inimicable to the public welfare and safety as to require correction; nor shall such regulations and amendments limit or prohibit the shipment, transportation, handling or storage incident to transportation of any explosive, combustible or other dangerous article in solid, liquid or gas form by rail, water or highway, when such articles are in conformity with regulations of the Interstate Commerce Commission; nor shall such regulations,

insofar as they purport to prohibit the sale, purchase or domestic use of gasoline, kerosene or other fuel burning home appliances for heating or cooking apply to any person whose personal faith or belief prevents the use of any alternative heating or cooking appliance recommended by the State Fire Prevention Commission, the burden of proof is upon the person claiming relief from such regulation. In their interpretation and application the regulations promulgated under this chapter shall be held to be the minimum requirements for the safeguarding of life and property from the hazards of fire and explosion. Whenever the provisions of any other statute or local regulation are more stringent or impose higher standards than are required by any regulations promulgated under this chapter, such statute or local regulation shall govern, provided they are not inconsistent with the state Code and are not contrary to recognized standards and good engineering practices.

b. Promulgate regulations consistent with the following language: The State Fire Marshal shall require that all persons involved in the inspection and testing of water-based fire protection systems maintain current certification in the National Institute for Certification in Engineering Technologies (NICET II) "Inspection and Testing of Water-based Systems" certification program or a substantially similar and equivalent course of instruction, as determined by the State Fire Marshal, as a condition of permit renewal after July 1, 2010.

c. Promulgate regulations consistent with the following language: The State Fire Marshal shall require that persons involved in the inspection and testing of water-based fire protection systems shall complete 16 contact hours of continuing education or similar course of instruction during each biennial period of renewal. Any and all continuing education requirements completed pursuant to paragraph (1)b. of this section may be used to meet the continuing education requirements as called for under this section.

(2) Appoint a person qualified by that person's previous training and experience in endeavors similar to those herein prescribed as State Fire Marshal.

(3) Appoint a person qualified by that person's previous training and experience in endeavors similar to those described herein as the State Fire School Director.

(4) Conduct hearings and issue orders in accordance with procedures established pursuant to this chapter and Chapter 101 of Title 29. Where such provisions conflict with this chapter, this chapter shall govern.

(5) Issue subpoenas for named respondents, witnesses, documents, physical evidence or any other source of evidence needed during the investigation of a complaint made under this chapter and/or for a public hearing on the complaint or for an appeal to the State Fire Prevention Commission from an order or decision of the State Fire Marshal. If the party or person subpoenaed fails to comply, the State Fire Prevention Commission may compel compliance with said subpoena by filing a motion to compel in the Superior Court which shall have jurisdiction. The Superior Court may order costs, attorney's fees and/or a civil fine not to exceed $1,000 if the motion to compel is granted.

(6) Acquire any real or personal property by purchase, gift or donation and have water rights.

(7) Make contracts and execute instruments necessary or convenient.

(8) Undertake by contract or contracts, or by its own agent and employees, and otherwise than by contract, any project or projects, and operate and maintain such projects.

(9) Accept grants of money or materials or property of any kind from a federal agency, private agency, county, city, town, corporation, partnership or individual upon such terms and conditions as the grantor may impose.

(10) Perform all acts and do all things necessary or convenient to carry out the power granted herein.

(16 Del. C. 1953, §§ 6603-6604; 49 Del. Laws, c. 335; 50 Del. Laws, c. 469, § 1; 52 Del. Laws, c. 5, § 1; 57 Del. Laws, c. 672; 57 Del. Laws, c. 727; 63 Del. Laws, c. 381, § 3; 68 Del. Laws, c. 408, § 1; 76 Del. Laws, c. 330, §§ 1-3; 77 Del. Laws, c. 444, § 4.)

§ 6605 State Fire Prevention Commission Advisory Board.

For the purpose of advising and make recommendations to the State Fire Prevention Commission in connection with the State Fire Prevention Commission's responsibilities regarding regulatory changes, there is hereby created the State Fire Commission Advisory Board. The State Fire Commission Advisory Board shall be composed of 7 members. One member shall be the Chairperson of the Fire School Advisory Board, 1 member shall be the Chairperson of the Fire Marshal's Advisory Board, 1 member shall be the Chairperson of the Ambulance Advisory Committee and 1 member shall be the Chairperson of the Delaware Volunteer Firefighter's Advisory Board. Three members shall be public members appointed by the State Fire Prevention Commission. One public member shall be from New Castle County, 1 from Kent County and 1 from Sussex County. Of the initial 3 public members appointed by the State Fire Prevention Commission, 1 must be appointed for a 1-year term, 1 must be appointed for a 2-year term and 1 must be appointed for a 3-year term. Thereafter, all public members shall serve 1-year terms. The Chairperson of the State Fire Prevention Commission shall call the Advisory Board to its first meeting. The Advisory Board shall choose a Chairperson and shall meet thereafter at the call of the Chairperson of the Advisory Board or the Chairperson of the State Fire Prevention Commission.

(77 Del. Laws, c. 444, § 4.)

§ 6606 Annual report; financial statement and budget.

(a) The State Fire Prevention Commission shall annually, on or before September 30, transmit to the Governor a full report of its proceedings under this chapter and such statistics as it may wish to include therein. It shall also recommend any amendments to the law which in its judgment shall be desirable.

(b) Along with the annual report, the State Fire Prevention Commission shall transmit a financial statement showing all expenditures and income of the State Fire Prevention Commission covering the preceding 12 months, starting July 1 and ending June 30.

(c) In the even-numbered years the State Fire Prevention Commission shall submit to the Budget Commission a budget showing proposed expenditures for the biennium beginning July 1 next succeeding.

(d) The State Fire Prevention Commission shall be given the authority to reimburse volunteer fire companies which incur extraordinary expenses, an amount not to exceed the amount specified in the annual appropriations act, upon request from a volunteer fire company. An "extraordinary expense" under the provisions of this section shall be defined as an expense for which a volunteer fire company would not normally prepare for in its company budget and is not covered by said company's own private insurance.

(16 Del. C. 1953, § 6612; 52 Del. Laws, c. 5, § 1; 73 Del. Laws, c. 309, § 3; 77 Del. Laws, c. 444, § 4.)

§ 6607 Power of State Fire Prevention Commission to authorize new fire companies or substations; resolve boundary disputes; and prohibit cessation of necessary fire protection services.

(a) The State Fire Prevention Commission, with the advice of the Advisory Board set forth in § 6605 of this title, is empowered to promulgate, amend and repeal regulations related to the exercise of State Fire Prevention Commission powers and responsibilities defined in this section.

(1) Except as provided in subsection (c) of this section, the State Fire Prevention Commission shall determine whether any new fire companies or substations shall be authorized in any part of the State. In making such determination the State Fire Prevention Commission shall consider among other things the ability, financial or otherwise, of the company seeking authorization to maintain an effective fire company and the fire protection needs of the area involved. The State Fire Prevention Commission, however, shall not authorize the establishment of a new fire company main station or substation within 4 miles of an existing fire company's main station or substation unless the State Fire Prevention Commission determines that an existing company is not reasonably equipped, manned, organized, financed or disciplined to deliver, or is not actually delivering, adequate fire protection in accordance with recognized safety standards to the area it serves.

(2) Except as provided in subsection (c) of this section, the State Fire Prevention Commission shall have authority to prohibit the suspension of fire protection services in this State by any fire company or substation thereof when the ability, financial or otherwise, of the company or substation seeking to suspend such service does not warrant such suspension. In making this determination the State Fire Prevention Commission shall consider, among other things, the fire protection needs of the area involved, whether the company or substation seeking to suspend fire protection services is inadequately financed, equipped, manned, organized or disciplined, and whether a new fire company should be authorized to deliver fire protection services to the area.

(3) The State Fire Prevention Commission shall have authority, acting on behalf of the State, to enter into agreements to confirm the established geographical boundaries of areas served by all existing fire companies in the State and to resolve boundary disputes between or among such fire companies.

(4) The State Fire Prevention Commission shall have authority to enter binding orders resolving boundary disputes between fire companies.

(b) The Delaware Volunteer Firefighters' Association shall designate from its members a 9-member advisory board to advise and make recommendations to the State Fire Prevention Commission in connection with the Commission's responsibilities under this section. The Delaware Volunteer Firefighter's Advisory Board shall consist of the President, First Vice-President, Second Vice-President and the 7 members of the Board of Directors, excluding the immediate past President who serves as a Commissioner, of the Delaware Volunteer Firefighters' Association.

(c) Paragraphs (a)(1) and (2) of this section shall not be applied with respect to any fire company in municipalities with a population greater than 50,000 as established in the official 1980 federal census.

(16 Del. C. 1953, § 6619; 55 Del. Laws, c. 149; 63 Del. Laws, c. 381, § 4; 68 Del. Laws, c. 437, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 378, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6607A Injunctive relief.

The State Fire Prevention Commission may in its discretion bring an action in the Delaware Court of Chancery to temporarily restrain or enjoin any act or practice which constitutes a violation of an order of the State Fire Prevention Commission or of any provision of this chapter and to enforce compliance with any order of the State Fire Prevention Commission or provision of this chapter.

(63 Del. Laws, c. 381, § 5; 77 Del. Laws, c. 444, § 4.)

§ 6608 Audits of volunteer fire and ambulance companies.

(a) The State Fire Prevention Commission shall promulgate regulations requiring financial audits of volunteer fire and ambulance companies and the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad. The regulations shall include, but not be limited to, specifying the required types of audits, the reporting periods, procedures for reviewing the audits and the processes to be followed in the event a company fails to submit or submits an inadequate audits.

(b) The State Fire Prevention Commission shall have the authority, after a hearing, to impose a civil penalty not to exceed $100 against any volunteer fire and ambulance companies, the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue

Squad that fails to comply with any regulation promulgated pursuant to subsection (a) of this section. Each day a violation continues may be deemed a separate offense in the State Fire Prevention Commission's discretion. However, in no event shall the total penalties exceed $5,000 per reporting period.

(c) The penalties specified in this section are in addition to and not in lieu of any other penalties provided for under this chapter.

(76 Del. Laws, c. 243, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6609 Appeals to the State Fire Prevention Commission — Procedure.

(a) Appeals to the State Fire Prevention Commission may be taken by any person aggrieved by an order or decision of the State Fire Marshal, or the Marshal's Deputy or Deputies, based upon or made in the course of the administration or enforcement of this chapter. Appeals to the State Fire Prevention Commission may be taken by any officer, department, board or bureau of the State and the several counties, cities and political subdivisions thereof affected by an order or decision of the State Fire Marshal, or the Marshal's Deputy or Deputies, in the course of the administration or enforcement of this chapter.

(b) Appeals by any person aggrieved by an order or decision of the State Fire Marshal, the Marshal's Deputy or Deputies, or Assistant State Fire Marshals based upon or made in the course of the administration or enforcement of this chapter or local regulations incorporating the State Fire Prevention Commission Regulations shall be taken to the State Fire Prevention Commission. Appeals by any officer, department, board or bureau of the State and the several counties, cities and political subdivisions thereof affected by an order or decision of the State Fire Marshal, or the Marshal's Deputy or Deputies or Assistant Fire Marshals, in the course of the administration or enforcement of this chapter or local regulations incorporating the State Fire Prevention Commission Regulations shall be taken to the State Fire Prevention Commission.

(c) The time within which such appeal must be made and the effect, form or other procedure relating thereto shall be as specified in regulations promulgated by the State Fire Prevention Commission following notice and public hearings as provided in § 6604 of this title.

(16 Del. C. 1953, § 6608; 52 Del. Laws, c. 5, § 1; 53 Del. Laws, c. 423, § 3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 183, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6610 Appeals to the State Fire Prevention Commission — Powers upon appeals.

Upon appeals the State Fire Prevention Commission shall have the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by the State Fire Marshal, or the Marshal's Deputy or Deputies, based on or made in the enforcement of this chapter;

(2) To hear and decide, in accordance with any duly adopted regulation, requests for special exceptions or for interpretation of regulations or for decisions upon other special questions upon which the State Fire Prevention Commission is required by any regulation to pass;

(3) To authorize a variance from particular provisions of the regulations duly promulgated under § 6604 of this title where strict compliance with such provisions would entail practical difficulties or unnecessary hardships, provided such relief may be granted without substantial detriment to the public safety and without substantially impairing the intent and purpose of the regulations promulgated under § 6604 of this title;

(4) All decisions, authorizations or interpretations made by the State Fire Prevention Commission hereunder shall be written and signed by the Chairperson or Vice-Chairperson and filed in the office of the State Fire Marshal, or the Marshal's Deputy or Deputies, within 30 days following the appeal.

(16 Del. C. 1953, § 6609; 52 Del. Laws, c. 5, § 1; 53 Del. Laws, c. 423, § 4; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6611 Court review of decision of State Fire Prevention Commission; procedure.

(a) Any person jointly or severally aggrieved by any decision of the State Fire Prevention Commission made in the exercise of its appellate function under §§ 6609 and 6610 of this title, or in exercise of its authority decertifying, suspending or otherwise disciplining an emergency medical technician (EMT) under § 6712A of this title, or any officer, department, board or bureau of the State and the several counties, cities and political subdivisions thereof may appeal the final order of the State Fire Prevention Commission to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to the party aggrieved by the decision. Upon such appeal the Superior Court shall hear the evidence on the record. Stays shall be granted in accordance with § 10144 of Title 29.

(b) Costs shall not be allowed against the State Fire Prevention Commission unless it shall appear to the Superior Court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

(16 Del. C. 1953, § 6610; 52 Del. Laws, c. 5, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 54, § 2; 77 Del. Laws, c. 444, § 4.)

Subchapter II

State Fire Marshal

§ 6612 State Fire Marshal — Term, salary, duties, powers and responsibilities.

(a) The State Fire Marshal shall reside in Delaware after appointment. The State Fire Marshal shall receive such salary as may be set by the State Fire Prevention Commission within the limits set by the annual appropriation to the State Fire Prevention Commission. The

State Fire Marshal shall devote their whole time to the duties of the State Fire Marshal's office. Whenever a vacancy shall occur in the office of State Fire Marshal for any reason other than the expiration of a term, the vacancy shall be filled by the State Fire Prevention Commission for the balance of the unexpired term. The State Fire Marshal shall be appointed for a term of 4 years and such term shall be renewable in the discretion of the State Fire Prevention Commission.

(b) The State Fire Marshal, with the consent and approval of the State Fire Prevention Commission, shall appoint all authorized personnel pursuant to Merit System rules and regulations and administer the usual oath as required. Salaries of all personnel to include appropriate position classifications, upgrading and promotions shall be in compliance with Chapter 59 of Title 29.

(c) The Fire Marshal of any political subdivision of this State, having such an office duly created by ordinance or resolution before January 1, 1959, shall serve as an Assistant State Fire Marshal. Within the limits of the said political subdivision, the Fire Marshal shall have exclusive jurisdiction exercising the duties and powers of the State Fire Marshal but the Fire Marshal shall serve without compensation.

(d) The State Fire Marshal, with the consent and approval of the State Fire Prevention Commission, shall employ or acquire such office and clerical employees as may be necessary for the orderly administration of Marshal's office. The State Fire Marshal shall acquire such equipment, furniture, supplies and paraphernalia as may be necessary for the orderly administration of Marshal's office.

(e) The State Fire Marshal, the State Fire Marshal's Deputy or Deputies, and other members of the State Fire Marshal's office, in addition to their salaries, shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(f) The State Fire Marshal, or the Marshal's Deputy or Deputies, shall enforce all laws and ordinances of the State and the several counties, cities and political subdivisions thereof having to do with:

(1) Prevention of fires;

(2) The storage, sale and use of any explosive, combustible or other dangerous article in solid, liquid or gas form;

(3) The installation and maintenance of equipment of all sorts intended for fire control, detection and extinguishment;

(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which numbers of persons work, live or congregate from time to time for any purpose, except buildings used wholly as dwelling houses containing no more than 2 families;

(5) The suppression of arson.

(g) The State Fire Marshal, or the Marshal's Deputy or Deputies, shall assist any chief of any recognized fire company upon request of such chief.

(h) The State Fire Marshal, or the Marshal's Deputy or Deputies, shall enforce the regulations promulgated by the State Fire Prevention Commission as authorized by § 6604 of this title.

(i) The State Fire Marshal, or the Marshal's Deputy or Deputies, shall require the administrative heads of public and private schools and educational institutions to have at least 1 fire drill each month when said schools are in session and to keep all doors and exits unlocked during school hours.

(j) The State Fire Marshal, or the Marshal's Deputy or Deputies, shall inspect all state- and county-owned institutions, all schools, theatres, churches and other places of public assembly as to fire exits and reasonable safety standards and report the Marshal's findings and recommendations to the proper administrative heads.

(k) The State Fire Marshal, or the Marshal's Deputy or Deputies, may at any time investigate as to the origin or circumstances of any fire or explosion occurring in the State and may at all reasonable hours enter any building or premises within the Marshal's jurisdiction for the purpose of making an inspection or investigation, which, under this chapter, they may deem necessary to be made.

(l)(1) The State Fire Marshal or the Marshal's designee shall review all plans and specifications, with the exception of those political subdivisions having exclusive jurisdiction under subsection (c) of this section for conformance to the requirements of subsections (f) and (j) of this section, prior to actual construction for:

a. All new buildings and additions; for any building undergoing a change in occupancy; or any part of a building suffering damage from fire, explosion, or any other cause; with the exception of buildings used wholly as dwelling houses containing no more than 2 families and buildings used wholly for farming purposes.

b. Alarm systems, fire protection systems, flammable and combustible liquid or gas installation or other miscellaneous installations falling under the State Fire Prevention Rules and Regulations.

c. Subdivision plans.

(2) The State Fire Marshal is authorized to establish a schedule of plan review fees to be paid by the submitter of the plans reviewed under paragraph (l)(1) of this section, except that no fees shall be charged for projects financed in excess of 50% by state funds, housing developed by an organization exempt from tax under § 501(c)(3) of the federal Internal Revenue Code (26 U.S.C. § 501(c)(3)), and projects financed under Chapters 40 and 45 of Title 31.

(3) The plan review fees shall be based on actual costs with the initial payment being based on the estimated cost of construction of the building, additions, renovation, alarm system, fire protection systems, or flammable or combustible liquid or gas installations or other miscellaneous installations required to be approved and shall not exceed the following schedule:

a. Seven tenths of 1% on July 1, 2009;

b. Three tenths of 1% over $1,000,000 of cost;

c. With respect to the provisions of paragraphs (l)(3) a. and b. of this section, the minimum fee for any plan review shall be no less than $150.

d. The State Fire Marshal must provide a schedule of reduced fees for low life hazard occupancies such as warehouses.

(4) Subdivision plan review fees shall be set at $150.

(5) The State Fire Marshal, with the approval of the State Fire Prevention Commission, where such regulations or amendments duly promulgated under the authority of the State Fire Prevention Commission require the issuing of a permit, license or certificate, is authorized to issue such permits, licenses or certificates and to establish a schedule of fees not to exceed the following schedule:

a. A maximum of $100 per fire alarm signaling system or fire suppression system, where a license is issued under the preceding provision of this section, for wholly owned or proprietary fire alarm signaling systems or fire suppression systems, serviced by the system owner.

b. A maximum of $50 for a license to service portable unit fire suppression appliances.

c. A maximum of $25 for all other permits, licenses and certifications as required in the State Fire Prevention Regulations.

d. The fees as authorized in this paragraph shall be the maximum so charged by the State Fire Prevention Commission and every 2 years shall be reviewed by the Department of Finance, the Controller General and the State Fire Marshal.

e. All fees associated with the permitting, licensing, or certification processes shall be annual fees, payable on a date as scheduled by the State Fire Marshal.

(6) It is expressly provided that said fees collected by the State Fire Marshal shall not affect the state appropriation or be deducted there from, but shall be so much additional moneys available for carrying out the provisions of this subsection, and the said fees shall be paid to the State Treasurer for accounting and deposited in a special fund in the State Treasury. Said fees included in this subsection shall not be charged for projects financed in excess of 50% by state funds, and projects financed under Chapters 40 and 45 of Title 31.

(7) The fees as authorized for the plan review process shall be the maximum allowed by the State Fire Prevention Commission and will be a cap, that every 2 years, by September 15, a review shall be conducted by the Director of the Office of Management and Budget, the Controller General and the State Fire Marshal, based upon the revenue experience and the anticipated funding needs of the Technical Services Division of the State Fire Marshal's Office, to revise the fees according to the anticipated funding needs of the State Fire Marshal's Office Technical Services Division, incorporating the plan review, licensing and additional consultative services.

(8) The permit, licensing and plan review fee requirements of this chapter shall not apply to municipalities, towns or other subdivisions of this State or to fire companies that wish to construct improvements upon their fire stations.

(m) The State Fire Marshal, or the State Fire Marshal's Deputy or Deputies, shall have the authority to issue subpoenas in the enforcement of this chapter.

(n) Appeals to the State Fire Prevention Commission from a decision of the State Fire Marshal shall be made in accordance with the provisions of §§ 6609 and 6610 of this title.

(o) The Office of the State Fire Marshal shall have the authority to:

(1) Advise and assist fire companies, municipal corporations and districts, including agencies and departments thereof in developing measures for more effective fire and arson prevention and control;

(2) Assist and encourage cooperative efforts to solve common problems relating to fire and arson prevention and control and to serve as a clearinghouse of information about fire and arson prevention and control, about reported cases of burn injuries or wounds sustained, and about state and federal services available to assist in solving such problems;

(3) Employ or contract with individuals, agencies or corporations to assist fire companies, municipal corporations and districts in the development of an arson investigation program or in the investigation of cases of suspected arson or cases of burn injuries or wounds sustained upon the request of such an entity. However, nothing in this provision shall be construed to remove the primary responsibility for arson investigations from appropriate local jurisdictions or agencies;

(4) Establish a burn registry data bank and disseminate information relating to fire and arson prevention and control, reported cases of burn injuries or wounds sustained, and to operate a state fire reporting system. The state fire reporting system shall include a procedure for the identification of patterns of suspicious, accidental or criminal fires and for alerting appropriate state and local authorities. The fire reporting system shall also include fire incident data supplied by local fire agencies in a manner and on forms prescribed by the State Fire Marshal. To the extent practicable, the data shall be collected and maintained in a form compatible with information collected by other Delaware agencies, other states and the federal government. The State Fire Marshal shall cooperate with the Division of State Police, Insurance Department, local police, fire and health agencies, the insurance industry and other appropriate organizations in maintaining such system.

(16 Del. C. 1953, §§ 6606, 6607; 50 Del. Laws, c. 469, § 1; 52 Del. Laws, c. 5, § 1; 53 Del. Laws, c. 189; 53 Del. Laws, c. 423, §§ 1, 2; 56 Del. Laws, c. 340, § 1; 60 Del. Laws, c. 551, § 1; 64 Del. Laws, c. 336, §§ 1, 2; 65 Del. Laws, c. 474, § 1; 68 Del. Laws, c. 408, §§ 2-10; 69 Del. Laws, c. 283, § 1; 69 Del. Laws, c. 291, § 273; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 149, § 1; 75 Del. Laws, c. 88, § 21(8); 77 Del. Laws, c. 76, §§ 1-4; 77 Del. Laws, c. 444, § 4.)

§ 6613 Reports from insurance companies; reports of investigations by State Fire Marshal.

(a) Each fire insurance company or association doing business in this State shall, within 30 days after the adjustment of any loss sustained by it, report to the State Fire Marshal, upon forms furnished by it, such information regarding the amount of insurance, the value of the property insured and the amount of claim as adjusted, as in the judgment of the State Fire Marshal it is necessary for the State Fire Marshal to know. This report shall be in addition to any such information required by the Insurance Commissioner.

(b) Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the State Fire Marshal, upon approval of the Attorney General's office, may make a written report to the person requesting the same of the result of the examination made by the State Fire Marshal regarding the property.

(16 Del. C. 1953, § 6620; 56 Del. Laws, c. 82; 77 Del. Laws, c. 444, § 4.)

§ 6614 Maintenance of fire hazard, violations of regulations or chapter; burn injuries and wounds to be reported; enforcement; remedies and penalties.

(a) No person shall erect, construct, reconstruct, alter, maintain or use any building, structure or equipment or use any land in such a way to endanger life or property from the hazards of fire or explosion or in violation of any regulation or any provision of or any change thereof promulgated by the State Fire Prevention Commission under the authority of this chapter.

(b) Whoever recklessly violates such regulations, provisions or change or any provision of this chapter, with the exception of exceeding the posted occupant load in a place of assembly as outlined in subsection (c) of this section, shall be fined not more than $100 or imprisoned not more than 10 days or both.

(c) Whoever negligently violates the regulation of exceeding the posted occupant load in a place of assembly, as defined in the Delaware State Fire Prevention Regulations, shall be fined at least $10 but not more than $100 per person exceeding the posted occupant load as determined by the State Fire Marshal.

(d) Each and every day during which such illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that same is illegal shall be deemed a separate offense.

(e) In case any building, structure or equipment is or is proposed to be erected, constructed, reconstructed, altered, maintained or used, or any land is or is proposed to be used in such a way to endanger life or property from the hazards of fire or explosion or in violation of this chapter or of any regulation or provision of any regulation or change thereof promulgated by the State Fire Prevention Commission under the authority granted by this chapter, the State Fire Prevention Commission, the State Fire Marshal or the Attorney General may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or actions, proceeding or proceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

(f) Every case of a burn injury or wound, where the victim sustained second or third degree burns to 5 percent or more of the body and/or any burns to the upper respiratory tract with laryngeal edema due to the inhalation of super-heated air, and every case of a burn injury or wound which is likely to or may result in death, shall be reported to the Office of State Fire Marshal. The State Fire Marshal shall accept the report and notify the proper investigatory agency. The report shall be provided to the Office of the State Fire Marshal within 72 hours of the initial treatment. The report shall be made by:

(1) The physician attending or treating the case; or

(2) The manager, superintendent or other person in charge, whenever such case is treated in a hospital or other health care facility.

The intentional failure to make such report is a class A misdemeanor.

(g) The State Fire Marshal, or the Marshal's Deputy or Deputies, may make arrests of persons violating offenses under this section or of persons violating any of the laws of this State relating to fires or burning.

(h) Justices of the Peace shall have jurisdiction over offenses under this section.

(i) All moneys derived from a violation of subsection (c) of this section shall be placed in a special fund to be used by the State Fire Marshal to carry out the provisions of this chapter. Fines that are a result of violations of this chapter that occur within the jurisdiction of the jurisdictional Fire Marshals shall be placed in a separate special fund to be used in that jurisdiction to carry out the provisions of this chapter.

(16 Del. C. 1953, § 6611; 52 Del. Laws, c. 5, § 1; 55 Del. Laws, c. 169; 55 Del. Laws, c. 170; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 34, §§ 1-3; 74 Del. Laws, c. 350, §§ 1, 2; 77 Del. Laws, c. 444, § 4.)

§ 6615 State Fire Marshal's Advisory Board.

For the purpose of advising and making recommendations to the State Fire Marshal in connection with any matters relating to the State Fire Marshal, there is hereby created the State Fire Marshal's Advisory Board. The Advisory Board shall be comprised of 6 members appointed by the Delaware Volunteer Firefighters' Association. Two members shall come from New Castle County, 2 from Kent County and 2 from Sussex County. Each member of the Advisory Board shall serve at the pleasure of the Delaware Volunteer Firefighters' Association. The Advisory Board shall choose a Chairperson and shall meet thereafter at the call of the Chairperson of the Advisory Board, or the State Fire Marshal.

(16 Del. C. 1953, § 6618; 54 Del. Laws, c. 318, § 1; 65 Del. Laws, c. 246, § 1; 65 Del. Laws, c. 400, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 378, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6616 Protection of records.

Any and all records and reports compiled by the State Fire Marshal's office resulting from the State's Juvenile Fire Setter Intervention Program, including, but not limited to, case histories, interviews and findings, shall be considered confidential and privileged and shall not be disclosed directly or indirectly to anyone other than Family Court, the Attorney General and the Deputy Attorneys General and the employees of the State Fire Marshal's office in the discharge of their official duties. Such records and reports shall not be subject to the Freedom of Information Act pursuant to Chapter l00 of Title 29 and shall not be subject to any subpoena powers of any court.

(69 Del. Laws, c. 395, § 1; 77 Del. Laws, c. 444, § 4.)

Subchapter III

State Fire School

§ 6617 Location; supervision; purposes.

There is established in the Dover area a state institution known as the Delaware State Fire School. The Delaware State Fire School shall be under the supervision and control of the State Fire Prevention Commission to effectuate the following purposes:

(1) To provide firefighters and first responders with needed professional instruction and training at a minimum cost to them and their employers;

(2) To develop new methods and practices of fire fighting;

(3) To provide facilities for testing fire fighting equipment;

(4) To disseminate information relative to fires, techniques of fire fighting and other related subjects to all interested agencies and individuals throughout the State;

(5) To undertake any project and engage in any activity which in the opinion of the Fire Prevention Commission will serve to protect the public safety.

(16 Del. C. 1953, § 6613; 54 Del. Laws, c. 318, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6618 State Fire Prevention Commission's powers and duties.

(a) The State Fire Prevention Commission shall have complete jurisdiction over the Delaware State Fire School and is vested with full power and authority:

(1) To adopt rules and regulations necessary for the governing of said institution;

(2) To appoint a Director to run the daily operations of the Delaware State Fire School and to employ or acquire such other instructors, office and clerical employees as may be necessary.

(3) To have full management, possession and control of the lands, buildings, structures and property belonging thereto;

(4) To approve the courses of study of the institution;

(5) To approve the rules and regulations for the admission of trainees to said institution;

(6) To visit and inspect said institution and every department thereof, including any and all accounts and records;

(7) To approve all necessary budgets of expenditures for the enlargement, proper furnishings, maintenance, support and conduct of said institution;

(8) To build, construct, change, enlarge, repair and maintain any and all buildings or structures of said institution that may at any time be necessary for said institution;

(9) To purchase and acquire all lands and property necessary for same, of every nature and description whatsoever;

(10) To care for and maintain the same and to do and perform every other matter or thing requisite to the proper management, maintenance, support and control of said institution necessary or requisite to carry out fully the purpose of §§ 6617-6623 of this title, and for raising it to and maintaining it at the proper efficiency and standard as required in the interest of public safety.

(b) The State Fire Prevention Commission shall be permitted to conduct any live burn operation at the Delaware State Fire Service Center, including the New Castle and Sussex Divisions, necessary to carry out the purposes and duties of this chapter, notwithstanding any other provision of the Delaware Code, any county or municipal ordinance or any rules or regulations prohibiting the same to the contrary.

(16 Del. C. 1953, § 6614; 54 Del. Laws, c. 318, § 1; 66 Del. Laws, c. 145, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6619 Director and employees.

The State Fire Prevention Commission shall employ a Director for the Delaware State Fire School who shall be especially trained and qualified in fire fighting, fire experimental work, and emergency services training or shall have such other qualifications as deemed appropriate by the State Fire Prevention Commission including, but not limited to, educational and administrative experience. The Director shall receive such salary as may be set by the State Fire Prevention Commission within the limits set by the annual appropriation to the State Fire Prevention Commission. The Director shall be appointed for a term of 4 years and such term shall be renewable in the discretion of the State Fire Prevention Commission. The Director with the consent and approval of State Fire Prevention Commission shall appoint all authorized personnel pursuant to the merit system rules and regulations as may be necessary for the orderly administration of the Fire

School. Salaries of all personnel, to include appropriate classifications, upgrading and promotions, shall be in compliance with Chapter 59 of Title 29.

(16 Del. C. 1953, § 6616; 54 Del. Laws, c. 318, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6620 School attendance fees.

The Director with the consent and approval of the State Fire Prevention Commission may fix and collect admission fees and other fees that it may deem necessary to be charged for training given, and it is expressly provided that all such fees so collected by the State Fire School shall not affect the state appropriation or be deducted there from, but shall be so much additional moneys available for the operation and maintenance of said institution, and the said fees shall be paid to the State Treasury for accounting and deposit in a special fund in the State Treasury.

(16 Del. C. 1953, § 6615; 54 Del. Laws, c. 318, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6621 Liability in the performance of instructional service.

(a) No full-time or part-time instructor certified, assigned, approved or contracted by the Delaware State Fire School who in good faith provides instructional services shall be liable for any civil damages as a result of issuing such instructions, unless guilty of gross or wilful negligence.

(b) No university, college or medical facility, nor any other entity nor any of its faculty members, participating in good faith as part of an approved Delaware State Fire School training or educational program, shall be liable for any civil damages as a result of any primary or continuing training or educational practice by any enrolled students unless guilty of gross or wilful negligence.

(66 Del. Laws, c. 34, § 1; 77 Del. Laws, c. 444, § 4.)

§ 6622 Buildings and equipment.

The State Fire Prevention Commission shall have the power to prescribe and shall make the necessary rules and regulations for the use of the buildings, equipment and other facilities of the institution when they are not in use for the purpose set forth.

(77 Del. Laws, c. 444, § 4.)

§ 6623 Fire School Advisory Board.

For the purpose of advising and make recommendations to the State Fire School in connection with any matters relating to the State Fire School, there is hereby created the State Fire School Advisory Board. The Advisory Board shall be comprised of 6 members appointed by the Delaware Volunteer Firefighters' Association. Two members shall come from New Castle County, 2 from Kent County and 2 from Sussex County. Each member of the Advisory Board shall serve at the pleasure of the Delaware Volunteer Firefighters' Association. The Advisory Board shall choose a Chairperson and shall meet thereafter at the call of the Chairperson of the Advisory Board or the Director of the State Fire School.

(16 Del. C. 1953, § 6618; 54 Del. Laws, c. 318, § 1; 65 Del. Laws, c. 246, § 1; 65 Del. Laws, c. 400, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 378, § 1; 77 Del. Laws, c. 444, § 4.)

§§ 6624 , 6625. [Reserved.]

Subchapter IV

Smoke Detectors

§ 6631 Smoke detectors required.

(a) Each owner of a residential occupancy, used wholly or in part as a home, residence, dwelling or sleeping place for 1 or more persons, either permanent or transient, including but not limited to any 1-family and 2-family dwelling, mobile home, modular home, townhouse; lodging, rooming or boarding house; hotel, motel, bed and breakfast facility; dormitory, apartment or multi-family dwelling; board and care facility; or a residential occupancy by any other name, be it rented, leased or owned, shall install, within such occupancy, smoke detection devices and/or smoke detection systems, either photo-electric or ionization types, capable of automatically sensing visible or invisible particles or products of combustion, and which activate an alarm sufficiently audible to warn the occupants of the building of an impending danger of fire or hazard to life.

(b) The requirement for the installation of smoke detecting devices and/or smoke detection systems as provided for in this section shall apply to all new and existing occupancies, buildings and/or structures listed in subsection (a) of this section, regardless of when any such occupancy, building or structure was built.

(c) It shall be the responsibility of the owner of a residential occupancy listed in subsection (a) of this section to install and maintain smoke detection devices as required by this chapter, with the following exception: Where there is a tenant of a rented or leased occupancy, structure or building required to have smoke detection devices and/or smoke detection systems, as required in this subchapter, and the rental, lease agreement or contract is for a period of 1 month or more, such tenant shall be responsible for the maintenance of any smoke detection devices, with respect to maintaining an operable battery in the smoke detection device, within the individual rented or leased unit.

(d) All smoke detection devices and/or smoke detection systems which are required to be installed under this subchapter shall be installed in accordance with the applicable provisions of the State Fire Prevention Regulations.

(e) When the standards of the State Fire Prevention Regulations and the building codes change with respect to the number and location of smoke detectors in new construction, such standards shall be the minimum to be utilized for determining compliance with this statute for new construction. A listing of all updated standards and their effective dates shall be maintained in the State Fire Marshal's Office.

(f) It shall not be the duty of a real estate salesperson or broker, licensed under Chapter 29 of Title 24 to verify the compliance of any person or residential occupancy with the provisions of this subchapter.

(69 Del. Laws, c. 170, § 2; 71 Del. Laws, c. 219, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6632 Smoke detector installation in 1- and 2-family dwellings; mobile homes; modular homes; townhouses.

(a) Each 1-family and 2-family dwelling, mobile home, modular home, and townhouse shall have smoke detection devices and/or smoke detection systems installed according to the following requirements:

(1) For each new building or occupancy built after July 8, 1993, smoke detection devices shall be installed in accordance with the provisions of the State Fire Prevention Regulations and the building codes in effect at the time of new construction.

(2) For all buildings or occupancies erected or built prior to July 8, 1993, each required smoke detection device shall be installed outside each sleeping area in the immediate vicinity of the bedrooms and shall be installed on each additional story of the family living unit, including basements, but excluding crawl spaces and unfinished attics, if nothing is stored or kept in such area; but the smoke detection devices in existing buildings or occupancies may be single-station, individual smoke detection devices, approved by Underwriters Laboratories or the Factory Mutual Association, and powered by a monitored battery power supply in accordance with Delaware Fire Prevention Regulations.

(b) Nothing contained in this section shall prohibit the owner of any 1-family or 2-family dwelling, mobile home, modular home or townhouse from installing an inter-connected smoke detection system, hard-wired to the building's electrical system.

(69 Del. Laws, c. 170, § 2; 71 Del. Laws, c. 219, §§ 2, 3; 77 Del. Laws, c. 444, § 3.)

§ 6633 Smoke detector installation; other residential occupancies.

(a) Each lodging, rooming or boarding house; hotel, motel, bed and breakfast facility; dormitory; apartment or multi-family dwelling; board and care facility; or a residential occupancy by any other name shall have smoke detection devices and/or smoke detection systems installed in conformance to the standards of the State Fire Prevention Regulations and the building codes pursuant to the specifications for the individual occupancies or use.

(b) Where there is a conflict between installation requirements, this section shall be interpreted to require the more strict of the installation specifications, for a particular occupancy.

(c) All required smoke detection devices and/or smoke detection systems listed in subsection (a) of this section, except as otherwise specified herein, shall be inter-connected, so that operation of any smoke detection device shall cause the alarm-sounding devices in all smoke detection devices within the building, occupancy or within a separate zoned area to sound; or that will initiate the building fire alarm system to provide an audible warning to all occupants of the building, and all such smoke detection devices and/or systems shall be hard-wired into the electric system of the building, in accordance with the National Electric Code.

(d) With approval of the Fire Marshal, smoke detection devices in individual sleeping rooms may be excepted from the requirement that smoke detection devices be interconnected if such building or occupancy is provided with an automatic smoke detection system in the hallways, corridors or stairwells, or is connected to a building fire alarm system which will activate an alarm which is sufficiently audible to warn the occupants of the building of the impending danger of fire or hazard to life.

(e) For all buildings or occupancies which under subsection (a) of this section are required to install smoke detection devices and/or smoke detection systems, and for such buildings or occupancies that do not have an auxiliary, emergency or back-up power system in accordance with State Fire Prevention Regulations, each smoke detection device or smoke detection system shall utilize the type of smoke detection device that has a built-in battery back-up power supply.

(f) The plans and specifications for all smoke detection devices and/or systems required by this subsection shall be submitted to the State Fire Marshal's Office, prior to installation, for review and approval in accordance with § 6612 of this title.

(69 Del. Laws, c. 170, § 2; 71 Del. Laws, c. 219, § 4; 77 Del. Laws, c. 444, §§ 3, 6.)

§ 6634 Smoke detectors; compliance dates.

(a) For each newly erected or constructed 1-family and 2-family dwelling, mobile home, modular home or townhouse listed in § 6631 of this title, the compliance date shall be July 8, 1993.

(b) For all existing 1-family and 2-family dwellings, mobile homes, modular homes or townhouses listed in § 6631 of this title, erected or constructed prior to July 8, 1993, the compliance date shall be July 1, 1994.

(c) For all other residential occupancies listed in § 6633 of this title, constructed after July 8, 1993, the required smoke detection devices and/or smoke detection systems shall be installed at time of construction.

(d) For all other existing residential occupancies listed in § 6633 of this title, newly erected or constructed prior to July 8, 1993, the compliance date shall be July, 1, 1996.

(69 Del. Laws, c. 170, § 2; 77 Del. Laws, c. 444, § 3.)

§ 6635 Smoke detectors, penalties for noncompliance.

(a) Each owner and/or tenant of every building or occupancy required to have smoke detection devices and/or smoke detection systems in accordance with this subchapter, whether an individual or a body corporate, who fails to comply with this subchapter regarding smoke detection devices and/or smoke detection systems, shall be fined not less than $100 nor more than $500 for each offense. The Justice of the Peace Courts shall have jurisdiction over any violation of this subchapter.

(b) Anyone who tampers with, damages, destroys or renders inoperative any smoke detection device and/or smoke detection system, shall be fined not less than $100 nor more than $500 for each offense. The Justice of the Peace Courts shall have jurisdiction over these violations.

(c) Where a fire department responds to an alarm of any type at a building or occupancy required to have smoke detection devices and/or smoke detection systems as required by this subchapter or by the State Fire Prevention Regulations, and such building does not have a functional, working smoke detection device and/or the smoke detection system is not operable, is not in service, or is not installed or maintained as required by this chapter or by the State Fire Prevention Regulations; or the Fire Marshal's Office becomes aware of such building or occupancy, the State Fire Marshal's Office shall have authority to investigate. The State Fire Marshal may issue a summons, where necessary, to the owner and/or occupant of such building or occupancy, for an appearance in the nearest Justice of the Peace Court.

(d) Each fine specified in this section of this title shall be remitted to the State Fire Marshal's Office in accordance with § 6612 of this title, which provisions shall be complied with in implementing the requirements of this chapter. All receipts shall be used to subsidize the costs of providing a greater public awareness of the ramifications of not having smoke detectors; and to provide smoke detection devices, where possible and/or permissible, for 1-family and 2-family dwellings, mobile homes, modular homes or townhouses, where enforcement action takes place with respect to the owner and/or occupant of the 1-family and 2-family dwelling, mobile home, modular home or townhouse.

(e) In the enforcement of this subchapter with respect to smoke detection devices and/or smoke detection systems, where the fines are collected within the jurisdictions of the cities of Wilmington, Newark, Dover or New Castle, such fines shall be remitted to the appropriate political subdivision, and shall be utilized for the purposes stated in subsection (d) of this section.

(f) The State Fire Marshal's Office shall be the state-wide manager and agency for all public awareness programs generated by the proceeds of the fines collected under this section.

(g) With the exception of subsection (f) of this section, where any reference is made to the State Fire Marshal or the State Fire Marshal's Office, such reference shall be interpreted to also apply to the Assistant State Fire Marshals of the cities of Wilmington, Newark, Dover and New Castle for the enforcement actions of these provisions.

(h) The State Fire Marshal or the Attorney General may, in addition to other remedies provided by this section, institute injunction, mandamus, abatement or any other appropriate action or actions or proceedings to prevent any continued violations of this chapter.

(69 Del. Laws, c. 170, § 2; 77 Del. Laws, c. 444, §§ 3, 5.)

§ 6636 Exceptions; claims of negligence.

Failure to comply with this subchapter shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim adjudication arising out of any injury or death arising from a fire or the direct consequences of a fire; nor shall failure to comply with this subchapter be admissible as evidence in any trial of any civil action or insurance claim adjudication.

(69 Del. Laws, c. 170, § 2; 77 Del. Laws, c. 444, § 3.)

§ 6637 Fire Detection Fund.

(a) This section shall be referred to as the "Delaware Fire Detection Fund."

(b) A special fund of the State is hereby created to be known as the "Delaware Fire Detection Fund." All moneys, including gifts, bequests, grants or other funds from private or public sources specifically designated for the Delaware Fire Detection Fund shall be deposited or transferred to the Fire Detection Fund. Moneys in the Delaware Fire Detection Fund may be saved and deposited in an interest bearing savings or investment account. Interest or other income earned on the moneys in the Delaware Fire Detection Fund shall be deposited or transferred into the Delaware Fire Detection Fund. The Delaware Fire Detection Fund shall not lapse or revert to the General Fund.

(c) Moneys from the Delaware Fire Detection Fund shall be expended for the purpose of providing hard-wired smoke detectors with battery back up to Delaware residences lacking fire detection devices; provided, however, any moneys received from State-appropriated funds shall only be used for owner-occupied residences. Any moneys derived from private sources may be used for any Delaware residences. Any moneys derived from private sources may be used for any Delaware residences.

(d) The State Fire Marshal is authorized to identify and maintain an approved contractor list of licensed master electricians and licensed fire alarm signaling system companies for the purpose of installing hard-wired smoke detectors. The State Fire Marshal will maintain this

approved list in each county in order to minimize costs and maximize efficiency consistent with public safety. This approved list will be furnished to those owners identified as lacking fire detection devices as outlined in subsection (c) of this section.

(e) The State Fire Prevention Commission is authorized to adopt rules and regulations necessary to administer the program in accordance with this section. The State Fire Prevention Commission will establish a priority list to distribute the hard-wired smoke detectors.

(f) The State Fire Marshal shall supervise and administer the program in accordance with any rules and regulations adopted by the State Fire Prevention Commission through the State Fire Marshal's Office Quality Assurance Program.

(g) The objective of the Fund is to ensure the installation of working smoke detectors in every private residence in the State.

(73 Del. Laws, c. 237, § 1; 77 Del. Laws, c. 444, §§ 3, 7-9.)

Subchapter V

False Fire Alarms

§ 6638 Definitions.

As used in this subchapter:

(a) "Alarm Activation Report" means a designated form issued by the State Fire Marshal for use by the Fire Chief indicating the alarm signal was found to be the result of a false alarm.

(b) "Alarm signal" means the activation of a fire alarm signaling system or a fire suppression system that requests a response by a fire department.

(c) "Audible alarm" means any device, bell, horn, or siren which is attached to the interior or exterior of a building, emits a warning signal outside the building and is designed to attract attention when activated by a fire.

(d) "Dispatch center" means a location specifically configured for the primary purpose of providing emergency communications services, public safety answering point services, and dispatch of fire apparatus to emergency situations.

(e) "False alarm" means the activation of a fire alarm signaling system or any audible alarm which results in a response by the fire department and which is not the result of a fire or other emergency.

(1) "False alarm" includes:

a. Negligently or accidentally activated alarm signals; and

b. Alarm signals that are the result of faulty, malfunctioning, or improperly installed or maintained equipment.

(2) "False alarm" does not include:

a. Alarm signals activated by severe weather conditions;

b. Alarm signals activated during the initial 30-day period following new installation; or

c. Alarm signals knowingly activated pursuant to § 1245(1) of Title 11, falsely reporting an incident.

(f) "Fire alarm contractor" means a person or company licensed by the State Fire Marshal's Office and engaged in installing, maintaining, monitoring, altering, or servicing fire alarm signaling or fire suppression systems.

(g) "Fire alarm signaling monitoring company" means a station or building located remote from the protected premises where fire alarm signals from one or more protected premises are received and from where, upon receipt of such signal, a dispatch center is notified.

(h) "Fire alarm signaling system" means an automatic or manual fire alarm or fire suppression system in accordance with the State Fire Prevention Regulations. For the purpose of this legislation, "fire alarm signaling system" does not include typical household single-station smoke detectors in 1- and 2-family dwellings.

(i) "Fire Chief" means the Fire Chief or officer in charge of the responding fire department.

(j) "Monitored System" means the process by which a fire alarm signaling monitoring company receives signals from a fire alarm system and notifies the dispatch center.

(k) "Owner" means any person who owns the premises where the fire alarm signaling system or fire suppression system is installed or the person or persons who lease, operate, occupy, manage the premises, or are bound by the contract for services provided by the fire alarm signaling monitoring company.

(l) "Premises" means any building or structure where a fire alarm signaling system is installed.

(74 Del. Laws, c. 21, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6639 Initial installation requirements.

(a) Upon the installation of a new fire alarm signaling system, the fire alarm contractor shall furnish the owner with written operating instructions and training to enable the owner to use the fire alarm signaling system properly. The fire alarm contractor shall notify the owner of the provisions of this chapter and of the State Fire Prevention Regulations upon completion of the installation of the fire alarm signaling system.

(b) A "Record of Completion" form, designated by the Office of the State Fire Marshal, containing owner and system information shall be submitted by the fire alarm contractor to the State Fire Marshal for all new fire alarm signaling systems.

(74 Del. Laws, c. 21, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6640 Fire alarm signaling monitoring companies.

(a) All fire alarm signaling monitoring companies are responsible for directing the call reporting the fire alarm signal to the appropriate dispatch center, and for providing the dispatch center with accurate location information.

(b) All fire alarm signaling monitoring companies shall maintain a current contact list of 3 representatives or designees of the owners of which 1 will respond to the premises within 30 minutes to assist the fire department in gaining access to the building. The fire alarm signaling monitoring company shall have current contact information for each representative or designee of the owner. The contact list must be updated on an annual basis.

(c) Where an owner is unable to provide a minimum of 3 representatives or designees who can respond within 30 minutes, in accordance with subsection (b) of this section, a lock box containing keys for fire department access shall be provided as specified in the State Fire Prevention Regulations.

(d) A $100 civil penalty will be charged if an owner fails to provide either a minimum of 3 representatives or designees who can respond within 30 minutes or a lock box approved by the Office of the State Fire Marshal.

(e) A $100 civil penalty shall be charged each time a fire alarm signaling monitoring company violates a provision of this section.

(f) For a fire alarm system installed in a single-family dwelling, the fire alarm contractor is responsible to solicit an updated contact list on an annual basis from the owner. It is an affirmative defense if the owner fails to comply with the fire alarm contractor's requests for information.

(74 Del. Laws, c. 21, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6641 Testing of fire alarm signaling systems.

(a) No person shall conduct any test or demonstration of a fire alarm signaling system without first contacting the appropriate fire dispatch center and fire alarm signaling monitoring company. The fire dispatch center and fire alarm signaling monitoring company shall also be contacted when the fire alarm test or demonstration is completed.

(b) A violation of this section shall be punished as follows:

(1) First offense; written warning; no fine.

(2) Second offense: $100 civil penalty.

(3) Third and subsequent offenses: $500 civil penalty for each offense.

(c) For purposes of this section, a fire alarm contractor that employs a person who violates this section will be held accountable for the offense.

(d) The offenses will be cumulative for all of the fire alarm contractor's employees who violate this section within a calendar year.

(e) The term "calendar year" shall be January 1, 2004 through December 31, 2004 for the first year and shall be January 1 through December 31 for each subsequent year.

(74 Del. Laws, c. 21, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6642 Inspection and maintenance of fire alarm signaling systems.

(a) The owner shall ensure that the fire alarm signaling system is inspected and tested in accordance with the State Fire Prevention Regulations.

(b) The owner shall ensure that the fire alarm signaling system is maintained per manufacturer's specifications.

(74 Del. Laws, c. 21, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6643 Fire alarm activation.

(a) The owner shall be responsible for the activation of a fire alarm signaling system.

(b) A response to the activation of a fire alarm signaling system shall result when the fire department is dispatched to the premises where the fire alarm signaling system has been activated.

(c) In the event that the dwelling fire alarm system, as defined in NFPA 72, is a Monitored System, the fire alarm signaling monitoring company shall be permitted to verify residential alarm signals prior to reporting them to the dispatch center, provided that the verification process does not delay the reporting by more than 90 seconds.

(d) Upon determining that a false alarm has occurred at the premises, the Fire Chief will submit an "Alarm Activation Report" to the State Fire Marshal's Office.

(e) Resetting an alarm panel by any person prior to the Fire Chief's authorization shall be prohibited, and shall be considered a false alarm if the Fire Chief cannot determine the cause and nature of the alarm activation.

(74 Del. Laws, c. 21, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6644 Excessive false alarms prohibited.

(a) Owners of a premise protected by a fire alarm signaling system shall not cause more than 3 false alarms within a calendar year.

(b) The State Fire Marshal will record the number of "Alarm Activation Reports" for each premise.

(c) An owner that is in violation of subsection (a) of this section will be subject to a civil penalty as follows:

(1) Fourth alarm: $100 civil penalty.

(2) Fifth alarm: $200 civil penalty.

(3) Sixth and subsequent alarms: $250 civil penalty for each offense.

(d) The term "calendar year" shall be January 1, 2004 through December 31, 2004 for the first year and shall be January 1 through December 31 for each subsequent year.

(74 Del. Laws, c. 21, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6645 Civil penalties and appeals.

(a) The State Fire Marshal shall assess all civil penalties as outlined in this subchapter.

(b) All civil penalties will be paid within 30 days of assessment.

(c) All moneys derived from the civil penalties shall be placed in the Fire Detection Fund pursuant to § 6637 of this title.

(d) An owner or a fire alarm contractor may appeal the assessment of a civil penalty to the State Fire Prevention Commission in accordance with the State Fire Prevention Regulations.

(e) The Justice of the Peace Court shall have jurisdiction over all unpaid civil penalties.

(74 Del. Laws, c. 21, § 1; 77 Del. Laws, c. 444, § 3.)

Subchapter VI

Volunteer Firefighters

§ 6646 Definitions.

"Member" means a volunteer firefighter of a Delaware volunteer fire department, as certified by the Delaware State Fire Prevention Commission.

(76 Del. Laws, c. 157, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6647 Membership requirements for volunteer firefighters.

(a) An applicant for membership in a Delaware volunteer fire department who has been convicted of or, had that applicant been charged as a juvenile, adjudicated delinquent of any of the following crimes is prohibited from serving as a firefighter in this State:

(1) A felony involving sexual misconduct where the victim's failure to affirmatively consent is an element of the crime, such as forcible rape;

(2) A felony involving the sexual or physical abuse of a child or of a person who is elderly or impaired, such as sexual misconduct with a child, sexual exploitation of a child, making or distributing child pornography, incest involving a child, or assault on a person who is elderly or impaired;

(3) A crime in which the victim is an out-of-hospital patient or a patient or resident of a healthcare facility, including abuse, neglect, or theft from or financial exploitation of a person entrusted to the care or protection of the applicant;

(4) Arson in the third, second, or first degree; reckless burning or exploding; cross or religious symbol burning; or any crime in which the applicant intentionally or recklessly started a fire or caused an explosion, or attempted or conspired to do so;

(5) A law of another state, territory, or jurisdiction which is the same or equivalent to the offenses described in paragraphs (a)(1) through (4) of this section.

(b) Membership in a Delaware volunteer fire department must be denied if the applicant has been convicted or, if that applicant was charged as a juvenile, has been adjudicated delinquent of any of the following crimes, except in extraordinary circumstances:

(1) Any crime for which the applicant is currently incarcerated, on work release, on probation, or on parole;

(2) Any crime in the following categories, unless at least 5 years have passed since the applicant's conviction or at least 5 years have passed since the applicant was released from custodial confinement, whichever occurs later:

a. A serious crime of violence against a person, such as assault with a dangerous weapon, aggravated assault, murder or attempted murder, manslaughter (other than involuntary manslaughter), kidnapping, or robbery of any degree;

b. A crime involving a controlled substance or designer drug, including unlawful possession or distribution of, or intent to unlawfully possess or distribute, a controlled substance in Schedules I through V of the Uniform Controlled Substances Act of Chapter 47 of this title;

c. A serious crime involving property, such as burglary, embezzlement, or insurance fraud;

d. Any crime involving sexual misconduct;

e. A crime of another state, territory, or jurisdiction which is the same or equivalent to the offenses described in paragraphs (b)(2)a. through d. of this section.

(3) In extraordinary circumstances, membership may be granted under subsection (b) of this section only if the applicant establishes by clear and convincing evidence that the applicant's membership will not jeopardize public health or safety.

(c) An applicant for membership in a Delaware volunteer fire department who knowingly provides false, incomplete, or inaccurate criminal history information, or who otherwise knowingly violates a provision of this subchapter, is guilty of a class G felony. In addition to a term of imprisonment of up to 2 years, the court shall impose a fine of no less than $1,000 which may not be suspended.

(d) The State Fire Prevention Commission shall adopt regulations to implement the provisions of this subchapter. The regulations must include, as part of the application form for membership in a Delaware volunteer fire department, a dated and signed statement by the applicant swearing to or affirming the following, if the following is true. If it is not true, the applicant must explain in writing what is not true and why it is not true.

"I have never been convicted of an offense that constitutes any of the crimes set forth in 16 Del. C. § 6647 or any similar offense under any federal, state, or local law. I hereby certify that the statements contained in this application are true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false statement in this application, I am subject to penalties prescribed by law, including denial or revocation of membership in the volunteer fire department and a mandatory fine of at least $1,000 or a term of imprisonment of up to 2 years, or both."

(e) An applicant for membership in a Delaware volunteer fire department who is denied membership or whose membership is revoked because of the requirements of this subchapter may appeal the denial or revocation to the State Fire Prevention Commission within 15 days of written notification of the denial or revocation by the volunteer fire department. An appeal under this subsection must be held in accordance with the appropriate provisions of the Administrative Procedures Act, Chapter 101 of Title 29, and is subject to judicial review under subchapter V of Chapter 101 of Title 29.

(76 Del. Laws, c. 157, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 444, § 3; 78 Del. Laws, c. 179, § 233.)

Subchapter VII

Delaware Burn Camp

§ 6648 Delaware Burn Camp Corporation authorization.

The State Fire Prevention Commission is hereby authorized to incorporate a nonprofit, nonstock corporation known as the Delaware Burn Camp Corporation for the purpose of establishing, administering and operating an overnight camp devoted to helping burned children cope with the emotional and physical issues arising from their injuries.

(77 Del. Laws, c. 16, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6649 Powers.

The Delaware Burn Camp Corporation shall be empowered, notwithstanding any other laws to the contrary:

(1) To adopt bylaws to govern the conduct of its affairs and to carry out and discharge its powers, duties and functions as appropriate;

(2) To enter into contracts and agreements as it may deem necessary, convenient or desirable;

(3) To plan, finance, develop, construct, purchase, lease, maintain, improve, own, operate or control facilities and such real, personal or intellectual property as it may deem necessary, convenient or desirable;

(4) To employ such personnel as necessary to carry out its functions;

(5) To retain, by contract, engineers, advisors, legal counsel and other providers of advice, counsel and services which it deems advisable or necessary in the exercise of its purposes and powers and upon such terms as it deems appropriate;

(6) To do all acts and things necessary or convenient to carry out its functions and purposes;

(7) To have and exercise any and all powers available to a corporation organized pursuant to Chapter 1 of Title 8, the Delaware General Corporation Law; and

(8) To accept appropriations, donations, contributions, grants and loan repayments and to keep such monies in the Corporation's own accounts.

(77 Del. Laws, c. 16, § 1; 77 Del. Laws, c. 444, § 3.)

§ 6650 Board of directors.

(a) An initial board of directors of the Delaware Burn Camp Corporation shall consist of the members of the Burn Camp Task Force, as established under Senate Concurrent Resolution 38 of the 144th General Assembly, and 1 Commissioner from the State Fire Prevention Commission. The terms of office of the initial board of directors shall expire on April 30, 2011.

(b) Upon expiration of the terms of the initial board of directors, members of the board of directors shall be appointed to oversee the operation of the Burn Camp consisting of 13 members to be determined as follows:

(1) Two public members appointed by the President Pro Tempore of the Delaware State Senate;

(2) Two public members appointed by the Speaker of the Delaware State House of Representatives;

(3) One representative of the Office of the State Fire Marshal, as designated by the State Fire Marshal;

(4) One representative of the Delaware Volunteer Firefighters Association, as designated by the Association's president;

(5) One Commissioner from the State Fire Prevention Commission;

(6) One representative from the Delaware health care community appointed by the President Pro Tempore of the Delaware State Senate;

(7) One representative from the Delaware health care community appointed by the Delaware Speaker of the House;

(8) One representative of Delaware youth organizations appointed by the President Pro Tempore of the Delaware State Senate;

(9) One representative of Delaware youth organizations appointed by the Delaware Speaker of the House; and

(10) Two public members appointed by the Governor.

(c) In order to stagger the terms of the board members;

(1) Those board members initially appointed pursuant to paragraphs (b)(1) and (b)(2) of this section shall be appointed to a 1-year term.

(2) Those board members initially appointed pursuant to paragraphs (b)(3), (b)(4), (b)(5) and (b)(6) of this section shall be appointed to a 2-year term.

(3) Thereafter, and all other board members shall be appointed to 3-year terms.

(d) The chairperson of the board of directors shall be chosen by the members of the board of directors. The board of directors shall adopt bylaws and other procedures needed for the operation and management of the Delaware Burn Camp Corporation and the Burn Camp.

(77 Del. Laws, c. 16, § 1; 77 Del. Laws, c. 378, § 1; 77 Del. Laws, c. 444, §§ 3, 10-13.)

Part VI
Safety
Chapter 66A
DELAWARE VOLUNTEER FIREMEN'S PENSION PLAN

§ 6651 Definitions.

(a) "Board" shall mean the Board of Pension Trustees established by § 8308 of Title 29.

(b) "Credited service" shall mean, for any member:

(1) Service as a volunteer after June 30, 1986, that has been certified by the employer; and

(2) Service as a volunteer prior to July 1, 1986, on the basis of 1 year of credited service for each 3 years of service as certified by the employer provided that the member has been actively participating in the organization for the 12 months preceding July 1, 1986.

(c) "Employer" shall mean the participating state volunteer fire departments, ladies auxiliaries thereof and service organizations providing volunteer ambulance services.

(d) "Fund" shall mean the Fund established by § 6661 of this title.

(e) "Member" shall mean an actively-participating volunteer of 1 of the state volunteer fire departments, auxiliaries thereof and service organizations providing volunteer ambulance services.

(65 Del. Laws, c. 269, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6652 Volunteer Firemen's Pension Committee.

The Delaware Volunteer Firefighter's Association shall appoint, from its membership, a 9-person advisory committee. Three members shall come from New Castle County, 3 members from Kent County and 3 members from Sussex County. The advisory committee shall make recommendations to the State Board of Pension Trustees on all pension matters the advisory committee deems appropriate.

(65 Del. Laws, c. 269, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 378, § 1.)

§ 6653 Attachment and assignment of benefits.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(65 Del. Laws, c. 269, § 1; 71 Del. Laws, c. 337, § 5.)

§ 6654 Waiver of benefits.

Any individual entitled to any benefits under this chapter may decline to accept all or any part of such benefits by a waiver signed and filed with the Board. Such waiver may be revoked in writing at any time, but no payment of the benefits waived shall be made covering the period during which such waiver was in effect.

(65 Del. Laws, c. 269, § 1.)

§ 6655 Eligibility for pension.

(a) A member shall become eligible to receive a pension beginning with the first month after attainment of age 60 if the member has 10 years of credited service.

(b) For purposes of this section, credited service shall include any period during which a member qualifies for benefits under Chapter 67 of Title 18 and/or workers' compensation.

(c) An inactive member with a vested right to a pension shall become eligible to receive such pension, computed in accordance with this chapter in effect when the member ceased to be a member, beginning with the first month after the member's attainment of age 60.

(65 Del. Laws, c. 269, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6656 Vested right to pension.

(a) A member who has 10 years of credited service shall have a vested right to a pension.

(b) A member's vested right shall be forfeited upon the member's application for a refund of the member's accumulated contributions, and the member's membership shall be cancelled.

(65 Del. Laws, c. 269, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6657 Payment of pension.

No pension payment shall be made under this chapter prior to July 1, 1988, thereafter pension payments shall be made beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member dies.

(65 Del. Laws, c. 269, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6658 Amount of pension.

The amount of the monthly pension payable to an eligible member shall be $5 times years of credited service up to a maximum of 25 years.

(65 Del. Laws, c. 269, § 1.)

§ 6659 Death benefit.

Upon the death of a member, inactive member or retired member, there shall be paid to the designated beneficiary or beneficiaries or, in the absence of a designated beneficiary, to the estate of the member, a lump sum equal to the excess, if any, of the accumulated member contributions with interest over the aggregate of all pension payments made.

(65 Del. Laws, c. 269, § 1.)

§ 6660 Withdrawal benefit.

(a) Upon the withdrawal from service of a member who is not eligible to receive a pension and does not have a vested right to a pension, the member's accumulated contributions with interest shall be paid to the member's employer for final disposition.

(b) Upon the withdrawal from service of a member who is not eligible to receive a pension but has a vested right to a pension, the member's accumulated contributions with interest shall be paid to such member.

(c) If an individual ceases to be a member the individual's service credits to the date of termination shall be cancelled, but shall be restored if the individual again becomes a member provided that if the individual has withdrawn the individual's own contributions the individual repays them with interest at a rate determined by the Board.

(65 Del. Laws, c. 269, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6661 Volunteer Firemen's Pension Fund established.

There shall be established a Volunteer Firemen's Pension Fund, hereinafter referred to as "Fund," to which the employer and member contributions shall be deposited annually and to which earnings on investments, any other contributions, gifts, donations, grants, refunds and reimbursements shall be deposited upon receipt and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 457(e)(11) [26 U.S.C. § 457(e)(11)], the assets of the Fund will be invested by the Board as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the members.

(65 Del. Laws, c. 269, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 121, § 10; 76 Del. Laws, c. 279, § 13.)

§ 6662 Member contributions.

Member contributions to the Fund shall be $60 per annum.

(65 Del. Laws, c. 269, § 1.)

§ 6663 Employer contributions.

(a) The employer's contribution to the Fund for the fiscal year 1986-1987 shall be $250,000.

(b) The employer's contribution to the Fund for the fiscal year 1987-1988 shall be $250,000.

(c) The employer's contribution to the Fund for the fiscal year 1988-1989, and for each fiscal year thereafter shall be a sum approved by the Board on the basis of the most recent actuarial valuation.

(d) The actuary shall prepare an actuarial valuation of the assets and liabilities of the Fund as of June 30, 1988, and each year thereafter. On the basis of reasonable actuarial assumptions and tables approved by the Board, the actuary shall determine the normal cost required to meet the actuarial cost of current service and the unfunded accrued liability.

(65 Del. Laws, c. 269, § 1.)

§ 6664 Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the Volunteer Firemen's Pension Fund shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132, § 90.)

Part VI
Safety
Chapter 66B
REPORTING OF BURN INJURIES AND WOUNDS

§§ 6601B , 6602B. Burn injuries and wounds to be reported; responsibility of State Fire Marshal.

Repealed by 77 Del. Laws, c. 444, § 14, effective July 27, 2010.

Part VI
Safety
Chapter 67
AUTHORITY OF FIRE DEPARTMENTS AND FIRE POLICE WITHIN THE STATE

§ 6701 Appointment of fire police; oath of office.

(a) Any duly organized fire company or substation (outside the City of Wilmington) may provide for the appointment of not more than 6 of its members to perform police duties at fires, fire drills and any emergencies or functions covered by the fire company for a term to be fixed by the fire company.

(b) The members selected by the fire company as fire police shall, before entering upon their duties, qualify by taking and subscribing an oath that they will justly, impartially and faithfully discharge their duties according to the best of their ability and understanding. The oath shall be administered by the sheriff of the county in which the fire company making the appointment is located and shall be subscribed by the member appointed as a fire police officer in duplicate. The original copy of the oath shall be filed with the sheriff of the county in which the fire company making the appointment is located and a copy thereof filed with the secretary of the fire company making the appointment.

(47 Del. Laws, c. 82, § 1; 16 Del. C. 1953, § 6701; 55 Del. Laws, c. 62; 66 Del. Laws, c. 150, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6701A Authority of fire officers-in-charge.

While any duly constituted fire department recognized by the Delaware State Fire Prevention Commission is responding to, operating at or returning from a fire, service call or other emergency, the fire chief, any other elected or appointed fire line officer or any member serving the capacity of fire officer-in-charge shall have the authority:

(1) Of controlling and directing the activities at such scene;

(2) To order any person or persons to leave any building or place in the vicinity of such scene for the purpose of protecting such persons from injury;

(3) To blockade any public highway, street or private right-of-way temporarily while at such scene;

(4) To trespass at any time of the day or night without liability while at such scene;

(5) To enter any building, including private dwellings, or upon any premises where a fire is in progress, or where there is reasonable cause to believe a fire is in progress, for the purpose of extinguishing the fire;

(6) To enter any building, including private dwellings, or premises near the scene of the fire for the purpose of protecting the building or premises or for the purpose of extinguishing the fire which is in progress in another building or premises;

(7) To inspect for preplanning all buildings, structures or other places in their fire district excepting, however, the interior of a private dwelling, where any combustible material, including waste paper, rags, shaving, waste, leather, rubber, crates, boxes, barrels, rubbish or other combustible material that is or may become dangerous as a fire menace to such building or buildings, structure or other places has been allowed to accumulate or where such chief or the chief's designated representative has reason to believe that such material of a combustible nature has accumulated or is liable to be accumulated;

(8) To direct without liability the removal or destroying of any fence, house, motor vehicle or other thing which the chief may judge necessary to be pulled down or destroyed, to prevent the further spread of the fire;

(9) To request and be supplied with additional materials such as sand, treatments, chemicals, etc., and special equipment when it is deemed a necessity, to prevent the further spread of the fire or hazardous condition, the cost of which to be borne by such property owner;

(10) To order disengagement or discouplement of any convoy, caravan, or train of vehicles, craft or railway cars if deemed a necessity in the interest of safety of persons or property;

(11) To take command of all industrial management, fire brigades or fire chiefs whenever the chief's company or department is called to respond to such; if in the chief's opinion such action is in the interest of public safety;

(12) In the event of an incident involving a hazardous substance, to transfer command to a state or federal emergency response team in accordance with the State Hazardous Substance Incident Contingency Plan.

(59 Del. Laws, c. 476, § 2; 64 Del. Laws, c. 123, § 2; 70 Del. Laws, c. 186, § 1.)

§ 6702 Territorial jurisdiction of fire police.

(a) A member of a fire company who has been appointed and qualified as a fire police officer may thereafter, for the term of the member's appointment, act as such anywhere in the county in which the fire company making the appointment is located or in any other county of the State in which the member is called upon to act.

(b) Subject to prior written approval by the fire chief, a fire police officer may be granted permission to:

(1) Assist the fire officer-in-charge, and also assist law enforcement officers as defined in § 9200(b), Title 11, anywhere within the State;

(2) Assist the fire officer-in-charge, and also assist law enforcement officers in out-of-state districts bordering the State, with authority of the bordering district;

(3) Assist at the scene of any potential emergency incident encountered by the fire police officer, and to remain on duty until released by the authorized fire officer or law enforcement officer in charge; and

(4) Perform other special duties as may be requested and approved by the fire chief.

(47 Del. Laws, c. 82, § 2; 16 Del. C. 1953, § 6702; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 12, § 1.)

§ 6703 Supervision by fire officer.

A fire police officer, subject to § 6702(b) of this title, shall perform the fire police officer's duties under the supervision of the fire officer-in-charge of the scene of a fire, fire drill or other emergency, or in the absence of a fire officer-in-charge, under the supervision of the law enforcement officer in charge of the scene.

(47 Del. Laws, c. 82, § 2; 16 Del. C. 1953, § 6703; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 12, § 2.)

§ 6704 Duties.

The duties of a fire police officer, subject to the supervision of the fire officer in charge, are to:

(1) Protect the contents of buildings and all other property affected by any fire or fire drill;

(2) Establish and maintain fire lines;

(3) Perform such traffic duties as are necessary;

(4) Wear a fire police badge, to be designed and authorized by the Delaware Volunteer Firefighter's Association, on the left breast of the outermost garment while on duty.

(47 Del. Laws, c. 82, § 3; 16 Del. C. 1953, § 6704; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 12, §§ 3, 4; 77 Del. Laws, c. 378, § 1.)

§ 6705 Powers as superseding authorized police officers.

Nothing contained in this chapter shall be construed to allow or permit the fire police, or any of them, to supersede the authority of a duly authorized police officer.

(47 Del. Laws, c. 82, § 4; 16 Del. C. 1953, § 6705.)

§ 6706 Arresting power.

If any person unreasonably refuses to obey the orders of a fire police officer in the exercise of the fire police officer's duties, such person may be held under arrest by the fire police officer until the fire at which the fire police officer is called upon to act is extinguished or the fire drill completed at which time the fire police shall take the arrested person before a justice of the peace and charge the arrested person with failure to obey the order of a fire police officer.

(47 Del. Laws, c. 82, § 5; 16 Del. C. 1953, § 6706; 59 Del. Laws, c. 322, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6707 Penalty for refusal to obey orders of fire police officer.

Whoever refuses to obey the orders of a fire police officer in the exercise of the fire police officer's duties shall be fined no less than $25 and no more than $50.

Prosecutions for violations of this section shall be before a justice of the peace.

(47 Del. Laws, c. 82, § 6; 16 Del. C. 1953, § 6707; 59 Del. Laws, c. 322, § 2; 70 Del. Laws, c. 186, § 1.)

§ 6708 Definitions.

For the purposes of this chapter:

(1) "Advisory committee" means the advisory committee on ambulance service.

(2) "Ambulance" includes any privately or publicly owned vehicle that is specially designed, constructed or modified and equipped and is intended to be used for and is maintained or operated for the transportation upon the streets and highways in this State of persons who are sick, injured, wounded or otherwise incapacitated or helpless. Vehicles designed primarily for rescue operations and which do not ordinarily but may transport persons upon the streets and highways are excluded.

(3) "Ambulance attendant" shall have the same definition as is set forth in Chapter 97 of this title.

(4) "Ambulance service district" means a geographical area with boundaries which are typically aligned to fire service districts within the State as identified and certified by State Fire Prevention Commission.

(5) "Ambulance service provider" means an organization or company which has been authorized and certified to provide ambulance service within the State by the State Fire Prevention Commission.

(6) "Certification" means original certification as an ambulance attendant or emergency medical technician by the State Fire Prevention Commission.

(7) "Commission" means State Fire Prevention Commission or a duly authorized representative thereof.

(8) "Criminal history" means a person's entire criminal history record from the State Bureau of Identification and the person's entire federal criminal history record maintained by the Federal Bureau of Investigation.

(9) "Decertification" means the cancellation or revocation of the certificate issued by the State Fire Prevention Commission to an ambulance attendant or emergency medical technician.

(10) "Emergency medical technician" (EMT) shall have the same definition as is set forth in Chapter 97 of this title.

(16 Del. C. 1953, § 6721; 58 Del. Laws, c. 177; 71 Del. Laws, c. 49, § 2; 72 Del. Laws, c. 137, § 6; 73 Del. Laws, c. 176, § 1.)

§ 6709 Permit required to operate ambulances.

(a) No person, firm, corporation or association either as owner, agent or otherwise shall hereafter furnish, operate, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of transporting patients under emergency conditions upon the streets or highways of this State unless the person, firm, corporation or association holds a currently valid permit for each ambulance used in such business or service issued by the Commission or a duly authorized representative thereof.

(b) Before a permit may be issued for a vehicle to operate as an ambulance, the registered owner must apply to the Commission for an ambulance permit. Application shall be made upon forms and according to procedures established by the Commission. Prior to issuing an original or renewal permit for an ambulance, the Commission or a duly authorized representative thereof shall determine that the vehicle for which the permit is issued meets all requirements as to medical equipment and supplies and sanitation as set forth in this chapter and the regulations of the Commission. Permits issued for ambulances shall be valid for a period specified by the Commission not to exceed 1 year.

(c) The Commission may issue temporary permits for vehicles not meeting required standards valid for a period not to exceed 90 days when it determines the public interest will be served thereby. Any temporary permit issued hereunder shall not be renewed.

(d) When a permit has been issued for an ambulance as specified herein, the vehicle for which issued and records relating to maintenance and operation of such vehicle shall be open to inspection by duly authorized representatives of the Commission at all reasonable times.

(e) The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any county or municipal government concerning ambulances.

(16 Del. C. 1953, § 6722; 58 Del. Laws, c. 177; 70 Del. Laws, c. 186, § 1.)

§ 6710 Advisory committee on ambulance service.

(a) For the purpose of assisting the Commission in developing standards for use in the administration of this chapter, there is hereby created the advisory committee on ambulance service. The advisory committee shall be composed of 8 members, whose names shall be submitted to the Commission by resolution of the following respective organizations: 6 representatives, 2 from each county from the Delaware Volunteer Firefighter's Association, 1 representative from the non-fire department owned volunteer ambulance organizations, and 1 representative from the privately owned ambulance companies. Each representative shall serve at the pleasure of the organization which the representative represents and the representative successor shall be chosen in like manner. The Chairperson of the Commission shall call the advisory committee to its first meeting. The advisory committee shall choose a chairperson and shall meet thereafter at the call of the chairperson of the advisory committee or the Chairperson of the Commission.

(b) The committee shall provide technical assistance for the establishment of regulations for ambulance services and make recommendations to the Commission.

(16 Del. C. 1953, § 6723; 58 Del. Laws, c. 177; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 239, § 1; 77 Del. Laws, c. 378, § 1.)

§ 6711 Establishment of operational standards.

(a) *Powers of the Commission. —*

(1) The Commission shall inspect equipment and supplies required of ambulances when it deems such inspection is necessary and shall maintain a record thereof. Upon determination, based upon an inspection, that required supplies or equipment fail to meet the requirements of this chapter or regulations adopted pursuant hereto, the Commission may suspend the permit for the ambulance concerned, until such requirements are met.

(2) Every ambulance shall be equipped with equipment and supplies specified by the Commission.

(3) [Deleted.]

(b) *Emergency ambulance licensing and certification. —*

(1) The Commission shall carry out the licensing and certification activities assumed by the State under this chapter and perform all inspections required by this chapter, filing all records required by law. The Chairperson may issue a temporary certificate and/or permit with or without inspection when the chairperson finds that such will be in the public interest. A temporary certificate and/or permit shall be valid for a period not to exceed 90 days. All renewals must be authorized by the Commission.

(2) The Commission shall adopt regulations specifying operational standards for ambulances. Regulations so adopted shall also require that the interior of the ambulance and the equipment within the ambulance be sanitary and maintained in good working order and sufficient quantities at all times.

(3) Every ambulance, except those specifically excluded from the operation of this chapter, when operated on an emergency mission in this State shall be occupied by at least 1 person who possesses a valid ambulance attendant's certificate from the Commission.

(4) [Deleted.]

(16 Del. C. 1953, § 6724; 58 Del. Laws, c. 177; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 176, §§ 2-4.)

§ 6712 Certification of ambulance attendants and emergency medical technicians; criminal background checks.

(a) A person seeking certification as an ambulance attendant or as an emergency medical technician (EMT) shall apply to the Commission using forms prescribed by the Commission. With the application, the applicant shall submit fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person.

(2) A report of the individual's entire federal criminal history record from the Federal Bureau of Investigation. The State Bureau of Identification shall be the intermediary for the purposes of this section and the Commission shall be the screening point for the receipt of said federal criminal history records.

(b) Upon application, the Commission or its governmental designee shall acquire and review the state and federal criminal history records for the applicant and may interview the applicant. If the Commission determines that the applicant meets the requirements of this section and of its regulations, then it shall issue a certificate to the applicant, subject to the following provisions:

(1) Certification must be denied to an applicant convicted of the following crimes:

a. A felony involving sexual misconduct where the victim's failure to affirmatively consent is an element of the crime, such as forcible rape;

b. A felony involving the sexual or physical abuse of a child or of a person who is elderly or impaired, such as sexual misconduct with a child, sexual exploitation of a child, making or distributing child pornography, incest involving a child, or assault on a person who is elderly or impaired;

c. A crime in which the victim is an out-of-hospital patient or a patient or resident of a health care facility, including abuse, neglect or theft from or financial exploitation of a person entrusted to the care or protection of the applicant.

(2) Certification must be denied to an applicant convicted of the following crimes, except in extraordinary circumstances:

a. Any crime for which applicant is currently incarcerated, on work release, on probation, or on parole;

b. A crime in the following categories, unless at least 5 years have passed since the applicant's conviction or at least 5 years have passed since the applicant was released from custodial confinement, whichever occurs later:

1. A serious crime of violence against a person, such as assault with a dangerous weapon, aggravated assault, murder or attempted murder, manslaughter (other than involuntary manslaughter), kidnapping, robbery of any degree, or arson;

2. A crime involving a controlled substance or designer drug, including unlawful possession or distribution of, or intent to unlawfully possess or distribute, a controlled substance in Schedules I through V of the Uniform Controlled Substances Act of Chapter 47 of this title;

3. A serious crime involving property, such as arson, burglary, embezzlement or insurance fraud;

4. Any crime involving sexual misconduct.

(3) In extraordinary circumstances, certification granted pursuant to paragraph (2) of this subsection may be granted only if the applicant establishes by clear and convincing evidence that certification will not jeopardize public health and safety.

(c)(1) Certificates issued pursuant to this section shall be valid for a period as determined by the Commission and may be renewed after reconsideration, which may include an interview, if the holder meets the requirements set forth in the regulations of the Commission. The Commission may decertify any ambulance attendant or EMT at any time it determines that the person no longer meets the qualifications prescribed for certification.

(2) The Commission may extend the suspension of an ambulance attendant or emergency medical technician's certification for a period not to exceed 30 days, if the Commission reviews the charges supporting the suspension of an ambulance attendant or EMT's by an Emergency Medical Services Medical Director pursuant to § 9806(b)(7) of this title and concludes that a Commission hearing should be scheduled to consider the charges.

(d) Information obtained pursuant to subsection (b) of this section is confidential and shall not be disclosed under any circumstances except:

(1) The State Bureau of Identification may release any subsequent criminal history to the Office of Emergency Medical Services or the State Fire Prevention Commission when properly requested; and

(2) All information that has been forwarded to the Commission pursuant to this section shall be reviewed with the person seeking certification pursuant to this section upon his or her request.

(e) Costs associated with obtaining criminal history information pursuant to this section from the State Bureau of Identification and the Federal Bureau of Identification shall be borne by the applicant.

(f) A person seeking certification pursuant to this section who knowingly provides false, incomplete or inaccurate criminal history information, or who otherwise knowingly violates the provisions of this section, shall be guilty of a class G felony and shall be punished according to Chapter 42 of Title 11.

(g) Any student enrolled in the University of Delaware seeking certification as an EMT through the University of Delaware Department of Safety and Homeland Security is exempted from the provisions of subsections (a) and (b) of this section; provided, however, that the criminal history background check and review procedures employed by the University of Delaware Department of Safety and Homeland Security are at least as restrictive as those contained in this section. For the purposes of any criminal history background check or review conducted pursuant to this subsection, the State Bureau of Identification shall be the intermediary and the University of Delaware Department of Safety and Homeland Security shall be the screening point for the receipt of said federal criminal history records.

(h) The Commission shall adopt regulations to implement this section setting forth the qualifications required for certification of ambulance attendants and emergency medical technicians.

(73 Del. Laws, c. 176, § 5; 73 Del. Laws, c. 239, § 1; 74 Del. Laws, c. 110, § 138; 75 Del. Laws, c. 54, § 1; 77 Del. Laws, c. 327, § 299; 78 Del. Laws, c. 179, § 234.)

§ 6712A Suspension of certificate by Commission pending hearing.

(a) Upon the receipt by the Commission of a court document charging an ambulance attendant or EMT licensed by the Commission with a felony, the Commission shall issue an order temporarily suspending the certificate holder's certificate, pending a final hearing on the complaint. An order of suspension under this section shall remain in effect for a period until such time as a determination of the case of said order.

(b) The certificate holder whose certificate has been temporarily suspended shall be notified forthwith in writing. Notification shall consist of a copy of the complaint and the order of suspension pending a hearing and shall be personally served upon the certificate holder or sent by certified mail, return receipt requested, to the certificate holder's last known address.

(c) A certificate holder whose certificate has been suspended pursuant to this section may request an expedited hearing. The Commission shall schedule the hearing on an expedited basis provided that the Commission receives the certificate holder's request for an expedited hearing within 15 calendar days from the date on which the certificate holder received notification of the Commission's decision to temporarily suspend the certificate holder's certificate.

(d) As soon as possible, but in no event later than 180 days after the issuance of the order of temporary suspension, the Commission shall convene for a hearing on the complaint. In the event that a certificate holder, in a timely manner, requests an expedited hearing, the Commission shall convene within 15 days of the receipt by the Commission of such a request and shall render a decision within 15 days.

(e) An order of suspension will remain in effect until such time as a determination of the case. Upon a final decision of the Commission, the order of suspension shall be vacated in favor of the disciplinary action ordered by the Commission.

(76 Del. Laws, c. 127, § 1.)

§ 6713 Exemptions.

The following are exempted from the operation of this chapter:

(1) Privately owned vehicles not ordinarily used in the business of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless;

(2) A vehicle rendering service as an ambulance in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required;

(3) Ambulances based outside the State rendering service in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required;

(4) Ambulances owned and operated by an agency of the United States government;

(5) Ambulances based outside the State engaged in interstate transportation.

(16 Del. C. 1953, § 6726; 58 Del. Laws, c. 177.)

§ 6714 Penalties.

The registered owner of every vehicle subject to this chapter shall comply with this chapter and all regulations adopted hereunder. For a violation of any regulation adopted under the authority of this chapter, the Commission may revoke or suspend the permit for all vehicles owned or operated by the violator.

(16 Del. C. 1953, § 6727; 58 Del. Laws, c. 177.)

§ 6715 Firemen, policemen or volunteer ambulance or rescue squad members rendering emergency care.

Transferred.

§ 6716 Penalty for disobeying fire officer-in-charge.

Any owner or occupant of any building or premises or any other person who refuses to obey the orders of a fire officer-in-charge in the exercise of the officer's duties shall be fined not more than $300 or imprisoned not more than 10 days.

(59 Del. Laws, c. 476, § 3.)

§ 6717 Establishment of State Fire Prevention Commission ambulance service responsibility and authority; ambulance service districts; operational and administrative requirements; ambulance service permits; penalties.

(a) As the responsible agency for the regulation of ambulance services within the State, the Commission shall adopt regulations applicable to ambulance service providers including but not limited to the establishment of ambulance service districts, establishment of operational and administrative requirements and requirements for certification of ambulance service providers. The Commission shall also have the authority to establish a process for certification renewal and shall have the authority to decertify any agency for noncompliance with its regulations.

(b) The Commission may adopt regulations to establish an Incident Review Committee to consider incidents related to ambulance service and all proceedings of the Incident Review Committee shall be confidential. All records of the Incident Review Committee to include the recording of interviews and all oral or written reports, statements, minutes, memoranda, charts, statistics, data and other documentation either generated or received by the Incident Review Committee or its members for the purpose of considering incidents related to ambulance service shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena or admission into evidence in any judicial or administrative proceedings. No record shall be available for public inspection or is it a public record within the meaning of the Delaware Freedom of Information Act.

(c) The Commission shall produce and make available an annual list of certified ambulance service providers. Ambulance service providers not certified will not be eligible to receive state funding, including but not limited to the special fund established pursuant to § 713 of Title 18 and Medicaid payments, and federal funding requiring certification. Nothing in this provision shall be construed to effect the eligibility of BLS agencies to receive state funding related to the operation of a rescue truck.

(d) The Commission shall, in consultation and cooperation with other components of the Delaware EMS system, develop and maintain a contingency plan for uninterrupted provision of service in the event an ambulance service provider is no longer able to provide service within an ambulance service district.

(e) The Commission shall monitor the occurrence of scratches by each ambulance service provider and take action to decertify any ambulance service provider that has excessive scratches. For purposes of this subsection, "scratches" are defined as instances when a BLS ambulance is alerted but does not respond to a call for assistance. For purposes of this subsection, "excessive scratches" shall mean a number of scratches exceeding a preestablished number or percentage for each BLS provider, determined and communicated annually in advance to the provider by the State Fire Prevention Commission.

(f) This section shall not pertain to the operation of paramedic service as outlined in Chapter 98 of this title.

(g) Any person, company or organization that provides ambulance service within the State without being authorized and certified by the State Fire Prevention Commission as an ambulance service provider shall be fined not more than $300 per offense. Each and every day the provision of ambulance service continues after knowledge or official notice that such activity is illegal shall be deemed a separate offense.

(71 Del. Laws, c. 49, § 1; 71 Del. Laws, c. 445, § 1; 72 Del. Laws, c. 137, §§ 4, 5; 74 Del. Laws, c. 304, §§ 1, 2.)

Part VI
Safety
Chapter 68
EXEMPTIONS FROM CIVIL LIABILITY
Subchapter I
Immunity for Rendering Emergency Care

§ 6801 Persons rendering emergency care exempt from liability; Advanced Life Support Standards Committee.

(a) Notwithstanding any inconsistent provisions of any public or private and special law, any person who voluntarily, without the expectation of monetary or other compensation from the person aided or treated, renders first aid, emergency treatment or rescue assistance to a person who is unconscious, ill, injured or in need of rescue assistance, or any person in obvious physical distress or discomfort shall not be liable for damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid, emergency treatment or rescue assistance, unless it is established that such injuries or such death were caused wilfully, wantonly or recklessly or by gross negligence on the part of such person. This section shall apply to members or employees of nonprofit volunteer or governmental ambulance, rescue or emergency units, whether or not a user or service fee may be charged by the nonprofit unit or the governmental entity and whether or not the members or employees receive salaries or other compensation from the nonprofit unit or the governmental entity. This section shall not be construed to require a person who is ill or injured to be administered first aid or emergency treatment if such person objects thereto on religious grounds. This section shall not apply if such first aid or emergency treatment or assistance is rendered on the premises of a hospital or clinic.

(b) For the purpose of assisting the Board of Medical Licensure and Discipline in developing standards for advanced life support services, there is hereby created the Advanced Life Support Standards Committee. The Standards Committee shall be composed of the Chairperson and 20 members. The Chairperson will be appointed by the Board of Medical Licensure and Discipline. The 20 members shall be selected from names submitted to the Board of Medical Licensure and Discipline by resolution of the following respective organizations:

(1) Three representatives of the American College of Emergency Physicians (1 representing each county);

(2) One representative from the American College of Surgeon's Committee on Trauma;

(3) One representative from the Medical Society of Delaware;

(4) One representative from the Delaware Chapter of the Emergency Department Nurses Association;

(5) Three active practicing ambulance attendants, 1 from each county, appointed by respective County Firefighter's Association;

(6) One representative from the State of Emergency Medical Services Office;

(7) One representative from the State Fire Prevention Commission;

(8) One representative from New Castle County government;

(9) One representative from Kent County government;

(10) One representative from Sussex County government;

(11) One representative from the City of Wilmington;

(12) One representative from the City of Dover;

(13) One representative from Delaware Chapter of the American Heart Association;

(14) One representative from the Bureau of Health, Planning, and Resources Development Division of the State Department of Health and Social Services;

(15) One representative from Delaware State Fire School;

(16) One practicing paramedic, certified and employed in the State. The chief or director of each county paramedic service shall submit 1 name for selection to the Board of Medical Licensure and Discipline.

Each representative shall serve at the pleasure of the organization which representative represents and representative's successor shall be chosen in a like manner. The Standards Committee will meet at the call of the Chairperson of the Standards Committee or the Chairperson of the Board of Medical Licensure and Discipline.

The Standards Committee shall provide technical assistance for establishment of minimum standards for advanced life support services, and review curricula for training programs submitted to the Board of Medical Licensure and Discipline referring them back to the Board with appropriate recommendations.

(16 Del. C. 1953, § 6801; 58 Del. Laws, c. 105; 59 Del. Laws, c. 361, § 1; 62 Del. Laws, c. 93, § 1; 63 Del. Laws, c. 235, §§ 1, 2; 66 Del. Laws, c. 51, § 1; 66 Del. Laws, c. 235, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 137, §§ 23, 32; 77 Del. Laws, c. 319, § 1.)

§ 6802 Exempting nurses from civil liability in rendering emergency care.

Any registered nurse or any licensed practical nurse, licensed as such by any state, who in good faith renders emergency care at the scene of any emergency or who undertakes to transport any victim thereof to the nearest medical facility shall not be liable for any civil damages as a result of any act or omission in rendering the emergency care; provided, however, such act or omission is not grossly negligent or intentionally designed to harm the victim.

(59 Del. Laws, c. 266, § 1.)

§ 6803 State Emergency Response Commission; other personnel.

Repealed by 71 Del. Laws, c. 208, § 1, eff. July 17, 1997.

Subchapter II

Immunity for Reporting of Arson

§ 6810 Definitions.

(a) As used in this subchapter:

(1) "Action" shall include nonaction or the failure to take action.

(2) "Authorized agencies" shall mean:

a. The State Fire Marshal, or the Marshal's equivalent in any political subdivision of the State, when authorized or charged with the investigation of fires at the place where the fire actually took place;

b. The State Police or police of a duly organized county or municipal police agency;

c. The Department of Justice of the State;

d. County law departments or the solicitor of a municipality;

e. The Federal Bureau of Investigation or any other federal agency;

f. The United States Attorney's Office when authorized or charged with investigation or prosecution of the fire in question.

(3) "Immune" shall mean that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to this subchapter where actual malice on the part of the insurance company or authorized agency against the insured is not present.

(4) Material will be "deemed important", if within the sole discretion of the "authorized agency", such material is requested by that "authorized agency".

(5) "Relevant" shall mean information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

(b) As used in this section "insurance company" includes the Insurance Placement Facility of Delaware (FAIR Plan).

(62 Del. Laws, c. 222, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6811 Disclosure of information.

(a) Any authorized agency may, in writing, require the insurance company at interest to release to the requesting agency any or all relevant information or evidence deemed important to the authorized agency which the company may have in its possession, relating to the fire loss in question. Relevant information may include, without limitation herein:

(1) Pertinent insurance policy information relevant to a fire loss under investigation and any application for such a policy;

(2) Policy premium payment records which are available;

(3) History of previous claims made by the insured;

(4) Material relating to the investigation of the loss, including statements of any person, proof of loss or any other evidence relevant to the investigation.

(b)(1) When an insurance company has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, and such fire loss is in excess of $5,000, then, for the purpose of notification and for having such fire loss investigated, the company shall, in writing, notify an authorized agency and provide it with any or all material developed from the company's inquiry into the fire loss.

(2) When an insurance company provides any one of the authorized agencies with notice of a fire loss, it shall be sufficient notice for the purpose of this subchapter.

(3) Nothing in this subsection shall abrogate or impair the rights or powers created under subsection (a) of this section.

(c) The authorized agency provided with information pursuant to subsection (a) or (b) of this section, and in furtherance of its own purposes, may release or provide information to any of the other authorized agencies.

(d) Any insurance company providing information to an authorized agency or agencies pursuant to subsection (a) or (b) of this section shall have the right to request relevant information and receive from the authorized agency or agencies within a reasonable time, not to exceed 30 days, the information requested.

(e) Any insurance company, or person acting in its behalf, or authorized agency who releases information, whether oral or written, pursuant to subsection (a) or (b) of this section shall be immune from any liability arising out of a civil action, or criminal prosecution.

(62 Del. Laws, c. 222, § 1.)

§ 6812 Confidentiality of information; testimony.

(a) Except as provided in subsection (c) of § 6811 of this title any authorized agency and insurance company described in § 6810 or § 6811 of this title who receives any information furnished pursuant to this subchapter shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

(b) Any authorized agency referred to in § 6810 of this title, or their personnel, may be required to testify in any litigation in which the insurance company at interest is named as a party.

(62 Del. Laws, c. 222, § 1.)

§ 6813 Enforcement.

(a) No person or agency shall intentionally or knowingly refuse to release any information requested pursuant to subsection (a) or (b) of § 6811 of this title.

(b) No person shall intentionally or knowingly refuse to release to authorized agencies relevant information pursuant to subsection (b) of § 6811 of this title.

(c) No person shall fail to hold in confidence information required to be held in confidence by § 6812 of this title.

(62 Del. Laws, c. 222, § 1.)

Subchapter III

Immunity for Food Donors

§ 6820 Food donors exempt from liability.

A person, including a farmer, processor, distributor, wholesaler or retailer of food, who, in good faith, donates an item of food for use or distribution by a nonprofit organization shall not be liable for civil damages or criminal penalties resulting from the nature, age, condition or packaging of the donated food. This section does not apply if the nonprofit organization sells or offers for sale the donated items of food. Nothing in this section is intended to limit any liability on the part of the donee nonprofit organizations accepting food items under this section. The Division of Public Health is authorized to inspect donated food items upon the request of the donee nonprofit organization.

(63 Del. Laws, c. 263, § 1.)

Subchapter IV

Immunity for Intervention to Protect Other Persons From Certain Criminal Acts

§ 6830 Person intervening to protect other persons from certain criminal acts exempt from liability.

Any person who, in good faith, intervenes without compensation to protect other persons against any criminal act involving death, serious physical injury, robbery, burglary, kidnapping or sexual intercourse compelled by force or threat at the scene of said attempted criminal act, shall not be liable for any civil damages resulting from the rendering of such assistance, except acts or omissions amounting to gross negligence or willful or wanton misconduct.

(63 Del. Laws, c. 444, § 1.)

Subchapter V

Nonprofit Sports Liability Limitation Act

§ 6835 Definitions.

As used in this subchapter:

(1) The term "compensation" does not include:

a. Any gift; or

b. Any reimbursement for any reasonable expense, incurred for the benefit of a nonprofit sports program.

(2) The term "member of the qualified staff " means any person who:

a. Is a manager, coach, umpire or referee;

b. An assistant to a manager, coach, umpire or referee; or

c. Prepares any playing field for any practice session or any formal game.

d. An officer or ride leader of a formally organized bicycle club.

(3) The term "negligent act or omission" shall be defined in accordance with applicable State law, except that such meaning shall not include any reckless act or omission nor any grossly negligent act or omission.

(4) The term "nonprofit sports program" means any program (whether or not it is registered with or recognized by the State or any political subdivision of the State):

a. That is in a competitive sport formally recognized as a sport, on the date the cause of action to which this subchapter applies arises, by the Amateur Athletic Union or the National Collegiate Athletic Association, or is a formally organized noncompetitive recreational bicycle club whether recognized by the Amateur Athletic Union or the National Collegiate Athletic Association or not; and

b. That is organized for recreational purposes and whose activities are substantially for such purposes; and

c. No part of whose net earnings inures to the benefit of any private person.

(65 Del. Laws, c. 258, § 1; 68 Del. Laws, c. 360, §§ 1, 2.)

§ 6836 Limitation on liability of nonprofit sports programs.

(a) *Uncompensated qualified staff.* — Any person who renders services without compensation as a member of the qualified staff of a nonprofit sports program shall not be liable under the laws of this State for civil damages resulting from any negligent act or omission of such qualified member occurring in the performance of any duty of such qualified member to the extent that said damages exceed either existing liability insurance coverage applicable to the negligent act or omission or the minimum liability insurance coverage required by law if no coverage applicable to the negligent act or omission exists.

(b) *Sponsors and operators.* — Any person who sponsors or operates a nonprofit sports program shall not be liable under the laws of this State for civil damages resulting from any negligent act or omission of any person who renders services without compensation as a member of the qualified staff of a nonprofit sports program and occurring in the performance of any duty of such qualified member to the extent that said damages exceed either liability insurance coverage applicable to the negligent act or omission or minimum liability insurance coverage required by law if no coverage applicable to the negligent act or omission exists.

(65 Del. Laws, c. 258, § 1.)

§ 6837 Applicability.

This subchapter shall apply to any cause of action arising after April 21, 1986.

(65 Del. Laws, c. 258, § 1.)

Subchapter VI

Civic Organizations Maintaining Parkland

§ 6840 Definitions.

As used in this subchapter:

(1) The term "member of a staff" means any person or entity which:

a. Is a member, board member, director or officer of a civic organization; or

b. Is an employee of a civic organization.

(2) The term "sponsor" means any person or entity which provides financial support to a civic organization through contributions, gifts or payment of dues.

(3) The term "negligent act or omission" shall be defined in accordance with applicable state law, except that such meaning shall not include any reckless act or omission or any grossly negligent act or omission.

(4) The term "civic organization" shall be defined as any nonprofit organization, which is the owner of parkland, or which has contracted with the State or a political subdivision thereof for the maintenance of parkland provided that:

a. The organization is not organized for profit or is qualified as an exempt organization under § 501(c) of the Internal Revenue Code of 1954, as amended [26 U.S.C. § 501(c)];

b. No part of the net earnings of the organization inures to the benefit of any private shareholder or individual.

(5) The term "parkland" shall be defined as real property, including improvements erected thereon and fixtures attached thereto, used primarily for recreational purposes and owned by the State, a political subdivision or a civic organization; provided that:

a. The property is not used by the civic organization or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor or bondholder of the organization or operator or any other person through the distribution of profits or the payment of excessive compensation;

b. The property is used for recreational purposes and upon liquidation or dissolution of the organization, or abandonment by the organization, none of the assets of the organization or benefits from the property will inure to the benefit of anyone except a community chest, fund, foundation, government, governmental agency, civic association, maintenance corporation or other nonprofit organization;

c. The use of the property is open, without charge, to the public members of the civic organization, or to the residents of the neighborhood, community or subdivision in which the property is located, regardless of sex, race, creed, color or national origin;

d. The property does not have a swimming pool thereon.

(66 Del. Laws, c. 169, § 1.)

§ 6841 Limitation on liability of civic organizations maintaining parkland.

(a) No civic organization, as defined in § 6840 of this title, shall be liable under the laws of this State for civil damages resulting from any negligent act or omission of such organization, its staff or any person or entity with which such organization may contract, which act or omission occurs in connection with the construction or maintenance of parkland.

(b) No member of the staff of a civic organization shall be liable under the laws of this State for civil damages resulting from any negligent act or omission of such organization, its staff or any person or entity with which such organization may contract, which act or omission occurs in connection with the construction or maintenance of parkland. The immunity provided in this subsection shall apply only to the extent that said damages exceed either existing liability insurance coverage applicable to the negligent act or omission or the minimum liability insurance coverage required by law if no coverage applicable to the negligent act or omission exists.

(c) No sponsor of any civic organization shall be liable under the laws of this State for civil damages resulting from any negligent act or omission of such organization, its staff or any person or entity with which such organization may contract, which act or omission occurs in connection with the construction or maintenance of parkland. The immunity provided in this subsection shall apply only to the extent that said damages exceed either existing liability insurance coverage applicable to the negligent act or omission or the minimum liability insurance coverage required by law if no coverage applicable to the negligent act or omission exists.

(66 Del. Laws, c. 169, § 1.)

Subchapter VII

Immunity for Distribution of Fire Safety Devices and Equipment

§ 6850 Smoke detectors.

(a) No nonprofit organization, municipality, town, county or other political subdivision of this State, or duly organized fire company, including volunteer fire companies, that distributes any type of smoke detection device and/or batteries free of charge to the recipient thereof shall be liable for any civil damages arising out of any injury to person or property proximately caused by an alleged defect in the design, manufacturing, maintenance or operation of any smoke detection device and/or battery distributed pursuant to this section. No duly organized fire company, including volunteer fire companies, and no firefighter thereof, that mounts a battery-operated smoke detection device on a wall or ceiling, or that installs batteries in a battery-operated smoke detection device, free of charge to the recipient thereof shall be liable for any civil damages arising out of any injury to person or property proximately caused by the installation of the smoke detection device and/or battery pursuant to this section. The immunity provided by this section does not apply if the smoke detection device or battery is sold or offered for sale or with respect to the installation of a smoke detection device if the firefighter does not test the smoke detection device upon installation. Nothing in this section is intended to limit any liability on the part of the manufacturer, distributor or retailer of a smoke detection device or battery.

(b) The immunities granted in subsection (a) of this section apply only to the degree and extent that no insurance coverage exists.

(73 Del. Laws, c. 147, § 1.)

§ 6851 Donations to volunteer fire department.

(a) *Liability protection.* — A person who donates qualified fire control or rescue equipment to a volunteer fire department shall not be liable for civil damages for personal injuries, property damage or loss, or death caused by the equipment after the donation.

(b) *Exceptions.* — Subsection (a) of this section does not apply to a person if:

(1) The person's act or omission causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct;

(2) The person is the manufacturer of the qualified fire control or rescue equipment; or

(3) The person modified or altered the equipment after it had been recertified by an authorized technician as meeting the manufacturer's specifications.

(c) *Definitions.* —

(1) "Authorized technician" means a technician who has been certified by the manufacturer of fire control or fire rescue equipment to inspect such equipment. The technician need not be employed by a state or local agency administering the distribution of the fire control or fire rescue equipment.

(2) "Fire control or rescue equipment" shall be understood to include any fire vehicle, fire fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.

(3) "Person" shall be understood to include any governmental or other entity.

(4) "Qualified fire control or rescue equipment" shall mean fire control or fire rescue equipment that has been recertified by an authorized technician as meeting the manufacturer's specifications.

(5) "Volunteer Fire Department" shall mean those volunteer fire departments which are subject to certification and regulation by the State Fire Prevention Commission.

(d) *Effective date.* — This section applies only to liability for injury, damage, loss, or death caused by equipment that, for purposes of subsection (a) of this section, is donated on or after May 27, 2010.

(77 Del. Laws, c. 248, § 1.)

Part VI
Safety
Chapter 69
FIREWORKS

§ 6901 Selling or possessing fireworks; exceptions.

No person shall store, sell, offer or expose for sale, or have in possession with intent to sell or to use, discharge or cause to be discharged, ignited, fired or otherwise set in action within this State, any fireworks, firecrackers, rockets, sparklers, torpedoes, Roman candles, fire balloons or other fireworks or substances of any combination whatsoever designed or intended for pyrotechnic display except after having obtained a permit as provided in § 6903 of this title and also except as provided in § 6906 of this title. This section shall not apply to any person established and manufacturing fireworks of any or all kinds in this State on September 5, 1939.

The term "fireworks," as used in this chapter, shall mean and include any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, Daygo bombs, sparklers or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any caps or tablets or other device containing any explosive substance, except that the term "fireworks" shall not include toy pistols, toy canes, toy guns or other devices in which paper caps manufactured in accordance with the United States Interstate Commerce Commission regulations for packing and shipping of toy paper caps are used and toy pistol paper caps manufactured as provided therein, the sale and use of which shall be permitted at all times.

(42 Del. Laws, c. 180, § 1; 16 Del. C. 1953, § 6901; 51 Del. Laws, c. 334, § 1; 52 Del. Laws, c. 275, § 1.)

§ 6902 Discharging rifle or other explosives; exceptions.

No person shall fire or discharge in or on or into any street, highway, alley or public place in the State any rifle, gun, pistol, revolver, cane, cannon or other appliance, whether projecting or exploding any bullet, cartridge, blank cartridge, cap (except a cap excluded from the provisions hereof under the definition set forth in § 6901 of this title) or otherwise or any explosive substance or mixture of chlorates or nitrates. This section shall not apply to peace officers in the regular discharge of their duties as such. Nothing in this section shall be construed to prohibit any person from using explosives in quarrying or for blasting or other industrial use.

(42 Del. Laws, c. 180, § 2; 16 Del. C. 1953, § 6902; 52 Del. Laws, c. 275, § 2.)

§ 6903 Permit for public display of fireworks; actions by injured persons.

(a) Any association or company desiring to hold a public display of fireworks may apply to the Office of the State Fire Marshal for a permit to hold such display if application is made 30 days prior to the date of holding the display.

(b) The application for a permit shall set forth the date, hour and place of holding such display and place of storing fireworks prior to display, also the name of the person holding the display and name of person in charge of igniting the fireworks.

(c) The application shall be accompanied by a certificate of insurance issued by a bona fide insurance company licensed by the State Insurance Commissioner showing a minimum of $1,000,000 liability insurance per event for those persons who suffer injuries as a result of any discharge of the fireworks by the applicant or anyone acting for or on the applicant's behalf.

(d) If the State Fire Marshal is satisfied that the holding of the display is supervised by a competent and experienced person and that the display will not be a detriment to the community or area in which the display is held, the Marshal may grant a permit for the display. The place of storage of fireworks prior to the display shall be subject to the approval of the State Fire Marshal.

(42 Del. Laws, c. 180, § 3; 16 Del. C. 1953, § 6903; 58 Del. Laws, c. 227, §§ 1-3; 61 Del. Laws, c. 301, §§ 1-3; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 447, § 1.)

§ 6904 Confiscation of illegally stored fireworks or explosives.

The State Fire Marshal shall confiscate all fireworks or explosives illegally stored within the State.

(42 Del. Laws, c. 180, § 4; 16 Del. C. 1953, § 6904; 58 Del. Laws, c. 227, § 4; 61 Del. Laws, c. 301, § 4.)

§ 6905 Penalties; jurisdiction.

(a) Whoever violates this chapter shall be fined not less than $25 nor more than $100.

(b) Justices of the peace shall have jurisdiction of any violation of this chapter.

(42 Del. Laws, c. 180, § 5; 16 Del. C. 1953, § 6905.)

§ 6906 Agricultural use.

Nothing in this chapter shall prohibit the importation, sale, purchase or use of fireworks used or to be used solely and exclusively for the purpose of frightening birds from crops and such importation, sale, purchase or use shall be governed by rules and regulations to be prescribed by the Board of Agriculture.

(16 Del. C. 1953, § 6906; 51 Del. Laws, c. 334, § 2.)

Part VI
Safety
Chapter 70
STORAGE OF EXPLOSIVES

§ 7001 Signs on premises containing stored explosives.

(a) Upon the premises on which explosives are stored there shall be posted signs with the words "EXPLOSIVES — KEEP OFF" legibly printed thereon in letters not less than 3 inches high. Signs shall be placed so that a bullet passing through them will not strike any nearby magazine.

(b) When explosives are being processed or are used in connection with any manufacturing process or if explosives are stored at such manufacturing establishment, a sign no smaller than 4 square feet bearing the words "DANGER — EXPLOSIVES" shall be kept posted at the main plant entrance and, in addition to this, the remainder of the premises shall be posted with signs as set forth in subsection (a) of this section.

(16 Del. C. 1953, § 7001; 52 Del. Laws, c. 334.)

§ 7002 Exceptions.

This chapter shall not apply to regularly licensed commercial establishments handling the sales and distribution of firearms and ammunition.

(16 Del. C. 1953, § 7002; 52 Del. Laws, c. 334.)

§ 7003 Storage within residential district prohibited.

It shall be unlawful for any person to store explosive materials within a residential district as zoned by the local zoning authority. "Explosive materials" shall have the same definition as set forth in Chapter 71 of this title. This section shall not apply to the storage of explosive materials that fall within the scope of § 7101 of this title.

(64 Del. Laws, c. 118, § 1.)

§ 7004 Penalties.

Whoever fails to comply with or violates any of the provisions of this chapter shall be fined not less than $25 nor more than $1,000 or imprisoned not more than 1 year, or both.

(16 Del. C. 1953, § 7003; 52 Del. Laws, c. 334; 64 Del. Laws, c. 118, § 2.)

Part VI
Safety
Chapter 71
SALE, PURCHASE, RECEIPT, POSSES- SION, TRANSPORTATION, USE, SAFETY AND CONTROL OF EXPLOSIVE MATERIALS

§ 7101 Scope.

This chapter is intended to supplement the requirements of any federal laws and regulations promulgated by any federal department or agency. This chapter shall apply to the sale, purchase, possession, receipt, transportation and use of explosive materials as provided herein, but shall not apply to:

(1) Explosive materials while in the course of transportation via railroad, water, highway or air when the explosive materials are moving under the jurisdiction of and in conformity with regulations adopted by any federal department or agency;

(2) The laboratories of schools, colleges and similar institutions when confined to the purpose of instruction or research, or to explosive materials in the forms prescribed by the official United States Pharmacopoeia or the National Formulary and used in medicines and medicinal agents;

(3) The normal and emergency operations of any government, including all departments, agencies and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties or functions;

(4) Explosive materials for delivery to any government or any departments, agencies and divisions thereof;

(5) Pyrotechnics commonly known as fireworks, including signaling devices such as flares, fuses and torpedoes;

(6) Small arms ammunition and components therefor, which are subject to the Gun Control Act of 1968 [18 U.S.C. § 921 et seq.] and regulations promulgated thereunder;

(7) Gasoline, fertilizers and propellant-actuated power devices or tools;

(8) Any type of black powder in quantities of less than 5 pounds.

(16 Del. C. 1953, § 7101; 58 Del. Laws, c. 498, § 1.)

§ 7102 Definitions.

As used in this chapter:

(1) "Crime punishable by imprisonment for a term exceeding 1 year" shall not mean (i) any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade or other similar offenses relating to the regulation of business practices or (ii) any state offense (other than one involving a firearm or explosive material) classified by the laws of any state as a misdemeanor and punishable by a term of imprisonment of 2 years or less.

(2) "Distribute" shall mean to issue, give, transfer or otherwise dispose of.

(3) "Explosive-actuated devices" shall mean any tool or special mechanized device which is actuated by explosives, other than smokeless propellants.

(4) "Explosive materials" means explosives, blasting agents and detonators as follows:

a. "Explosives" means any chemical compound mixture or device the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters and those materials included in the list published annually in the Federal Register by the Secretary of the Treasury pursuant to the Organized Crime Control Act of 1970 [18 U.S.C. § 841 et seq.].

b. "Blasting agent" means any material or mixture consisting of fuel and oxidizer intended for blasting not otherwise defined as an explosive; provided, that the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

c. "Detonator" means any device containing a detonating charge that is used for initiating detonation in an explosive. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

(5) "Fugitive from justice" shall mean any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term shall also include any person who has been convicted of any crime and has fled to avoid imprisonment.

(6) "Issuing authorities" shall mean the State Fire Marshal and such local fire marshals as and to the extent the State Fire Marshal shall so designate.

(7) "Person" means any individual, corporation, company, association, firm, partnership, society or joint stock company.

(8) "Propellant-actuated power devices or tools" shall mean any tool or special mechanized device or gas generator system which is actuated by smokeless propellant or which releases and directs work through a smokeless propellant charge. It does not include explosive-actuated devices.

(16 Del. C. 1953, § 7102; 58 Del. Laws, c. 498, § 1.)

§ 7103 General provisions.

(a) *Loading explosive materials into railroad cars near passenger tracks; penalty.* —

(1) No person shall load explosive materials into cars on any railroad in this State within 100 yards of the bed of the regular track used in carrying passengers.

(2) Whoever engages or participates in any way in loading or putting explosive materials into cars standing within 100 yards of the regular bed of any railroad engaged in carrying passengers in this State shall be fined $1,000 or imprisoned for 6 months, or both.

(b) *Delivering explosive materials to warehouseperson or carrier without disclosure and marking; penalty.* — Whoever, within the limits of this State, delivers or causes to be delivered to any warehouseperson for storage, or delivers or causes to be delivered to any carrier, whether by land or water, for transportation, any keg, can or other package known by such person to contain explosive materials without first disclosing to the warehouseperson or carrier, the warehouseperson's or carrier's proper agents or servants, the character of the contents of such keg, can or package and without also having plainly marked or stamped on every such keg, can or package the true nature of the contents thereof, shall, for each offense, be fined not more than $1,000 or imprisoned not more than 6 months, or both.

(c) *False representations or false marking of package containing explosive materials; penalty.* — Whoever, within the limits of this State, delivers or causes to be delivered to any warehouseperson for storage, or delivers or causes to be delivered to any carrier, whether by land or water, for transportation, any keg, can or other package known by such person to contain explosive materials which keg, can or package is falsely marked as to its contents, or whoever, at the time of such delivery, makes a false and fraudulent statement as to the character of the contents of any such keg, can or package to any such warehouseperson or carrier, the warehouseperson's or carrier's proper agents or servants, whereby such warehouseperson or carrier, the warehouseperson's or carrier's proper agents or servants, are deceived and misled as to the explosive and dangerous qualities of the contents of such keg, can or package, shall, for each offense, be fined not more than $2,000 or imprisoned not more than 1 year, or both.

(16 Del. C. 1953, § 7103; 58 Del. Laws, c. 498, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7104 Purchase, receipt and possession.

(a) *License.* — It shall be unlawful for any person to purchase, receive or possess explosive materials in the State without obtaining a license from the issuing authorities.

(b) *Federal license or permit.* — Any person who possesses a license or permit under Title XI of the Organized Crime Control Act [18 U.S.C. § 841 et seq.] properly covering the activities of such person shall not be required to obtain a license under this section.

(16 Del. C. 1953, § 7104; 58 Del. Laws, c. 498, § 1.)

§ 7105 Sale.

No person shall sell or distribute explosive materials to any person without first obtaining a copy of the license which authorizes the distributee to purchase, receive or possess explosive materials as provided in this chapter; provided that such person shall not be required to again obtain a copy of said license during the effective term shown on said license.

(16 Del. C. 1953, § 7105; 58 Del. Laws, c. 498, § 1.)

§ 7106 Licensed blasters.

(a) *License.* — It shall be unlawful for any person to use explosive materials unless such person, or if such person is a business entity, an employee of such person using such explosive materials, possesses a blaster's license issued by the issuing authorities having jurisdiction over the locality in which such materials are used. The blaster's license must conform to the class and use as provided in subsection (e) of this section and be carried on the person of each such individual during the use of the explosive materials.

(b) *Use.* — Use of explosive materials shall include all applications of explosives for any purpose whatsoever, unless specifically exempted by subsection (c) of this section.

(c) *Use does not include.* — For purposes of this section, use does not include any type of commercial manufacturing or research conducted in laboratories of commercial or educational institutions.

(d) *Qualifications.* — Blaster's licenses will be issued only to a natural person and shall bear the person's name, address and photograph. In addition to the qualifications specified in § 7107 hereof, such person must satisfy each of the following qualifications:

(1) Present evidence of training, knowledge and experience in the transporting, storing, handling and use of explosive materials.

(2) Be able to understand and give written and oral orders.

(3) Be knowledgeable of federal, state and local laws and regulations pertaining to explosive materials.

(4) Be able to pass a qualifying written or oral examination as required by the issuing authorities.

(5) Be physically and mentally fit for the work required.

(6) Such other requirements as the issuing authorities are hereby authorized to prescribed by regulations.

(e) *Classes of license.* — Blaster's license shall be issued by the issuing authorities and shall include the following classes of licenses:

Class	Category	Description
A	Unlimited	All types of blasting.
B	General Above Ground	All phases of blasting operations in quarries, open pit mines, above ground construction.
C	General Underground	All phases of blasting operations, in underground mines, shafts, tunnels and drifts.
D	Demolition	All phases of blasting in demolition projects.
E	Seismic Prospecting	All phases of blasting in seismic prospecting.
F	Agriculture	All phases of blasting in agriculture but limited to not more than 50 lbs. per blast.
G	Special	Special blasting as described on the permit.

(16 Del. C. 1953, § 7106; 58 Del. Laws, c. 498, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7107 Administration.

(a) *Application.* — Applications for license hereunder shall be made to the issuing authorities having jurisdiction over the locality for which license is requested on forms and as prescribed in regulations issued by such authorities.

(b) *License fees.* — License fees shall be paid at the time of application in the amount of $10.

(c) *Qualifications.* — No issuing authorities shall issue any license to any person unless:

(1) The applicant is at least 21 years of age, or if a business entity, properly qualified to do business in the State.

(2) The applicant has not been convicted of a wilful violation of any provisions of this chapter.

(3) The applicant has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive in connection with the application.

(4) The applicant has certified in writing familiarity and understanding of all published federal, state and local laws relating to explosives at the location of the applicant's activities.

(5) The applicant has not been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year.

(6) The applicant is not a fugitive from justice.

(7) The applicant is not an unlawful user of or addicted to marijuana (as defined in § 4761 of the Internal Revenue Code of 1954 [Repealed]) or any depressant or stimulant drug (as defined in § 201(2) of the Federal Food, Drug and Cosmetic Act [Obsolete]), or narcotic drug (as defined in § 4731(a) of the Internal Revenue Code of 1954 [Repealed]).

(d) *Posting and possession of licenses.* — Licenses issued under this chapter, except as otherwise provided with respect to blaster's licenses, shall be kept posted on premises or on the person of the licensee and be available for inspection.

(e) *Licensed locations and activities.* — Each license issued under this chapter shall specify the licensee, the licensed activity, its effective date and its expiration date.

(f) *Regulations and forms.* — The administration of this chapter shall be vested in the issuing authorities who are authorized to:

(1) Prescribe such rules and regulations as are deemed reasonably necessary to carry out this chapter. The issuing authorities shall give reasonable public notice and afford to interested parties opportunity for hearing prior to prescribing such regulations.

(2) Prescribe forms required for the administration of this chapter.

(g) *Right of inspection and disclosure.* — The issuing authorities or their designees may enter during business hours the premises (including places of storage) of any licensee for the purpose of inspecting or examining (1) any records or documents kept by such licensee, and (2) any explosive materials kept or stored by such licensee. Upon the request of any federal agency, the issuing authorities shall make available any information which it may obtain by reason of this section with respect to the identification of persons within the State who have purchased or received explosive materials, together with a description of such explosive materials.

(h) *Denial or revocation of license.* — A license under this chapter may be denied or revoked for failure to comply with or satisfy the requirements of any provision of this chapter and for any of the following reasons:

(1) Noncompliance with any order of the applicable issuing authorities.

(2) Proof that the applicant or licensee has been convicted of a crime punishable by imprisonment for more than 1 year.

(3) Proof that the applicant or licensee advocates or knowingly belongs to any organization or group which advocates violent overthrow or violent action against any federal, state or local government, or any individuals therein.

(4) Proof that the applicant or licensee suffers from a mental or physical defect which makes applicant or licensee unfit for the work required.

(5) Violation by the applicant or licensee of any provision of any law or regulation relating to explosive materials or proof that false information was given or misrepresentation made to obtain the license.

(6) Failure by the applicant or licensee to advise the issuing authorities of any change in a material fact supplied in the application.

In any case where the issuing authorities deny or revoke a license, they promptly will notify the applicant or licensee of the basis for the revocation or denial and afford the applicant or licensee an opportunity for a hearing in the manner prescribed by the regulations of the issuing authorities.

(i) *Renewal.* — Licenses issued under this chapter shall be effective for not more than 2 years and may be renewed as the issuing authorities may prescribe by regulations.

(j) *Emergency variations.* — Issuing authorities may approve variations from the requirements of this chapter when they find that an emergency exists and that the proposed variations from the specific requirements (1) are necessary and (2) will not hinder the effective administration of this chapter.

(16 Del. C. 1953, § 7107; 58 Del. Laws, c. 498, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7108 Authority to purchase in contiguous states.

Any person who is a resident of the State and who uses explosive materials in the conduct of business or occupation may lawfully purchase explosive materials from a seller located or residing in a state contiguous to the State, provided such person is properly licensed under this chapter.

(16 Del. C. 1953, § 7108; 58 Del. Laws, c. 498, § 1.)

§ 7109 Records.

(a) *Records required.* — It shall be unlawful for any person willfully to purchase, possess, receive, sell or distribute explosive materials in the State without keeping records as specified in this section.

(b) *Contents of records.* — Records of purchases, possession and receipts of explosive materials shall be maintained by the persons purchasing, possessing and receiving the explosive materials and shall include the date of the transaction, the name, address and license or permit number of the person from whom received, the name of the manufacturer and importer (if any), the manufacturer's marks of identification (if any), and the quantity and description of explosive materials. With respect to explosive materials sold or distributed, the seller or distributor shall record the name, address and license or permit number of the distributee, the date of transaction, the name of the manufacturer and importer (if any), the manufacturer's marks of identification (if any), and the quantity and description of the explosive materials.

(c) *False entry.* — It shall be unlawful for any licensee or permittee knowingly to make any false entry in any record which the licensee or permittee is required to keep pursuant to this section or regulations promulgated under subsection (f) of § 7107 of this title.

(d) *Record retention.* — Any record required by this chapter or regulations promulgated under its provisions shall be retained by the licensee or permittee for not less than 5 years from the date of the transaction recorded.

(16 Del. C. 1953, § 7109; 58 Del. Laws, c. 498, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7110 Safety.

The issuing authorities are authorized to issue such safety regulations as are deemed by the issuing authorities to be necessary in their respective jurisdictions.

(16 Del. C. 1953, § 7110; 58 Del. Laws, c. 498, § 1.)

§ 7111 Notice to affected persons.

Any person engaged in blasting shall make reasonable efforts to notify persons residing in areas that may be affected by blasting, and businesses, schools, churches and other public and private enterprises located in areas that may be affected by blasting of the intent to engage in blasting and the schedule for blasting, including the dates and times during which the person will engage in blasting. For purposes of this section, "any person" shall not include law enforcement officers acting within the scope of their duties.

(75 Del. Laws, c. 401, § 1.)

§ 7112 Transportation.

It shall be unlawful for any person to transport explosive materials in violation of the regulations relating to the transportation of explosive materials. Issuing authorities are authorized to issue regulations covering the transportation of explosive materials in their areas of jurisdiction. Compliance with applicable regulations of the United States Department of Transportation issued pursuant to 18 U.S.C., §§ 831 through 835 of the United States Code [18 U.S.C. §§ 832-835 repealed], and such other federal regulations as exist or are adopted from time to time, shall be deemed compliance with this chapter and the regulations issued hereunder.

(16 Del. C. 1953, § 7111; 58 Del. Laws, c. 498, § 1; 75 Del. Laws, c. 401, § 1.)

§ 7113 Penalties.

Any person violating this chapter, other than § 7103 of this title, or any rules or regulations made thereunder:

(1) Shall for each offense be punished by a fine of not more than $2,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment, and any license issued under this chapter shall be subject to revocation for such period as the applicable issuing authorities deem appropriate;

(2) And, if such violation was committed with the knowledge or intent that any explosive material involved was to be used to kill, injure or intimidate any person or unlawfully to damage any real or personal property, the person committing such violation shall be guilty of a felony and for each offense be fined not more than $10,000 or imprisoned for not more than 10 years, or both;

(3) And if personal injury results, shall be guilty of a felony and imprisoned for not more than 20 years or fined not more than $20,000 or both;

(4) And if death results, shall be guilty of a felony and subject to imprisonment for any term of years or for life.

The Superior Court shall have exclusive jurisdiction of violations of this chapter.

(16 Del. C. 1953, § 7112; 58 Del. Laws, c. 498, § 1; 75 Del. Laws, c. 401, § 1.)

§ 7114 Limitation on legislation.

This chapter is intended to and shall preempt and supersede all existing and future county, town, city or municipal ordinances or regulations respecting the subjects covered by this chapter.

(16 Del. C. 1953, § 7113; 58 Del. Laws, c. 498, § 1; 75 Del. Laws, c. 401, § 1.)

Part VI
Safety
Chapter 71A
REDUCED IGNITION PROPENSITY CIGARETTES

§ 7116 Definitions.

As used in this chapter:

(1) "Agent" shall mean any person authorized by the State to purchase and affix tax stamps on packages of cigarettes.

(2) "Cigarette" means:

a. Any roll for smoking whether made wholly or in part of tobacco or any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material other than leaf tobacco; or

b. Any roll for smoking wrapped in any substance containing tobacco which, because of its appearance the type of tobacco used in the filler or its packaging and labeling, is likely to be offered, or purchased by, consumers as a cigarette as described in paragraph (2)a. of this section above.

(3) "Manufacturer" shall mean:

a. Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer; or

b. The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

c. Any entity that becomes a successor of an entity described in paragraph (3)a. or (3)b. of this section.

(4) "Quality control and quality assurance program" shall mean the laboratory procedures implemented to ensure that operator bias systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in § 7117(a)(6) of this title for all test trials used to certify cigarettes in accordance with this chapter.

(5) "Repeatability" shall mean the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(6) "Retail dealer" shall mean any person other than a manufacturer or wholesale dealer engaged in selling cigarettes or tobacco products.

(7) "Sale" means in addition to its usual meaning, any sale, transfer, exchange, theft, barter, gift or offer for sale and distribution, in any manner or by any means whatsoever.

(8) "Sell" shall mean to sell or to offer or agree to do the same.

(9) "State Fire Marshal" shall mean the Delaware State Fire Marshal or the State Fire Marshal's deputies.

(10) "Wholesale dealer" shall mean any person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, and any person who owns, operates or maintains 1 or more cigarette or tobacco product vending machines in, at or upon premises owned or occupied by any other person.

(76 Del. Laws, c. 100, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7117 Test method and performance standard.

(a) Except as provided in subsection (g) of this section, no cigarettes may be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless such cigarettes have been tested in accordance with the test method and meet the performance standard specified in this subsection; and a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with § 7118 of this title, and the cigarettes have been marked in accordance with § 7119 of this title.

(1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials (ASTM) standard E2187-04 "Standard Test Method for Measuring the Ignition Strength of Cigarettes."

(2) Testing shall be conducted on 10 layers of filter paper.

(3) No more than 25 percent of the cigarettes tested in a test trial in accordance with this subsection shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(4) The performance standard required by this subsection shall only be applied to a complete test trial.

(5) Written certification shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization (ISO), or other comparable accreditation standard required by the State Fire Marshal.

(6) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of testing results. The repeatability value shall be no greater than 0.19.

(7) This section does not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

(8) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standard required shall be conducted in accordance with this section.

(b) Each cigarette listed in a certification submitted pursuant to § 7118 of this title that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least 2 nominally identical bands on the paper surrounding the tobacco column. At least 1 complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design there shall be at least 2 bands fully located at last 15 millimeter from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for a nonfiltered cigarette.

(c) The manufacturer or manufacturers of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in subsection (a) of this section shall propose a test method and performance standard for such cigarette to the State Fire Marshal. Upon approval of the proposed test method and a determination by the State Fire Marshal that the performance standard proposed by the manufacturer or manufacturers is equivalent to the performance standard prescribed in paragraph (a)(3) of this section, the manufacturer or manufacturers may employ such test method and performance standard to certify such cigarette pursuant to § 7118 of this title. If the State Fire Marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter, and the State Fire Marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this State, unless the State Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this section shall apply to such manufacturer or manufacturers.

(d) In order to ensure compliance with the performance standard specified in subsection (a) or (c) of this section, data from testing conducted by manufacturers to comply with this performance standard shall be kept on file by such manufacturers for a period of 3 years and shall be sent to the State Fire Marshal upon its request, and to the Office of the Attorney General upon its request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request shall be subject to a civil penalty not to exceed $10,000 for each day after the sixtieth day that the manufacturer does not make such copies available.

(e) The State Fire Marshal may adopt a subsequent ASTM Standard Test Method for Measuring Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04.

(f) As of January 1, 2010, and at least every 3 years thereafter, the State Fire Marshal shall undertake a review of the effectiveness of this chapter and report its findings to the legislature. Based upon such review, the State Fire Marshal may recommend legislation to improve the effectiveness of this chapter. The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each 3-year period.

(g) The requirements of subsection (a) of this section shall not prohibit:

(1) Wholesale or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2009, if the wholesale or retailer dealer can establish that state tax stamps were affixed to the cigarettes prior to January 1, 2009, and if the wholesale or retail dealer can establish that the inventory was purchased prior to January 1, 2009, in comparable quantity to the inventory purchased during the same period of the prior year.

(2) The sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" shall mean an assessment of cigarettes that is conducted by a manufacturer (or under the control and direction of a manufacturer), for the purpose of evaluating consumer acceptance of such cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for such assessment, and in a controlled setting where the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of testing.

(h) This chapter shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.

(76 Del. Laws, c. 100, § 1.)

§ 7118 Certification of compliance by manufacturers.

(a) Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

(1) Each cigarette listed in the certification has been tested in accordance with § 7117 of this title;

(2) Each cigarette listed in the certification meets the performance standard set forth under § 7117(a)(3) of this title;

(3) Each cigarette listed in the certification shall be described with the following information:

a. Brand (i.e., the trade name on the package);
b. Style (i.e., light, ultra light);
c. Length in millimeters;
d. Circumference in millimeters;
e. Flavor (e.g., menthol, chocolate), if applicable;
f. Filter or nonfilter;
g. Package description (e.g., soft pack, box);
h. Marking approved in accordance with § 7119 of this title.
i. The name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and
j. The date that the testing occurred.

(b) Such certifications shall be made available to the Attorney General and the Division of Revenue for the purposes of ensuring compliance with this section. Each cigarette certified under this section shall be recertified every 3 years.

(c) For each cigarette listed in a certification a manufacturer shall pay to the State Fire Marshal a $250 fee. The State Fire Marshal shall have the power to adjust this fee to an amount sufficient only to provide for processing, testing, enforcement and oversight activities related to this chapter.

(d) There is hereby established in the custody of the State Comptroller a special nonlapsing fund to be known as the "Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund." Such fund shall consist of all certification fees submitted by manufacturers, and shall, in addition to any other moneys made available for such purpose, be available to the State Fire Marshal's Office and shall be used solely to support State processing testing, enforcement and oversight activities related to this chapter. All payments from the Cigarette Fire Safety and Firefighter Protection Act Enforcement Fund shall be made on the audit and warrant of the State Treasurer on vouchers certified and submitted by the State Fire Marshal.

(e) If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter, that cigarette shall not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in § 7117 of this title and maintains records of that retesting as required by § 7117 of this title. Any altered cigarette which does not meet the performance standard set forth in § 7117 of this title may not be sold in this State.

(76 Del. Laws, c. 100, § 1.)

§ 7119 Package markings.

(a) Cigarettes that are certified by a manufacturer in accordance with § 7118 of this title shall be marked to indicate compliance with the requirements of § 7117 of this title. Such marking shall be in 8 point font type or larger and consist of:

(1) Modification of the product UPC code to indicate a visible mark printed at or around the area of the UPC code. Such mark may consist of alphanumeric or symbolic character or characters permanently stamped, engraved, embossed or printed in conjunction with the UPC code; or

(2) Any visible combination of alphanumeric or symbolic character or characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(3) Printed, stamped, engraved or embossed test that indicates that the cigarettes meet the standards of this section; or

(4) The letters "FSC", which signifies Fire Standards Compliant appearing in 8 point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

(b) A manufacturer must use only 1 marking and must apply this marking uniformly for all packages (including, but not limited to, packs, cartons and cases) and brands marketed by that manufacturer.

(c) The State Fire Marshal must be notified as to the marking that is selected.

(d) Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the State Fire Marshal for approval. Upon receipt of the request, the State Fire Marshal shall approve or disapprove the marking offered, except that the State Fire Marshal shall approve:

(1) Any marking in use and approved for sale in New York State pursuant to New York Fire Safety Standard for Cigarettes, or

(2) The letters "FSC", which signifies Fire Standards Compliant appearing in 8 point type or larger and permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

(e) Proposed markings shall be deemed approved if the State Fire Marshal fails to act within 10 business days of receiving a request for approved.

(f) No manufacturer shall modify its approved marking unless the modification has been approved by the State Fire Marshal in accordance with this § 7119.

(g) Manufacturers certifying cigarettes in accordance with § 7118 of this title shall provide a copy of such certifications to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package markings utilized

by the manufacturer pursuant to this § 7119 for each retailer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents and retail dealers shall permit the State Fire Marshal, the Director of the Division of Revenue, the Office of the Attorney General, or employees thereof, to inspect markings of cigarette packaging marked in accordance with this section.

(76 Del. Laws, c. 100, § 1.)

§ 7120 Enforcement and penalties.

(a) A manufacturer, wholesale dealer, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of § 7117 of this title shall be subject to a civil penalty not to exceed $100 for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any such person or entity exceed $100,000 during any 30-day period.

(b) A retail dealer who knowingly sells or offers to sell cigarettes in violation of § 7117 of this title shall be subject to a civil penalty not to exceed $100 for each pack of such cigarettes sold or offered for sale provided that in no case shall the penalty against any retail dealer exceed $25,000 during any 30-day period.

(c) In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to § 7118 of this title shall be subject to a civil penalty of at least $75,000, and not to exceed $250,000 for each such false certification.

(d) Any person violating any other provision in this chapter shall be subject to a civil penalty for a first offense not to exceed $1,000, and for a subsequent offense subject to a civil penalty not to exceed $5,000, for each such violation.

(e) Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required by § 7117 of this title shall be subject to forfeiture. Cigarettes forfeited pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(f) The State Fire Prevention Commission is authorized to promulgate regulations as necessary to implement and administer this law.

(g) The State Fire Prevention Commission may, in consultation with the State Fire Marshal, Director of the Division of Revenue and/or the Attorney General, promulgate regulations to conduct random inspections of wholesale dealers, agents, and retail dealers to ensure that only cigarettes complying with this chapter are sold in the State.

(h) In addition to any other remedy provided by the law, the Attorney General may file an action in state court for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the State government because of a violation of this section, including enforcement costs relating to the specific isolation and attorney's fees. In any such action, the Attorney General shall have the same authority to investigate and to obtain remedies if the action were brought (under authorizing statutes and authorities). Each violation of this chapter or of the rules adopted under this section constitutes a separate civil violation for which the Attorney General may obtain relief.

(i) Whenever any law-enforcement personnel or duly authorized representative of the State Fire Marshal shall discover any cigarettes that have not been marked in the manner required by § 7119 of this title, such personnel is hereby authorized and empowered to seize and take possession of such cigarettes. Such cigarettes shall be turned over to the Department of Finance, and shall be forfeited to the State. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that prior to the destruction of any cigarette seized pursuant to these provisions, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(j) The State Fire Marshall is authorized to enforce this chapter as necessary to implement and administer this law.

(76 Del. Laws, c. 100, § 1; 77 Del. Laws, c. 444, §§ 15-18.)

§ 7121 Fire Prevention and Public Safety Fund.

(a) The State Fire Marshal shall assess all civil penalties as outlined in this chapter.

(b) All civil penalties will be paid within 30 days of assessment.

(c) The moneys derived from the civil penalties will be split equally between the State Fire Marshal for enforcement of this section, and the Fire Detection Fund pursuant to § 6637 of this title.

(76 Del. Laws, c. 100, § 1.)

§ 7122 Exemptions.

This chapter shall not be construed to affect the making or manufacturing of cigarillos. A cigarillo shall mean a small cigar or cigarette wrapped in tobacco instead of paper.

(76 Del. Laws, c. 100, § 1.)

§ 7123 Sale outside of Delaware.

Nothing in this chapter shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of § 7117 of this title if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside

the United States, and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this State.

(76 Del. Laws, c. 100, § 1.)

§ 7124 Effective date.

This chapter shall take effect on January 1, 2009, and the requirement that only cigarettes certified as compliant with the performance standard herein may be sold shall not prohibit wholesale dealers or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2009, if the wholesale dealer or retailer can establish that state tax stamps were affixed to the cigarettes prior to January 1, 2009, and if such wholesale dealer or retailer can establish that such inventory was purchased prior to January 1, 2009, in comparable quantity to the inventory purchased during the same period of the prior year. Nothing in this chapter shall be construed to prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of § 7117 of this title if such cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this State.

(76 Del. Laws, c. 100, § 1.)

§ 7125 Effect of federal regulation.

(a) This chapter shall be repealed if a federal reduced cigarette ignition propensity standard that preempts this chapter is adopted and becomes effective.

(b) Notwithstanding any other provision of law, the local government units of this State may neither enact nor enforce any ordinance or other local law or regulations conflicting or preempted by, any provision of this chapter or with any policy of this State expressed by this chapter, whether that policy be expressed by inclusion in this chapter or with any policy of this State expressed by this chapter or by exclusion of that subject from this chapter.

(76 Del. Laws, c. 100, § 1.)

Part VI
Safety
Chapter 72
LIQUEFIED PETROLEUM GAS CONTAINERS

§ 7201 Definitions.

(a) The term "liquefied petroleum gas" as used in this chapter means any material which is composed predominately of any of the following hydrocarbons or mixtures of the same: Propane, propylene, butanes (normal butane and isobutane) and butylenes.

(b) The term "owner" as used in this chapter means any person who holds a written bill of sale under which title or ownership to a container was transferred to such person or any manufacturer of a container who has not sold or transferred ownership thereof by written bill of sale.

(c) The term "person" as used in this chapter means any person, firm or corporation.

(16 Del. C. 1953, § 7201; 58 Del. Laws, c. 95.)

§ 7202 Unlawful use, filling or refilling of containers.

(a) No person except the owner thereof or person authorized in writing by the owner shall fill or refill with liquefied petroleum gas, or any other gas or compound, a liquefied petroleum gas container, or buy, sell, offer for sale, give, take, loan, deliver or permit to be delivered or otherwise use, dispose of or traffic in a liquefied petroleum gas container or containers if the container bears upon the surface thereof in plainly legible characters the name, initials, mark or other device of the owner, nor shall any person other than the owner of a liquefied petroleum gas container or a person authorized in writing by the owner deface, erase, obliterate, cover up or otherwise remove or conceal any name, mark, initial or device thereon.

(b) It shall be unlawful for any person to fill a liquefied petroleum gas container in excess of the amount permitted in the National Fire Protection Association Standard 58, The Liquefied Petroleum Gas Code; or to fill a liquefied petroleum gas container on the property of any person that is not equipped with a fill tube or gauge; provided that a liquefied petroleum gas container may be filled by weight if the liquefied petroleum gas container is weighed before and after filling.

(16 Del. C. 1953, § 7202; 58 Del. Laws, c. 95; 76 Del. Laws, c. 357, § 1.)

§ 7203 Presumptive evidence of unlawful use.

The use of a liquefied petroleum gas container or containers by any person other than the person whose name, mark, initial or device is on the liquefied petroleum gas container or containers without written consent, or purchase of the marked and distinguished liquefied petroleum gas container for the sale of liquefied petroleum gas or filling or refilling with liquefied petroleum gas, or possession of the liquefied petroleum gas containers by any person other than the person having the person's name, mark, initial or other device thereon, without the written consent of such owner, shall be presumptive evidence of the unlawful use, filling or refilling or trafficking in of such liquefied petroleum gas containers.

(16 Del. C. 1953, § 7203; 58 Del. Laws, c. 95; 70 Del. Laws, c. 186, § 1.)

§ 7204 Arrest for violation.

If any person or the president, secretary, treasurer or other officer of any corporation mentioned in § 7201 of this chapter, or the person's duly authorized agent, who has personal knowledge of the facts, makes oath in writing before any justice of the peace that the party making such affidavit believes that any of that party's liquefied petroleum gas containers marked with the name, initials, mark or any other device of the owner are in the possession of or being used by or being filled or refilled by any person who is not the owner or agent of the owner and who is in the possession of filling or refilling or using any such containers without the written consent of the owner of the name, initials or trademark, the justice of the peace, when satisfied that there is probable cause, may issue a warrant and cause the person designated to be brought into court for the purpose of discovering and obtaining the container, and if the justice of the peace finds that the person has been guilty of a violation of § 7202 of this chapter, the justice may impose the punishment herein prescribed and the justice shall also award the possession of property acquired by such warrant to the owner thereof.

(16 Del. C. 1953, § 7204; 58 Del. Laws, c. 95; 70 Del. Laws, c. 186, § 1.)

§ 7205 Penalty and jurisdiction.

(a) Any person who violates § 7202 of this chapter shall be imprisoned not more than 90 days or fined not more than $300, or both, for each separate offense.

(b) Justices of the peace shall have original jurisdiction over this offense.

(16 Del. C. 1953, § 7205; 58 Del. Laws, c. 95.)

§ 7206 Disposition of fines and costs.

The costs incurred in the enforcement of this chapter shall be assessed and collected in the same manner as in other criminal cases, and all fines collected by virtue of this chapter shall be turned over in the same manner and for the same purposes as criminal and misdemeanor fines are disposed of by law.

(16 Del. C. 1953, § 7206; 58 Del. Laws, c. 95.)

§ 7207 Nonapplicability to small containers.

Nothing in this chapter shall apply to or shall be construed to affect a liquefied petroleum gas container having a total capacity of 30 pounds or less.

(16 Del. C. 1953, § 7207; 58 Del. Laws, c. 95.)

§ 7208 Ownership of liquefied petroleum gas containers.

Any liquefied petroleum gas containers placed upon land, whether aboveground or underground, by a person other than the owner of the land, pursuant to a lease or bailment agreement between the owner of the land and the person placing such containers on the land, shall remain movable property during the term of such lease or bailment, and the ownership thereof shall not be affected by the sale, either private or judicial, through foreclosure, execution process or otherwise, of the land upon which they are placed, nor shall the ownership of such containers by the person placing them upon the land be subordinate to the rights of any purchaser of the land at any such sale. The owner of any liquefied petroleum gas container removed from any property under this section shall be responsible for filling in the hole resulting from the removal of such container.

(61 Del. Laws, c. 29, § 1; 62 Del. Laws, c. 66, § 1.)

Part VI
Safety
Chapter 73
PRODUCTS UTILIZING PETROLEUM DERIVATIVES

§ 7301 Selling without fire test; method of testing.

(a) No person shall sell or offer for sale, within the limits of this State, any kerosene, headlight or other oil for illuminating purposes produced from petroleum, which will not bear the fire test of at least 115° Fahrenheit.

(b) The fire test shall be determined by the use of the Tagliabue instrument or apparatus in method and manner as follows: Partially fill the metal cup with water about 60° Fahrenheit temperature, leaving room for displacement by the glass oil cup; fill the glass oil cup with the oil to be tested, to within one-quarter of an inch of the top of the cup, remove all oil from the top edge of the cup using soft paper for such purpose; see that the surface of oil in the cup is free from air bubbles; suspend the thermometer with the bulb just below the surface of the oil; heat with a small alcohol flame; when the thermometer indicates 100° Fahrenheit; remove flame and allow temperature to run up to 103° Fahrenheit; at which point try for flash with small bead of fire on the end of a string, or otherwise, held not less than one-quarter of an inch above the surface of the oil; if the oil does not flash or if it flashes and does not continue to burn, replace flame, work temperature up 4° Fahrenheit more, then remove flame, allow temperature to run up 3° Fahrenheit more and again try to flash; if the oil flashes, or if it flashes and does not continue to burn, repeat this operation until 114° Fahrenheit are reached, at which point, if the oil does not flash or if it flashes and does not continue to burn, it shall be deemed and considered as of not less than 115° fire test; but the oil thus tested shall not be deemed or considered as of not less than 115° fire test if it flashes and continues to burn at 114° Fahrenheit or at a lower temperature.

(c) The temperature in making the test, as set forth in subsection (b) of this section, shall not be raised or allowed to rise in any instance faster than 2° Fahrenheit per minute.

(14 Del. Laws, c. 411, § 1; 24 Del. Laws, c. 161, § 1; Code 1915, § 3454; Code 1935, § 3924; 16 Del. C. 1953, § 7301.)

§ 7302 Tests by State Chemist; fees.

(a) The State Chemist shall make tests in the method or manner as provided in § 7301 of this title to determine the fire test of any sample of kerosene, headlight or other oil for illuminating purposes produced from petroleum sold or offered for sale in this State which any citizen thereof may forward to the State Chemist for such test. Each sample sent shall not be less in quantity than one pint and shall be forwarded by express, charges prepaid, contained in a glass, earthen or metal receptacle which has not been used to contain any other substance, securely sealed and accompanied by a fee of $1. If such sample stands the legal fire test described in § 7301 of this title and will not burn below 115° Fahrenheit, the State Chemist may retain the $1 as a fee, but in the event the sample fails to stand the legal test by burning below 115° Fahrenheit, the $1 shall be returned to the sender and a fee of $5 charged against the dealer from whom the sample has been obtained, which shall be collected in the same manner as fines are collected, subject to the same rights of appeal.

(b) The State Chemist may take from any reservoir, tank, barrel, can or other receptacle in this State, used for holding or storing kerosene, headlight or other oil for illuminating purposes produced from petroleum, a sample not exceeding 1 pint from any such receptacle, for the purpose of submitting and subjecting such oil to a fire test as provided in § 7301 of this title.

(14 Del. Laws, c. 411, § 2; 24 Del. Laws, c. 161, § 2; Code 1915, § 3455; Code 1935, § 3925; 16 Del. C. 1953, § 7302.)

§ 7303 Report of test failures to Attorney General.

(a) The State Chemist, when a tested sample of kerosene, headlight or other oil for illuminating purposes produced from petroleum is found to be of a fire test less than that required by the provisions of § 7301 of this title, shall report the fact to the Attorney General giving the name of the owner or owners of the oil in any reservoir, tank, barrel, can or other receptacle from which the tested sample was taken together with a certificate showing the result of such fire test.

(b) The Attorney General, upon receipt of the report and certificates from the State Chemist, shall proceed in a court of competent jurisdiction against the owner or owners of the kerosene, headlight or other oil for illuminating purposes produced from petroleum from which the tested sample was taken, if such owner or owners be individuals and against the officers thereof if the owner of such oil be a domestic corporation and against the resident agent in this State if the owner of such oil be a foreign corporation or nonresident individual or copartnership.

(14 Del. Laws, c. 411, § 2; 24 Del. Laws, c. 161, § 2; Code 1915, § 3455; Code 1935, § 3925; 16 Del. C. 1953, § 7303.)

§ 7304 Civil liability.

If any person sustains property damage or personal injury by reason of a violation of this chapter by another person, the person guilty of the violation shall be liable to the person injured for damages sustained thereby.

(14 Del. Laws, c. 411, § 3; Code 1915, § 3456; Code 1935, § 3926; 16 Del. C. 1953, § 7304; 70 Del. Laws, c. 186, § 1.)

§ 7305 Legislative intent.

It is hereby declared that modern, efficient, safety-tested portable oil-fueled heaters may be offered for sale, sold and used in this State. However, fire hazards and other dangers to the health, safety and welfare of the inhabitants of this State may exist in the absence of

legislation the purpose of which is to reasonably assure that portable oil-fueled heaters offered for sale to, sold to and used by inhabitants of this State are modern, efficient and safety tested. It is the intent of the General Assembly to hereinafter set forth such legislation.

(14 Del. Laws, c. 411, § 2; 24 Del. Laws, c. 161, § 2; Code 1915, § 3455; Code 1935, § 3925; 16 Del. C. 1953, § 7305; 63 Del. Laws, c. 117, §§ 2, 3.)

§ 7306 Definitions.

As used in this chapter:

(1) "1-K" or "K-1 kerosene" means kerosene that has been distilled from petroleum to meet the current specifications of A.S.T.M. (American Society for Testing of Materials) #D3699 (1978) for 1-K.

(2) "2-K" or "K-2 kerosene" means kerosene that has been distilled from petroleum to meet the current specifications of A.S.T.M. #D3699 (1978) for 2-K.

(3) "Approved" means acceptable to the authority having jurisdiction over the sale and use of portable oil-fueled heaters as hereinafter set forth.

(4) "Listed" means any portable oil-fueled heater which has been evaluated with respect to reasonably foreseeable hazards to life and property by any one of the following nationally recognized testing or inspection agencies: Underwriters Laboratories, Inc., Canadian Standards Association, Factory Mutual System, Applied Research Laboratories of Florida, Inc., Electrical Testing Laboratory and which has been authorized by the State Fire Prevention Commission as being reasonably safe for its specific purpose and shown in a list published by such agency and bears the mark, name or symbol of such agency as indication that it has been so authorized. Such evaluation shall include but not be limited to evaluation of the requirements hereinafter set forth. Similar evaluations by a nationally recognized testing or inspection agency other than the above mentioned which are approved by the State Fire Marshal may be listed as well.

(5) "Oil" means any liquid fuel with a flash point of greater than 100 degrees Fahrenheit, including but not limited to kerosene.

(6) "Portable oil-fueled heater" means any nonflue-connected, self-contained, self-supporting, oil-fueled, heating appliance equipped with an integral reservoir, designed to be carried from 1 location to another.

(7) "Structure" means any building or completed construction of any kind, including but not limited to, private dwellings or to any structure used for business, commercial or industrial purposes, but not including buildings under construction or buildings used solely for agricultural purposes.

(63 Del. Laws, c. 117, § 4; 64 Del. Laws, c. 31, § 1.)

§ 7307 Sale and use of portable oil-fueled heaters.

Approved portable oil-fueled heaters may be offered for sale, sold and used in structures in this State; however, the use of a portable oil-fueled heater in multi-unit residential buildings is specifically prohibited. Any portable oil-fueled heaters which are not approved may not be offered for sale, sold or used in structures in this State. Any portable oil-fueled heater may be offered for sale, sold and used in locations other than structures unless specifically prohibited by legislation of this State. Any listed portable oil-fueled heater shall be approved if it satisfies the requirements hereinafter set forth and if the supplier has certified to the State Fire Prevention Commission that it is listed and in compliance herewith.

(63 Del. Laws, c. 117, § 5.)

§ 7308 Requirements for approved portable oil-fueled heaters.

Approved portable oil-fueled heaters must adhere to the following requirements:

(1) Approved portable oil-fueled heaters must have labeling affixed thereto such as to caution and inform concerning:

a. Provision of an adequate source of ventilation when the heater is in operation;

b. Use of only suitable fuel for the heater;

c. Proper manner of refueling;

d. Proper placement and handling of the heater when in operation; and

e. Proper procedures for lighting, flame regulation and extinguishing the heater.

(2) Approved portable oil-fueled heaters must be packaged with instructions such as to inform concerning proper maintenance and operation.

(3) Approved portable oil-fueled heaters must be constructed with a low center of gravity and minimum tipping angle of 33 degrees from the vertical with an empty reservoir.

(4) Approved portable oil-fueled heaters must have an automatic safety shut-off device or inherent design feature which eliminates fire hazards in the event of tipover and otherwise conform with the standards set forth in National Fire Protection Association (NFPA) No. 31.

(5) Approved portable oil-fueled heaters must not produce carbon monoxide at rates which create a hazard when operated as intended and instructed.

(63 Del. Laws, c. 117, § 6.)

§ 7309 Storage of kerosene.

Any portable containers in which kerosene is stored must not be red in color, nor may they be made of glass. They must be clearly marked "kerosene".

(63 Del. Laws, c. 117, § 7.)

§ 7310 Authority of State Fire Prevention Commission.

The State Fire Prevention Commission shall be the authority having jurisdiction over the sale and use of portable oil-fueled heaters and only this chapter shall govern the sale and use of portable oil-fueled heaters in this State.

(63 Del. Laws, c. 117, § 7.)

§ 7311 Penalties; jurisdiction.

Whoever violates this chapter shall be fined not more than $200 for each offense. The Superior Court shall have jurisdiction to adjudicate offenses under this chapter.

(63 Del. Laws, c. 117, § 8.)

§ 7312 Kerosene labeling requirements.

1-K and 2-K kerosene which is kept, offered, exposed for sale or sold within the State shall be properly identified as meeting A.S.T.M. standards. Such identification requirements shall apply to every dispenser and delivery ticket (manifest or invoice) accompanying the transfer of kerosene which is kept, offered, exposed for sale or sold in the State. Furthermore, dispensers or retail pumps of kerosene fuels other than 1-K must bear the following warning label in a conspicuous place: A.S.T.M. grade 2-K kerosene is not suitable for use in unvented (flueless) portable heaters. Evidence for the quality of 1-K or 2-K from the supplier of kerosene shall be maintained at the retail sales location and shall be available for state inspection during normal business hours.

(64 Del. Laws, c. 31, § 2.)

§ 7313 Kerosene inspection, sampling and testing.

The weights and measures section of the State Department of Agriculture shall be responsible for the inspection, sampling and testing of kerosene sold by dealers within the State to determine compliance with labeling requirements. Tests shall be conducted on kerosene kept, offered, exposed for sale or sold within the State in order to determine if the product specifications meet the minimum specifications of the type of product being sold. A "stop sale" shall be issued immediately by the Department of Agriculture for all kerosenes found to be mislabeled or misrepresented.

(64 Del. Laws, c. 31, § 2.)

§ 7314 Penalties.

Notwithstanding § 7311 of this title, persons who do not comply with labeling and/or certification provisions of §§ 7312 and 7313 of this title shall be punished by a fine of not less than $25 or more than $200, or by imprisonment for not more than 1 month, or by both such fine and imprisonment; and upon a subsequent conviction thereof, they shall be punished by a fine of not less than $50 or more than $500, or by imprisonment for not more than 6 months, or by both such fine and imprisonment. The Superior Court shall have jurisdiction to adjudicate offenses under this section.

(64 Del. Laws, c. 31, § 2.)

Part VI
Safety
Chapter 74
RADIATION CONTROL

§ 7401 Declaration of policy.

It is the policy of this State in furtherance of its responsibilities to protect the public health and safety to:

(1) Institute and maintain a regulatory program for sources of ionizing radiation so as to provide for (i) compatibility with the standards and regulatory programs of the federal government, (ii) a single, effective system of regulation within the State, and (iii) a system consonant insofar as possible with those of other states;

(2) Institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public; and

(3) Encourage the constructive uses of radiation, and to prohibit and prevent exposure to ionizing radiation in amounts which are or may be detrimental to health.

(16 Del. C. 1953, § 7401; 56 Del. Laws, c. 266, § 1; 67 Del. Laws, c. 192, § 1.)

§ 7402 Purpose.

It is the purpose of this chapter to effectuate the policies set forth in § 7401 of this title by providing a program to:

(1) Effectively regulate sources of ionizing radiation for the protection of occupational and public health and safety;

(2) Promote an orderly regulatory pattern within the State, among the states and between the federal government and the State and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) Define regulatory responsibilities with respect to radioactive material; and

(4) Permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

(5) [Repealed.]

(16 Del. C. 1953, § 7402; 56 Del. Laws, c. 266, § 1; 67 Del. Laws, c. 192, §§ 2, 3; 78 Del. Laws, c. 336, § 1.)

§ 7403 Definitions.

As used in this chapter:

(1) "Authority" means the Authority on Radiation Protection created by § 7404 of this title.

(2) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles, but not sound or radio waves or visible, infrared or ultraviolet light.

(3) "Person," in addition to the definitions contained in § 302 of Title 1, means any public or private institution, group, agency, political subdivision of this State, any other state or political subdivision or agency thereof and any legal successor, representative, agent or agency of the foregoing, other than the United States Nuclear Regulatory Commission or any successor thereto and other than federal government agencies licensed by the United States Nuclear Regulatory Commission or any successor thereto.

(4) "Radioactive material" means any material (solid, liquid or gas) which emits ionizing radiation spontaneously.

(5) "Users of ionizing radiation" means persons who supervise the application of ionizing radiation and/or apply ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(16 Del. C. 1953, § 7403; 56 Del. Laws, c. 266, § 1; 60 Del. Laws, c. 698, § 1; 67 Del. Laws, c. 192, § 4; 76 Del. Laws, c. 249, § 1; 78 Del. Laws, c. 336, § 1.)

§ 7404 Authority on Radiation Protection.

(a) There is created an Authority on Radiation Protection which shall be governed in accordance with Authority bylaws, established to ensure integrity, accountability and transparency regarding decisions of the Authority which impact the citizens of Delaware. The Authority shall consist of the following members:

(1) The Secretary of the Department of Health and Social Services or the Secretary's duly authorized designee;

(2) The Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee;

(3) The Lead Administrator of the Office of Radiation Control in the Division of Public Health, Department of Health and Social Services and 12 other persons who shall be appointees of the Governor to include:

a. One appointee shall be from the Medical Society of Delaware;

b. One appointee shall be from the Delaware State Osteopathic Association;

c. One appointee shall be from the Dental Society of Delaware;

d. One appointee shall be a qualified member from the staff or faculty of the University of Delaware or Delaware State University;

e. One appointee shall be a nonmedical member from industry; and

f. The remaining 7 shall be appointed members of the public who need not fall into any of the other categories for membership on the Authority, but who have an interest in radiation protection. Each nonpublic member shall have had training in 1 or more of the following fields: radiology, nuclear medicine, radiation oncology, radiation physics, health physics or related sciences with specialization in ionizing radiation, provided however, that not more than 2 persons shall be specialists in any 1 of the above-named fields. Each county shall be represented by at least 2 members. Each of the 15 members shall have 1 vote.

(b) Authority members appointed by the Governor shall be appointed for a term of 3 years. Each Authority member shall hold over after the expiration of the member's term until the member's successor has been appointed and has taken office. Vacancies shall be filled for the unexpired term.

(c) The Secretary of Health and Social Services or the Secretary's duly authorized designee shall be Secretary of the Authority, and shall provide staffing and facilities required to enable the Office of Radiation Control to deliver core services as defined by the Delaware Radiation Control Regulations, as promulgated or amended by the Authority. The Office of Radiation Control in the Department of Health and Social Services shall be the administrative agent for the Authority. The Office of Radiation Control in the Department of Health and Social Services shall make such inspections, conduct such investigations, collect fees or administrative penalties established or levied by the Authority, administer such revenue through the General Fund, and do such other acts as may be necessary to carry out this chapter within the limits of the appropriation made for this purpose. The administrative agent shall have all of the powers conferred by law upon the Authority except adopting the rules and regulations provided for in this chapter, subject, however, to the general direction of the Authority.

(d) [Repealed.]

(e) The Authority shall elect a Chairperson to serve for at least 1 year from those members appointed by the Governor. The Chairperson shall lead biennial review of the Authority bylaws, chair public hearings and issue approval of regulations amended or promulgated by the Authority. A majority of the Authority shall constitute a quorum to transact its business.

(f) The Authority shall hold at least 4 regular meetings each calendar year and such special meetings as it deems necessary.

(g) The Authority shall establish and provide biennial review of the Authority bylaws.

(h) The Authority shall review policies and programs relating to control of ionizing radiation and make recommendations thereon to the agencies of the State.

(i) The Authority may aid the Department of Health and Social Services in the employment, training of and prescribing of the power and duties of such individuals as may be necessary to carry out this chapter.

(16 Del. C. 1953, § 7404; 56 Del. Laws, c. 266, § 1; 57 Del. Laws, c. 591, §§ 16, 17; 60 Del. Laws, c. 698, § 2; 64 Del. Laws, c. 302, §§ 1, 2; 67 Del. Laws, c. 192, § 5; 69 Del. Laws, c. 67, § 2; 70 Del. Laws, c. 149, § 198; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 249, § 2; 78 Del. Laws, c. 336, § 1.)

§ 7405 Rules and regulations; adoption; notice; hearing.

(a) The Authority shall adopt rules and regulations as may be necessary for the control of sources of ionizing radiation. Prior to adoption of any rule or regulation, the Authority shall publish or otherwise circulate notice of its intended action and afford interested parties an opportunity, at a public hearing, to submit data and views orally or in writing. Such rules and regulations may provide, subject to subsection (c) of this section, for the establishment of fees by the Authority to fund the issuance of licenses, certifications or registrations, and other activities deemed appropriate to meet the requirements of this statute. No code, rule, regulation or amendment or repeal thereof shall be effective until 60 days after adoption thereof.

(b) Any fee established by the Authority shall not be effective until enacted into law by an act of the General Assembly.

(c) Fees are established for issuance of annual registration permits to radiation machine facilities located within the State, according to the fee schedule below, with appropriated revenue to be used for fee-supported program enhancements, consistent with state budgetary procedures.

Category I: Facilities with a total of 5 or more of the medical modalities or nonmedical modalities listed below: $1370.

Category II: Facilities with a total of 3 or 4 of the medical modalities or nonmedical modalities listed below: $1030.

Category III: Facilities with 2 of the medical modalities listed below: $690.

Category IV: Facilities with 1 of the medical modalities listed below, and an annual patient workload of 750 examinations or more: $275.

Category V: Facilities with 1 of the medical modalities listed below, and an annual patient workload of less than 750 examinations, and all other radiation installations with 1 or 2 of the nonmedical modalities listed below except as listed under Category VI: $140.

Category VI: Dental, podiatric, bone densitometry or veterinary installations: $75.

For purposes of the fee schedule set out above, the following definitions shall apply:

"Medical modalities" shall mean radiography, fluoroscopy, computed tomography, angiography, stereotactic breast biopsy systems, and radiation therapy, utilized in humans.

"Nonmedical modalities" shall mean radiography, fluoroscopy, analytical equipment (including electron microscopes, fluorescence analysis and X-ray diffraction equipment), computed tomography, and particle accelerators, not utilized on humans.

(16 Del. C. 1953, § 7405; 56 Del. Laws, c. 266, § 1; 60 Del. Laws, c. 698, § 3; 76 Del. Laws, c. 249, § 2; 78 Del. Laws, c. 336, § 1.)

§ 7406 Licensing and registration of sources and users of ionizing radiation.

(a) The Authority shall promulgate rules and regulations for regulation of radiation sources and devices or equipment utilizing such sources and for the registration or exemption of such sources, devices or equipment. Such rules or regulations shall provide for the amendment, suspension or revocation of such licenses or registration.

(b) The Authority may require licensing or certification of users of ionizing radiation.

(c) The Authority may provide for recognition of other state or federal licenses or registrations.

(16 Del. C. 1953, § 7406; 56 Del. Laws, c. 266, § 1; 60 Del. Laws, c. 698, § 4; 67 Del. Laws, c. 192, § 6; 78 Del. Laws, c. 336, § 1.)

§ 7407 Inspection.

The Authority or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violations of this chapter and rules and regulations issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly authorized designated representative.

(16 Del. C. 1953, § 7407; 56 Del. Laws, c. 266, § 1.)

§ 7408 Records.

(a) The Authority or its duly authorized representatives shall require each person who possesses or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer or disposal and such other records as the Authority may require subject to such exemptions as may be provided by rules or regulations.

(b) The Authority or its duly authorized representatives shall require each person who possesses or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by the rules and regulations of the Authority. Copies of these records and those required to be kept by this section shall be submitted to the Administrative Agent or Authority on request.

(16 Del. C. 1953, § 7408; 56 Del. Laws, c. 266, § 1; 78 Del. Laws, c. 336, § 1.)

§ 7409 Federal-state agreements.

(a) The Governor, upon the recommendation of the Authority, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this State.

(b) In the event that the Governor enters into an agreement with the federal government all federal licenses which are valid on the effective date of such agreement shall have the force and effect of a state license or registration issued by the Authority. Such licenses shall be deemed to expire on a date which shall be the earlier of (1) the date of expiration specified in the federal license or (2) 90 days from receipt from the Authority of notice that the federal license will no longer be recognized by the Authority.

(16 Del. C. 1953, § 7409; 56 Del. Laws, c. 266, § 1.)

§ 7410 Inspection agreements and training programs.

(a) Subject to the approval of the Governor, the Authority may enter into agreements with the federal government, other states or interstate agencies for inspections or other functions relating to control of sources of ionizing radiation.

(b) The Authority or its duly authorized representatives may institute training programs for the purpose of qualifying personnel to carry out this chapter and may make personnel available for participation in any program or programs of the federal government, other states or interstate agencies.

(16 Del. C. 1953, § 7410; 56 Del. Laws, c. 266, § 1; 78 Del. Laws, c. 336, § 1.)

§ 7411 Conflicting laws.

Ordinances, resolutions or regulations of a governing body or of any other governmental unit relating to radioactive materials shall not be superseded by this chapter if they are consistent with this chapter and rules and regulations hereunder.

(16 Del. C. 1953, § 7411; 56 Del. Laws, c. 266, § 1; 78 Del. Laws, c. 336, § 1.)

§ 7412 Administrative procedure and judicial review; emergency rules.

(a) In any proceeding under this chapter (1) for the issuance or modification of rules and regulations relating to control of sources of ionizing radiation, or (2) for granting, suspending, revoking or amending any license or registration, or (3) for determining compliance

with, or granting exceptions from, rules and regulations of the Authority, the Authority shall afford an opportunity for a hearing on the record upon the request of any person who may be affected by the action of the Authority and shall admit any such person as a party to such proceeding.

(b) Whenever the Administrative Agent finds that an emergency exists requiring immediate action to protect the public health and safety, the Administrative Agent may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Such regulation or order may be effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but on application to the Authority shall be afforded a hearing within 30 days. On the basis of such hearing, the emergency regulation or order shall be continued, modified or revoked within 30 days after such hearing.

(c) Any final order entered in any proceeding by the Authority or the Administrative Agent shall be subject to judicial review by the Superior Court of this State.

(16 Del. C. 1953, § 7412; 56 Del. Laws, c. 266, § 1.)

§ 7413 Injunctions.

Whenever, in the judgment of the Authority, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter or any rule, regulation or order issued thereunder, the Authority may request the Attorney General to make application to the Court of Chancery for an order enjoining such acts or practices or for an order directing compliance and, upon a showing by the Authority that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order or other order may be granted.

(16 Del. C. 1953, § 7413; 56 Del. Laws, c. 266, § 1.)

§ 7414 Prohibited uses.

It is unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own or possess any source of ionizing radiation unless licensed by, the Nuclear Regulatory Commission and registered with or specifically exempted by the Authority in accordance with this chapter.

(16 Del. C. 1953, § 7414; 56 Del. Laws, c. 266, § 1; 78 Del. Laws, c. 336, § 1.)

§ 7415 Impounding of materials.

The Authority may, in the event of an emergency, order the impounding of sources of ionizing radiation, with the approval of the Nuclear Regulatory Commission when deemed necessary, in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder.

(16 Del. C. 1953, § 7415; 56 Del. Laws, c. 266, § 1; 76 Del. Laws, c. 249, § 1; 78 Del. Laws, c. 336, § 1.)

§ 7416 Penalties; jurisdiction of Superior Court.

Whoever violates any of this chapter or rules, regulations or orders of the Authority shall be assessed an administrative penalty in an amount not to exceed $500 for a first offense, an amount not to exceed $750 for any subsequent offense. Each violation shall be considered a separate offense.

(16 Del. C. 1953, § 7416; 56 Del. Laws, c. 266, § 1; 76 Del. Laws, c. 249, § 3.)

§ 7417 Storage of radioactive material.

(a) No facility for the permanent deposit, storage, reprocessing or disposal of spent nuclear fuel elements, or for the permanent deposit, storage, reprocessing or disposal of high- or low-level radioactive waste material, shall be constructed or established in this State unless the Authority on Radiation Protection in consultation with the U.S. Nuclear Regulatory Commission first finds that such facility promotes the general good of the State and approves, after a public hearing, a petition for the approval of such facility.

(b) No high-level waste material shall be held in temporary storage for longer than 5 years.

(c) No low-level radioactive waste material shall be held in temporary storage for longer than 10 years.

(d) Whenever the Authority on Radiation Protection finds that the continued presence of a facility for the deposit, storage, reprocessing or disposal of materials in subsection (a) of this section is injurious to the public welfare, the Authority in consultation with the U.S. Nuclear Regulatory Commission shall issue its order shutting the facility and requiring immediate removal of such material as follows.

(61 Del. Laws, c. 432, § 1; 67 Del. Laws, c. 192, § 7; 70 Del. Laws, c. 145, § 1; 78 Del. Laws, c. 336, § 1.)

§ 7418 Radioactive material originating in another state.

The Authority on Radiation Protection shall not permit the deposit in Delaware, for any period of time, of any radioactive waste material set forth in § 7417(a) of this title originating in any other state.

(61 Del. Laws, c. 432, § 1; 67 Del. Laws, c. 192, § 8.)

Part VI
Safety
Chapter 74B
OVERHEAD HIGH-VOLTAGE LINE SAFETY

§ 7401B Short title.

This chapter shall be known and cited as the "Overhead High-Voltage Line Safety Act".

(72 Del. Laws, c. 193, § 1.)

§ 7402B Definitions.

(1) "Authorized person" means:

a. A qualified employee of a public utility which produces, transmits or delivers electricity, or a qualified employee of an approved contractor of such public utility;

b. A qualified employee of a public utility which provides communication services to state, county or municipal agencies which have authorized circuit construction on or near the poles or structures of a public utility;

c. A qualified employee of an industrial plant whose work relates to the electrical system of the industrial plant;

d. A qualified employee of a cable television or communication services company or an employee of a contractor of a cable television or communication services company if specifically authorized by the owner of the poles to make cable television or communication services attachments;

e. A qualified employee or agent of state, county or municipal agencies that have or whose work relates to overhead electrical lines or circuit construction or conductors on poles or structures of any type.

(2) "Dangerous proximity" means a distance up to and including 10 feet of high-voltage lines, or within such greater distances as may be set forth in the current editions and any subsequent revisions of the regulations of the United States Occupational Safety and Health Administration (29 C.F.R. § 1902.1 et seq.) and the National Electrical Safety Code.

(3) "Field visitation" means direct physical observation of electrical lines, facilities and/or appliances by an authorized representative of the utility operating such line, facility and/or appliance.

(4) "High voltage line" or "high voltage overhead line" means:

a. An electric line that is installed above ground; and

b. Has a voltage in excess of 600 volts measured between conductors or between a conductor and the ground.

(5) "Person(s)" means any individual, firm, joint venture, partnership, corporation, association, municipality, other political subdivision, state or federal governmental unit, department or agency, state cooperative, association, joint stock association and shall include any assignee, trustee, receiver or personal representative thereof.

(6) "Public utility" means every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that operates within this state, any steam, manufactured gas, natural gas, electric light, heat, power, water, telephone, excluding telephone service provided by cellular technology, or by domestic public land mobile radio service or heating oil) for residential consumption directly to residences by means of a pipeline) service, system, plant or equipment, for public use.

(7) "Qualified employee" means an individual who has been trained in working in dangerous proximity to high voltage lines.

(72 Del. Laws, c. 193, § 1.)

§ 7403B Presumption.

Until and unless a field visitation or written determination is obtained from the public utility operating an electric line that is above ground level and such visitation or writing results in a determination that states otherwise, there is a rebuttable presumption that the electric line is:

(1) To be energized at all times after installation or erection; and

(2) To have a voltage of more than 600 volts.

(72 Del. Laws, c. 193, § 1.)

§ 7404B Activity near overhead lines; safety restrictions.

Unless the Field Visitation or written approval described in § 7402B(3) of this title has been obtained and/or there is a written determination that the line is not energized pursuant to § 7402B(3) of this title:

(1) A person shall not, individually or through an agent or employee, require or permit any person to perform any function or activity upon any land, building, highway or other premises if at any time during the function or activity such person will be required or permitted to place himself or herself, or will be placed within dangerous proximity of any high voltage overhead line, or such person will use tools or materials which will be placed by said person within dangerous proximity of any such high voltage overhead line.

(2) A person shall not, individually or through an agent or employee, operate any mechanical equipment, hoisting equipment, load equipment or equipment of any description so that any portion of such equipment enters into dangerous proximity of any high voltage overhead line.

(72 Del. Laws, c. 193, § 1.)

§ 7405B Activity in dangerous proximity to high voltage overhead lines; clearance arrangements, procedures, notice.

If any person intends to carry on any function, activity, work or operation within dangerous proximity of any high voltage overhead line, the person responsible for performing the function, activity, operation or work shall promptly notify the public utility operating the high voltage line. The person may perform such task only after mutually agreeable measures to prevent contact with the applicable high voltage line(s) ("preventive measures") have been established and the public utility has given written approval to take such measures and perform the task. Thereafter, such work shall be performed only in accordance with the restrictions or conditions described in such written approval. Such preventive measures may include, but may not be limited to:

(1) Coordination of the work and construction schedules between the utility and the person responsible for performing the work;

(2) The placement of temporary mechanical barriers to separate and prevent contact between material, equipment and/or persons and the high voltage line;

(3) Temporary de-energization and grounding the high voltage lines; and/or

(4) Temporary relocation or raising of the high voltage overhead lines.

At the sole discretion of the utility, costs incurred in devising and implementing such preventive measures shall be borne by the person responsible for performing the work in dangerous proximity to the high voltage overhead line.

(72 Del. Laws, c. 193, § 1.)

§ 7406B Penalties and civil liability.

(1) Any person and/or agent of a person who violates this chapter may be subject to a civil penalty in an amount not to exceed $1,000 for each violation, to be imposed by the court in favor of the State to be deposited in the General Fund.

(2) If a violation of this chapter results in physical or electrical contact with any high voltage overhead line, the person violating or causing this chapter to be violated is liable to the public utility for all damages to the overhead line and related facilities and all costs and expenses, including damages owing to third persons, and cost of defense incurred by the public utility or such third persons as a result of such contact.

(72 Del. Laws, c. 193, § 1.)

§ 7407B Exemptions.

This chapter does not apply to construction, reconstruction, operation or maintenance of overhead electrical or communication circuits or conductors and their supporting structures or electrical generating, transmission or distribution systems or communication systems by an authorized person or to any other acts performed within the scope of employment of an authorized person and requiring such authorized person to work in contact with or in proximity to such overhead circuits, conductors, structures and systems.

(72 Del. Laws, c. 193, § 1.)

§ 7408B Jurisdiction.

The Superior Court shall have jurisdiction over violations of this chapter.

(72 Del. Laws, c. 193, § 1.)

Part VII
Building and Plumbing
Chapter 75
FIRE ESCAPES AND EXITS

§ 7501 Buildings requiring fire escapes; exceptions.

(a) The owner of any building which is more than 2 stories in height and which is used in the third or any higher story in whole or in part as a college, seminary, schoolhouse, hotel, hospital, asylum, almshouse, a factory or workshop, or as a tenement-house, or when rooms are let to families or lodgers or for the accommodation of organized associations of any description shall be required to furnish such building with sufficient permanent fire escapes from the third and all higher stories, which escapes shall be kept and maintained in good order.

(b) The fire escapes may be by means of stairways or ladders outside the building or by stairways in a separate tower or structure furnished with safe and easy communication with such building.

(c) This chapter shall not apply to any building whatever that is already supplied with 2 or more independent stairways leading from the highest story to the ground floor if the stairways shall not be nearer to each other at any point than a distance of 60 feet.

(16 Del. Laws, c. 546, § 1; Code 1915, § 3460; Code 1935, § 3930; 16 Del. C. 1953, § 7501.)

§ 7502 Inspections and certificates of compliance; fee.

(a) The chief fire officer of the fire department in any city, town or borough where there may be such officers or, if there be no such officer therein, then the mayor or chief officer thereof, and in all other places the clerk of the school district wherein any such building is located, shall examine fire escapes as to their suitableness and sufficiency, whether as to quality, location or number.

(b) If upon the examination the fire escapes are found to be sufficient and suitable, the person examining shall give the owner of such building or some one of them, if more than 1, a certificate stating such examination and the person's approval, which certificate shall be good for 2 years, at the expiration of which time another examination shall be had and a like certification given. In New Castle County an inspection may be made by the County Building Inspector.

(c) The certificate of approval shall be evidence of sufficient compliance with the requirements of this chapter and shall protect such owner from any penalty therein prescribed during the time for which it may have been given.

(d) The fee for the examination shall be $1.

(16 Del. Laws, c. 546, § 2; Code 1915, § 3461; Code 1935, § 3931; 46 Del. Laws, c. 304, § 1; 16 Del. C. 1953, § 7502; 57 Del. Laws, c. 424; 70 Del. Laws, c. 186, § 1.)

§ 7503 Regulation of doors in public places.

All public schoolhouses, theatres, lecture rooms, churches and public halls where large numbers of persons assemble, if more than 1 story in height, shall be furnished with doors opening outwardly and hung in such manner as to afford the most convenient and ready means of safe and speedy egress. Any building having doors of egress that open outwardly as provided in this section may also have outer doors on the front that do not so open, if the outer doors are habitually kept open during the services or performances.

(16 Del. Laws, c. 546, § 3; Code 1915, § 3462; Code 1935, § 3932; 16 Del. C. 1953, § 7503.)

§ 7504 Penalties.

Every owner of any such building as is specified in this chapter, whether an individual or a body corporate, who fails to comply with this chapter shall be fined not more than $200.

(16 Del. Laws, c. 546, § 4; Code 1915, § 3463; Code 1935, § 3933; 16 Del. C. 1953, § 7504.)

Part VII
Building and Plumbing
Chapter 76

COUNTY OR MUNICIPAL BUILDING, PLUMBING, ELECTRICAL AND OTHER CODES

§ 7601 Promulgation of building, plumbing, electrical and other codes; building permits; fees.

The Levy Court of Kent County and the County Councils of New Castle County and Sussex County may adopt and enforce building codes, plumbing codes, electrical codes or other similar codes. The said Levy Court and County Councils may charge reasonable fees for the enforcement of said codes.

(16 Del. C. 1953, § 7521; 56 Del. Laws, c. 408; 75 Del. Laws, c. 85, § 1.)

§ 7602 Code for Energy Conservation.

(a) Except as herein noted, no county or municipal building or plumbing code shall contain any provision which shall be materially at variance with most recent version of the International Code Council (ICC), International Energy Conservation Code (IECC). In effect, the highest available energy conservation code of the ICC/IECC as determined by the Delaware Energy Office shall be the referenced energy code for all new detached 1- and 2-story family dwellings and all other new residential buildings 3 stories or less in height. Energy standards for all other new buildings, to include high-rise residential, shall be established to meet the latest available standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers/Illuminating Engineering Society of North America (ASHRAE/IESNA) as determined by the Delaware Energy Office; provided, however, the respective county or municipal governments may exclude agricultural structures from these provisions. The Delaware Energy Office shall adopt these updates pursuant to Chapter 101 of Title 29.

(b) The Delaware Energy Office, or its successor, shall promulgate procedures for certification of compliance with these codes and standards to be utilized by respective local governments; provided, however, with respect to compliance with these codes and standards, for a commercial building of less than 5,000 square feet in size, the respective local government, rather than requiring that such compliance be certified by licensed engineers or architects, as is required with commercial buildings of 5,000 square feet or more, may elect to utilize a commercial buildings ASHRAE/IESNA Compliance Guide, to include computerized software compliance packages such as the Department of Energy developed COMcheck compliance software for insuring commercial energy code compliance and the Department of Energy developed REScheck compliance software for residential energy code compliance. An alternate compliance method for residential code compliance using ENERGY STAR documentation software may be used in lieu of the REScheck software. Code officials shall allow submission of documents that demonstrate energy efficiency that exceeds the requirements of the code when these state, local or national programs have been demonstrated to exceed the requirements of the code.

(c) The Delaware Energy Office, or its successor, in consultation with the Green Building Council of the Home Builders Association of Delaware, shall establish programs to promote the construction of zero net energy homes. A "zero net energy home" or "zero net energy building" is defined as a residence or commercial building that, through the use of energy efficient construction, lighting, appliances and on-site renewable energy generation, results in zero net energy consumption from the utility provider. Therefore, a net zero energy capable home must be energy efficient enough that if the home or building owner chooses to add on-site generation, net zero energy consumption could be achieved. As of December 31, 2025, all new residential building construction in the State of Delaware shall be zero net energy capable. As of December 31, 2030, all new commercial building construction must also be zero net energy capable.

(d) The Delaware Energy Office shall review the State Energy Code triennially for potential updates to the IECC energy code and ASHRAE energy code standard.

(e) This section shall become effective on July 1, 2010.

(f) From January 1, 2010, to June 30, 2010, sellers of new construction shall notify buyers of an option to purchase the construction built to the ICC/IECC 2009 code standard.

(g) The Delaware Energy Office will conduct energy code training work shops for code officials, builders, architects, and engineers prior to July 1, 2010.

(62 Del. Laws, c. 133, § 1; 70 Del. Laws, c. 72, § 1; 70 Del. Laws, c. 539, § 1; 71 Del. Laws, c. 116, § 1; 74 Del. Laws, c. 418, § 1; 77 Del. Laws, c. 187, § 1.)

§ 7603 Lighting efficiency standards for new and existing buildings.

Repealed by 70 Del. Laws, c. 72, § 1, eff. June 23, 1995.

Part VII
Building and Plumbing
Chapter 77
ERECTING, REPAIRING OR PAINTING BUILDINGS

§ 7701 Scaffolding regulations.

(a) A person employing or directing another to perform labor of any kind in the erection, repairing, altering or painting of a house, building or structure shall not furnish or erect or cause to furnished or erected for the performance of such labor scaffolding, hoists, stays, ladders or other mechanical contrivances which are unsafe, unsuitable or improper and which are not so constructed, placed and operated as to give proper protection to the life and limb of a person so employed or engaged.

(b) Scaffolding or staging swung or suspended from an overhead support or erected with stationary supports more than 20 feet from the ground or floor, except scaffolding wholly within the interior of a building and which covers the entire floor space of any room therein, shall have a safety rail of suitable material, properly bolted, secured and braced, rising at least 34 inches above the floor or main portions of such scaffolding or staging and extending along the entire length of the outside and the ends thereof, with such openings as may be necessary for the delivery of materials, and properly attached thereto, and such scaffolding or staging shall be so fastened as to prevent the same from swaying from the building or structure.

(29 Del. Laws, c. 234, § 1; Code 1935, § 3631; 16 Del. C. 1953, § 7701.)

§ 7702 Other construction regulations.

(a) All contractors and owners, when constructing buildings where the plans and specifications require the floors to be arched between the beams thereof or where the floors or filling in between the floors are of fireproof material or brickwork, shall complete the flooring or filling in as the building progresses to not less than within 3 tiers of beams below that on which the iron work is being erected.

(b) If the plans and specifications of the buildings do not require filling in between the beams of floors with brick or fireproof material, all contractors for carpenter work, in the course of construction, shall lay the underflooring thereon on each story as the building progresses to not less than within 2 stories below the one to which such building has been erected. Where double floors are not to be used, such contractor shall keep planked over the floor 2 stories below the story where the work is being performed.

(c) If the floor beams are of iron or steel, the contractors for the iron and steel work of buildings in course of construction or the owners of such buildings shall thoroughly plank over the entire tier of iron or steel beams on which the structural iron or steel work is being erected, except such spaces as may be reasonably required for the proper construction of such iron or steel work and for the raising or lowering of materials to be used in the construction of such building or such spaces as may be designated by the plans and specifications for stairways and elevator shafts.

(d) If elevators or elevating machines are used within a building in the course of construction for the purpose of lifting materials to be used in such construction, the contractors or owner shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides by a barrier at least 8 feet in height, except on 2 sides which may be used for taking off and putting on materials, and those sides shall be guarded by an adjustable barrier not less than 3 nor more than 4 feet from the floor and not less than 2 feet from the edge of such shaft or opening.

(29 Del. Laws, c. 234, § 2; Code 1935, § 3632; 16 Del. C. 1953, § 7702.)

§ 7703 Penalties.

Whoever violates this chapter shall, for each offense, be fined not less than $50 nor more than $100.

(29 Del. Laws, c. 234, § 2; Code 1935, § 3632; 16 Del. C. 1953, § 7703.)

Part VII
Building and Plumbing
Chapter 78
ASBESTOS

§ 7801 Statement of purpose.

The Delaware General Assembly hereby declares that it is in the interest of the public to control, reduce and prevent the exposure of the public to asbestos. It is the intent of the General Assembly to ensure the health, safety and welfare of the public by regulating the practice of asbestos abatement, particularly in locations where the general public can reasonably be expected to have access for the purpose of ensuring that such abatement is performed in such a manner as to minimize exposure to asbestos fibers and contamination.

(66 Del. Laws, c. 35, § 1.)

§ 7802 Definitions.

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

(1) "Asbestos" includes chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos and any of these minerals that has been chemically treated and/or altered.

(2) "Asbestos abatement" shall mean any of the following activities except those which may be considered incidental during normal day-to-day operations and maintenance:

a. Demolition or salvage of structures where asbestos is present;

b. Removal or encapsulation of materials containing asbestos;

c. Construction, alteration, repair, maintenance, demolition or renovation of structures, substrates or any portions thereof, that contain asbestos;

d. Installation of products containing asbestos;

e. Asbestos spill/emergency cleanup; and

f. Transportation, disposal, storage or containment of asbestos, or products containing asbestos, on the site or location at which construction, alteration, repair, maintenance, demolition or renovation activities are performed.

(3) "Asbestos worker" shall mean any individual who performs asbestos abatement activities and/or work.

(4) "Contractor" shall mean any corporation, company, association, firm, partnership, society, joint-stock company, sole proprietorship or individual that contracts to perform asbestos abatement, including the removal or encapsulation of asbestos.

(5) "Friable asbestos material", "friable material" or "asbestos material" shall mean any material containing more than 1 percent asbestos by weight, that hand pressure can crumble, pulverize or reduce to powder when dry, or is already dry and pulverized.

(66 Del. Laws, c. 35, § 1.)

§ 7803 Certification required; fees; reciprocity.

(a) No contractor shall hold that contractor's self out to the public as being certified to engage in asbestos abatement, nor shall any contractor use or advertise any title or description intending to convey the impression that such contractor is certified to engage in asbestos abatement, unless such contractor has been certified in accordance with this chapter. No contractor or asbestos worker shall undertake any asbestos abatement work without having first been certified in accordance with this chapter.

(b) No person or contractor may assign, contract with, or permit any asbestos worker to perform asbestos abatement unless such asbestos worker is certified under this chapter.

(c) Any contractor or asbestos worker applying for certification under this chapter shall meet criteria prescribed by the Office of Management and Budget, which may include, but are not limited to the following:

(1) Contractors:

a. Previous experience or training in asbestos abatement work;

b. Type and size of equipment the contractor utilizes in asbestos abatement;

c. Ability of the contractor to perform asbestos abatement work;

(2) Asbestos workers:

a. Physical ability to perform asbestos abatement work without endangering the health and safety of themselves or others;

b. Free of any respiratory and/or health disorders which would prevent the person from wearing protective respiratory equipment;

c. Completion of a training program in asbestos abatement procedures approved by the Office of Management and Budget and periodic completion of approved retraining programs.

(d) Any contractor or asbestos worker may apply to the Office of Management and Budget for certification to perform asbestos abatement by submitting an application in the form specified by the Office of Management and Budget and the payment of such fees as may be established by the Office of Management and Budget.

(e) The fees for certification required pursuant to this chapter shall be established by the Office of Management and Budget in its rules and regulations. The fees may be adjusted periodically but shall approximate and reasonably reflect all costs necessary to defray the expenses incurred by the Office in operating the certification program.

(f) Asbestos workers certified by other states may request certification by reciprocity. The Office of Management and Budget will evaluate each request for reciprocity based upon evaluations of the quality of training received and quality of the other state's certification program.

(66 Del. Laws, c. 35, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 16(3).)

§ 7804 Suspension; revocation; refusal to renew.

If the Office of Management and Budget finds that a contractor or asbestos worker has violated any provision of this chapter or any rule, regulation or order promulgated or entered pursuant to this chapter, the Office of Management and Budget may immediately suspend, revoke and/or refuse to renew the certification of such contractor or asbestos worker. A hearing may be requested by the contractor or asbestos worker within 30 days after written notice has been sent to the contractor or asbestos worker by certified mail.

If, after a hearing under this section, the Director of the Office of Management and Budget finds just cause to suspend, revoke or refuse to renew, the contractor or asbestos worker shall be given written notice of the decision of the Director of the Office of Management and Budget and the reasons therefor. The decision of the Director of the Office of Management and Budget may be appealed to the Superior Court within 30 days after written notice has been sent by certified mail by the Office of Management and Budget.

(66 Del. Laws, c. 35, § 1; 75 Del. Laws, c. 88, § 16(3).)

§ 7805 Powers and duties of the Office of Management and Budget.

The Office of Management and Budget shall have the following powers and duties and shall give due consideration to Federal Environmental Protection Agency (EPA) document 560/5-85-024 June 1985 or later revision, "Guidance for Controlling Asbestos Containing Materials in Buildings" in conducting these duties:

(1) Approve the standards and specifications for all asbestos abatement funded with state moneys from any source;

(2) Adopt rules and regulations governing the training requirements and certification of contractors and asbestos workers for all asbestos abatement within the State;

(3) Approve the selection of contractors and asbestos workers performing asbestos abatement for state-funded projects based upon qualifications, experience and ability to perform asbestos abatement;

(4) Require all state agencies to obtain prior approval for all asbestos abatement funded with state moneys from any source;

(5) Function as a central location for the receipt and dissemination of relevant asbestos information and reports;

(6) Act as liaison with any federal and/or state agencies that have other programs which may now or hereafter provide funds or assistance in any manner for the detection and elimination of friable asbestos;

(7) During state-funded asbestos abatement projects, conduct an onsite inspection of all procedures of asbestos abatement;

(8) Have the authority to suspend, revoke and/or refuse to renew the certification of any contractor or asbestos worker for a violation of this chapter or any rules, regulations or orders promulgated or entered pursuant to this chapter;

(9) Promulgate such rules and regulations as are necessary to implement this chapter, including but not limited to:

a. Performance standards, practices and specifications for asbestos abatement;

b. Determination of the minimum scope of work of asbestos abatement to which this chapter shall apply;

c. Requirements for submission of a notice of intent to construct, alter, repair, maintain, demolish or renovate or to perform asbestos abatement in any structure, substrate or any portion thereof which may contain asbestos;

(10) Establish a statewide emergency abatement policy to address any asbestos abatement which was not planned but results from a sudden, unexpected event or emergency.

(66 Del. Laws, c. 35, § 1; 75 Del. Laws, c. 88, § 16(3).)

§ 7806 Powers and duties of the Department of Natural Resources and Environmental Control.

The Department of Natural Resources and Environmental Control shall have the following powers and duties and shall:

(1) Act as the enforcement arm of the Office of Management and Budget with respect to any violations of this chapter and be responsible for oversight and enforcement of this chapter for all asbestos abatement within the State;

(2) Maintain records and reports as required by the rules and regulations of the Department of Natural Resources and Environmental Control and any appropriate federal rules and regulations as they may relate to asbestos abatement;

(3) Have the authority to conduct on-site inspections of asbestos abatement in both the private and public sectors;

(4) Promulgate rules and regulations as are necessary to implement the enforcement aspects of this chapter;

(5) Provide the Office of Management and Budget with the appropriate evidence and documentation of violations of this chapter, or any rules, regulations or orders promulgated or entered pursuant to this chapter which would initiate the Office of Management and Budget decertification process.

(66 Del. Laws, c. 35, § 1; 75 Del. Laws, c. 88, § 16(3).)

§ 7807 Violations, penalties and injunctions.

(a) For purposes of this section, the term "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control. The Secretary shall enforce this chapter.

(b) Any contractor, asbestos worker or person who violates any of the provisions of this chapter, or any rules, regulations or orders promulgated or entered pursuant to this chapter shall be punishable in the following manner, and each day of a continued violation shall be considered as a separate violation:

(1) A fine of not less than $100 and not more than $1,500 for each day of such violation, if such contractor, asbestos worker or person is certified for asbestos abatement under this chapter. If the contractor, asbestos worker or person is not certified for asbestos abatement under this chapter, the fine shall be not less than $500, and not more than $1,500 for each day of such violation. The Justices of the Peace Court shall have original jurisdiction under this subsection.

(2) In addition, for contractors, a civil penalty of not less than $5,000 for each day of such violation, if such contractor is not certified for asbestos abatement under this statute. The Superior Court shall have jurisdiction over such violations. If the violation is continuing, or is threatening to begin or to reoccur, the Secretary may also seek a temporary restraining order or any other injunctive relief in the Court of Chancery.

(c) Any contractor who intentionally, knowingly or recklessly violates any provision of this chapter, or any rule, regulation or order promulgated or entered pursuant to this chapter shall, upon conviction, be punishable by a fine of not less than $2,500 nor more than $25,000 for each day of such violation and/or imprisonment for not more than 6 months.

(d) Any contractor who is found to have violated this chapter, or any rule, regulation or order promulgated or entered pursuant to this chapter shall be liable for all expenses incurred by the Department of Natural Resources and Environmental Control:

(1) In abating the violation;

(2) Controlling a pollution incident related to the violation; and

(3) Clean-up and restoration of the environment.

Such expenses shall include, but not be limited to, the costs of investigation, legal assistance, public hearings, materials, equipment, personnel, contractual assistance and appropriate salary and overtime pay for all persons, including state employees, involved in the effort notwithstanding merit system laws, regulations or rules to the contrary. The Secretary shall submit a detailed billing of expenses to the contractor. In the event the contractor desires to challenge the detailed billing submitted by the Secretary, the contractor shall request an administrative hearing before the Secretary. Testimony at the administrative hearing shall be under oath and shall be restricted to issues relating to the billing of expenses submitted by the Secretary. A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The Secretary shall make findings of fact based upon the record, and enter an order which shall contain reasons supporting the decision, and shall send all parties a copy of the order by certified mail. Any party may appeal the order of the Secretary to the Superior Court within 30 days after the order of the Secretary has been sent to that party by certified mail. In the event a liable person fails or refuses to pay any of the expenses listed in the detailed billing, the Secretary may seek to compel payment through the initiation of a civil action in the Superior Court.

(e) Any expenses or civil penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this Chapter.

(66 Del. Laws, c. 35, § 1; 70 Del. Laws, c. 186, § 1.)

Part VII
Building and Plumbing
Chapter 79
BASIC PLUMBING PRINCIPLES

§ 7901 Purpose.

The basic plumbing principles contained in this chapter shall act as the basis for the formation of all detailed plumbing regulations adopted by the Division of Public Health, local or district boards of health or city councils.

(47 Del. Laws, c. 184, § 1; 16 Del. C. 1953, § 7901; 70 Del. Laws, c. 147, § 13.)

§ 7902 Principles applicable throughout State.

All plumbing installed after June 4, 1949 in any part of the State shall conform to the basic plumbing principles provided in this chapter.

(47 Del. Laws, c. 184, § 30; 16 Del. C. 1953, § 7902.)

§ 7903 Plumbing Code; adoption and enforcement.

The Division of Public Health shall adopt and enforce the most recent version of the International Plumbing Code (IPC) within 1 calendar year of its issuance, in conformity with the basic plumbing principles provided in this chapter. The Division of Public Health may adopt and enforce additional plumbing regulations which shall not be in conflict with the IPC and the basic plumbing principles set forth in this chapter.

(47 Del. Laws, c. 184, § 31; 16 Del. C. 1953, § 7903; 70 Del. Laws, c. 147, § 14; 77 Del. Laws, c. 200, § 1.)

§ 7904 Local regulations.

Every political subdivision within the State, including county, city or municipal governments, shall enforce the International Plumbing Code (IPC) as adopted or modified by the Division of Public Health. Every political subdivision retains the right to propose additional or modified plumbing regulations, which must be submitted in writing to the Division of Public Health for review and approval. The Division of Public Health, within 60 days of receiving such proposed changes or additions, shall consult with the State Board of Plumbing, Heating, Air Conditioning, Ventilation and Refrigeration Examiners, and may thereafter adopt, modify or reject the proposed changes or additions. Upon issuance of the statewide plumbing regulations every political subdivision shall have the option of adopting and enforcing said regulations, or adopting and enforcing the minimum standards set forth in the most recently adopted version of the IPC.

(47 Del. Laws, c. 184, § 32; 16 Del. C. 1953, § 7904; 70 Del. Laws, c. 147, §§ 15, 16, 25; 77 Del. Laws, c. 200, § 2.)

§ 7905 Additional regulations.

Nothing in this chapter shall be construed to limit the Division of Public Health, councils of cities or sanitary bodies of communities from making further and additional regulations not in conflict with this chapter.

(47 Del. Laws, c. 184, § 36; 16 Del. C. 1953, § 7905; 70 Del. Laws, c. 147, § 17.)

§ 7906 Rules and regulations for installation of plumbing; registration of plumbers; application for inspection.

(a) The Division of Public Health, in order to provide for the health of the citizens of the State, shall adopt and promulgate suitable rules and regulations for the construction, alteration, repair, modification or renovation of water and sewer systems and of building and house drainage systems; shall enforce those rules and regulations; and shall make provisions under this section and Chapter 18 of Title 24 for the punishment of any person who violates or assists in the violation of or refuses to comply with such rules and regulations.

(b) Registration and licensure of plumbers and persons engaged in the practice of plumbing in this State shall be in accordance with Chapter 18 of Title 24.

(c) No license shall be required of a person who installs his or her own plumbing work, service or equipment in or about his or her own home that is not for sale or any part for rent or lease, except that such person shall be required to obtain a permit from the Division of Public Health or from the proper plumbing inspection authority. Nothing in this paragraph shall be construed to prohibit a person from obtaining free assistance in installing his or her own plumbing work, service or equipment in his or her own home that is not for sale or any part for rent or lease.

(d) Property used exclusively for agricultural purposes is excluded from all provisions of this section, except for the necessity to obtain a permit from the Division of Public Health or from the proper plumbing inspection authority.

(e) The Division of Public Health shall issue plumbing permits and shall assess a $100 fee for each permit, except that no permit shall be required or fee assessed for the replacement of an existing fixture, piece of equipment or related piping, including but not limited to hot water heaters and water conditioning systems. All revenue generated shall be retained by the Division of Public Health in order to defray costs associated with the plumbing inspection program.

(47 Del. Laws, c. 184, § 33; 16 Del. C. 1953, § 7906; 67 Del. Laws, c. 72, § 1; 70 Del. Laws, c. 147, § 18; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 185, § 4; 76 Del. Laws, c. 110, § 1; 77 Del. Laws, c. 445, § 1.)

§ 7907 Inspection and inspectors.

(a) The Division of Public Health shall by rules and regulations also establish a system of inspection and supervision over all water and sewer systems, building and house drainage systems and ventilation of the same.

(b) The Division of Public Health shall appoint such inspectors as may be necessary, at such compensation as may be fixed by it, and shall make provision for payment of same.

(c) All plumping inspectors must be practical plumbers with at least 10 years' experience and skilled and well trained in matters pertaining to plumbing and sanitation generally.

(d) All plumbing inspectors shall, as far as may be necessary for the performance of their duties and the maintenance of the health of the citizens of the State, have the right to enter any building or premises in the State. They shall have the right to inspect and order the removal of any plumbing fixture, soil, drain, waste, vent pipe or pipes, cesspools, septic tanks and privies when they, at the discretion of the inspectors, are deemed in an unsanitary condition.

(e) A $50 inspection fee per inspection shall be assessed when the Division of Public Health inspectors must conduct any inspection due to the permittee's failure to comply with applicable regulations after 3 inspections. All revenue generated shall be retained by the Division of Public Health in order to defray costs associated with the plumbing inspection program.

(47 Del. Laws, c. 184, § 34; 16 Del. C. 1953, § 7907; 70 Del. Laws, c. 147, §§ 19, 20; 76 Del. Laws, c. 110, § 3.)

§ 7908 Definitions.

As used in this chapter:

(1) "Plumbing" is the art of installing in buildings the pipes, fixtures and other apparatus for bringing in the water supply and removing liquid and water-carried wastes.

(2) "Plumbing fixtures" are receptacles intended to receive and discharge water, liquid or water-carried wastes into a drainage system with which they are connected.

(3) "Plumbing system of a building" includes the water supply distributing pipes, the fixtures and fixture traps, the soil, waste and vent pipes, the house drain and house sewer, the storm water drainage, and all the devices, appurtenances and connections of the above within or adjacent to the building.

(4) "Place of public entertainment" shall mean an establishment that accommodates more than 100 individuals.

(5) "Public restroom" shall mean a public sanitary facility that contains more than 1 plumbing fixture.

(47 Del. Laws, c. 184, §§ 2-4; 16 Del. C. 1953, § 7908; 69 Del. Laws, c. 419, § 2.)

§ 7909 Safe water supply.

All premises intended for human habitation or occupancy shall be provided with a supply of pure and wholesome water.

(47 Del. Laws, c. 184, § 5; 16 Del. C. 1953, § 7909.)

§ 7910 Cross connections with unsafe water supplies.

(a) Cross connections between safe and unsafe water supply distributing systems shall not be permitted unless such connections have the written approval of the Division of Public Health.

(b) No plumbing, fixture, construction, valves, fitting, device, apparatus or connection that will provide a cross connection between a safe water supply and a sewage system or will permit or make possible the back flow of sewage or waste into a water supply system shall be installed.

(47 Del. Laws, c. 184, §§ 6, 7; 16 Del. C. 1953, § 7910; 70 Del. Laws, c. 147, § 21.)

§ 7911 Adequate water supply.

Buildings in which water closets and other plumbing fixtures exist shall be provided with a supply of water adequate in volume and pressure for flushing purposes.

(47 Del. Laws, c. 184, § 8; 16 Del. C. 1953, § 7911.)

§ 7912 Size of pipes.

The pipes conveying water to water closets shall be of sufficient size to supply the water at a rate required for adequate flushing without unduly reducing the pressure at other fixtures.

(47 Del. Laws, c. 184, § 9; 16 Del. C. 1953, § 7912.)

§ 7913 Hot water tanks or boilers.

Devices for heating water and storing it in boilers or hot water tanks shall be so designed and installed as to prevent all danger of explosion and also prevent a back flow of hot water through a meter connected with a public water supply.

(47 Del. Laws, c. 184, § 10; 16 Del. C. 1953, § 7913.)

§ 7914 Separate sewer connections.

Every building intended for human habitation or occupancy on premises abutting on a street in which there is a public sewer shall have a separate connection.

(47 Del. Laws, c. 184, § 11; 16 Del. C. 1953, § 7914.)

§ 7915 Family private water closet in multiple dwellings.

In multiple dwellings provided with a house drainage system there shall be for each family at least 1 private water closet.

(47 Del. Laws, c. 184, § 12; 16 Del. C. 1953, § 7915.)

§ 7916 Plumbing fixture materials.

Plumbing fixtures shall be made of smooth nonabsorbent material, shall be free from concealed fouling surfaces and shall be set free of inclosures.

(47 Del. Laws, c. 184, § 13; 16 Del. C. 1953, § 7916.)

§ 7917 House drainage system.

The entire house drainage system shall be so designed, constructed and maintained as to conduct the waste water or sewage quickly from the fixture to the place of disposal with velocities which will guard against fouling and the deposit of solids and will prevent clogging.

(47 Del. Laws, c. 184, § 14; 16 Del. C. 1953, § 7917.)

§ 7918 Drainage pipes.

The drainage pipes shall be so designed and constructed as to be proof, for a reasonable life of the building, against leakage of water or drain air due to defective materials, imperfect connections, corrosions, settlements, vibrations of the ground or building, temperature changes, freezing or other causes.

(47 Del. Laws, c. 184, § 15; 16 Del. C. 1953, § 7918.)

§ 7919 Cleanouts in drainage systems.

The drainage system shall be provided with an adequate number of cleanouts so arranged that in case of stoppage the pipes may be readily accessible.

(47 Del. Laws, c. 184, § 16; 16 Del. C. 1953, § 7919.)

§ 7920 Fixture traps.

Each fixture or combination fixture shall be provided with a separate, accessible, self-scouring, reliable, water-sealed trap placed as near to the fixture as possible.

(47 Del. Laws, c. 184, § 17; 16 Del. C. 1953, § 7920.)

§ 7921 Adequate air circulation.

The house drainage system shall be so designed that there will be an adequate circulation of air in all pipes and no danger of siphonage, aspiration or forcing of trap seals under conditions of ordinary use.

(47 Del. Laws, c. 184, § 18; 16 Del. C. 1953, § 7921.)

§ 7922 Roof terminals, soil or waste stacks.

The soil stack shall extend full size upward through the roof and have a free opening, the roof terminal being so located that there will be no danger of air passing from it to any window and no danger of clogging of the pipe by the frost or by articles being thrown into it or of roof water draining into it.

(47 Del. Laws, c. 184, § 19; 16 Del. C. 1953, § 7922.)

§ 7923 Water or air pressure test.

The plumbing system shall be subjected to a water or air pressure test and to a final test in such manner as to disclose all leaks and imperfections in the work.

(47 Del. Laws, c. 184, § 20; 16 Del. C. 1953, § 7923.)

§ 7924 Substances entering house drainage system.

No substance which will clog the pipes, produce explosive mixtures or destroy the pipes or their joints shall be allowed to enter the house drainage system.

(47 Del. Laws, c. 184, § 21; 16 Del. C. 1953, § 7924.)

§ 7925 Connections with refrigerators.

Refrigerators, ice boxes or receptacles for storing food shall not be connected directly with the drainage system.

(47 Del. Laws, c. 184, § 22; 16 Del. C. 1953, § 7925.)

§ 7926 Light and ventilation.

No water closet or urinal shall be located in a room or compartment which is not properly lighted and ventilated to the outer air.

(47 Del. Laws, c. 184, § 23; 16 Del. C. 1953, § 7926.)

§ 7927 Private sewage treatment and disposal system.

If water closets or other plumbing fixtures exist in buildings where there is no sewer within reasonable distance, suitable provision shall be made for the disposing of the house sewage by some method of sewage treatment and disposal satisfactory to the health authority having jurisdiction.

(47 Del. Laws, c. 184, § 24; 16 Del. C. 1953, § 7927.)

§ 7928 Back flow of sewage.

Where a house drainage system may be subjected to back flow of sewage suitable provision shall be made to prevent its overflow in the building.

(47 Del. Laws, c. 184, § 25; 16 Del. C. 1953, § 7928.)

§ 7929 Storm water.

Storm water from roofs and paved areas, yards, courts and courtyards shall be drained into a storm water sewerage system or a combined sewerage system, but not into a sanitary sewerage system intended for sewage only. Inside roof leaders, downspouts and storm water house drains shall be designed and constructed as are other drainage pipes.

(47 Del. Laws, c. 184, § 26; 16 Del. C. 1953, § 7929.)

§ 7930 Privy vaults.

Privy vaults or cesspools shall not be permitted on premises accessible to a public sewer.

(47 Del. Laws, c. 184, § 27; 16 Del. C. 1953, § 7930.)

§ 7931 Private water supply.

Dug wells or other sources of private water supply shall not be permitted on premises accessible to a public water supply unless the private water supply has been approved in writing by the Division of Public Health.

(47 Del. Laws, c. 184, § 28; 16 Del. C. 1953, § 7931; 70 Del. Laws, c. 147, § 22.)

§ 7932 Sanitary maintenance.

Plumbing systems shall be maintained in a sanitary condition.

(47 Del. Laws, c. 184, § 29; 16 Del. C. 1953, § 7932.)

§ 7933 Public accommodations.

In any place of public entertainment required by a state, county or municipal law, rule or regulation to have a public restroom, water closets and urinals shall be provided for men and women in accordance with the minimum number of plumbing facilities required under the 1993 National Plumbing Code promulgated by the Building Officials and Code Administrators International, Inc. (BOCA), Table P-1204.1, Building Use Groups A-1, A-2, A-3 and A-5.

(69 Del. Laws, c. 419, § 1.)

§ 7934 Penalties.

Whoever violates or assists in the violation of this chapter or any order, code or regulation issued under this chapter shall be, for each offense, fined not less than $25 nor more than $100 or imprisoned not more than 60 days, or both.

(47 Del. Laws, c. 184, § 38; 16 Del. C. 1953, § 7933; 69 Del. Laws, c. 419, § 1.)

Part VII
Building and Plumbing
Chapter 81
PLUMBING CODE FOR RURAL NEW CASTLE COUNTY

§§ 8101 -8108. Promulgation of plumbing code; inspection and supervision; rules and regulations; plumbing inspectors; appointment; compensation; permits and registration of plumbers; registration and permits for installation or repair of heating or air conditioning equipment; penalties; abatement proceedings; exceptions.

Repealed by 75 Del. Laws., c. 85, § 2, effective June 30, 2005.

Part VII
Building and Plumbing
Chapter 83
BUILDING CODE FOR RURAL NEW CASTLE COUNTY

§§ 8301 -8317. Promulgation of building code; existing buildings, application to; building inspector — appointment; compensation; duties; building inspector — appointment of assistants; building inspector — qualifications; bond; oath; building inspector — powers and duties; inspections; records; reports; construction or alteration of buildings and walls; application for construction permits; fees for permits; notice of violations; work stoppage orders; use and maintenance of building erected in violation of code; penalties; abatement proceedings; exceptions.

Repealed by 75 Del. Laws., c. 85, § 3, effective June 30, 2005.

Part VII
Building and Plumbing
Chapter 84
TRENCHES AND EXCAVATIONS

§ 8401 Code of rules and regulations.

(a) The Levy Court and County Councils of New Castle County, Kent County and Sussex County and each incorporated municipality in each of the said counties, in order to provide for the safety of the citizens of the various counties and the State, shall adopt and promulgate a code containing suitable rules and regulations controlling, regulating and supervising all trench, ditch, channel, shaft and other excavation work involving depths and widths which present a hazard to the workers performing the job.

(b) The Levy Court and County Councils of New Castle County, Kent County and Sussex County and each incorporated municipality in each of the said counties shall on or before January 1, 1962 adopt and promulgate the safety code for trenches and excavation described in subsection (a) of this section. Such code shall contain suitable rules and regulations controlling, regulating and supervising all trenching, ditching, channel, shaft and other excavation work performed, constructed or installed in or on any property or state-owned lands by any builder, contractor, state agency or private citizen.

(c) Each municipality may elect to adopt the code of the Levy Court or County Council in its county and each municipality may adopt additional regulations as required by its own particular conditions, but in no case shall the rules and regulations be any less restrictive than those adopted by the Levy Court or County Council of the 3 respective counties.

(d) The code to be promulgated in accordance with this section shall be determined by the Levy Court or County Council and municipalities mentioned in subsections (a)-(c) of this section after consultation with and in cooperation with other state agencies involved in excavation work, contractors' organizations, labor organizations and any other interested agency or group which shall be notified by means of public announcement of the intent to formulate such a code.

(16 Del. C. 1953, § 8401; 53 Del. Laws, c. 233; 70 Del. Laws, c. 186, § 1.)

§ 8402 Fees for permits.

The Levy Court or County Councils of New Castle County, Kent County and Sussex County and each incorporated municipality in each of the said counties may fix a reasonable fee for the issuance of a permit for work under the code which is to be performed under their respective jurisdictions. Contract work in which several applications of the code will be performed under 1 agreement shall be considered as 1 permit.

(16 Del. C. 1953, § 8402; 53 Del. Laws, c. 233.)

§ 8403 Enforcement of code.

Enforcement of the code when adopted by the Levy Court or County Council and municipalities mentioned in § 8401 of this section shall rest with the Levy Court or County Council and municipalities, except that enforcement of the code with respect to the work of a state, city or county agency, whether by contract or its own forces, may be delegated to that agency.

(16 Del. C. 1953, § 8403; 53 Del. Laws, c. 233.)

§ 8404 Penalty.

Each code promulgated and adopted under this section shall contain a penalty clause of not more than a $50 fine and not less than a $25 fine for each infraction with such penalty continued on a daily basis until the terms of the code are complied with.

(16 Del. C. 1953, § 8404; 53 Del. Laws, c. 233.)

§ 8405 Revision of code.

The Levy Court or County Council of New Castle County, Kent County and Sussex County and each incorporated municipality in each of the said counties may revise in accordance with the terms of this chapter the codes adopted on or before January 1, 1962 at any time subsequent thereto when changing conditions and situations within their county or municipality may require such revision.

(16 Del. C. 1953, § 8405; 53 Del. Laws, c. 233.)

Part VII
Building and Plumbing
Chapter 85
BOILERS

§§ 8501 -8507. Rules and regulations; effective date of rules; penalties; spark arresting devices; penalties; exemptions; exemption of boilers subject to federal law; powers of enforcement personnel; administrative inspections and warrants.

Repealed by 72 Del. Laws, c. 418, § 1, eff. July 13, 2000. For present law, see § 8210 of Title 29.

Part VII
Building and Plumbing
Chapter 86
GLASS AND SAFETY GLAZED MATERIALS

§ 8601 Definitions.

As used in this chapter:

(1) "Hazardous locations" mean those installations, glazed or to be glazed, in industrial, commercial and public buildings known as framed or unframed glass entrance doors; and those installations, glazed or to be glazed, in residential buildings and other structures used as dwellings, industrial buildings, commercial buildings and public buildings known as sliding glass doors, storm doors, shower doors, bathtub enclosures and fixed glazed panels adjacent to entrance and exit doors which because of their location present a barrier in the normal path traveled by persons going into or out of these buildings, and because of their size and design may be mistaken as means of ingress or egress; and any other installation, glazed or to be glazed, wherein the use of other than safety glazing materials would constitute an unreasonable hazard as the inspector of the county in which the construction is done may determine after notice and hearings as required by the county in which the construction is located, whether or not the glazing in such doors, panels, enclosures and other installations is transparent.

(2) "Safety glazing material" means any glazing material, such as tempered glass, laminated glass, wire glass or rigid plastic, which meets the test requirements of the current American National Standards Institute Standard Z-97.1 and such further requirements as may be adopted by the building inspector of the county in which the construction is done after notice and hearing as required by the county in which the construction is located, and which are so constructed, treated or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material.

(16 Del. C. 1953, § 8601; 58 Del. Laws, c. 90.)

§ 8602 Labeling required.

(a) Each type of safety glazing material manufactured, distributed, imported or sold for use in hazardous locations or installed in such a location within the State shall be permanently labeled by such means as etching, sandblasting, firing of ceramic material on the safety glazing material or by other suitable means. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of the current American National Standard Institute Standard Z-97.1 and such further requirements as may be adopted by the building inspector of the county in which the construction is done. The label must be legible and visible after installation.

(b) Such safety glazing labeling shall not be used on other than safety glazing materials.

(16 Del. C. 1953, § 8602; 58 Del. Laws, c. 90.)

§ 8603 Safety glazing materials required.

It shall be unlawful within the State to sell, fabricate, glaze or contract to install for another glazing materials other than safety glazing materials in or for use in any hazardous location.

(16 Del. C. 1953, § 8603; 58 Del. Laws, c. 90.)

§ 8604 Employees not covered.

No liability under this chapter shall be created as to workers who are employees of a contractor, subcontractor or other employer responsible for compliance with this chapter.

(16 Del. C. 1953, § 8604; 58 Del. Laws, c. 90.)

§ 8605 Penalty.

(a) Whoever violates this chapter shall, upon conviction thereof, be sentenced to pay a fine of not less than $50 or more than $1000.

(b) The Superior Court shall have exclusive jurisdiction of this chapter.

(16 Del. C. 1953, § 8605; 58 Del. Laws, c. 90.)

§ 8606 Local ordinances.

This chapter shall supersede any local, municipal or county ordinance or parts thereof relating to the subject matter hereof.

(16 Del. C. 1953, § 8606; 58 Del. Laws, c. 90.)

Part VII
Building and Plumbing
Chapter 87
ELEVATORS

§ 8701 Emergency communication.

(a) Every elevator which is used to transport people shall have some means for its passengers to communicate directly to a person outside the elevator in an emergency; such means shall be available on a 24-hour basis.

(b) This section shall not apply to any private residence.

(c) Each county or municipality may adopt rules or regulations to effectuate this section.

(70 Del. Laws, c. 578, § 1.)

§ 8702 Compliance; penalties.

(a) Every elevator subject to this section shall have 6 months from July 25, 1996, to comply with the provisions hereof.

(b) No certificate of occupancy shall be issued to any building not exempt from this section containing an elevator that does not comply with this section, and no permit or license to operate an elevator subject to this section shall be issued or renewed if such elevator does not comply with this section.

(c) The owner of any elevator subject to this section that does not comply with this section shall be fined $1,000 for each 1 year, or part thereof, for which such noncompliance exists.

(70 Del. Laws, c. 578, § 1.)

Part VII
Building and Plumbing
Chapter 88
STUDENT DORMITORIES AND STUDENT RESIDENTIAL HOUSING FIRE SUPPRESSION SYSTEMS

§ 8801 Legislative findings; purpose.

The General Assembly finds and declares that:

(1) Education plays a vital role in the economic development of the nation and the State by providing the education and training of the work force of the future;

(2) The safety of students housed in dormitories at boarding schools and at institutions of higher education is a vital concern, as these students represent our State's and our country's future;

(3) Automatic fire suppression systems installed in buildings within the State have been a very effective method of preventing injury, death and widespread property damaged; and

(4) It shall be deemed to be in the public interest and to have a public purpose to construct, reconstruct or renovate, develop and/or improve dormitory safety facilities, including fire prevention, smoke and fire alarms, and sprinkler systems.

(73 Del. Laws, c. 391, § 1.)

§ 8802 Definitions.

(a) "Common areas" mean those areas within a building which are normally accessible to all residents, including the corridors, and lounge or lobby areas, and areas which contain elements of fire hazards, such as boiler rooms or storage areas.

(b) "Dormitories" shall mean buildings or portions thereof containing rooms which are provided as residences for overnight sleeping for individuals and all residential occupancies for student housing owned by the schools, colleges or universities. This definition does not apply to residential occupancies used exclusively for staff or faculty residences.

(c) "Equipped throughout" means installed in the common areas as well as in the areas utilized for sleeping within a dormitory.

(73 Del. Laws, c. 391, § 1.)

§ 8803 Dormitories to have automatic fire suppression systems, compliance rate.

All buildings used as dormitories, in whole or in part, to house students at a public or private school or public or private institution of higher education within the State shall be equipped throughout with an automatic fire suppression system in accord with the provisions of this chapter within 7 years of enactment. This provision also requires the retrofitting of all existing buildings used as dormitories, in whole or in part, which do not have an existing automatic fire suppression system within 7 years of enactment.

(73 Del. Laws, c. 391, § 1.)

§ 8804 Rules and regulations promulgation by State Fire Prevention Commission.

All fire protection systems as required under the provisions of this chapter shall meet the minimum standards and specifications of the State Fire Prevention Regulations as promulgated by the State Fire Prevention Commission.

(73 Del. Laws, c. 391, § 1.)

§ 8805 Automatic fire suppression system; penalties for noncompliance.

The office of the State Fire Marshal shall assist educational institutions with dormitories in their compliance with this act in accord with § 6612(l)(1)b. of this title.

(73 Del. Laws, c. 391, § 1; 77 Del. Laws, c. 444, § 4.)

§ 8806 Automatic fire suppression system; penalties for noncompliance.

Each owner of a dormitory required to comply under this chapter who wilfully fails to comply with the installation of automatic fire systems pursuant to this chapter, whether an individual or body corporate, shall be fined not less than $100 nor more than $500 for each offense. The Justice of the Peace Courts shall have jurisdiction over any violations of this chapter.

(73 Del. Laws, c. 391, § 1.)

§ 8807 Exceptions, claims of negligence.

Failure to comply with this chapter shall not be considered as evidence of either contributory or comparative negligence in any civil suit or insurance claim adjudication arising out of injury or death arising from a fire or the direct consequences of a fire; nor shall failure to comply with this chapter to be admissible as evidence in any trial of any civil action or insurance claim.

(73 Del. Laws, c. 391, § 1.)

Part VIII
Hospitals and Other Health Facilities
Chapter 90
HEALTH FACILITIES SUBSIDY FUND

§ 9001 Created; purpose.

There is hereby created a special fund of the State designated the "Health Facilities Subsidy Fund." The Fund is created to provide a source of financial assistance to health facilities corporations in connection with loans obtained with the assistance of the Delaware Health Facilities Authority for eligible projects.

(16 Del. C. 1953, § 9010; 56 Del. Laws, c. 363; 58 Del. Laws, c. 503, § 1; 59 Del. Laws, c. 455, § 4; 64 Del. Laws, c. 463, § 1.)

§ 9002 Definitions.

As used in this chapter, the following terms shall have the following meanings:

(1) "Board" shall mean the State Board of Health and any successor to the board exercising the powers granted the Board by this chapter.

(2) "Eligible project" shall mean any health facility which has been approved by the Board pursuant to this chapter, or any refinancing of bonds or notes issued by the Delaware Health Facilities Authority for the benefit of a health facility.

(3) "Health facilities corporation" shall mean a nonprofit corporation organized and existing under the laws of the State for the purpose of owning and operating 1 or more health facilities.

(4) "Health facility" shall mean a facility, located in the State, owned and operated by a health facilities corporation, providing general medical, surgical and emergency treatment to the public.

(5) "Issuing officers" shall mean the Governor, the Secretary of State and the State Treasurer as defined in § 7401 of Title 29.

(6) "Subsidy contract" shall mean a contract by the State, approved by the issuing officers, providing a subsidy to a health facilities corporation.

(16 Del. C. § 9001; 56 Del. Laws, c. 363; 59 Del. Laws, c. 455, § 3; 64 Del. Laws, c. 463, § 1; 65 Del. Laws, c. 125, § 1.)

§ 9003 Subsidy contract — Application.

A written application by a health facilities corporation for a subsidy contract shall be submitted to the Department. The Department or, in the discretion of the Department, the Health Facilities Planning Council, Inc., shall review the application and make a recommendation to the issuing officers to approve or disapprove a subsidy contract. No subsidy contract shall be approved by the issuing officers without the favorable recommendation of the Department.

(16 Del. C. 1953, § 9002; 56 Del. Laws, c. 363; 59 Del. Laws, c. 455, §§ 4, 5; 64 Del. Laws, c. 463, § 1; 70 Del. Laws, c. 149, § 200.)

§ 9004 Subsidy contract — Department determination of eligibility.

The Department shall consider each application for a subsidy contract. The Department shall either recommend or disapprove each such application and advise the issuing officers of its decision. No favorable recommendation shall be made by the Department unless the Department shall find and determine that:

(1) The applicant is a health facilities corporation;

(2) The health facilities corporation is in sound financial condition and is reasonably expected to remain in sound financial condition during the term of the subsidy contract;

(3) There exists a need for the health facility for which the subsidy contract is sought, taking into account the existing and planned health facilities in the State; and

(4) The health facilities corporation has a managerial, administrative and medical staff that has conformed, or, in the case of a health facilities corporation that has not commenced operation of a health facility, is reasonably expected to conform to standards of professional integrity and ability that may reasonably be required by the State.

The Department may obtain assistance from other State agencies, from the federal government and from private sources in making the foregoing determinations. The Department may also employ experts to assist it.

(16 Del. C. 1953, §§ 9003, 9004; 56 Del. Laws, c. 363; 59 Del. Laws, c. 455, § 4; 64 Del. Laws, c. 463, § 1; 70 Del. Laws, c. 149, § 201.)

§ 9005 Subsidy contract — Authorization; conditions for payments.

(a) The issuing officers, upon receipt of a written favorable recommendation from the Department, shall determine the amount, terms, form and content of the subsidy contract. In making their determination, the issuing officers shall not approve a subsidy contract unless

the reasonably expected cost of the eligible project, as determined by the Department, does not exceed the sum of $5,000,000; provided, however, that if the cost of such eligible project does exceed this amount, the issuing officers shall approve a subsidy contract for the first $5,000,000 of cost of the eligible project.

(b) The subsidy contract shall provide for payments on an annual basis in an amount not to exceed the difference between the yield on the loan obtained through the Delaware Health Facilities Authority and 25 basis points above the yield on the immediately preceding issue of state general obligation bonds. The issuing officers may, however, take into account in determining the yield, the amount of loan closing costs, if any, incurred by the health facilities corporation that could have been avoided if the loan were being made by the State. The determinations of yield by the issuing officers shall be conclusive.

(16 Del. C. 1953, § 9005; 56 Del. Laws, c. 363; 57 Del. Laws, c. 655; 58 Del. Laws, c. 405; 59 Del. Laws, c. 455, § 4; 64 Del. Laws, c. 463, § 1; 70 Del. Laws, c. 149, § 202.)

§ 9006 Subsidy contract — Pledge of support; terms; records; release of mortgages securing outstanding loans.

A subsidy contract shall be entered into by the issuing officers on behalf of the State. The subsidy contract shall contain a pledge by the State to make payments, in the amount provided by the subsidy contract, from the Health Facilities Subsidy Fund, to the health facilities corporation from money on deposit in such Fund. No subsidy contract shall be entered into by the issuing officers unless they reasonably determine that the amounts from interest earned or profit realized in the Fund will be available to meet annual payments under the subsidy contract as they become due and payable. The issuing officers shall maintain records of all payments made and all payments owing under subsidy contracts. The issuing officers shall have the power to grant releases or satisfactions of mortgages granted to secure loans made from the Health Facility Construction Fund, provided that the Governor shall execute such release or satisfaction.

(16 Del. C. 1953, §§ 9006, 9007; 56 Del. Laws, c. 363; 59 Del. Laws, c. 455, § 4; 64 Del. Laws, c. 463, § 1.)

§ 9007 Repayment of outstanding loans.

Repayment of all outstanding loans made from the "Health Facility Construction Fund" (established pursuant to Volume 59, Chapter 455 of the Laws of Delaware), or predecessor funds, shall continue to be made to the Board. The Board shall inform the issuing officers of all payments received and shall provide the issuing officers with other information required to carry out the purposes of this chapter. Repayments of interest on such loans shall be immediately transferred to the General Fund of the State. Principal payments of such loans shall be deposited in the Health Facilities Subsidy Fund until the principal in such Fund, to include the accrued earnings credited to principal as provided in § 9008 of this title, has reached the sum of $4,000,000. Thereafter, upon certification by the State Treasurer that the Fund has been capitalized pursuant to this section, future principal repayments of loans from the Health Facility Construction Fund shall be deposited in the State Treasurer's Bond Reversion Account.

(16 Del. C. 1953, §§ 9005, 9011; 56 Del. Laws, c. 363; 57 Del. Laws, c. 655; 58 Del. Laws, c. 405; 58 Del. Laws, c. 503, § 2; 59 Del. Laws, c. 455, § 4; 64 Del. Laws, c. 463, § 1; 65 Del. Laws, c. 125, § 2.)

§ 9008 Management of Fund.

The Health Facilities Subsidy Fund shall be managed by the State Treasurer in conformance with policies promulgated by the Cash Management Policy Board (established pursuant to § 2716 of Title 29). Interest earned or profit realized from investment of money on deposit in the Health Facilities Subsidy Fund shall be retained in such Fund.

(64 Del. Laws, c. 463, § 1.)

§ 9009 Eligibility for early repayment.

If any health facility which has incurred any obligation to the State through loans from the Health Facility Construction Fund chooses to accelerate the repayments of all or a portion of its indebtedness to the State, and chooses to finance its accelerated repayment through funds raised by debt issued through the Delaware Health Facilities Authority or any other debt instrument duly obligating the health facility, the State is hereby authorized to accept as satisfaction for that obligation an amount equal to all accrued interest, to the date of repayment, plus a principal amount equal to the future principal payments (or the portion thereof to be prepaid) on the Health Facility Construction Loan, discounted to their present value at the net interest cost of the new borrowing. In such case, the health facility shall not be eligible for a subsidy contract on that portion of its borrowing from the Health Facilities Authority or other creditor which is used to prepay its loan or loans from the Health Facility Construction Fund. Such payments of principal and interest shall be credited to the various funds and accounts of the State as specified in §§ 9007 and 9008 of this title.

(65 Del. Laws, c. 125, § 3.)

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Part VIII
Hospitals and Other Health Facilities
Chapter 91
MANAGED CARE ORGANIZATION

§§ 9101 -9124. Legislative purpose and intent; definitions; certificate of authority required; procedure for issuance of certificate of authority; annual report; prohibited practices; relationships with insurance companies and health service corporations; examinations; suspension or revocation of certificate of authority; probation; public censure; rules and regulations; fees; relationship to other laws; confidentiality of health information; freedom of choice; short title; Independent health care appeals program; violations; penalties; enforcement; adoption of rules and regulations.

Repealed by 75 Del. Laws, c. 362, § 1, effective July 6, 2006.

Part VIII
Hospitals and Other Health Facilities
Chapter 92
DELAWARE HEALTH FACILITIES AUTHORITY

§ 9201 Declaration of policy.

It is hereby declared that for the benefit of the people of the State, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions, it is essential that health care facilities within the State be provided with appropriate additional means to expand, enlarge and establish health care, hospital and other related facilities; and that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable facilities in the State to provide the facilities and structures which are sorely needed to accomplish the purposes of this chapter, all to the public benefit and good, to the extent and manner provided herein.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9202 Short title.

This chapter may be referred to and cited as the "Health Facilities Act."

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9203 Definitions.

In this chapter, the following words and terms shall, unless the context otherwise requires, have the following meanings:

(1) "Authority," the Health Facilities Authority created by § 9204 of this title.

(2) "Bonds" or the words "revenue bonds" shall mean revenue bonds of the Authority issued under this chapter, including revenue refunding bonds notwithstanding that the same may be secured by mortgage or by the full faith and credit or by any other lawfully pledged security of 1 or more participating facilities.

(3) "Cost," as applied to a project or any portion thereof financed under this chapter embraces all or any part of the costs of a project, whether capital or otherwise, including the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project including all lands, structures, real or personal property, rights, rights-of-way, air right, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to, during and for a period after completion of such construction and acquisition, provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, the cost of architectural engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project and such other expenses as may be necessary or incident to the construction and acquisition of the project, the financing of such construction and acquisition and the placing of the project in operation.

(4) "Facility," a health care facility within the State, including a hospital, psychiatric hospital, tuberculosis hospital, skilled nursing facility, kidney disease treatment center, including freestanding hemodialysis unit, intermediate care facility, ambulatory health care facility, freestanding emergency facility, home health agency and blood bank.

(5) "Participating facility," a facility which, pursuant to this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in this chapter.

(6) "Project," in the case of a participating health care facility, any activity whether a capital improvement or otherwise, including any structure or structures suitable for use as a hospital, clinic or other health care facility, laboratory, laundry, nurses' or interns' residence as a part of the health care facility, or other multi-unit housing facility for staff, employees, patients or relatives of patients admitted for treatment in such health care facility, doctors' office building, administration building, research facility, maintenance, storage or utility facility as a part of the health care facility and other structures or facilities related to any of the foregoing or required or useful for the operation of a health care facility, including parking and other facilities or structures essential or convenient for the orderly conduct of such health care facility, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular health care facility or structure in the manner for which its use is intended; and "project" may include any combinations of 1 or more of the foregoing undertaken jointly by any participating facility with one or more other participating facilities.

(59 Del. Laws, c. 292, § 1; 64 Del. Laws, c. 463, § 3; 66 Del. Laws, c. 92, §§ 18(a)-(d); 67 Del. Laws, c. 152, § 3.)

§ 9204 Health Facilities Authority.

(a) There is hereby created a body politic and corporate to be known as the "Delaware Health Facilities Authority," hereinafter in this chapter called the Authority. Said Authority is constituted a public instrumentality and the exercise by the Authority of the powers conferred by this chapter shall be deemed and held to be the performance of an essential public function. Said Authority shall consist of 7 members to be appointed by the Governor, 1 of which shall be a resident of the City of Wilmington, 1 a resident of New Castle

County, 1 a resident of Kent County, 1 a resident of Sussex County and 3 members at large, all of whom shall be residents of the State. No more than 4 shall be members of the same political party. At least 2 of the members shall be trustees, directors, officers or employees of a health care facility, at least 1 shall be a person having a favorable reputation for skill, knowledge and experience in the field of state and municipal finance, either as a partner, officer or employee of an investment banking firm which originates and purchases state and municipal securities, or as an officer or employee of an insurance company or bank whose duties relate to the purchase of state and municipal securities as an investment and to the management and control of a state and municipal securities portfolio and at least 1 shall be a person having a favorable reputation for skill, knowledge and experience in the building construction field. The terms of the members of the Authority first appointed shall be designated by the Governor to commence on June 1, 1976, and to expire, respectively, 1 on June 30th in each of the years 1977, 1978, 1979 and 1980 and 3 in the year 1981. A member of the Authority shall be eligible for reappointment. Upon the expiration of the term of any member the member's successor shall be appointed for a term of 5 years. The Governor shall fill any vacancy for the remainder of the unexpired term. Any member of the Authority may be removed by the Governor for misfeasance, malfeasance or wilful neglect of duty or other cause after notice and a public hearing unless such notice and hearing shall be expressly waived in writing. Each member of the Authority, before entering upon the member's duties, shall take an oath to administer the duties of the member's office faithfully and impartially, and such oath shall be on file in the office of the Secretary of State. For the purposes of this section, a member's residency, political affiliation, position or employment, skill, knowledge and experience in a specified area shall be determined as of the date of the initial appointment of such member.

(b) The Authority shall annually elect 1 of its members as chairperson and 1 as vice chairperson. It may appoint an executive director, assistant executive director, treasurer and secretary who shall not be members of the Authority, who shall serve at the pleasure of the Authority. They shall receive such compensation as shall be fixed by the Authority.

(c) The person designated by resolution of the Authority shall keep a record of the proceedings of the Authority and shall be custodian of all books, documents and papers filed with the Authority, the minute book or journal of the Authority, and its official seal. Said person may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under the official seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely upon such certificates.

(d) Three members of the Authority shall constitute a quorum. The affirmative vote of a majority of the members present at a meeting of the Authority having a quorum present shall be necessary for any action taken by the Authority. A vacancy in the membership of the Authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. Any action taken by the Authority under this chapter may be authorized by resolution at any regular or special meeting, and each such resolution shall take effect immediately and need not be published or posted.

(e) Before the issuance of any bonds or notes under this chapter, the chairperson, vice chairperson, executive director and assistant executive director and any other member of the Authority authorized by resolution of the Authority to handle funds or sign checks of the Authority shall execute a surety bond in the penal sum of $100,000, or in lieu thereof the chairperson shall obtain a blanket position bond covering the executive director and every member and other employee of the Authority in the penal sum of $100,000. Each such bond shall be conditioned upon the faithful performance of the duties of the principal or the members, executive director and other employees, as the case may be, shall be executed by a surety company authorized to transact business in the State as surety, shall be approved by the Attorney General and shall be filed in the office of the State Secretary. The cost of each such bond shall be paid by the Authority.

(f) The members of the Authority shall receive no compensation for the performance of their duties hereunder but each such member shall be paid that member's necessary expenses incurred while engaged in the performance of such duties.

(g) Notwithstanding any other law to the contrary, it shall not be or constitute a conflict of interest for a trustee, director, officer or employee of a participating facility or for a person having the required favorable reputation for skill, knowledge and experience in state and municipal finance or for a person having the required favorable reputation for skill, knowledge and experience in the building construction field to serve as a member of the Authority; provided, in each case to which provisions thereof are applicable, such trustee, director, officer or employee of such participating facility abstains from discussion, deliberation, action and vote by the Authority in specific respect to any undertaking pursuant to this chapter in which such participating facility has an interest, or such person having the required favorable reputation for skill, knowledge and experience in state and municipal finance abstains from discussion, deliberation, action and vote by the Authority in specific respect to any sale, purchase or ownership of bonds of the Authority in which the investment banking firm or insurance company or bank of which such person is a partner, officer or employee has a past, current or future interest, or such person having the required favorable reputation for skill, knowledge and experience in the building construction field abstains from discussion, deliberation, action and vote by the Authority in specific respect to construction or acquisition of any project of the Authority in which any partnership, firm, joint venture, sole proprietorship or corporation of which such person is an owner, venturer, participant, partner, officer or employee who has a past, current or future interest.

(59 Del. Laws, c. 292, § 1; 60 Del. Laws, c. 565, § 1; 66 Del. Laws, c. 92, § 18(e); 67 Del. Laws, c. 152, § 3; 67 Del. Laws, c. 285, § 32; 70 Del. Laws, c. 186, § 1.)

§ 9205 General grant of powers.

(a) The purpose of the Authority shall be to assist health care facilities in the acquisition, construction, financing and refinancing of projects, and for this purpose the Authority is authorized and empowered to:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) Adopt an official seal and alter the same at pleasure;

(3) Maintain an office at such place or places as it may designate;

(4) Sue and be sued in its own name, plead and be impleaded;

(5) Determine the location and character of any project to be financed under this chapter, and to construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, to enter into contracts for any and all of such purposes, to enter into contracts for the management and operation of a project, and to designate a participating facility as its agent to determine the location and character of a project undertaken by such participating facility under this chapter and, as the agent of the Authority, to construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, and, as the agent of the Authority, to enter into contracts for any and all of such purposes, including contracts for the management and operation of such project;

(6) Issue bonds, bond anticipation notes and other obligations of the Authority for any of its corporate purposes, and to fund or refund the same all as provided in this chapter;

(7) Generally, fix and revise from time to time and charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with any person, partnership, association or corporation or other body public or private in respect thereof and to designate a participating facility as its agent to fix, revise, charge and collect such rates, rents, fees and charges and to make such contracts;

(8) Establish rules and regulations for the use of a project or any portion thereof and to designate a participating facility as its agent to establish rules and regulations for the use of a project in which such participating facility is participating;

(9) Employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation;

(10) Receive and accept from any public agency loans or grants for or in aid of the construction of a project or any portion thereof, and receive and accept loans, grants, aid or contributions from any source of either money, property, labor or other things of value to be held, used and applied only for the purposes for which such loans, grants, aid and contributions are made;

(11) Mortgage any project and the site thereof for the benefit of the holders of bonds issued to finance such project;

(12) Make loans to any participating facility for the cost of a project in accordance with an agreement between the Authority and one or more participating facilities; provided that no such loan shall exceed the total cost of the project as determined by such participating facility or facilities and approved by the Authority;

(13) Make loans to participating facilities to refund outstanding obligations, mortgages or advances issued, made or given by such participating facilities for the cost of the project;

(14) Charge to and equitably apportion among participating facilities its administrative costs and expenses reasonably incurred in the exercise of the powers and duties conferred by this chapter;

(15) Do all things necessary or convenient to carry out the purposes of this chapter.

(b) In carrying out the purposes of this chapter, the Authority may undertake a joint project or projects for 2 or more participating facilities, and, thereupon, all other provisions of this chapter shall apply to and for the benefit of the Authority and the participants in such joint project or projects.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9206 Source of payment of expenses.

All expenses incurred in carrying out this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which money shall have been provided under this chapter.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9207 Acquisition of property.

The Authority is authorized and empowered, directly or by and through a participating facility, as its agent, to acquire by purchase solely from funds provided under the authority of this chapter, or by gift or devise, such lands, structures, property, real or personal, rights, rights-of-way, air rights, franchises, easements and other interests in lands, including lands lying under water and riparian rights, which are located within the State as it may deem necessary or convenient for the acquisition, construction or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the Authority, or in the name of 1 or more participating facilities as its agent.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9208 Title to projects.

When the principal of an interest on bonds of the Authority issued to finance the cost of a particular project or projects for 1 or more participating facilities, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provisions have been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance

with the provisions thereof, the Authority shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating facility or facilities, all to the extent that title to such project or projects is not, at the time, vested in such participating facility or facilities.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9209 Release of collateral.

When the principal of and interest on bonds of the Authority issued to finance the cost of a particular project or projects for a participating facility, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance with the provisions thereof, the Authority shall promptly do such things and execute such releases and documents as are necessary and required to release securities held as collateral by a trustee or trustees pursuant to the trust agreement to such participating facility, which facility had pursuant to the trust agreement, deposited and turned over such securities to a trustee or trustees in order to assure the full payment and retirement of said bonds, free and clear of all liens and encumbrances, all to the extent that title to such securities shall not, at the time, then be vested in such participating facility.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9210 Notes of the Authority.

The Authority may from time to time issue negotiable notes for any corporation purpose and may from time to time renew any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The Authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the Authority or any issue thereof may contain any provisions which the Authority is authorized to include in any resolution or resolutions authorizing revenue bonds of the Authority or any issue thereof, and the Authority may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds. Such resolution or resolutions may delegate to any combination of 3 of the following, the executive director, assistant executive director, treasurer or any member of the Authority, the power to determine any of the details of the notes and to award such notes to a purchaser or purchasers. All such notes shall be payable solely from the revenues of the Authority, subject only to any contractual rights of the holders of any of its notes, and subject to any agreements with any participating facility.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9211 Bonds of the Authority.

(a) The Authority may from time to time issue bonds for any corporate purpose and all such bonds, notes, bond anticipation notes or other obligations of the Authority issued pursuant to this chapter shall be and are hereby declared to be negotiable for all purposes notwithstanding their payment from a limited source and without regard to any other law or laws. In anticipation of the sale of such bonds, the Authority may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed 5 years from the date of issue of the original note. Such notes shall be paid from any revenues of the Authority available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the Authority in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the Authority may contain.

(b) The bonds and notes of every issue shall be payable solely out of the revenues of the Authority, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues and subject to any agreements with any participating facility. Notwithstanding that bonds and notes may be payable from a special fund, they shall be and be deemed to be, for all purposes, negotiable instruments subject only to the provisions of the bonds and notes for registration.

(c) The bonds may be issued as serial bonds or as term bonds, or the Authority, in its discretion may issue bonds of both types. The bonds shall be authorized by resolution of the members of the Authority and shall bear such date or dates, mature at such time or times, not exceeding 50 years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. Such resolution or resolutions may delegate to any combination of 3 of the following, the executive director, assistant executive director, treasurer or any member of the Authority, the power to determine any of the matters set forth in this section and the power to award the bonds to a purchaser or purchasers at public sale or to negotiate a sale to a purchaser or purchasers. The bonds or notes may be sold at public or private sale for such price or prices as the Authority shall determine. Pending preparation of the definitive bonds, the Authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(d) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized as to:

(1) Pledging the full faith and credit of the Authority, the full faith and credit of a participating facility, all or any part of the revenues of a project or projects, any revenue producing contract or contracts made by the Authority with any individual, partnership, corporation

or association or other body, public or private, to secure the payment of the bonds or of any particular issue of bonds, subject to such agreements with bondholders or participating facilities as may then exist;

(2) The rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(3) The establishment and setting aside of reserves or sinking funds, the regulation and disposition thereof;

(4) Limitations on the right of the Authority or its agent to restrict and regulate the use of the project;

(5) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds;

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds;

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(8) Limitations on the amount of money derived from the project to be expended for operating, administrative or other expenses of the Authority;

(9) Defining the acts or omissions to act which shall constitute a default in the duties of the Authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default;

(10) The duties, obligations and liabilities of any trustee or paying agent; and

(11) The mortgaging of a project and the site thereof for the purpose of securing the bondholders.

(e) Neither the members of the Authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The Authority shall have power, out of any funds available therefor, to purchase its bonds or notes. The Authority may hold, pledge, cancel or resell such bonds or notes subject to and in accordance with agreements with bondholders or participating facilities.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9212 Trust agreement.

In the discretion of the Authority any bonds issued under this chapter may be secured by a trust agreement by and between the Authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly such provisions as have hereinabove been specifically authorized to be included in any resolution or resolutions of the Authority authorizing bonds thereof. Any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnifying bonds or pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of a project.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9213 Credit of State not pledged.

Bonds or notes issued under this chapter shall not be deemed to constitute a debt or liability of the State or of any political subdivisions thereof, other than the Authority, or a pledge of the faith and credit of the State or of any such political subdivision, other than the Authority, but shall be payable solely from the funds herein provided therefor. All such bonds or notes shall contain on the face thereof a statement to the effect that neither the State nor any political subdivision thereof other than the Authority shall be obligated to pay the same or the interest thereon except from revenues of the project or projects or the portion thereof for which they are issued and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof other than the Authority is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under this chapter shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor, or to make any appropriation for their payment. Nothing contained in this section shall prevent or be construed to prevent the Authority from pledging its full faith and credit or the full faith and credit of a participating facility to the payment of bonds or issue of bonds authorized pursuant to this chapter.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9214 Revenues.

The Authority may fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with any person, partnership, association or corporation, or other body, public or private, in

respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rates, rents, fees and charges from such project so as to provide funds sufficient with other revenues, if any, (1) to pay the principal of and the interest of such project as the same shall become due and payable and (2) to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such revenue bonds of the Authority. Such rates, rents, fees and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this State, other than the Authority. A sufficient amount of the revenues derived in respect of a project shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is pledged to, and charged with, the payment of the principal of and the interest on such bonds or notes as the same shall become due, and the redemption price or the purchase price of bonds or notes retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other money so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in records of the Authority. The use and disposition of money to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or notes of such trust agreement. Except as may otherwise be provided in such resolution or trust agreement, such sinking or other similar fund shall be a fund for all such bonds or notes issued to finance a project or projects at 1 or more participating facilities as the case may be, without distinction or priority of 1 over another; provided the Authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project at a facility and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds or notes having a subordinate lien in respect of the security authorized to other bonds or notes of the Authority and, in such case, the Authority may create separate or other similar funds in respect of such subordinate lien bonds.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9215 Trust funds.

All money received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and the resolution authorizing the bonds or notes of any issue or the trust agreement securing such bonds or notes may provide.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9216 Remedies.

Any holder of bonds, notes, bond anticipation notes, other notes or other obligations of the Authority issued under this chapter or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the right herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, such bonds or other obligations, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the Authority of any officer, employee or agent thereof, including the fixing, charging and collecting of the rates, rents, fees and charges herein authorized and required by such resolution or trust agreement to be fixed, established and collected.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9217 Exemption from taxation.

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of this State, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a project by the Authority or its agent or a lessee will constitute the performance of an essential public function, neither the Authority nor its agent nor the lessee shall be subject to provisions of the Constitution of the State required to pay any taxes or assessments upon or in respect of a project or upon any property acquired or used by the Authority or its agent, or the lessee, under this chapter or upon the income therefrom, and any bonds or notes issued under this chapter, their transfer and the income therefrom, shall at all times be free from taxation of every kind by the State and by the municipalities and other political subdivisions in the State.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9218 Refunding bonds or notes.

(a) The Authority is hereby authorized to provide for the issuance of bonds or notes of the Authority for the purpose of refunding any outstanding bonds, notes or other obligations of the Authority, or of a participating facility, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase, prepayment or maturity of such bonds, notes or other obligations and, if deemed advisable by the Authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project or any portion thereof.

(b) The proceeds of any such bonds or notes issued for the purpose of refunding outstanding bonds or notes, may, in the discretion of the Authority, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds or notes either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the Authority.

(c) Any such escrowed proceeds, pending such use, may be invested and reinvested in direct obligations of the United States of America, or in certificates of deposit or time deposits secured by direct obligations of the United States of America, or in any other obligation or security as may be determined by the Authority maturing at such time or times as shall be appropriate to assure the prompt payment, as to principal, interest and redemption premium, if any, of the outstanding bonds or notes to be so refunded. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds or notes to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the Authority for use by it in any lawful manner.

(d) The portion of the proceeds of any such bonds or notes issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project may be invested and reinvested in direct obligations of the United States of America, or in certificates of deposit or time deposits secured by direct obligations of the United States of America, or in any other obligation or security as may be determined by the Authority maturing not later than the time or times when such proceeds will be needed for the purpose of paying all or any part of such cost. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the Authority in any lawful manner.

(e) All such bonds or notes shall be subject to this chapter in the same manner and to the same extent as other bonds or notes issued pursuant to this chapter.

(59 Del. Laws, c. 292, § 1; 64 Del. Laws, c. 463, § 2; 66 Del. Laws, c. 92, § 18(f), (g); 67 Del. Laws, c. 152, § 3.)

§ 9219 Bonds or notes eligible for investment.

Bonds or notes issued by the Authority under this chapter are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, savings banks, cooperative banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or notes or obligations of the State is now or may hereafter be authorized by law.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9220 Annual report.

Within the first 90 days of each calendar year, the Authority shall make a report to the Governor of its activities for the preceding calendar year. Each such report shall set forth the complete operating and financial statement covering its operations during such year. The Authority shall cause an audit of its books and accounts to be made at least once each year by certified public accountants, and the cost thereof shall be paid by the Authority from funds available to it pursuant to this chapter.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9221 Continued existence of Authority.

The Authority and its corporate existence shall continue until terminated by law, provided, however, that no such law shall take effect so long as the Authority shall have bonds, notes or other obligations outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the Authority, all its rights and properties shall pass to and be vested in the State.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

§ 9222 Additional and alternative method.

The foregoing sections of this chapter shall be deemed to provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws; provided the issuance of bonds or notes and refunding bonds or notes under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds or notes. Except as otherwise expressly provided in this chapter, none of the powers granted to the Authority under this chapter shall be subject to the supervisions or regulation or require the approval or consent of any municipality or political subdivision or any department, division, commission, board, body, bureau, official or agency thereof or of the State.

(59 Del. Laws, c. 292, § 1; 67 Del. Laws, c. 152, § 3.)

Part VIII
Hospitals and Other Health Facilities
Chapter 93
HEALTH PLANNING AND RESOURCES MANAGEMENT

§ 9301 Purpose.

It is the purpose of this chapter to assure that there is continuing public scrutiny of certain health care developments which could negatively affect the quality of health care or threaten the ability of health care facilities to provide services to the medically indigent. This public scrutiny is to be focused on balancing concerns for cost, access and quality.

(61 Del. Laws, c. 393, § 1; 66 Del. Laws, c. 90, § 1; 69 Del. Laws, c. 251, § 1; 70 Del. Laws, c. 446, § 1; 72 Del. Laws, c. 64, § 2.)

§ 9302 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context indicates a different meaning:

(1) "Board" shall mean the Delaware Health Resources Board established pursuant to § 9303 of this title.

(2) "Bureau" shall mean the Bureau of Health Planning and Resources Management within the Department of Health and Social Services.

(3) "Certificate of Public Review" shall mean the written approval of an application to undertake an activity subject to review as described in § 9304 of this title.

(4) "Health care facility" shall include hospital, nursing home, freestanding birthing center, freestanding surgical center, freestanding acute inpatient rehabilitation hospital, and freestanding emergency center, whether or not licensed or required to be licensed by the State, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a unit of State or local government. The term also includes continual care communities and any other nontraditional, long-term care facilities identified by the Department of Health and Social Services or the Delaware Health Care Commission. The term does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts. The term shall not include any physician's office, whether an individual or group practice, any independent clinical laboratory or any radiology laboratory. The term shall also not include the office of any other licensed health care provider, including, but not limited to, physical therapist, dentist, physician assistant, podiatrist, chiropractor, an independently practicing nurse or nurse practitioner, optometrist, pharmacist or psychologist. The term also shall not include any dispensary or first aid station located within a business or industrial establishment maintained solely for the use of employees, provided that the facility does not contain inpatient beds, nor shall it apply to any first aid station or dispensary or infirmary offering non-acute services exclusively for use by students and employees of a school or university or by inmates and employees of a prison, provided that services delivered therein are not the substantial equivalent of hospital services in the same area or community. Further:

a. "Freestanding acute inpatient rehabilitation hospital" shall mean a facility that satisfies, or is expected by the person who will construct, develop or establish the facility to satisfy, the requirements of 42 C.F.R. § 412.23(b); provided that, if such facility is not paid under the prospective payment system specified in 42 C.F.R. § 412.1(a)(3) within 24 months after accepting its first patient, then it shall not be considered a freestanding acute inpatient rehabilitation hospital under this section.

b. "Freestanding birthing center" shall mean any facility licensed as such pursuant to Chapter 1 of this title and more particularly in the State Board of Health Regulations.

c. "Freestanding emergency center" shall mean any facility licensed as such pursuant to Chapter 1 of this title and more particularly § 52 of the State Board of Health Regulations.

d. "Freestanding surgical center" shall mean any facility licensed as such pursuant to Chapter 1 of this title and more particularly in the State Board of Health Regulations.

e. "Hospital" shall mean any nonfederal facility licensed as such pursuant to Chapter 10 of this title and more particularly § 50 of the State Board of Health Regulations.

f. "Nursing home" shall mean any nonfederal facility licensed as such pursuant to Chapter 11 of this title and more particularly § 57 (Skilled care) and § 58 (Intermediate care) of the State Board of Health Regulations.

(5) "Health services" shall mean clinically related (i.e., diagnostic, curative or rehabilitative) services provided in or through health care facilities.

(6) "Major medical equipment" shall mean a single unit of medical equipment or a single system of components with related functions which is used for the diagnosis or treatment of patients and which:

a. Entails a capital expenditure as set forth in this chapter which exceeds $5,800,000 or some greater amount which has been designated by the Board following an annual adjustment for inflation using an annual inflation index determined by the United States Department of Labor, Bureau of Labor Statistics;

b. Represents medical technology which is not yet available in Delaware; or

c. Represents medical technology which has been designated by the Board as being subject to review.

The Board may exempt from review a capital expenditure used to acquire major medical equipment which represents medical technology which is not yet available in Delaware. A notice of intent filed pursuant to § 9305 of this title along with any other information deemed necessary by the Board shall provide the basis for exempting such a capital expenditure from review.

(7) "Person" shall mean an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), a state or political subdivision or instrumentality (including a municipal corporation) of a state.

(61 Del. Laws, c. 393, § 1; 65 Del. Laws, c. 69, § 2; 66 Del. Laws, c. 90, § 1; 68 Del. Laws, c. 29, §§ 1, 2; 69 Del. Laws, c. 251, § 1; 70 Del. Laws, c. 446, § 2; 72 Del. Laws, c. 64, §§ 1, 3-5; 75 Del. Laws, c. 192, §§ 1, 2; 79 Del. Laws, c. 50, § 1.)

§ 9303 Delaware Health Resources Board.

(a) There is hereby established a Delaware Health Resources Board to foster the cost-effective and efficient use of health care resources and the availability of and access to high quality and appropriate health care services.

(b) The Board shall consist of a Chair, a Vice Chair and 13 other members, all of which shall be appointed by the Governor. Appointments shall be for 3-year terms, provided that the terms of newly appointed members will be staggered so that no more than 5 appointments shall expire annually. The Governor may appoint members for terms of less than 3 years to ensure that the board members' terms expire on a staggered basis. The membership shall be representative of all counties in the State. In addition to the Chair and the Vice Chair, the membership shall consist of 1 representative of the Delaware Health Care Commission; 1 representative from the Department of Health and Social Services recommended by the Secretary of the Department of Health and Social Services; 1 representative of labor; 1 representative of the health insurance industry; 1 representative with knowledge and professional experience in health care administration; 1 representative licensed to practice medicine in Delaware; 1 representative with knowledge and professional experience in long-term care administration; 1 representative of a provider group other than hospitals, nursing homes or physicians; 1 representative involved in purchasing health care coverage on behalf of State employees; 1 other representative involved in purchasing health care coverage for employers with more than 200 employees; and 4 representatives of the public-at-large. Public members may include but not be limited to representative from business, educational and nonprofit organizations. The Chair shall be an at-large position and shall be appointed by and serve at the pleasure of the Governor. The Governor shall designate a Vice Chair from among the members of the Board who shall serve in this capacity at the pleasure of the Governor. The Delaware Healthcare Association, the Medical Society of Delaware, the Delaware Health Care Facilities Association, the Delaware State Chamber of Commerce, and other interested organizations may submit nonbinding recommendations to aid the Governor in making appointments to the Board. Any vacancy shall be filled by the Governor for the balance of the unexpired term. A quorum shall consist of at least 50% of the membership. Members of the Board shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incident to their duties, to the extent that funds are available and the expenditures are in accordance with state laws.

(c) The Board is an independent public instrumentality. For administrative and budgetary purposes only, the Board shall be placed within the Department of Health and Social Services, Office of the Secretary. The Delaware Health Resources Board shall function in cooperation with the Delaware Health Care Commission, as well as other state health policy activities. Staff support for the Board shall be provided by the Delaware Health Care Commission and the Office of the Secretary, Department of Health and Social Services.

(d) The duties and responsibilities of the Board shall include, but not be limited to, the following:

(1) Develop a Health Resources Management Plan which shall assess the supply of health care resources, particularly facilities and medical technologies, and the need for such resources. Essential aspects of the plan shall include a statement of principles to guide the allocation of resources, as well as rules and regulations which shall be formulated for use in reviewing Certificate of Public Review applications. Any revision of the Health Resources Management Plan shall be done in accordance with the provisions of the Administrative Procedures Act (Chapter 101 of Title 29). The Board shall also be required to conduct a public hearing. Also, prior to adoption, the plan or revision of the plan shall be submitted to the Delaware Health Care Commission for review and approval. Upon receiving written approval from the Commission, the plan or revision shall be submitted to the Secretary, Department of Health and Social Services. The plan or revision shall become effective upon the written approval of the Secretary;

(2) Review Certificate of Public Review applications filed pursuant to this chapter and make decisions on same. Decisions shall reflect the importance of assuring that health care developments do not negatively affect the quality of health care or threaten the ability of health care facilities to provide services to the medically indigent. Decisions can be conditional but the conditions must be related to the specific project in question;

(3) Gather and analyze data and information needed to carry out its responsibilities. Identify the kinds of data which are not available so that efforts can be made to assure that legitimate data needs can be met in the future;

(4) Address specific health care issues as requested by the Governor or the General Assembly;

(5) Adopt bylaws as necessary for conducting its affairs. Board members shall comply with the provisions of Chapter 58 of Title 29 (State Ethics Code) and the Board shall operate in accordance with Chapter 100 of Title 29 (Freedom of Information Act); and

(6) Coordinate activities with the Delaware Health Care Commission, the Department of Health and Social Services and other groups as appropriate.

(e) The Governor may at any time, after notice and hearing, remove any board member for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office. A member shall be deemed in neglect of duty if they are absent from 3 consecutive board meetings without good cause or if they attend less than 50% of board meetings in a calendar year.

(66 Del. Laws, c. 90, § 1; 68 Del. Laws, c. 29, §§ 3, 4; 69 Del. Laws, c. 251, § 1; 72 Del. Laws, c. 64, §§ 1, 6, 7; 75 Del. Laws, c. 192, §§ 3, 4; 78 Del. Laws, c. 394, § 1.)

§ 9304 Activities subject to review.

Any person must obtain a Certificate of Public Review prior to undertaking any of the following activities:

(1) The construction, development or other establishment of a health care facility or the acquisition of a nonprofit health care facility;

(2) Any expenditure by or on behalf of a health care facility in excess of $5.8 million, or some greater amount which has been designated by the Board following an annual adjustment for inflation using an annual inflation index determined by the United States Department of Labor, Bureau of Labor Statistics, is a capital expenditure. A capital expenditure for purposes of constructing, developing or otherwise establishing a medical office building shall not be subject to review under this chapter. When a person makes an acquisition by or on behalf of a health care facility under lease or comparable arrangement, or through donation which would have required review if the acquisition had been by purchase, such acquisition shall be deemed a capital expenditure subject to review. The Board may exempt from review capital expenditures when determined to be necessary for maintaining the physical structure of a facility and not related to direct patient care. A notice of intent filed pursuant to § 9305 of this title, along with any other information deemed necessary by the Board, shall provide the basis for exempting such capital expenditures from review;

(3) A change in bed capacity of a health care facility which increases the total number of beds (or distributes beds among various categories, or relocates such beds from 1 physical facility or site to another) by more than 10 beds or more than 10 percent of total licensed bed capacity, whichever is less, over a 2-year period;

(4) The acquisition of major medical equipment, whether or not by a health care facility and whether or not the acquisition is through a capital expenditure, an operating expense or a donation. The replacement of major medical equipment with similar equipment shall not be subject to review under this chapter. In the case of major medical equipment acquired by an entity outside of Delaware, the use of that major medical equipment within Delaware, whether or not on a mobile basis, is subject to review under this chapter. Major medical equipment which is acquired for use in a freestanding acute inpatient rehabilitation hospital, as defined in § 9302(4) of this title, a dispensary or first aid station located within a business or industrial establishment maintained solely for the use of employees or in a first aid station, dispensary or infirmary offering services exclusively for use by students and employees of a school or university or by inmates and employees of a prison is not subject to review.

(5) [Effective until Dec. 31, 2016]. Notwithstanding any other provision in this chapter to the contrary, any person who held, as of June 1, 2013, a certificate of public review issued by the Delaware Health Resources Board authorizing the construction of a 34-bed freestanding acute inpatient rehabilitation hospital in Middletown, Delaware, regardless of such certificate's date of expiration or whether the certificate has otherwise been challenged on appeal, shall not be required to obtain any additional certificate of public review pursuant to this chapter prior to the construction, development, or other establishment of freestanding acute inpatient rehabilitation hospital. Any acute inpatient rehabilitation hospital constructed, developed, or established pursuant to this section shall not have any license or authority to operate denied, revoked, or restricted on the grounds that a certificate of public review has not been obtained or has otherwise been challenged on appeal.

(61 Del. Laws, c. 393, § 1; 66 Del. Laws, c. 90, § 1; 68 Del. Laws, c. 29, §§ 5, 6; 69 Del. Laws, c. 251, § 1; 70 Del. Laws, c. 446, §§ 3-5; 72 Del. Laws, c. 64, §§ 1, 8-11; 75 Del. Laws, c. 192, §§ 5, 6; 76 Del. Laws, c. 87, § 1; 79 Del. Laws, c. 50, §§ 2, 3.)

§ 9305 Procedures for review.

Reviews under this chapter shall be conducted in accordance with the following procedures:

(1) *Notices of intent.* — At least 30 days but not more than 180 days prior to submitting an application for review under this chapter, applicants shall submit to the Bureau a notice of intent in such form as may be determined by the Board to cover the scope and nature of the project. An application may be submitted less than 30 days from submitting the notice of intent only with the written approval of the Board. A notice of intent expires and is rendered invalid if no subsequent application for review is submitted to the Board within 180 days following the date on which the notice of intent is submitted.

(2) *Applications for review.* — Application forms will be developed by the Board and may vary according to the nature of the application.

(3) *Deadlines and time limitations.* — Upon receipt of an application under this chapter, the Bureau shall have a maximum of 15 business days to notify the applicant as to whether the application is considered complete. If complete, written notification in accordance with paragraph (4) of this section will be provided. If incomplete, the applicant will be notified in writing of such determination and will be advised of what additional information is required to make the application complete. When the additional information is received, the Bureau again has a maximum of 15 business days to determine whether the application is complete. The same steps shall be taken as with the initial submission each time that additional information is required.

Except as provided below, the review of an application shall take no longer than 90 days from the date of notification as covered under paragraph (4) of this section. If a public hearing is requested under paragraph (6) of this section, the maximum review period will be extended to 120 days from the date of notification. Within 30 days from the date of notification (60 days if a public hearing

is requested), the Board may extend the maximum review period up to 180 days from the date of notification. Such extensions shall be invoked only as necessary to allow the development of appropriate review criteria or other guidance when these are lacking or to facilitate the simultaneous review of similar applications. The maximum review period can also be extended as mutually agreed to in writing by the Board and the applicant.

In the case of a project required to remedy an emergency situation which threatens the safety of patients or the ability of the health facility to remain in operation, an abbreviated application shall be submitted in such format as the Board prescribes. As quickly as possible, but within 72 hours after receipt, the Board shall render a decision as to whether or not the project shall be treated as an emergency and whether or not the application shall be approved. The Chair or Vice Chair of the Board shall be authorized to render such decision and shall have discretion as to the decision making process.

(4) *Agency review; notification.* — Within 5 working days of determining that an application under this chapter is complete, the Bureau shall provide written notification of the beginning of a review. Such notification shall be sent directly to all health care facilities in the State and to others who request direct notification. A notice shall also appear in a newspaper of general circulation which shall serve as written notification to the general public. The date of notification is the date on which such notice appears in the newspaper. The notification shall identify the applicant, indicate the nature of the application, specify the period during which a public hearing in the course of the review as covered in subdivision (6) of this section may be requested, and indicate the manner in which notice will be provided of the time and place of any hearing so requested.

(5) *Findings.* — Upon completion of a review under this chapter, and within the time frames outlined in subdivision (3) of this section, the Bureau shall notify in writing the applicant and anyone else upon request as to the Board's decision, including the basis on which the decision was made. Decisions can be conditional, but the conditions must be related to the specific project in question.

(6) *Public hearing in the course of review.* — Within 10 days after the date of notification as described in subdivision (4) of this section, a public hearing in the course of review may be requested in writing by any person. The Board shall provide for a public hearing if requested and shall provide notification of the time and place for such hearing in a newspaper of general circulation. The public hearing shall be held not less than 14 days after such notice appears in the newspaper. Fees shall not be imposed for such hearings. An opportunity must be provided for any person to present testimony.

(7) *Administrative reconsideration — Procedure for Board.* — Any person may, for a good cause shown, request in writing a public hearing for purposes of reconsideration of a Board decision rendered under subdivision (5) of this section. The Board may not impose fees for such a hearing. For purposes of this subdivision, a request for a public hearing shall be deemed by the Board to have shown good cause if it:

a. Presents newly discovered, significant, relevant information not previously available or considered by the Board; and

b. Demonstrates that there have been significant changes in factors or circumstances relied upon by the Board in reaching its decision; or

c. Demonstrates that the Board has materially failed to follow its adopted procedures in reaching its decision.

A request for such a hearing must be received within 10 days of the decision. The hearing shall commence within 45 days of the request.

Notice of such public hearing shall be sent, not less than 15 days prior to the date of the hearing, to the person requesting the hearing and to the applicant, and shall be sent to others upon request. Following completion of the hearing, the Board shall, within 45 days, issue its written decision which shall set forth the findings of fact and conclusion of law upon which its decision is based.

(8) *Appeal — Applicant.* — A decision of the Board following review of an application pursuant to subdivision (5) of this section, an administrative reconsideration pursuant to subdivision (7) of this section, or the denial of a request for extension of a Certificate of Public Review pursuant to § 9307 of this title, may be appealed within 30 days to the Superior Court. Such appeal shall be on the record.

(9) *Access by public.* — The general public shall be provided access to all applications reviewed under this chapter and to all other written materials pertinent to any review of an application.

(10) *Filing fees.* — Within 5 working days of determining that an application under this chapter is complete, the Bureau shall notify the applicant of any filing fee due.

Filing fees shall be determined from the following table:

Capital Expenditures	Filing Fee
Less than $500,000	$100
$500,000 to $999,999	$750
$1,000,000 to $4,999,999	$3,000
$5,000,000 to $9,999,999	$7,500
$10,000,000 and over	$10,000

Filing fees shall be due 30 days after the date of notification of the beginning of review as covered under subdivision (4) of this section. This due date may be extended up to 10 additional days at the discretion of the Bureau. Applications for which filing fees have not been paid within this time frame shall be considered to be withdrawn. All filing fees shall be deposited in the General Fund.

(61 Del. Laws, c. 393, § 1; 66 Del. Laws, c. 90, § 1; 68 Del. Laws, c. 29, § 7; 69 Del. Laws, c. 251, § 1; 72 Del. Laws, c. 64, § 1; 75 Del. Laws, c. 192, §§ 7, 8; 76 Del. Laws, c. 87, § 2.)

§ 9306 Review considerations.

In conducting reviews under this chapter, the Board shall consider as appropriate at least the following:

(1) The relationship of the proposal to the Health Resources Management Plan adopted pursuant to § 9303 of this title. Prior to adoption of a Health Resources Management Plan by the Board, the State health plan last in use by the Health Resources Management Council shall comprise such plan;

(2) The need of the population for the proposed project;

(3) The availability of less costly and/or more effective alternatives to the proposal, including alternatives involving the use of resources located outside the State;

(4) The relationship of the proposal to the existing health care delivery system;

(5) The immediate and long-term viability of the proposal in terms of the applicant's access to financial, management and other necessary resources;

(6) The anticipated effect of the proposal on the costs of and charges for health care; and

(7) The anticipated effect of the proposal on the quality of health care.

(61 Del. Laws, c. 393, § 1; 66 Del. Laws, c. 90, § 1; 69 Del. Laws, c. 251, § 1.)

§ 9307 Period of effectiveness of Certificate of Public Review.

(a) A Certificate of Public Review shall be valid for 1 year from the date such approval was granted.

(b) At least 30 days prior to the expiration of the Certificate of Public Review, the applicant shall inform the Board in writing of the project's status. The Board shall determine if sufficient progress has been made for the Certificate of Public Review to continue in effect. If sufficient progress has not been made, the applicant may request in writing, to the Board, that a 6-month extension be granted. The Board shall either allow the certificate to expire or grant such extension. A decision by the Board to deny an extension may be appealed pursuant to § 9305(8) of this title.

(61 Del. Laws, c. 393, § 1; 66 Del. Laws, c. 90, § 1; 69 Del. Laws, c. 251, § 1; 72 Del. Laws, c. 64, § 1.)

§ 9308 Sanctions.

(a) Any person undertaking an activity subject to review as described in § 9304 of this title, without first being issued a Certificate of Public Review for that activity, shall have its license or other authority to operate denied, revoked or restricted as deemed appropriate by the responsible licensing or authorizing agency of the State and an order in writing to such effect shall be issued by that licensing or authorizing agency.

(b) In addition to subsection (a) of this section, the Board or any adversely affected health care facility may maintain a civil action in the Court of Chancery to restrain or prohibit any person from undertaking an activity subject to review as described in § 9304 of this title without first being issued a Certificate of Public Review.

(c) A person who willfully undertakes an activity subject to review as described in § 9304 of this title and who has not received a Certificate of Public Review for that activity shall be fined not less than $500 nor more than $2,500 for each offense and each day of a continuing violation after notice of violation shall be considered a separate offense. The Superior Court shall have jurisdiction over criminal violations under this subsection.

(61 Del. Laws, c. 393, § 1; 66 Del. Laws, c. 90, § 1; 69 Del. Laws, c. 251, § 1; 72 Del. Laws, c. 64, § 1.)

§ 9309 Surrender, revocation and transfer of Certificate of Public Review.

(a) A Certificate of Public Review may be surrendered by the holder upon written notification to the Board and such surrender shall become effective immediately upon receipt of the Board.

(b) A Certificate of Public Review may be revoked by the Board in the case of misrepresentation in the Certificate of Public Review application, failure to comply with conditions established by the Board pursuant to § 9303(d)(2) of this title, failure to undertake the activity for which the Certificate of Public Review was granted in a timely manner or loss of license or other authority to operate. Prior to revoking a Certificate of Public Review, the Board shall provide written notice to the holder of the certificate stating its intent to revoke the certificate and providing the holder at least 30 days to voluntarily surrender the certificate or to show good cause why the certificate should not be revoked. No Certificate of Public Review shall be revoked by the Board without first providing the holder of the certificate an opportunity for a hearing. The Board's decision to revoke a Certificate of Public Review may be appealed pursuant to § 9305(8) of this title.

(c) No Certificate of Public Review issued under this chapter, and no rights or privileges arising therefrom, shall be subject to transfer or assignment, directly or indirectly, except upon order or decision of the Board specifically approving the same, issued pursuant to application supported by a finding from the evidence that the public to be served will not be adversely affected thereby.

(61 Del. Laws, c. 393, § 1; 66 Del. Laws, c. 90, § 1; 69 Del. Laws, c. 251, § 1; 72 Del. Laws, c. 64, §§ 1, 12.)

§ 9310 Immunity.

No member, officer or employee of the Board, the Bureau or health care facility shall be subject to, and such persons shall be immune from, any claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or

determination undertaken or performed, or recommendations made while discharging any duty or authority under this chapter, so long as such person acted in good faith, without malice, and within the scope of such person's duty or authority under this chapter or any other provisions of the Delaware law, federal law or regulations or duly adopted rules and regulations providing for the administration of this chapter, good faith being presumed until proven otherwise, with malice to be shown by the complainant.

(61 Del. Laws, c. 393, § 1; 66 Del. Laws, c. 90, § 1; 69 Del. Laws, c. 251, § 1; 70 Del. Laws, c. 186, § 1.)

§ 9311 Charity care.

Any person subject to a CPR review pursuant to this chapter shall perform and accept within this State charity care to the extent required by the Board to those individuals who meet the criteria for rendering charity care established by the Board, and shall continue to provide charity care in each fiscal year as determined by the Board. The authority to enforce charity care requirements shall rest with the Department of Health and Social Services.

(75 Del. Laws, c. 192, § 10; 76 Del. Laws, c. 87, § 3; 77 Del. Laws, c. 132, § 2.)

§ 9312 Charity care.

Transferred to § 9311 of this title by 77 Del. Laws, c. 132, § 2, effective July 8, 2009.

Part IX
Persons With Disabilities and Partial Disabilities
Chapter 94
COMMUNITY-BASED ATTENDANT SERVICES

§ 9401 Short title.

This act may be cited as the Community-Based Attendant Services Act.

(73 Del. Laws, c. 193, § 1.)

§ 9402 Purpose.

The purposes of this chapter are as follows:

(1) To minimize the likelihood of institutionalization and maximize the potential for independent living of individuals with disabilities.

(2) To establish a statewide consumer-directed attendant support program which promotes self-sufficiency, self-reliance and a sense of personal responsibility among participants.

(3) To enhance the continuum of community-based services offered by the State; and

(4) To reduce barriers to participation in vocational, educational, social and other common community-based activities.

(73 Del. Laws, c. 193, § 1.)

§ 9403 Definitions.

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

(1) "Ancillary services" means the following supplemental support services, which may be provided only if an eligible participant qualifies for 1 or more basic support services:

a. Homemaker-type services, including cleaning, laundry, shopping and seasonal chores;

b. Companion-type services, including transportation, escort and facilitation of written, oral and electronic communication;

c. Assistance with cognitive tasks, including bill payment and money management, planning activities and decision-making; and

d. Such other supplemental support services as may be adopted by the Department through regulation.

(2) "Attendant services" means those basic and ancillary services which compensate for an eligible participant's limitations in performing essential activities of daily living, self-care or mobility within home or community environments.

(3) "Basic services" means the following support services:

a. Assistance with transferring to and from a bed, wheelchair, vehicle, or other environmental setting;

b. Help with use of medical and non-medical equipment, devices, or assistive technology;

c. Assistance with routine bodily functions, including, but not limited to:

1. Health maintenance activities;

2. Bathing and personal hygiene;

3. Bowel or urinary evacuation;

4. Dressing and grooming; and

5. Food consumption, preparation and cleanup; and

d. Such other core support services as may be adopted by the Department through regulation.

(4) "Department" means the Department of Health and Social Services.

(5) "Eligible participant" means a resident of the State with a severe, chronic mental or physical disability which precludes or significantly impairs the individual's independent performance of essential activities of daily living, self-care or mobility within home or community environments. For purposes of this paragraph, a "chronic disability" is a medically determinable impairment which can be expected to last for a continuous period of not less than 12 months.

(6) "Program" means the Community-Based Attendant Services Program.

(73 Del. Laws, c. 193, § 1.)

§ 9404 Powers and duties.

In furtherance of the purposes of this chapter, and within the limits of appropriations and other available funds, the Department shall have the following powers and duties:

(1) Develop and implement a statewide community-based attendant services program either directly or through contractual arrangements with other public or private agencies;

(2) Establish and periodically revise an income-based sliding fee schedule for attendant services for eligible participants;

(3) Consistent with definitions in § 9403 of this title, clarify program eligibility and the scope of authorized services;

(4) Establish program operation standards which ensure prompt determination of applications, periodic review of eligibility, participant satisfaction assessment, and an impartial grievance system;

(5) Ensure that the primary program service delivery model is participant-directed and includes the following features:

a. Eligible participant option to hire, supervise, pay and dismiss attendants;

b. Availability of eligible participant training to facilitate adoption of employer role; and

c. Authorization of eligible participant to act through guardian or appointed representative;

(6) Ensure that attendant services are provided in conformity with a written individualized service plan, whose format shall be specifically prescribed by regulation, developed and approved as follows:

a. The plan shall be jointly prepared by the Department and eligible participant, and, in the participant's discretion, other persons with special expertise or interest, including family members;

b. The plan shall be based on an individualized needs assessment;

c. The contents of the plan shall be fully explained to the eligible participant and implemented only after written endorsement by both the Department and eligible participant;

d. In the event that endorsement is withheld, the plan shall be partially implemented in contexts in which consensus is achieved;

e. The plan shall describe the nature, frequency and financial aspects of itemized attendant services; and

f. The plan shall include services onset, review, and ending dates;

(7) Prepare an annual report which describes the number of program participants; profiles of participants, including types of disabilities, geographical location and services provided; financial expenditures; participant satisfaction data; and such other information recommended by the Advisory Council;

(8) Investigate and assess the availability of federal and other funding to support implementation of this chapter.

(73 Del. Laws, c. 193, § 1.)

§ 9405 Attendant screening.

(a) The Department shall safeguard participants through establishment of an attendant screening system which includes, but is not limited to, the following features:

(1) Standardized application comprehensively addressing each prospective attendant's background;

(2) Criminal background check at state expense; and

(3) Check of abuse, neglect, mistreatment and financial exploitation registries, including those authorized by Chapters 9 and 11 of this title and Chapter 85 of Title 11.

(b) To effectively implement the attendant screening system, the Department is vested with the following powers, duties and authority:

(1) The Department shall require any person seeking to provide attendant services under this chapter to share any and all information, including fingerprints, necessary to obtain a report of the person's Delaware criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 [28 U.S.C. § 534]. The State Bureau of Identification shall be the intermediary for acquisition of the federal criminal history record.

(2) Notwithstanding any requirements of Chapter 85 of Title 11 to the contrary, the State Bureau of Identification shall furnish information pertaining to the entire Delaware and federal criminal history record of any person seeking to provide attendant services under this chapter. Such information shall be provided to the Department of Health and Social Services pursuant to the procedures established by the Superintendent of the State Police.

(3) Notwithstanding any contrary provision of Chapter 9 of this title, the Department is authorized to obtain child abuse and neglect registry information from the Department of Services for Children, Youth and Their Families pertaining to any person seeking to provide attendant services under this chapter.

(4) The Department shall adopt criteria through its regulations which shall disqualify a person from providing attendant services under this chapter. To the extent not otherwise prohibited by law, the Department shall provide a program participant with a summary report of a prospective attendant's screening results prior to employment.

(5) The Department may adopt criteria through regulations authorizing exemption from this section for persons for whom a qualifying screening was conducted within the previous 5 years.

(c) Any person who either fails to make a full and complete disclosure on an application or a full and complete disclosure of any information required to obtain a registry or criminal background check as required in this section shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(73 Del. Laws, c. 193, § 1.)

§ 9406 Advisory Council.

The State Council for Persons with Disabilities, established by § 8813 of Title 29 shall serve as the Advisory Council to the Department in implementing this chapter. In furtherance of this role, the Council shall fulfill the following functions:

(1) Review and comment on regulations, policies, and guidelines issued or proposed by the Department;

(2) Review and comment on the Department's annual report developed in conformity with § 9404(7) of this title;

(3) Obtain and review information from the Department and other agencies pertaining to program operation, participant satisfaction and unmet needs;

(4) Study, research and advise the Department on national studies, projects, trends and funding initiatives pertaining to attendant care; and

(5) Otherwise assess and assist the Department in implementation of this chapter.

(73 Del. Laws, c. 193, § 1.)

§ 9407 Regulations.

(a) The Department shall prescribe such regulations as may be necessary to fully implement this chapter.

(b) Regulations prepared by the Department under this chapter shall be subject to review and comment by the Advisory Council and shall otherwise be promulgated in conformity with the Administrative Procedures Act, Chapter 101 of Title 29.

(73 Del. Laws, c. 193, § 1.)

Part IX
Persons With Disabilities and Partial Disabilities
Chapter 95
DELAWARE WHITE CANE LAW

§ 9501 Public policy; White Cane Day.

(a) It is the policy of this State to encourage and enable persons who are blind, visually impaired or have physical disabilities to participate fully in the social and economic life of this State and to engage in remunerative employment.

(b) It is the policy of this State that persons who are blind, visually impaired or have physical disabilities shall be employed by all employers including this State, political subdivisions of this State, the public schools and in all other employment supported in whole or in part by public funds on the same terms and conditions as are persons without such disabilities unless it is shown that the particular disability prevents the performance of the work involved.

(c) Each year the Governor by proclamation or the General Assembly by resolution may take public notice of October 15 as White Cane Safety Day so that the public may continue to be aware of the significance of the white cane and be able to recognize the presence of persons with disabilities on the streets and sidewalks of the State.

(16 Del. C. 1953, § 9501; 58 Del. Laws, c. 222; 78 Del. Laws, c. 179, §§ 236-238.)

§ 9502 Rights and liabilities.

(a) Persons who are blind, visually impaired or have physical disabilities shall have the same rights as persons without such disabilities to use streets, highways, sidewalks, walkways, public buildings, public facilities and other public places.

(b) Persons who are blind, visually impaired or have physical disabilities are entitled to full and equal accommodations, advantages, facilities and privileges on all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats or any other public conveyances or modes of transportation, and in all hotels, lodging places, places of public accommodation, amusement or resort and other places to which the general public is invited, subject only to the conditions and limitations established by law.

(c) Every person who is totally or partially blind may be accompanied by a guide dog, especially trained for the purpose, in any of the places listed within this section without being required to pay an extra charge for the guide dog, provided that the person who is totally or partially blind shall be liable for any damages done to the premises or facilities by such dog. A guide dog may be excluded from any of the places enumerated in this section if the admission of such dog would create the clear danger of a disturbance or physical harm to other persons in such place.

(16 Del. C. 1953, § 9502; 58 Del. Laws, c. 222; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 239-241.)

§ 9503 Rules of the road.

The driver of a vehicle approaching a pedestrian who is totally or partially blind who is carrying a cane predominately white or metallic in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such pedestrian who is blind, and any driver who fails to take such precautions shall be liable in damages for any injury caused to such pedestrian. A pedestrian who is totally or partially blind not carrying such a cane or using a guide dog in any of the places, accommodations or conveyances listed in § 9502 shall have all of the rights and privileges conferred by law upon other persons and the failure of a pedestrian who is totally or partially blind to carry a cane or use a dog in any such places, accommodations or conveyances shall not be conclusively held to constitute nor be evidence of contributory negligence.

(16 Del. C. 1953, § 9503; 58 Del. Laws, c. 222; 78 Del. Laws, c. 179, §§ 242, 243.)

§ 9504 Enjoyment of public facilities.

Any person or persons, firm or corporation or an agent thereof who denies or interferes with the admittance to or enjoyment of the public facilities enumerated in § 9502 or otherwise interferes with the rights of a person who is totally or partially blind or has a disability as specified in § 9502 shall be guilty of a misdemeanor.

(16 Del. C. 1953, § 9504; 58 Del. Laws, c. 222; 78 Del. Laws, c. 179, § 244.)

§ 9505 Housing accommodations.

(a) Persons who are blind, visually impaired or have physical disabilities shall be entitled to full and equal access as other members of the general public to all housing accommodations offered for rent, lease or compensation in this State, subject to the conditions and limitations established by law on all persons.

(b) "Housing accommodations" shall mean any real property or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of 1 or more human beings, but shall not include any accommodations not included within subsection (a) or any single-family residence the occupants of which rent, lease or furnish for compensation not more than 1 room therein.

(c) Nothing in this section shall require any person renting, leasing or providing for compensation real property to modify such person's property in any way or provide a higher degree of care for a person who is blind or visually impaired.

(d) Every person who is totally or partially blind who has a guide dog shall be entitled to full and equal access to all housing accommodations provided for in this section and the person who is totally or partially blind shall not be required to pay extra compensation for such guide dog, but shall be liable for any damage done to the premises by such a guide dog.

(16 Del. C. 1953, § 9505; 58 Del. Laws, c. 222; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 245-247.)

§ 9506 Violations.

Any person who violates this chapter shall, upon conviction for such offense in a Justice of the Peace Court, be fined $100 for every such violation.

(16 Del. C. 1953, § 9506; 58 Del. Laws, c. 222.)

Part IX
Persons With Disabilities and Partial Disabilities
Chapter 96
STATE USE LAW

§ 9601 Declaration of purpose.

The purpose of this chapter is to further the policy of the State to encourage and assist blind and other severely handicapped individuals to achieve maximum personal independence through useful and productive gainful employment by assuring an expanded and constant market for their products and services, thereby enhancing the dignity and capacity for self-support of blind and other severely handicapped persons, and minimizing their dependence on welfare as well as the need for the State to provide costly institutionalization.

(59 Del. Laws, c. 566, § 1; 64 Del. Laws, c. 85, § 1.)

§ 9602 Definitions.

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

(1) "Agency of this State" shall include all counties, towns, school districts or any other entity which is supported in whole or in part by funds appropriated by the General Assembly.

(2) "Blind" shall include all persons whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the better field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(3) "Delaware Association of Rehabilitation Facilities (DELARF)" means the Association whose membership includes organizations, both public and private, whose primary purpose is to provide rehabilitation services, and individuals who have a recognized interest in rehabilitation. The State Association's purpose is to stimulate interest and help to insure suitable programming of vocational, medical, social, psychological rehabilitation.

(4) "Food service" means restaurant, cafeteria, snack bar, vending machines for food and beverages and goods and services customarily offered in connection with any of the foregoing.

(5) "Public office building" means any building owned or leased by the State, used for governmental purposes. It does not include public schools, or buildings at residential institutions operated by the State. No building or property, used as a public recreational facility, owned or leased by the State and operated or occupied by the Department of National Resources and Environmental Control or the State Forestry Department, shall be included within this definition. Food service located in or on any public building on the Delaware Turnpike shall not be included in this definition.

(6) "Qualified rehabilitation facility" shall mean a rehabilitation facility:

a. Which is owned and operated by a corporation or association organized under the laws of the United States or of this State, operated in the interest of severely handicapped individuals, no part of the net earnings of which inures, or any lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954, as amended; and

b. Which is certified as a sheltered workshop and/or work activities center by the Wage and Hour Division of the United States Department of Labor; and

c. Which meets the national standards for accepted rehabilitation facilities, as certified by a national rehabilitation accreditation association such as the Commission of Accreditation of Rehabilitation Facilities (CARF); and

d. Which complies with any applicable health and safety standards prescribed by the Secretary of Labor of the United States.

(7) "Severely handicapped" and "severely handicapped individuals" mean:

a. An individual or class of individuals who is under a physical or mental disability other than blindness which constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from engaging in normal competitive employment. The handicap substantially limits 1 or more of the person's major life activities.

b. An individual who has met the admission requirements of a qualified rehabilitation facility.

(8) "Workshop" or "sheltered workshop" shall mean the Delaware Industries for the Blind.

(59 Del. Laws, c. 566, § 1; 63 Del. Laws, c. 43, § 1; 64 Del. Laws, c. 85, § 2; 69 Del. Laws, c. 291, § 173.)

§ 9603 Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals — Appointed; composition; terms; vacancies; compensation.

(a) A Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals shall be appointed by the Governor to advise the Director of the Division for the Visually Impaired in the management of the Delaware Industries

for the Blind operated by the Division. The Commission shall be composed of 9 members as follows: From the private sector, a person with business experience in production, a person skilled in marketing, a person experienced in industrial purchasing, a person experienced in industrial engineering, a person experienced in sales, a person experienced in accounting, a person experienced in the field of advertising; and from state government, the Director of Government Support Services and the Secretary of Finance or their designated representatives, and, ex officio, the Director of the Division for the Visually Impaired and a representative from the Delaware Association of Rehabilitation Facilities. The members of the Commission shall be appointed for terms of 4 years and shall serve until new appointments are made at the end of their terms. Four of the members appointed in 1982 shall serve terms of 2 years in order to stagger the expiration dates of the terms of the members from the private sector. No more than 5 of the members from the private sector shall be members of the same political party.

(b) Any private citizen member appointed under subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term.

(c) Members of the Commission shall serve without compensation other than reimbursement for expenses actually incurred in connection with the work of the Commission, and for travel expenses when away from their homes or regular places of business.

(d) The Commission may secure, directly from any agency of this State, information necessary to enable it to carry out this chapter. Upon request of the Chairperson of the Commission, the head or administrator of such state agency shall furnish the requested information to the Commission.

(e) The Commission shall, not later than 90 days following the close of each fiscal year, transmit to the Governor and to the General Assembly a report which shall include the names of the Commission members serving in the preceding fiscal year, the dates of the Commission meetings in that year, a description of its activities during that year, and any recommendations for changes in the law which the Commission might suggest.

(f) Notwithstanding any other provision of the Delaware Code, members of the Commission may participate in a meeting of the Commission by means of conference telephone or other communications equipment by which all persons participating in the meeting can hear each other. Participating in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

(59 Del. Laws, c. 566, § 1; 63 Del. Laws, c. 259, § 1; 64 Del. Laws, c. 85, §§ 3, 4; 69 Del. Laws, c. 291, § 173; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 143, § 4; 75 Del. Laws, c. 88, § 22(3); 76 Del. Laws, c. 56, § 1.)

§ 9604 Commission for the Purchase of Products and Services for the Blind and Other Severely Handicapped Individuals — Powers and duties; sheltered workshop; qualified rehabilitation facility.

(a) The Commission for the Purchase of Products and Services of the Blind and Other Severely Handicapped Individuals shall provide a market for products and services of visually handicapped and severely handicapped individuals. The Director of the Division for the Visually Impaired and the representative from the Delaware Association of Rehabilitation Facilities shall determine, with the advice of the Commission, the price of all products manufactured and services provided by the Delaware Industries for the Blind or qualified rehabilitation facility which are offered for sale to the various agencies of the State. The price shall recover for the Delaware Industries for the Blind and qualified rehabilitation facility the cost of raw materials, labor, overhead and delivery costs, but shall not include a profit to the Commission or to the Delaware Industries for the Blind or qualified rehabilitation facility. The Director of the Division for the Visually Impaired and the representative from the Delaware Association of Rehabilitation Facilities, with the advice of the Commission, may revise such prices from time to time in accordance with changing cost factors, and may make such rules and regulations concerning specifications, time of delivery and other matters of operation as shall be necessary to carry out the purposes of the Delaware Industries for the Blind and qualified rehabilitation facility and this chapter.

(b) The Commission shall create subcommittees to facilitate its work. It shall act as an advisory committee to the Director of the Division for the Visually Impaired and the appointee from the Delaware Association of Rehabilitation Facilities in the operation of the Delaware Industries for the Blind and qualified rehabilitation facility and shall provide technical assistance to the Delaware Industries for the Blind in the areas of sales promotion, public relations, market development, market analysis and budget preparation.

(c) The Commission shall create a subcommittee comprised of the Director of Government Support Services or the Director's designated representative, 2 appointed members of the Commission and the representative from the Delaware Association of Rehabilitation Facilities. This subcommittee shall function as advisors for qualified rehabilitation facilities and shall adopt policies and procedures for the awarding of contracts or subcontracts to qualified rehabilitation facilities. This subcommittee will select a provider for a product or service when more than 1 qualified rehabilitation facility submits quotations. Selection of the provider will be based on criteria set by this subcommittee to facilitate the equitable allocation of orders among qualified rehabilitation facilities. The subcommittee shall encourage diversity in products and services provided by qualified rehabilitation facilities and shall discourage unnecessary duplication or competition between qualified rehabilitation facilities.

(d) The Director of the Division for the Visually Impaired and the appointee from the Delaware Association of Rehabilitation Facilities shall publish periodically a list of products and services provided by the Delaware Industries for the Blind and qualified rehabilitation facilities which the Commission recommends as suitable for procurement by agencies of this State pursuant to this chapter. The list shall be distributed to every person who procures materials for each agency of the State.

(59 Del. Laws, c. 566, § 1; 63 Del. Laws, c. 259, § 1; 64 Del. Laws, c. 85, § 5; 69 Del. Laws, c. 291, § 173; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 143, § 4; 75 Del. Laws, c. 88, § 22(3).)

§ 9605 Procurement requirements for the State.

(a) If any agency of this State intends to procure a product or service on the procurement list, that agency shall, in accordance with the rules and regulations of the Commission, procure such product or service, at the price established by the Commission, from the Delaware Industries for the Blind and from qualified rehabilitation facilities. If the product or service is available within the period required by that agency, such procurement shall be mandatory. This chapter, however, shall not apply in any case where products or services are available for procurement from any agency of this State and procurement therefrom is required under any statute, rule or regulation.

(b) In the procurement of any product or service under this chapter preference shall be given by an agency of this State to a product or service of the Delaware Industries for the Blind. Waiver of such preference shall be provided in writing by the Director of the Division for the Visually Impaired to the Chairperson of the Commission for the Purchase of Products or Services of the Blind and Other Severely Handicapped Individuals.

(c) In furthering the purposes of this chapter, as set forth in § 9601 of this title, and in contributing to economy of government, it is the intent of the General Assembly that there be close cooperation between the Commission and any agency of the State from which procurement of products or services is required under any state law. The Commission and any such agency are authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of this chapter and any other law requiring procurement of products or services from any agency of this State.

(59 Del. Laws, c. 566, § 1; 64 Del. Laws, c. 85, § 6; 69 Del. Laws, c. 291, § 173; 70 Del. Laws, c. 186, § 1.)

§ 9606 Food service in public office buildings.

(a) If any governmental agency of this State intends to operate or continue food service in a public office building, that agency shall procure such food service from the Delaware Division for the Visually Impaired under the vending facility program authorized by 20 U.S.C. § 107 et seq. No governmental agency shall charge the Division for the Visually Impaired or its food service vendors rent for food service operations operated under this section. In the event the Delaware Division for the Visually Impaired certifies in writing that it is unable to provide food service to a governmental agency who requests such service, the governmental agency may seek food service from another provider.

(b) This section shall not impair any valid existing contracts by governmental agencies; however, at the expiration of such existing contracts, the mandates contained in this section shall be binding on the governmental agency.

(c) This section shall not apply to any office building owned or leased by any county or municipal corporation. This section shall also not apply to any building leased, used or owned by any institution of higher education.

(d) Notwithstanding any provision of subsection (a) of this section to the contrary:

(1) Any provision of 20 U.S.C. § 107 et seq. that limits accrual of vending machine income to the Division for the Visually Impaired on the basis of the annual income from such vending machines is not incorporated into the laws of this State by this section; and

(2) Any provision of 20 U.S.C. § 107 et seq. that governs the use of vending machine income which accrues to the Division for the Visually Impaired is not incorporated into the laws of this State by this section.

(e) The Secretary of the Department of Health and Social Services shall have the power to promulgate all rules and regulations necessary to accomplish the purposes of this section.

(63 Del. Laws, c. 43, § 2; 66 Del. Laws, c. 339, §§ 1, 2.)

Part X
Paramedic and Other Emergency Medical Service Systems
Chapter 97
EMERGENCY MEDICAL SERVICES SYSTEMS

§ 9701 Purposes.

The purposes of the emergency medical services systems legislation are to establish and/or identify specific roles and responsibilities in regard to emergency medical services in Delaware in order to reduce morbidity and mortality rates for the citizens of Delaware and to ensure quality of emergency care services, within available resources, through the effective coordination of the emergency medical services system.

(63 Del. Laws, c. 383, § 1; 67 Del. Laws, c. 152, § 5.)

§ 9702 Definitions.

As used in this subchapter:

(1) "Advanced emergency medical technician" (AEMT) shall mean a person who has successfully completed a course approved by the Board of Medical Licensure and Discipline or its duly authorized representative, which meets the objectives of the national scope of practice.

(2) "Advanced life support" (ALS) shall mean the advanced level of prehospital and interhospital emergency care that includes basic life support functions including cardiopulmonary resuscitation, plus cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive medical devices, trauma care and other authorized techniques and procedures.

(3) "Ambulance" shall mean any publicly or privately owned vehicle, as certified by the State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and is intended to be used for and is maintained or operated for the transportation upon the streets and highways of this State for persons who are sick, injured, wounded or otherwise incapacitated or helpless.

(4) "Ambulance attendant" shall mean a person trained in emergency medical care procedures and currently certified by the Delaware State Fire Prevention Commission or its duly authorized agent in accordance with standards prescribed by the Commission. Such course shall be classified as basic life support and shall be the minimum acceptable level of training for certified emergency medical personnel.

(5) "Basic life support" (BLS) shall mean the level of capability which provides prehospital, noninvasive emergency patient care designed to optimize the patient's chances of surviving an emergency situation.

(6) "Consumer" shall mean a recipient or potential recipient of the services provided by an emergency medical services system, who receives no direct or indirect personal, financial or professional benefit as a result of association with health care or emergency services other than that generally shared by the public at large, and who is not otherwise considered a "provider" within the intent of this subchapter.

(7) "Director" shall mean the program chief of the Office of Emergency Medical Services responsible for the duties of the Office as set forth in Chapter 97 of this title.

(8) "Disaster" shall mean a sudden unexpected event which disrupts normal community functions and/or quickly exhausts local facilities so as to require outside help.

(9) "Early defibrillation provider" shall mean a member or employee of an early defibrillation service certified to operate Semi-Automatic External Defibrillator (SAED) equipment under the requirements set forth in regulations promulgated by the Department of Health and Social Services.

(10) "Early defibrillation service" shall mean any agency, organization or company, certified as such by the State Office of Emergency Medical Services, that employs or retains providers certified in the use of semi-automatic defibrillation equipment.

(11) "Emergency medical services systems" (EMSS) shall mean a statewide system which provides for the utilization of available personnel, equipment, transportation and communication to ensure effective and coordinated delivery of medical care in emergency situations resulting from accidents, illness or natural disasters.

(12) "Emergency medical technician" (EMT) shall mean a person trained, and currently certified by the State Fire Prevention Commission, in emergency medical care procedures through a course which meets the objectives of the national scope of practice.

(13) "Health planning agencies" shall mean the federally designated health system agency and/or statewide health planning and development agency for Delaware.

(14) "Inclusive Statewide Trauma Care System" means a Trauma System in which all current and future providers of hospital and/or prehospital health care services may participate, at a level commensurate with the scope of their resources, as outlined in paragraph (21) of this section.

(15) "Medical control" shall mean directions and advice normally provided from a centrally designated medical facility operating under medical supervision, supplying professional support through radio or telephonic communication for on-site and in-transit basic and advanced life support services given by field and satellite facility personnel.

(16) "Mutual aid agreements" shall mean the establishment of appropriate arrangements with EMS systems of other states for the provision of emergency medical services on a reciprocal basis.

(17) "Paramedic" shall mean a person who has successfully completed a course approved by the Board of Medical Licensure and Discipline or its duly authorized representative, and who acts under the direct or radio control of a physician or physician surrogate.

(18) "Provider" shall mean a person who, as an individual or member of a corporation or organization, whether profit-making or nonprofit, on a regular basis gives or offers for sale any supplies, equipment, professional or nonprofessional services, or is capable of giving or offering for sale supplies, equipment or services vital or incidental to the functions of an emergency medical services system.

(19) "Public safety personnel" shall mean law-enforcement officers, lifeguards, park rangers, firefighters, ambulance and rescue personnel, communications and dispatch specialists and other public employees and emergency service providers charged with maintaining the public safety.

(20) "Semi-automatic external defibrillator" shall mean a device capable of analyzing a cardiac rhythm, determining the need for defibrillation, automatically charging and advising a provider to deliver a defibrillation electrical impulse.

(21) "Specialty care unit" shall mean sophisticated treatment facilities that provide advanced specialized definitive care for critically ill patients. The units shall be available for the diagnosis and care of specific patient problems including major trauma, burns, spinal cord injury, poisoning, acute cardiac, high-risk infant and behavioral emergencies.

(22) "Trauma Facility" means an acute care hospital which has received and maintains current State designation as a Trauma Center. Categories of trauma facilities in Delaware are as follows:

a. Regional Level 1 Trauma Center: A regional resource Trauma Center that has the capability of providing leadership and comprehensive, definitive care for every aspect of injury from prevention through rehabilitation.

b. Regional Level 2 Trauma Center: A regional Trauma Center with the capability to provide initial care for all trauma patients. Most patients would continue to be cared for in this Center; there may be some complex cases which would require transfer for the depth of services of a Regional Level 1 or Specialty Center.

c. Community Trauma Center: An acute care hospital that provides assessment, resuscitation, stabilization and triage of all trauma patients, arranging for timely transfer of those patients requiring the additional resources of a Regional Trauma or Specialty Center and delivering definitive care to those whose needs match the resources of the Community Trauma Center.

d. Participating Hospital: An acute care facility which transfers trauma patients with moderate or severe injuries to Trauma Centers after initial resuscitation. When necessary, this facility may provide care to trauma patients with minor injuries. Participating hospitals contribute data to the Delaware Trauma System Registry and Quality Improvement Program.

(23) "Trauma Patient" means any person with actual or potential bodily damage subsequent to an event which exposed the body to an external force or energy.

(24) "Treatment protocols" shall mean written uniform treatment and care plans for emergency and critical patients. The treatment plans for advanced life support must be approved and signed by appropriate physicians and/or medical groups.

(63 Del. Laws, c. 383, § 1; 67 Del. Laws, c. 152, § 5; 70 Del. Laws, c. 192, §§ 1, 2; 70 Del. Laws, c. 453, §§ 1, 2; 72 Del. Laws, c. 137, §§ 20, 21; 77 Del. Laws, c. 319, § 1; 78 Del. Laws, c. 310, § 1.)

§ 9703 Delaware Emergency Medical Services Oversight Council.

(a) There is established the Delaware Emergency Medical Services Oversight Council (DEMSOC). The Council shall consist of the following members:

(1) A representative of the Office of the Governor appointed by the Governor:

(2) The Secretary of the Department of Safety and Homeland Security;

(3) The Secretary of the Department of Health and Social Services, or at the discretion of the Secretary, the Director of Public Health;

(4) The Chair of the Delaware State Fire Prevention Commission or another Commissioner selected by the Chair;

(5) The President of the Delaware Volunteer Firefighter's Association;

(6) The Colonel of the New Castle County Police Department or, at the Colonel's discretion, the Director of New Castle County Emergency Medical Services;

(7) The Kent County Administrator or, at the Administrator's discretion, the Kent County EMS Chief;

(8) The Sussex County Administrator, or at the Administrator's discretion, the Sussex County EMS Director;

(9) The President of the Delaware Chapter of the American College of Emergency Physicians;

(10) The State EMS Medical Director;

(11) The Chair of the Trauma Systems Committee;

(12) A practicing paramedic, certified and employed in the State, appointed by the Governor;

(13) The Chair of the DVFA Ambulance Advisory Committee;

(14) Three additional at-large members, 1 from each county, appointed by the Governor; and

(15) The President of the Delaware Healthcare Association or, at the President's discretion, a representative of the Delaware Healthcare Association.

(16) The Executive Director of the Medical Society of Delaware or, at the Executive Director's discretion, a representative of the Medical Society of Delaware;

(17) The Chair of the Delaware Police Chiefs' Council or, at the Chair's discretion, a representative of the Delaware Police Chief's Council;

(18) The Paramedic Commander of the Delaware State Police Aviation Unit; and

(19) The Chair of the Emergency Medical Services for Children (EMSC) Advisory Committee, or at the discretion of the EMSC Advisory Committee Chair, the EMSC Program Manager.

(b) The members of the Council may designate a voting alternate representative.

(c) The Council shall meet at a minimum of 1 time per year.

(d) The Chairperson of the Council shall be designated from among the members by the Governor and shall serve at the pleasure of the Governor. The Chairperson shall select a Vice Chairperson from the membership of the Council to serve in the Chairperson's absence.

(e) The Council shall monitor Delaware's emergency medical services system to ensure that all elements of the system are functioning in a coordinated, effective, and efficient manner in order to reduce morbidity and mortality rates for the citizens of Delaware and to ensure quality of emergency care services.

(f) The Council shall have the following duties and responsibilities:

(1) To examine policies and procedures and evaluate the effectiveness of the EMS system, specifically the respective roles, responsibilities, effectiveness and efficiency of the Office of Emergency Medical Services (OEMS), the State Fire Prevention Commission, the Department of Safety and Homeland Security, the EMS provider agencies and the medical community;

(2) To study, research, plan, evaluate as well as offer guidance to, cooperate with and assist public agencies and private institutions and organizations on methods for the coordination and effective utilization of their emergency medical service programs;

(3) To formulate goals and recommendations, based on objective criteria and data, to be used in evaluating EMS provider agency performance;

(4) To review and make recommendations concerning quality improvement efforts pursuant to this chapter;

(5) To make recommendations to the Office of EMS, the Department of Safety and Homeland Security, the EMS provider agencies and the medical community for improving EMS in Delaware;

(6) To make legislative recommendations to the Governor and General Assembly;

(7) To provide an annual report on or before April 15 of each year to the Governor, General Assembly, interested parties and the public which will outline the performance of all EMS system agencies, comparing that performance to established goals and performance measures. The report shall also estimate the costs of Delaware's EMS medical system. Automatic external defibrillator and cardio-pulmonary resuscitation program performance shall be included in this report. The first report will cover service provided in calendar year 2000 and will be delivered by April 15, 2001;

(8) To make recommendations concerning EMS to the State Fire Prevention Commission. The Commission will consider and act upon those recommendations; and

(9) To conduct a full review of EMS in the State at a minimum of every 5 years.

(g) The Council may request and shall receive from any department, division, commission or agency of the State such reasonable assistance and data as will enable it to properly carry out its functions hereunder.

(h) OEMS shall staff the Council.

(61 Del. Laws, c. 164, § 1; 67 Del. Laws, c. 47, § 50; 67 Del. Laws, c. 152, § 1; 69 Del. Laws, c. 78, § 1; 69 Del. Laws, c. 326, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 453, § 9; 72 Del. Laws, c. 137, § 2; 72 Del. Laws, c. 421, § 1; 73 Del. Laws, c. 218, §§ 1, 2, 3, 4; 73 Del. Laws, c. 368, § 10; 74 Del. Laws, c. 110, § 138; 74 Del. Laws, c. 261, § 1; 77 Del. Laws, c. 378, § 1; 78 Del. Laws, c. 326, § 1.)

§ 9704 Office of Emergency Medical Services — Created; purpose.

(a) The Office of Emergency Medical Services is hereby created. The Office shall be responsible for ensuring the effective coordination and evaluation of the emergency medical services system in Delaware which includes providing assistance and advice for activities related toward the planning, development, improvement and expansion of emergency medical services.

(b) The Office of Emergency Medical Services shall be a state agency within the Division of Public Health, Department of Health and Social Services. The Office of Emergency Medical Services shall report directly to and be responsible to the Director of the Division of Public Health, which is consistent with the health plan for Delaware.

(c) As used in this subchapter, the term "Office" shall refer to the State Office of Emergency Medical Services. In the performance of the functions mandated by this legislation which relate to the planning and evaluation of the emergency medical services system in Delaware, the Office of Emergency Medical Services shall coordinate with the Bureau of Health Planning and Resources Development for technical assistance in emergency medical services planning activities. Specifically, the Bureau of Health Planning and Resources Development shall have the primary responsibility for all data analysis related to the emergency medical services system. This coordination should minimize duplication of effort between the 2 agencies and allow for the effective use of available staff resources within the Department of Health and Social Services.

(d) Except for those activities and responsibilities for basic life support, which are under the jurisdiction of the State Fire Prevention Commission, the Office of Emergency Medical Services shall have jurisdiction over the development, implementation and maintenance of a Statewide Trauma System.

(e) A memorandum of agreement shall be established between the Office of Emergency Medical Services of the Division of Public Health and the State Fire Prevention Commission to foster inclusion and coordination of Basic Life Support Services within the Statewide Trauma System.

(f) The Director of Public Health shall establish a standing Trauma System Committee and ad hoc committees as deemed appropriate to assist in oversight of the Inclusive Statewide Trauma Care System. The standing Trauma System Committee shall convene at least quarterly. Membership on the standing Trauma System Committee will include, but not be limited to, a representative of each of the following constituencies to be selected from the 3 counties within the State:

(1) Trauma rehabilitation professionals

(2) Practicing trauma surgeons

(3) Practicing emergency department physicians

(4) The Association of Delaware Hospitals

(5) Advanced Life Support prehospital providers

(6) Basic Life Support prehospital providers

(7) The State Fire School

(8) Practicing trauma subspecialty physicians

(9) Practicing pediatric surgeons or pediatricians

(10) Practicing registered nurses involved in trauma patient care

(11) Emergency medical dispatchers

(12) Hospital administration

(13) The Delaware state police aviation section

(14) A representative from the State Fire Prevention Commission.

(g) The Trauma System Committee shall be an advisory group to the Director of Public Health on the following issues:

(1) Rules governing the operation of Delaware's Inclusive Statewide Trauma Care System, which will be based upon national references such as the American College of Surgeons' Resources for Optimal Care of the Trauma Patient: 1993.

(2) Recommendations for corrective action based on the reviews of the following:

a. Statewide trauma care system operations, including the monitoring for adherence to adopted policies, procedures, protocols and standards, the availability of appropriate resources and the periodic review of trauma hospital participation (designation) criteria.

b. The delivery of emergency medical and hospital services by trauma care service providers to trauma patients.

(3) Recommendation for modifications of the policies, procedures and protocols of trauma care as a result of system-wide review.

(63 Del. Laws, c. 383, § 1; 67 Del. Laws, c. 152, § 5; 70 Del. Laws, c. 453, §§ 3-6.)

§ 9705 Office of Emergency Medical Services — Functions.

(a) *Personnel.* — It shall be the responsibility of the Office to collect and analyze annually data pertaining to certified emergency medical services personnel in Delaware by levels of training in order to identify possible or potential shortages. Once EMS personnel shortages are identified, the Office shall notify the affected agencies and provide recommended courses of action to alleviate the problem or potential problem. In order to accomplish this task, the following agencies shall be required to provide a listing of the appropriate emergency medical services personnel by organization, level of training and county:

(1) Delaware State Fire Prevention Commission or its duly authorized representative;

(2) Wilmington Medical Center School for Emergency Medical Technicians;

(3) Delaware Committee on Trauma of the American College of Surgeons — advanced trauma life support;

(4) American Heart Association of Delaware — cardiopulmonary resuscitation (CPR) training programs and advanced cardiac life support;

(5) American Red Cross, Delaware Chapter — CPR training and first-aid training;

(6) Delaware Chapter of the American College of Emergency Physicians;

(7) Delaware Chapter of the Emergency Department Nurses Association; and

(8) Any other organization not listed above that provides certified emergency medical training, including CPR.

(b) *Training.* — All organizations providing emergency medical training programs, as listed under the personnel section, shall provide to the Office copies of course curricula and schedules of the availability of training courses. The Office shall monitor EMS training levels to provide information on the availability of training programs for all levels of EMS personnel. In addition, the EMS Office shall keep abreast of all federal training standards to ensure that EMS training agencies in Delaware are aware of regional and national standards. In accordance with § 6711(a)(3) [repealed] of this title, the State Fire Prevention Commission shall adopt regulations setting forth the qualifications required for the certification of ambulance attendants. Since advanced life support ambulance personnel are "physicians' assistants" as defined in subchapter VI of Chapter 17 of Title 24, they must have been trained in programs approved by the Delaware State Board of Medical Licensure and Discipline.

(c) *Communications.* — The Office shall:

(1) Through the appropriate county dispatch center directors, monitor and evaluate the effectiveness of the statewide EMS communications system;

(2) Identify resources to improve or augment both the communications system in Delaware and the training of medical dispatchers as needed;

(3) Monitor and evaluate the effectiveness of emergency access numbers in terms of the impact on the EMS system.

(d) *Transportation.* — In conjunction with appropriate EMS providers in Delaware, the Office shall monitor and evaluate emergency medical transportation services in Delaware to ensure that patients in the EMS system have access to effective and efficient transportation to appropriate treatment facilities. Pursuant to § 6709 of this title, all ambulances in Delaware shall be inspected and certified by the Delaware State Fire Prevention Commission or a duly authorized representative thereof. The Delaware State Fire Prevention Commission or its duly authorized representative shall be required to provide to the Office on an annual basis a listing and location of certified ambulances.

(e) *Facilities.* — The Office shall monitor the availability of the various levels of care of EMS facilities and services and shall have the authority to categorize all Delaware emergency receiving facilities and services in accordance with criteria established by the Joint Commission on Accreditation of Hospitals (JCAH) for hospital settings and other appropriate national professional organizations for nonhospital settings. This authority shall also include the responsibility of categorizing and designating by level of care, when appropriate, specialty care facilities in accordance with the established criteria of the American Medical Association or other appropriate national professional organizations. In addition, the Office shall periodically re-evaluate the categorization or designation of emergency care facilities and specialty care services.

(f) *Specialty care units.* — The Office shall identify the categorization of the 7 specialty care areas for EMS which are available to all patients (the specialty care areas are: Trauma, burns, spinal cord, poisoning, acute cardiac, high-risk infant and behavioral emergencies). In addition, the Office shall coordinate the activities of the EMS system to ensure that all patients have access, within a reasonable time period depending on the nature of the illness, to specialty care services. In accordance with this activity, the Office shall have the authority to designate or categorize specialty care units by level of care as specified in the section related to facilities.

(g) *Public safety agencies.* — Based on the data obtained in the section related to personnel, the Office shall monitor and evaluate the activities of public safety agencies to determine the number of trained first responders and to promote their participation, to the maximum level possible consistent with their capabilities, in emergency medical situations.

(h) *Consumer participation.* — All agencies and organizations involved in the EMS system in Delaware should seek reasonable consumer participation in planning, development and organizational activities.

(i) *Access to care.* — The Office shall monitor and evaluate activities of all EMS organizations to ensure that no person is denied emergency treatment or transportation services.

(j) *Patient transfer.* — The EMS system shall provide for transfer of patients to facilities and programs which offer such follow-up care and rehabilitation as is necessary to effect the maximum recovery of the patient. The transfer of emergency patients from the emergency site to the emergency department, specialty care unit and to follow-up care and rehabilitation centers are all within the scope of a total EMS system.

(k) *Coordinated patient recordkeeping.* — The Office shall collect and analyze available data from all providers of the EMS system. This data will be used by the Office, in conjunction with the appropriate EMS providers, to evaluate the overall effectiveness of the system. It is necessary that the data be collected from each level of care, which includes the initial entry point through final discharge from the health care delivery system. EMS agency certification will be contingent upon agency participation in the Statewide EMS data collection system maintained by the Office.

(l) *Public information, prevention and education.* — The Office shall provide programs of public information and education designed to inform residents of Delaware and visitors to the State of the availability of, proper use of and access to emergency medical services. The Office shall also support prevention activities designed to address key categories of illness and injury as identified through data collection. The Office will serve as a clearinghouse for illness and injury prevention activity, and will work to coordinate EMS prevention efforts statewide. These programs shall include elements related to citizen involvement in the administration of prehospital care, such as

cardiopulmonary resuscitation and first aid, and information concerning the availability of training programs in Delaware. In addition, the Office shall monitor public information and education programs offered by other EMS providers in Delaware. All EMS provider agencies shall provide a report on their prevention and education activities conducted during the previous year to the Office by January 15 of each year. The Office shall publish an annual report outlining the status of prevention and public education activities throughout the State by May 15 of each year.

(m) *Review and evaluation.* — In conjunction with the health planning agencies and the EMS providers in Delaware, the Office shall conduct and/or coordinate an on-going comprehensive evaluation of the effectiveness of the EMS system, in terms of the impact on the health status of the EMS patients in Delaware.

(n) *Disaster planning.* — The Office shall: (1) Upon request, participate in disaster planning with all organizations that provide emergency medical services to assist with coordination of disaster activities which impact the EMS system, and (2) review all municipal, county and state disaster plans which utilize the emergency medical services system. All organizations involved in planning disaster exercises which impact the EMS system should advise the Office of scheduled disaster exercises. In addition, the Office shall, upon request, participate in disaster exercises for the purpose of evaluation and improvement of the emergency medical services system and make recommendations as needed to the appropriate provider for the refinement of their disaster plans. All disaster planning activities of the Office shall be coordinated with the Delaware Emergency Management Agency as authorized by Chapter 31 of Title 20, and the Department of Health and Social Services Disaster Coordinator.

(o) *Mutual aid agreements.* — The Director of the Office in conjunction with the Division Director shall be authorized to develop and implement mutual aid agreements as may be necessary to ensure continuity of care. These agreements shall be coordinated through and approved by the appropriate EMS providers. These agreements may relate to reciprocity of services, and treatment, transfer and triage protocols to coordinate the provision of services, both within Delaware and across state lines as necessary.

(p) *Semi-automatic external defibrillators.* —

(1) The Department of Health and Social Services shall promulgate regulations specific to the use of semi-automatic external defibrillators and shall seek input and review from the Board of Medical Licensure and Discipline, the Delaware EMS Oversight Council and the Delaware State Fire Prevention Commission.

(2) The Office shall coordinate a statewide effort to promote and implement widespread use of semi-automatic external defibrillators and cardio-pulmonary resuscitation to increase the number of publicly available SAEDs to 100 by January 1, 2002, and 200 by January 1, 2004. In addition, the Office shall coordinate a statewide effort to provide, train and maintain a minimum of 5 qualified individuals for each publicly available SAED.

(3) All law enforcement vehicles on patrol shall be equipped with a semi-automatic external defibrillator by January 1, 2001, subject to appropriations.

(q) *Emergency Medical Services for Children.* — The Office shall provide a program to address the specific emergency medical care of children. This program shall be known as the Emergency Medical Services for Children (EMSC) program.

(1) The EMSC program shall have the power to:

a. Advise EMS medical direction on the development and implementation of statewide protocols that emphasize pediatric emergency care;

b. Support pediatric emergency medical technician and paramedic education and training programs; which shall include training in the emergency care of infants and children;

c. Develop pediatric emergency care standards and a voluntary program to recognize hospitals able to treat and manage pediatric emergencies;

d. Develop programs for parents and communities which shall identify and reduce barriers to emergency care for children;

e. Provide information relating to child-specific health promotion and injury prevention;

f. Focus on recognition of emergencies;

g. Assist in improving access to appropriate use of the local EMS systems;

h. Develop and maintain a Special Needs Alert Program to educate EMS providers, and, on a voluntary basis, identify for EMS providers children with special health care needs in the community; and

i. Analyze pediatric injury/illness data collected through the Office for the purpose of quality management purposes. All quality management proceedings shall be confidential.

(2) There is established the EMSC Advisory Committee. The Committee shall advise the Office on issues concerning EMS care for children, and shall consist of the following representatives:

a. The State EMS Medical Director;

b. The State EMS Director;

c. The Director of Children with Special Health Care Needs of the Division;

d. The Chair of the Delaware State Fire Prevention Commission or another Commissioner selected by the Chair;

e. The Chair of the State Trauma System Committee or another member selected by the Chair;

f. The Chair of School Health Services in the Department of Education or another member selected by the Chair;

g. Advanced Life Support Agency County EMS Chiefs or Directors in Delaware or another member of the Advanced Life Support Agency selected by the Chief or Director;

h. The Commander of the State Police EMS Aviation Section;

i. The President of the Delaware Chapter of the American College of Emergency Physicians or, at the President's discretion, a representative of the Chapter;

j. The President of the Delaware Chapter of the American Academy of Pediatrics or, at the President's discretion, a representative of the Chapter;

k. The President of the Delaware Healthcare Association or, at the President's discretion, a representative of the Delaware Healthcare Association;

l. The President of the Delaware Emergency Nurses Association or, at the President's discretion, a representative of the Emergency Nurses Association who is an emergency nurse licensed and practicing in Delaware;

m. The President of the Delaware Volunteer Firefighter's Association or, at the President's discretion, a representative of the Delaware Volunteer Firefighter's Association;

n. The President of the Delaware EMS Association or, at the President's discretion, a representative of the Delaware EMS Association;

o. The Chair of Safe Kids Delaware or, at the Chair's discretion, a member of Safe Kids;

p. The Commander of the Health Care Clinic at the Dover Air Force Base or at the Commander's discretion a medical care representative from the Dover Air Force Base;

q. A Pediatric Emergency Medicine Physician practicing in the State of Delaware; and

r. Three lay parent representatives of children ages 0-19, 1 from each county, appointed by the Director of the Division of Public Health.

(63 Del. Laws, c. 383, § 1; 67 Del. Laws, c. 152, § 5; 69 Del. Laws, c. 78, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 137, §§ 22, 24, 25; 75 Del. Laws, c. 141, § 3; 77 Del. Laws, c. 319, § 1; 78 Del. Laws, c. 326, § 2.)

§ 9706 Office of Emergency Medical Services — Additional functions.

(a) In order to monitor and evaluate the effectiveness of the EMS system, the Office must be notified of any proposed new service or major service modification within the emergency medical services system in Delaware.

(b) Copies of applications for federal, state and county emergency medical service grant funds shall be sent to the Office.

(c) All proposed legislation pertaining to the EMS system in Delaware shall be reviewed by DEMSOC with recommendations from the Office.

(d) The Office shall, with the consent of the Director of the Division of Public Health, be authorized to make news releases pertaining to the emergency medical services system as required in order to inform the public on issues pertinent to the health and well being of the citizens of Delaware.

(e) The Office shall be required to provide routine progress reports identifying the accomplishments and the problem areas within the system to DEMSOC at its regularly scheduled meetings. In addition, an annual summary report shall be sent to the Chairperson of DEMSOC through the Division Director by August 15 of each year.

(f) The Office is authorized and empowered to apply for, accept and disburse grants, gifts and contributions from the government, individuals, foundations, corporations and other organizations, agencies or institutions on behalf of the EMS system in Delaware.

(g) The Director of Public Health shall, except for those activities and responsibilities for basic life support, which is under the jurisdiction of the State Fire Prevention Commission:

(1) Use the Trauma System Committee recommendations as the basis for establishing a plan for the implementation and maintenance of Delaware's Inclusive Statewide Trauma Care System. The State Trauma System Plan shall address each component of trauma care as outlined in national references such as Model Trauma Care System Plan, HRSA-BHRD, September 1990 and subsequent revisions. These include, but are not limited to:

a. Prehospital care — Standardized and statewide policies, procedure and protocols to be used by all emergency medical service providers and licensed personnel for the identification, treatment and transport of trauma patients.

b. Prevention — Efforts to decrease the numbers and severity of injuries, resulting in decreased demand for care.

c. Hospital care — Standards and criteria for hospital personnel, equipment and designation that identify the necessary resources that hospitals must have in order to be recognized within Delaware's Inclusive Statewide Trauma Care System as a specified category trauma facility. These standards and criteria shall be consistent with those identified in national trauma system references, such as the American College of Surgeons' Resources for Optimal Care of the Injured Patient: 1993 and subsequent revisions. All expenses associated with utilizing a nationally recognized accreditation team to verify a hospital's compliance with hospital designation criteria will be the responsibility of the hospital being surveyed.

d. Rehabilitative care — Standards for the follow-up care for persons with disabilities resulting from injuries.

e. Trauma continuing education — The on-going trauma related education for trauma care system personnel/providers to maintain knowledge and skills.

f. Trauma care system evaluation — Monitor policies and procedures regarding the effectiveness/impact of trauma care systems.

(2) The Director of Public Health shall have the authority to promulgate rules for the management of all components of Delaware's Inclusive Statewide Trauma Care System, and shall seek input and review from the Trauma System Committee.

(3) Maintain a program of trauma care system evaluation, including a trauma data collection and registry system and a mechanism for evaluating and monitoring system performance throughout the continuum of trauma care.

(h) The Director of Public Health shall have the authority to promulgate rules for EMS provider recognition and compliance with an advanced health care directive that has become effective pursuant to § 2503(c) of this title, and shall seek input and review from the Board of Medical Licensure and Discipline, the Delaware EMS Advisory Council and the Delaware State Fire Prevention Commission. For purposes of this subsection, "EMS provider" shall mean providers certified by the Delaware State Fire Commission or the Office of Emergency Medical Services within the Division of Public Health, Department of Health and Social Services. EMS providers acting in accordance with the regulations promulgated hereunder shall be immune from criminal or civil liability pursuant to § 2510 of this title.

(1) The regulation shall define prehospital advanced care directive procedures to be used for terminally ill patients only.

(2) All sections of the regulation will insure that processes are in compliance with Chapter 25 of this title, the "Delaware Death with Dignity Act." The regulations shall include, but not be limited to, the following:

a. The allowable content of prehospital advanced care directives, to include:

1. Option A (Advanced Life Support) — Maximal (Restorative) Care Before Arrest, then prehospital advanced care directive; or

2. Option B (Basic Life Support) — Limited (Palliative) Care Only Before Arrest, then prehospital advanced care directive;

b. Methods of identification describing the methods that can be used by persons electing to enact a prehospital advanced care directive. The properly enacted Delaware Prehospital Advanced Care Directive Form must be present; however, voluntary use of a Medic Alert prehospital advanced care directive bracelet or necklace may be worn and/or a designation on a person's driver's license or state-issued identification card pursuant to § 2718(c) of Title 21 to indicate the presence of the form;

c. Methods of revocation of prehospital advanced care directive describing how a prehospital advanced care directive can be revoked per Chapter 25 of this title; and

d. Reciprocity to allow Delaware EMS providers to recognize prehospital advanced care directives from neighboring states for persons in Delaware.

(63 Del. Laws, c. 383, § 1; 67 Del. Laws, c. 152, § 5; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 453, § 7; 72 Del. Laws, c. 137, § 28; 72 Del. Laws, c. 360, § 1; 75 Del. Laws, c. 194, § 1; 77 Del. Laws, c. 319, § 1.)

§ 9707 Confidentiality of quality review program and participants.

(a) *Confidentiality of quality review program and participants. — As used in this section, "records" means the recordings of interviews and all oral or written reports, statements, minutes, memoranda, charts, statistics, data and other documentation generated by the Trauma System Committee or its subcommittees for the stated purposes of trauma system medical review or quality care review and audit.*

All quality management proceedings shall be confidential. Records of the Trauma System Committee, its quality care review committee and members, attendees and visitors at meetings held for stated purposes of trauma system medical review or quality care review and audit shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena or admission into evidence in any judicial or administrative proceeding. Raw data shall not be available for public inspection nor is it a public record within the meaning of the Delaware Freedom of Information Act.

(b) *Confidentiality of Delaware Emergency Medical Services Oversight Council (DEMSOC) quality review program and participants.* — As used in this section, "records" means the recordings of interviews and all oral or written reports, statements, minutes, memoranda, charts, statistics, data and other documentation generated by the Delaware Emergency Medical Services Oversight Council (DEMSOC) or its subcommittees for the stated purposes of the Emergency Medical Services System medical review or quality care review and audit. All quality management proceedings shall be confidential. Records of DEMSOC, its quality care review subcommittees and members, attendees and visitors at meetings held for stated purposes of the Emergency Medical Services Systems medical review or quality care review and audit shall not be available for public inspection nor are they a public record within the meaning of the Delaware Freedom of Information Act, and shall be protected from direct or indirect means of discovery, subpoena or admission into evidence in any judicial or administrative proceeding. Raw data and original records relating to medical care shall not be available for public inspection nor are they a public record within the meaning of the Delaware Freedom of Information Act, except to the extent that such raw data and original records relating to medical care would have been subject to disclosure or discovery pursuant to other statute or court rule.

(c) *Confidentiality of Emergency Medical Services for Children Advisory Committee.* — Records of the EMSC Advisory Committee, its quality care review committee and members, attendees and visitors at meetings held for stated purposes of pediatric emergency care system medical review or quality care review and audit shall be confidential and privileged and shall be protected from direct or indirect

means of discovery, subpoena or admission into evidence in any judicial or administrative proceeding. Raw data shall not be available for public inspection nor is it a public record within the meaning of the Delaware Freedom of Information Act [Chapter 100 of Title 29].

(d) *Immunity.* — No person shall be subject to, and shall be immune from, any claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken or performed, or recommendation made while discharging any duty or authority under this chapter, so long as such person acted in good faith without malice, and within the scope of his or her duty or authority under this chapter or any other provisions of the Delaware law, federal law or regulations or duly adopted rules and regulations providing for the administration of this chapter, good faith being presumed until proven otherwise, with malice required to be shown by the complainant.

(70 Del. Laws, c. 453, § 8; 73 Del. Laws, c. 52, § 1; 78 Del. Laws, c. 326, § 3.)

Part X
Paramedic and Other Emergency Medical Service Systems
Chapter 98
PARAMEDIC SERVICES

§ 9801 Purpose.

(a) It is the purpose of this chapter to establish a statewide paramedic program under the direction of the Office of Emergency Medical Services, Division of Public Health, Department of Health and Social Services.

(b) The paramedic program includes a coordinated advanced life support system, under qualified medical supervision, which has the responsibility for providing a rapid response capability in the delivery of emergency medical services to individuals who become unexpectedly ill or incapacitated or who are otherwise placed in a position where highly skilled medical assistance must be rendered to sustain or maintain such individual prior to institutional health care.

(c) The paramedic services program shall be utilized for medical emergencies, either at the scene or while the patient is in transit to a health facility.

(d) It is the further purpose of this chapter to provide a program which shall have a direct impact on the morbidity and mortality rates of this State and which, over a period of time, will also reduce health care costs to each emergency patient.

(e) It is the further purpose of this chapter to establish a framework for the creation of an effective and efficient means for the provision of advanced life support services to the citizens of the State regardless of their economic status, who require such services without prior inquiry as to the patient's ability to pay.

(f) This chapter is intended to promote the public health, safety and welfare of the citizens of this State by providing for the creation of a statewide advanced life support services system, in conjunction with the efforts of all providers of emergency medical services in this State, with uniform standards for all such providers of advanced life support services.

(g) It is the further purpose of this chapter to insure that emergency patients requiring advanced life support services are transported from the scene of a medical emergency to the nearest emergency medical institution or the institution of their choice, within reason, that possesses the equipment and staff resources to immediately attend to the particular needs of the patient. This statement is tempered by the understanding that, in certain circumstances, it may be necessary to bypass the closest medical facility if specialized medical care is required. It shall also be understood that the use of paramedics to assist in the transfer of patients to facilities and programs which offer such follow-up care and rehabilitation as is necessary to effect the maximum recovery of the patient, shall be permitted when deemed medically necessary.

(67 Del. Laws, c. 152, § 6; 70 Del. Laws, c. 192, § 7.)

§ 9802 Definitions.

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

(1) "Administrator" shall mean the program chief of the paramedic services responsible for advanced life support and the administration of the Delaware Paramedic Services Act;

(2) "Advanced life support" (ALS) shall have the same definition as is set forth in Chapter 97 of this title;

(3) "Basic life support" (BLS) shall have the same definition as is set forth in Chapter 97 of this title;

(4) "Board" shall mean the Board of Medical Licensure and Discipline;

(5) "Certification" means original certification as a paramedic by the Board of Medical Licensure and Discipline.

(6) "County" or "counties" shall refer singularly or collectively to New Castle, Kent and Sussex Counties of the State;

(7) "County paramedic service" shall mean the paramedic service operated pursuant to this chapter by a county with its own employees or under contract with another governmental entity;

(8) "Criminal history" means a person's entire criminal history record from the State Bureau of Identification and the person's entire federal criminal history record maintained by the Federal Bureau of Investigation.

(9) "Decertification" means the cancellation or revocation of the certificate issued by Board of Medical Licensure and Discipline to a paramedic.

(10) "Department" shall mean the Delaware Department of Health and Social Services;

(11) "Emergency medical services (EMS) provider" shall mean individual providers certified by the Delaware State Fire Prevention Commission or the Office of EMS, or emergency medical dispatchers certified by the National Academy of Emergency Medical Dispatch.

(12) "Emergency medical services (EMS) provider agency" shall mean a provider agency certified by the Delaware State Fire Prevention Commission or the Office of EMS, or an emergency medical dispatch center under contract with the Department of Safety and Homeland Security.

(13) "Emergency medical unit" shall mean an ambulance, rescue vehicle or any other specialized vehicle staffed by EMS providers and other certified or licensed medical care providers, and utilized solely for providing mobile pre-hospital care and other emergency medical treatment;

(14) "Medical command facility" shall mean the distinct unit within a hospital which meets the operational, staffing and equipment requirements established by the Division of Public Health for providing medical control to the EMS providers. Any hospital that operates an emergency medical facility and desires to be designated as a medical command facility shall maintain and staff such facility on its premises and at its own expense with the exception of base station communication devices which shall be an authorized shared expense pursuant to the provisions of this chapter;

(15) "Medical control" shall mean an order or directive given to an EMS provider by an authorized medical control physician. These orders or directives shall normally be provided from a specifically authorized and designated medical command facility with such medical supervision supplying professional support to the EMS provider through radio or telephonic communication for on-scene and in-transit basic and advanced life support services;

(16) "Medical control physician" shall mean any physician certified by the American Board of Emergency Medicine or the American Board of Osteopathic Emergency Medicine, or their successors, or a physician certified in Advanced Trauma Life Support (ATLS), Advanced Cardiac Life Support (ACLS) and Pediatric Advanced Life Support (PALS) or other courses approved by the Office of Emergency Medical Services who is credentialed by the hospital within which a medical command facility is located and who is authorized by the medical command facility to give medical control commands via radio or other telecommunication devices to an EMS provider. When a medical control physician establishes contact with an EMS provider, the EMS provider shall, solely for the purpose of compliance with the Medical Licensure and Discipline Act, be considered to be operating under the license of said medical control physician;

(17) "Office" shall mean the Office of Emergency Medical Services, of the Division of Public Health, Department of Health and Social Services;

(18) "Paramedic staff hour" shall mean 1 full hour of a paramedic on duty.

(19) "Pre-hospital care" shall mean any emergency medical service, including advanced life support, rendered by an emergency medical unit before and during transportation to a hospital or other facility, and upon arrival at the facility until such care is assumed by the facility's staff;

(20) "Service and/or training reciprocity agreements" shall mean written agreements negotiated between 2 counties or between a county and an adjoining state or a governmental entity of an adjoining state and approved pursuant to the provisions of this chapter which provide for the scheduled delivery of paramedic services by paramedics to citizens of this State or a neighboring state by personnel certified to render such services by this State or a neighboring state, or such similar agreements as are required by and between the counties of this State, in order to effectively and efficiently deliver paramedic services. Such agreements may also include provisions that provide for the temporary rotation of paramedics and/or equipment between the counties of this State in order to provide such personnel with proper experience and training opportunities, address seasonal demands, or adequately respond to a disaster or severe emergency incident. All such agreements shall include any financial terms, or other considerations included as part of the agreement;

(21) "State EMS Medical Director" shall mean a physician who is board-certified by the American Board of Emergency Medicine and/or by the Osteopathic Board of Emergency Medicine and who shall be the chief physician for the statewide emergency medical system and under whose license all EMS providers shall operate for the purpose of delivering the standing orders of the statewide standard treatment protocol;

(22) "Statewide ALS treatment protocol" shall mean written and uniform treatment and care plans for emergency and critical patients statewide that constitute the standing orders of paramedics. The treatment protocol for advanced life support must be approved and signed by the State EMS Medical Director and the Director of the Division of Public Health, Department of Health and Social Services. The treatment protocol shall be prepared by the Board of Medical Licensure and Discipline. In preparing and, from time to time, amending the statewide ALS treatment protocol, the Board shall consult with the State EMS Medical Director and the ALS Standards Committee of the Board of Medical Licensure and Discipline.

(23) "Statewide BLS treatment protocol" shall mean written and uniform treatment and care plans for emergency and critical patients statewide that constitute the standing orders of basic life support providers. The treatment protocol shall be prepared by the Board of Medical Licensure and Discipline. The treatment protocol for basic life support must be approved and signed by the State EMS Medical Director, the BLS Medical Director and the Director of the Division of Public Health, Department of Health and Social Services. The treatment protocol for basic life support shall be adopted and enacted by the State Fire Prevention Commission. In preparing and, from time to time, amending statewide BLS treatment protocol, the Board shall consult with the EMS Medical Director, the ALS Standards Commission and the State Fire Prevention Commission. The Statewide BLS treatment protocol shall be adopted by June 30, 2000, and in use by all EMS providers by January 1, 2002.

(67 Del. Laws, c. 152, § 6; 70 Del. Laws, c. 147, § 23; 70 Del. Laws, c. 192, §§ 3, 8; 70 Del. Laws, c. 341, § 1; 72 Del. Laws, c. 137, §§ 7-15; 73 Del. Laws, c. 176, § 5[6]; 73 Del. Laws, c. 368, § 1; 74 Del. Laws, c. 110, § 138; 77 Del. Laws, c. 319, § 1; 78 Del. Laws, c. 310, §§ 2, 3.)

§ 9803 Statewide paramedic system.

(a) Except for those activities and responsibilities for basic life support and other emergency services which are under the jurisdiction of the State Fire Prevention Commission, the Office shall have jurisdiction over the development, implementation and maintenance of a statewide paramedic system. As part of its responsibilities, the Office shall:

(1) Hire an administrator and staff to carry out the intent of this legislation, which shall include identifying the minimum number of paramedics that are required to be hired by a county so as to achieve advanced life support coverage throughout the State;

(2) Advise in the development of standards for the selection of students to the didactic, clinical, and field training portion of paramedic advanced training.

(3) Assure reasonable conditions and qualifications for certification of any person serving as a paramedic that meets or exceeds the advance life support standard of the United States Department of Transportation;

(4) Assure that county boundaries do not become barriers to the effective and efficient deployment of paramedic units by coordinating the development of and approving service and/or training reciprocity agreements between counties;

(5) Approve or deny the request of a hospital to become designated as a medical command facility. Such approval, denial or subsequent revocation or limitation of such designation shall be based on the ability of the hospital to comply with the operational and staffing requirements prescribed for medical command facilities by the Division of Public Health. In making decisions pursuant to this paragraph, the Office shall seek the advice of the Board of Medical Licensure and Discipline;

(6) Assure that training and continuing education opportunities required for paramedic certification are reasonably accessible from a geographic standpoint.

(b) A "memorandum of agreement" shall be established between the Office of Emergency Medical Services, of the Division of Public Health, Delaware State Police, State Fire Prevention Commission, Board of Medical Licensure and Discipline and any other agency serving as a component to the emergency medical services system in compliance with their respective agency's statutory provisions. To foster continuity and program coordination, the Office shall enforce each such memorandum of agreement.

(c) In order to provide statewide paramedic services, the counties shall provide the following minimum number of paramedic staff hours: 122,640 paramedic staff hours per year for New Castle County; 52,560 paramedic staff hours per year for Kent County; and 87,600 paramedic staff hours per year for Sussex County. The Secretary of the Department of Health and Social Services shall have the authority, subject to appropriation, to increase the minimum number of paramedic staff hours to ensure the efficient and effective operation of the statewide paramedic services program. At any time after enactment into law, following submission of an application by New Castle County subject to approval by the Secretary of the Department of Health and Social Services, the paramedic staff hours for New Castle County shall increase by 17,520 paramedic staff hours per year until January 1, 2001, at which time it shall increase by an additional 17,520 paramedic staff hours.

(d) Each operating paramedic unit should be continuously staffed by 2 paramedics. Notwithstanding this requirement, the Board of Medical Licensure and Discipline, following review and approval by the State EMS Medical Director and ALS Standards Committee, shall have the authority to grant approval to the county paramedic services to conduct pilot programs utilizing other staff configurations including but not limited to the number and type of staff on each operating ALS unit.

(67 Del. Laws, c. 152, § 6; 70 Del. Laws, c. 147, § 24; 70 Del. Laws, c. 192, § 4; 71 Del. Laws, c. 300, §§ 1, 2; 72 Del. Laws, c. 137, §§ 16, 30; 77 Del. Laws, c. 319, § 1.)

§ 9804 Paramedic Advisory Council.

Repealed by 72 Del. Laws, c. 137, § 3, eff. July 12, 1999.

§ 9805 Paramedic Administrator.

The Paramedic Administrator shall be employed within the Office of Emergency Medical Services responsible directly to the Director of the Office of Emergency Medical Services. The Paramedic Administrator shall be a state employee within the Merit System and shall be responsible for the following:

(1) Hiring sufficient personnel to provide staff and clerical support for the office;

(2) Verifying certification from the Board for each paramedic employed by a county or its subcontractor;

(3) Administering and coordinating all activities of the program including periodic inspections;

(4) Developing appropriate uniforms as required;

(5) Developing and negotiating contracts with county paramedic services;

(6) Developing annual budgets;

(7) Procuring the necessary equipment to carry out the requirements of this legislation and following the current state bidding and procurement policies for equipment; i.e., vehicles, communication equipment, medical equipment and uniforms as required;

(8) Develop rules governing the operation of programs that provide paramedical instruction to ensure compliance with the ALS Standards of the Board of Medical Licensure and Discipline.

(9) Providing reports of activities as required by the Director of the Office of Emergency Medical Services; and

(10) Monitoring paramedic staff hours in each county.

(11) Have the authority to suspend a paramedic from patient treatment or to permit limited practice for the duration of an investigation of the paramedic by the Division of Professional Regulation.

(67 Del. Laws, c. 152, § 6; 70 Del. Laws, c. 192, §§ 5, 6; 71 Del. Laws, c. 300, § 3; 72 Del. Laws, c. 137, § 17; 73 Del. Laws, c. 368, § 2; 77 Del. Laws, c. 319, § 1.)

§ 9806 EMS medical directors.

(a) There shall be 5 part time EMS Medical Directors: 1 State EMS Medical Director, 3 county EMS medical directors and 1 Basic Life Support EMS Director. Each county EMS medical director shall practice emergency medicine in the county in which the county director serves as a director, unless otherwise approved by the Office of Emergency Medical Services. The State EMS Medical Director shall supervise all EMS Medical Directors. The Basic Life Support EMS Medical Director shall serve as an advisor for basic life support to the State Fire Prevention Commission. An EMS Medical Director shall be available at all times to advise supervising physicians, EMS providers and EMS provider agencies.

(b) As part of their responsibilities, the EMS medical directors shall:

(1) Provide medical oversight and prospective, concurrent and retrospective medical quality control of advanced life support, basic life support and emergency medical dispatch;

(2) Establish and ensure compliance with standing orders and treatment protocols;

(3) Provide review and evaluate the medical interventions of the EMS providers;

(4) Coordinate with and advise the Office of EMS, State Fire Prevention Commission and provider agencies of any deficiencies within the system with suggested remedies;

(5) Monitor the EMS providers for skill degradation and recommend appropriate remedies to the Office of EMS, the State Fire Prevention Commission and the provider agencies;

(6) Offer technical assistance to all EMS providers and assist in the provision of patient care while functioning as an EMS Medical Director; and

(7) Have authority to suspend EMS providers immediately from patient treatment for a period not to exceed 30 days, if they determine that it is necessary in order to prevent a clear and immediate danger to the public health.

(c) Each EMS medical director shall be employed by the State, by contract or otherwise, and shall be a board certified emergency physician actually involved in the practice of emergency medicine.

(d) The EMS medical directors shall be appointed by the Director of the Division of Public Health who shall consult with the Board of Medical Licensure and Discipline as part of the selection process.

(67 Del. Laws, c. 152, § 6; 70 Del. Laws, c. 192, § 9; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 341, § 2; 71 Del. Laws, c. 300, § 4; 72 Del. Laws, c. 137, § 19; 73 Del. Laws, c. 368, § 3; 74 Del. Laws, c. 101, §§ 1-4; 77 Del. Laws, c. 319, § 1.)

§ 9807 Paramedics.

(a) A paramedic may provide such paramedic services as are set forth in the paramedic's certificate if such services are provided under the supervision of a physician, or in any context where voice contact by radio or telephone is monitored by a physician; and such paramedic may provide advanced life support where authorized to do so by a physician.

(b) If direct voice communication between a physician and a paramedic fails or is technically impossible, the paramedic may perform any emergency medical service for which the paramedic is certified, in compliance with treatment protocols set forth by the Board, when the life of the patient is in immediate danger and requires such care for its preservation.

(67 Del. Laws, c. 152, § 6; 70 Del. Laws, c. 186, § 1.)

§ 9808 Role of county governments.

(a) Each county shall participate in the operation and funding of the statewide paramedic services program, and shall provide the Office with all necessary information requested by the Secretary of the Department of Health and Social Services in the time frames and in the format prescribed.

(b) Any paramedic employed by a county or its subcontractor must be certified by the Administrator and the State Paramedic Medical Director in accordance with the standards of the Board. Direct initial training costs shall be paid partially at state expense, based on the results of an annual needs assessment conducted by the Office.

(c) The counties shall be bound by the rules, regulations, requirements and procedures established pursuant to this chapter.

(d) The authority to select, discipline and terminate a paramedic or any administrative staff authorized as a shared expense shall reside with the county or its subcontractor, except that suspension or revocation of a paramedic certification for reasons covered by § 9811 of this title shall be conducted in accordance with this chapter.

(e) A county may choose to operate its own paramedic service using regular county employees entirely, or it may contract portions of its service to other governmental entities.

(f) If a county elects in the design of its paramedic service to exceed the training standards, minimum number of paramedic staff hours, or otherwise exceed the requirements established in accordance with this chapter, the county shall be 100% liable for any additional cost. At a minimum, a county shall deploy the number of paramedics and paramedic units determined to be necessary to meet the operational requirements of this chapter.

(67 Del. Laws, c. 152, § 6; 71 Del. Laws, c. 300, § 5; 72 Del. Laws, c. 137, §§ 29, 31; 77 Del. Laws, c. 84, § 178; 78 Del. Laws, c. 310, § 4.)

§ 9809 Certification.

(a) No individual shall represent that individual's own self as a paramedic certified by this State unless the person so represented is in fact certified by the Board.

(b) No person nor governmental agency shall represent itself as a paramedic service, emergency medical service, or similar type of service certified by this State unless such person or governmental agency is in fact certified by the Department.

(c) No person shall provide, offer nor advertise to provide advanced life support services outside a hospital, unless so authorized by law.

(d) Notwithstanding any other provision of this chapter, any paramedic who has been certified by the Board of Medical Licensure and Discipline prior to the effective date of this chapter shall automatically be certified under this chapter, and shall be deemed to have complied with all the requirements of this chapter.

(e) Pending formal approval of paramedic certification by the Board, the executive director of the Board may issue a temporary certification to a paramedic whose application establishes to the satisfaction of the executive director that the applicant has met all requirements and standards for certification. Such temporary certification shall be valid for not greater than 90 days.

(67 Del. Laws, c. 152, § 6; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 369, § 1; 73 Del. Laws, c. 368, § 4; 77 Del. Laws, c. 319, § 1.)

§ 9809A Criminal background checks.

(a) A person seeking certification as a paramedic shall apply to the Board using forms prescribed by the Board and shall submit to the State Office of Emergency Medical Services fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person.

(2) A report of the individual's entire federal criminal history record from the Federal Bureau of Investigation. The State Bureau of Identification shall be the intermediary for the purposes of this section and the Office shall be the screening point for the receipt of said federal criminal history records.

(b) Upon receipt of fingerprints and other necessary information pursuant to subsection (a) of this section, the Office shall acquire and review the state and federal criminal history records for the applicant and may interview the applicant. If the Office determines that the applicant meets the requirements of this section and of its regulations, it shall issue a binding recommendation to the Board regarding the certification of the applicant, subject to the following provisions:

(1) The Office must recommend denial of, and the Board must deny, certification to an applicant convicted of the following crimes:

a. A felony involving sexual misconduct where the victim's failure to affirmatively consent is an element of the crime, such as forcible rape;

b. A felony involving the sexual or physical abuse of a child or of a person who is elderly or impaired, such as sexual misconduct with a child, sexual exploitation of a child, making or distributing child pornography, incest involving a child, or assault on a person who is elderly or impaired;

c. A crime in which the victim is an out-of-hospital patient or a patient or resident of a health care facility, including abuse, neglect or theft from or financial exploitation of a person entrusted to the care or protection of the applicant.

(2) The Office must recommend denial of, and the Board must deny, certification to an applicant convicted of the following crimes, except in extraordinary circumstances:

a. Any crime for which the applicant is currently incarcerated, on work release, on probation, or on parole;

b. A crime in the following categories, unless at least 5 years have passed since the applicant's conviction or at least 5 years have passed since the applicant was released from custodial confinement, whichever occurs later:

1. A serious crime of violence against a person, such as assault with a dangerous weapon, aggravated assault, murder or attempted murder, manslaughter (other than involuntary manslaughter), kidnapping, robbery of any degree, or arson;

2. A crime involving a controlled substance or designer drug, including unlawful possession or distribution of, or intent to unlawfully possess or distribute, a controlled substance in Schedules I through V of the Uniform Controlled Substances Act of Chapter 47 of this title;

3. A serious crime involving property, such as arson, burglary, embezzlement or insurance fraud;

4. Any crime involving sexual misconduct.

(3) In extraordinary circumstances, certification granted pursuant to paragraph (2) of this subsection may be granted only if the applicant establishes by clear and convincing evidence that certification will not jeopardize public health and safety. The Office shall determine and advise the Board:

a. If extraordinary circumstances exist allowing certification pursuant to paragraph (2) of this subsection; and

b. If the applicant has established by clear and convincing evidence that such certification will not jeopardize public health and safety.

(c) Certificates issued pursuant to this section shall be valid for a period as determined by the Board and may be renewed after reconsideration, which may include an interview, if the holder meets the requirements set forth in the regulations of the Board. The Board may decertify any paramedic at any time it determines that the person no longer meets the qualifications prescribed for certification.

(d) Information obtained pursuant to subsection (b) of this section is confidential and shall not be disclosed under any circumstances except:

(1) The State Bureau of Identification may release any subsequent criminal history to the Office of Emergency Medical Services or the Board of Medical Licensure and Discipline when properly requested; and

(2) All information that has been forwarded to the Office pursuant to this section shall be reviewed with the person seeking certification pursuant to this section upon the person's request.

(e) Costs associated with obtaining criminal history information pursuant to this section from the State Bureau of Identification and the Federal Bureau of Investigation shall be borne by the applicant.

(f)(1) A person seeking certification as a paramedic through the New Castle County paramedic service is exempted from the provisions of subsections (a) and (b) of this section; provided, however, that the criminal history background check and review procedures employed by the New Castle County paramedic service are found to be at least as restrictive as those contained in this section. For the purposes of any criminal history background check or review conducted pursuant to regulations promulgated pursuant to this subsection, the State Bureau of Identification shall be the intermediary and the New Castle County Department of Police Paramedic Service shall be the screening point for the receipt of said federal criminal history records. The New Castle County Department of Police may designate any or all of the other divisions or offices therein as a screening point for the receipt of said federal criminal history records.

(2) A person seeking certification as a paramedic who is presently employed as a law-enforcement officer in this State and who was subject to a review of the person's own entire criminal history background at the time the person began employment as a law-enforcement officer in this State is exempted from the provisions of subsections (a) and (b) of this section if, at the time of the prior criminal history background check, no items described in paragraph (b)(1) of this section appeared as part of the person's criminal history background.

(g) A person seeking certification pursuant to this section who knowingly provides false, incomplete or inaccurate criminal history information, or who otherwise knowingly violates the provisions of this section, shall be guilty of a class G felony and shall be punished according to Chapter 42 of Title 11.

(73 Del. Laws, c. 176, § 6[7]; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 319, § 1; 78 Del. Laws, c. 179, § 248; 78 Del. Laws, c. 310, § 5.)

§ 9810 Reciprocity.

Where a person applies for a certification as a paramedic and has already been licensed or certified as such in another state, the Administrator shall accept a true copy of such license or certificate, or evidence of any examination scores issued by a testing service or professional paramedic association, which shows that the applicant has met requirements in the previous state which are equal to those required in this State; such applicant shall be required to meet such written and practical examinations as determined by the medical directors; and the Board shall certify such person to be a paramedic in the State.

(67 Del. Laws, c. 152, § 6.)

§ 9811 Violations; disciplinary procedure.

(a) The Administrator may at any time upon the Administrator's own motion; and shall, upon verified written complaint of any person, request an investigation be conducted by the Executive Director of the Board of Medical Licensure and Discipline to determine whether or not there are grounds to recommend suspension, revocation or any other penalty upon a person certified under the provisions of this chapter. The Administrator shall recommend to the Board to suspend or revoke any certificate if after a hearing it is found that the holder thereof has:

(1) Obtained such certificate by means of fraud or deceit;

(2) Demonstrated gross negligence, or has proven otherwise to be grossly incompetent; or

(3) Violated or aided or abetted in the violation of any provision of this chapter.

(b) If a paramedic's physical or mental capacity to safely perform the paramedic's duties and responsibilities is at issue, the County may order such paramedic to submit to a reasonable physical or mental examination. Failure to comply with this order shall render such paramedic liable to suspension or revocation of the paramedic's certificate.

(c) Nothing in this subsection shall prohibit a member of the public from filing a complaint directly with the Board of Medical Licensure and Discipline. Upon receipt of a complaint by the Division of Professional Regulations, the Administrator shall be notified in the interest of public safety.

(67 Del. Laws, c. 152, § 6; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 368, §§ 5-8; 77 Del. Laws, c. 319, § 1.)

§ 9812 Suspension, revocation and other penalties.

(a) For purpose of the public health, safety and welfare, and notwithstanding any other statute or provision of law, the Administrator may recommend to a county or the Board that any of the following penalties, singly or in combination, be imposed:

(1) That a letter of reprimand be issued;

(2) That a paramedic be placed on probationary status with limited responsibilities and be required to:

a. Regularly report to the county upon the matters which are the basis of the probation;

b. Limit all paramedical activities to those areas specifically recommended by the Administrator; and/or

c. Take either remedial or continuing education until the required degree of skill has been attained in those areas which are the basis of the probation;

(3) That a paramedic's certification be suspended; or

(4) That a paramedic's certification be revoked.

(b) No penalties shall be imposed upon a paramedic's certification without provisions for a hearing. Hearings shall be established in accordance with the provisions of the Medical Practices Act, Chapter 17 of Title 24.

(c) and (d). [Deleted.]

(67 Del. Laws, c. 152, § 6; 73 Del. Laws, c. 368, § 9.)

§ 9813 Liability; limitations.

(a) *Physician instructions.* — No emergency physician or designee of such physician who in good faith gives instructions to a paramedic shall be liable for any civil damages which may occur as the result of issuing such instructions; unless the conduct of the physician or the designee of such physician in issuing such instructions rises to the level of willful and wanton, reckless or grossly negligent conduct.

(b) *Paramedics.* — No paramedic who in good faith attempts to render or facilitate emergency medical care authorized by this chapter shall be liable for any civil damages which occur as a result of any act or omission of the paramedic in the rendering of such care; unless such paramedic is guilty of wilful and wanton, reckless or grossly negligent conduct.

(c) *Educational programs.* — No university, college, medical facility or other entity participating as part of an educational program, nor any faculty member of any such entity, nor any student of such entity who is enrolled in a course of instruction approved by the Administrator, shall be liable for any civil damages as the result of any primary or continuing educational practice conducted under proper supervision, unless such university, college or other entity or faculty member or student is guilty of wilful and wanton, reckless or grossly negligent conduct.

(d) *Health facilities.* — No health facility which assists a physician in giving instructions to a paramedic in accordance with this chapter shall be liable for any civil damages as the result of such instructions, unless such health facility is guilty of wilful and wanton, reckless or grossly negligent conduct.

(67 Del. Laws, c. 152, § 6.)

§ 9814 Statewide paramedic funding program.

(a) The statewide paramedic funding program is hereby established for the purpose of participating with the counties in the financing of the statewide paramedic program.

(b) The operational costs of the minimum paramedic staff hours established for each county in § 9803(c) of this title shall be shared by the State and county with the State providing 30 percent of the cost and the county providing 70 percent beginning in Fiscal Year 2010.

(c) A county will not be eligible for its 30 percent state share until such time as the rules, regulations, procedures, protocols and approvals required by this chapter have been completed or July 1, 1990, whichever is later. The date of approval by the Department of a county program shall be the starting date in terms of eligibility for state share funding. No county programs will be funded retroactively and the Department shall not unreasonably withhold or delay any approval. The Secretary shall not encumber any of the state funds applied for by a county until such county has appropriated its proportional share of funding.

(d) The General Assembly shall appropriate annually an amount sufficient to reimburse 30 percent of approved costs of the statewide paramedic program; this appropriation shall be made in the annual Grants-In-Aid Act and shall be appropriated to the Office of Emergency Medical Services, Division of Public Health, Department of Health and Social Services, which shall serve as the State's fiscal agent for distributing the funds in accordance with this chapter to counties that operate approved programs. The appropriation in the Grants-In-Aid Act of the state share of the paramedic funding program shall not be subject to the limitation in § 6533(f) of Title 29.

(e) Funds distributed to a county for the purpose of supporting a county component of the statewide paramedic system may be used for direct operating costs or as debt service and financing for bond issuance for that purpose. For those capital projects with a total cost greater than $200,000, the State shall reimburse on a debt service basis. In no instance shall reimbursement include the cost of indirect services provided by the county.

(f) The Office shall promulgate regulations for the distribution of the funds appropriated pursuant to this chapter to the counties that provide for reimbursement on a quarterly basis.

(g) Funds appropriated pursuant to this section may not be used to fund basic life support services. To the extent that a county or its subcontractor operates integrated advanced and basic life support services, the Office shall devise a methodology to separate costs and shall provide reimbursement accordingly.

(h) The Office shall report on the applications, expenditures, and uses of the statewide paramedic funding program annually as part of the budgetary process of the Department.

(i) The Delaware Paramedic Budget Review package shall be submitted by the counties to the Paramedic Administrator by September 1 of each year. Such request shall include, but not be limited to, a detailed plan of expenditure for each county's approved paramedic program for the subsequent fiscal year. The Paramedic Administrator shall forward copies of the counties' requests, along with the Department's funding recommendation to the Director of the Office of Management and Budget and the Office of the Controller General by November 1.

(j) The Office shall distribute, by contract or otherwise, all state funds used for paramedic training programs.

(67 Del. Laws, c. 153, § 1; 68 Del. Laws, c. 290, § 124; 68 Del. Laws, c. 292, § 19; 69 Del. Laws, c. 64, § 144; 70 Del. Laws, c. 192, § 10; 71 Del. Laws, c. 169, § 21; 71 Del. Laws, c. 300, § 6; 72 Del. Laws, c. 137, § 18; 74 Del. Laws, c. 111, § 31; 74 Del. Laws, c. 309, §§ 28-30; 75 Del. Laws, c. 88, § 21(8); 75 Del. Laws, c. 352, § 29(a); 76 Del. Laws, c. 281, § 29; 79 Del. Laws, c. 293, § 34.)

Part XI
Delaware Health Care Commission
Chapter 99
DELAWARE HEALTH CARE COMMISSION
Subchapter I
Findings, Organization and Duties of Commission

§ 9901 Findings.

(67 Del. Laws, c. 334, § 1; 68 Del. Laws, c. 341, § 1; repealed by 78 Del. Laws, c. 296, § 1, eff. June 5, 2012.)

§ 9902 Delaware Health Care Commission.

(a)(1) There is hereby established the Delaware Health Care Commission, hereinafter in this chapter referred to as the Commission. Said Commission shall consist of 11 members, 5 of whom shall be appointed by the Governor, 1 of whom shall be appointed by the President Pro Tempore of the State Senate and 1 of whom shall be appointed by the Speaker of the House of Representatives. Of the 5 members appointed by the Governor, at least 1 member shall be a resident of each county. The Insurance Commissioner, the Secretary of Finance, the Secretary of Health and Social Services, and the Secretary of Services for Children, Youth and Their Families or their designees shall serve as ex officio members of the Commission.

(2) The Governor shall designate 1 member of the Commission to be Chairperson who shall serve at the pleasure of the Governor. The terms of the remaining 6 appointed members shall be for 4 years except that the initial term of each may be for a lesser period. Any vacancy shall be filled by the Governor for the balance of the unexpired term. A member of the Commission shall be eligible for reappointment. No more than 3 of the Commission members appointed by the Governor shall be of the same political party.

(b) The Commission is constituted an independent public instrumentality and may call upon the Delaware Health Information Network and/or any state agency for any assistance, information or data that may be necessary to carry out the purposes for which it had been established. For administrative and budgetary purposes only, the Commission shall be placed within the Department of Health and Social Services, Office of the Secretary.

(c) The Commission is authorized to reimburse Commission members for mileage associated with Commission responsibilities.

(67 Del. Laws, c. 334, § 1; 68 Del. Laws, c. 290, § 106; 69 Del. Laws, c. 35, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 141, §§ 1-4; 73 Del. Laws, c. 309, § 1; 78 Del. Laws, c. 296, § 2.)

§ 9903 Duties and authority of the Commission.

(a) The Commission shall have the authority to hire staff, contract for consulting services, conduct any technical and/or actuarial studies which it deems to be necessary to support its work, and to publish reports as required in order to accomplish its purposes in accordance with the provisions of this chapter.

(b) As relates to the pilot health access projects, the Commission is expressly authorized to develop such programs in consultation with the appropriate public and private entities; to assign implementation to the appropriate state agency; to monitor and oversee program progress and to ensure that each pilot program is evaluated by an outside, independent evaluator after no more than 2 years of operations.

(c) The Commission shall be responsible for the administration of the Delaware Institute of Medical Education and Research (DIMER), which shall serve as an advisory board to the Commission, and the Chair of the Health Care Commission shall appoint the Chair of DIMER. The Commission shall have such other duties and authorities with respect to DIMER which are necessary to carry out the intent of the General Assembly as expressed in this chapter.

(d) The Commission shall be responsible for the administration of the Delaware Institute for Dental Education and Research (DIDER), which shall serve as an advisory board to the Commission. The Commission shall have such other duties and authorities with respect to DIDER which are necessary to carry out the intent of the General Assembly as expressed in this chapter.

(e) Other functions which the Commission may undertake include:

(1) Serve as the policy body to advise the Governor and General Assembly on strategies to promoting affordable quality health care to all Delawareans and assuring policies are in place to maintain an optimal health-care environment. Analyze all aspects of the health-care landscape, including, but not limited to, population and health outcomes, service delivery infrastructure, quality, costs, accessibility, utilization, insurance coverage and financing;

(2) Convene, as necessary, public and private stakeholders to identify, analyze and address health policy issues and build consensus around workable solutions. Serve as the coordinating entity between the public and private sectors to implement emerging health initiatives at the federal, state and local levels;

(3) Function in such a way that fosters creative thinking and problem solving across state agency lines and across the public and private sectors;

(4) Ensure that data to support the activities of the Commission are available and accessible;

(5) Monitor cost trends in order to recommend methods to reduce and control health-care costs for public programs and in conjunction with the private sector;

(6) Coordinate efforts with the Health Resources Board and any other entities the Commission identifies as essential to carry out its mission;

(7) Review and recommend changes to state health insurance laws and regulations (in conjunction with the Insurance Commissioner) to promote efficiency, equity and affordability in health insurance premiums;

(8) Coordinate and collaborate with the Delaware Health Information Network [DHIN] to assure that the use of health information technology and health information exchange results in cost effective, quality health care for all Delawareans. Consult with DHIN Board of Directors and staff on implementation of health information technology in Delaware and call upon the DHIN to assist in conducting pilot programs, providing technical support, capabilities and expertise, and/or conducting research necessary to achieve the Commission's mission;

(9) Oversee efforts to assure that Delaware has an adequate supply and distribution of health-care professionals to provide quality care to all Delawareans in consultation with DIMER, DIDER and other institutions, bodies or agencies as necessary;

(10) Monitor access to health-care programs and make recommendations for changes where necessary; and

(11) Conduct other activities it considers necessary to carry out the intent of the General Assembly as expressed in this chapter.

(67 Del. Laws, c. 334, § 1; 70 Del. Laws, c. 516, § 2; 73 Del. Laws, c. 4, § 2; 78 Del. Laws, c. 296, § 3.)

§ 9904 Reporting requirements.

(a) On or before January 15, 1991, the Commission shall report to the Governor and the General Assembly on the status of the recommendations contained in the May 31, 1990 Task Force Report. On or before March 15, 1991, the Commission shall submit to the Governor and the General Assembly its recommendations for legislative action on insurance reform. On or before May 15, 1991, the Commission shall report to the Governor and the General Assembly on the status of specific initiatives in Medicaid, education, outreach and case management, and the pilot model projects.

(b) On or before January 15, 1991, and on or before every January 15 thereafter, the Commission shall report to the Governor and the General Assembly on the status of all of the Task Force recommendations. The comprehensive report shall identify any segments of the population which remain without access to health care and any further recommendations deemed necessary to meet the Commission's charge.

(67 Del. Laws, c. 334, § 1.)

Subchapter II

Delaware Institute of Medical Education and Research

§ 9905 Findings.

(a) The General Assembly finds and declares that the purpose of the Delaware Institute of Medical Education and Research (DIMER), created in 1969 as an alternative to a state sponsored medical school, is sound and should be continued and strengthened. Delaware should continue to provide opportunities for Delaware residents to receive a medical education, but it would not be a wise use of resources for the State to build and maintain a medical school.

(b) The General Assembly finds and declares that the current arrangement between the State and Jefferson Medical College of Thomas Jefferson University, which allows Jefferson to function as Delaware's medical school, is extremely valuable to the State and has produced benefits which far surpass the admission of 20 Delaware residents into Jefferson Medical College each year. The relationship with Jefferson Medical College through DIMER is built upon years of a solid working relationship and should be perpetuated.

(c) The General Assembly finds and declares that a new structure of the DIMER Board will more appropriately reflect DIMER's abilities to meet its responsibilities as outlined in this legislation.

(d) The General Assembly finds and declares that placing administration of DIMER within the Delaware Health Care Commission will enhance its ability to accomplish its goals and ensure that DIMER's future functions will be focused on promoting medical education while helping the State to meet its health care needs.

(70 Del. Laws, c. 516, § 3.)

§ 9906 Creation of a Board.

(a) There is hereby established the Board of Directors of the Delaware Institute of Medical Education and Research (Board), which shall serve as an advisory board to the Health Care Commission.

(b) The Board shall consist of 17 members, 1 of whom shall be a member of the Delaware Health Care Commission, to be appointed by the Delaware Health Care Commission; 3 of whom shall be appointed by the Christiana Care Health Services; 6 of whom shall be appointed by the Governor, consisting of 1 public member from each county and 1 public member from the City of Wilmington and 2 members representing medical residency programs in the State, other than those operated by the Christiana Care Health Services; 1 of whom shall be appointed by the Association of Delaware Hospitals to represent hospitals in Kent and Sussex Counties; 1 of whom

shall be appointed by the Delaware Higher Education Office, subject to the approval of the Secretary of Education; 3 of whom shall be appointed by the University of Delaware, including representation from the College of Nursing; and 1 of whom shall be appointed by Delaware State University. The Director of the Division of Public Health shall serve as an ex officio member.

(c) All members, other than the ex officio member, shall be appointed for terms of 3 years, except that the present 9 members shall serve the remainder of their terms, and of the 6 new appointments, 2 shall be for 3 years, 2 shall be for 2 years and 2 shall be for 1 year, to allow for staggered terms. Any member appointed to fill a vacancy shall be appointed only to fill that vacancy for the remainder of the term, but shall be eligible for re-appointment upon expiration of that term.

(d) No member of the Board shall receive compensation for that member's duties other than normal travel expenses incurred in carrying out the responsibilities as members.

(e) A majority of the members of the Board shall constitute a quorum and shall be sufficient for any action by the Board.

(f) The Chair of the Board shall be appointed by the Chair of the Delaware Health Care Commission.

(g) The Board may establish working committees to assist in completing its work; however, it shall maintain a standing "Committee on Rural Health" to assure that the unique health needs of rural Delaware are addressed in DIMER activities.

(70 Del. Laws, c. 516, § 3; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 4, §§ 4-6; 77 Del. Laws, c. 431, § 17.)

§ 9907 Purposes of the Board.

The purpose of the Board shall be to initiate, encourage and promote:

(a) The relationship with Jefferson Medical College of Thomas Jefferson University as Delaware's medical school, including ensuring the admission of 20 bona fide Delaware residents into Jefferson Medical College on an annual basis.

(b) Expansion of opportunities for Delaware residents to obtain training at a reasonable cost in the health and health-related professions when such residents commit to practice their professions in Delaware.

(c) Incentives for qualified personnel in the health and health-related professions to practice in Delaware.

(d) Continued development of a coordinated program of premedical, medical and graduate education among state public institutions of higher learning, Delaware hospitals and Jefferson Medical College.

(e) Support of graduate and post-graduate medical and health care training programs, including emphasis on those programs targeted to meet the State's health care needs.

(f) Programs of education and training in the health fields and research in health and health-related fields, both basic and applied, including the vital areas of public health education, community health planning and health care costs.

(70 Del. Laws, c. 516, § 3.)

§ 9908 Duties.

The Board shall be responsible for overseeing implementation of policies designed to accomplish the purposes set forth in § 9907 of this title and shall report to the Commission on its progress. Its activities and responsibilities shall include:

(a) Developing a recruitment program for medical education in conjunction with local colleges and universities to encourage medical school applications from minorities and residents of rural counties and underserved areas of Delaware, in addition to other students interested in pursuing a medical education.

(b) Developing and maintaining statewide communications, publicity and marketing plans in cooperation with the Delaware Higher Education Office and other interested parties, which will promote awareness of the existence of DIMER and the Jefferson Medical College as Delaware's alternative to a state sponsored medical school.

(c) Close monitoring of the relationship between the University of Delaware Medical Scholars Program and Jefferson Medical College admission slots reserved for Delaware residents.

(d) Developing recruitment programs aimed at attracting premedical students interested in community and rural medicine; provided, however, that the Delaware Health Care Commission shall be empowered to expand or replace this activity with other duties if required by the future health care needs of the State.

(e) Support, as appropriate, private sector provider recruitment efforts by consolidating information collection and dissemination efforts, such as statewide recruitment brochures.

(f) Advising the Delaware Higher Education Office as it administers and monitors scholarships, loans and loan repayment programs:

(1) Aimed at attracting graduates and residents in disciplines in which there is a shortage as determined by the Delaware Health Care Commission; and

(2) Offered to Delaware residents in financial need who wish to pursue a health-related education and to practice health-related professions in Delaware.

The Board may develop working relationships and affiliation agreements with other institutions to facilitate carrying out the purposes of this chapter. Any such agreements shall be approved by the Delaware Health Care Commission, and the State shall be a signatory to any documents setting the terms of the agreements.

(70 Del. Laws, c. 516, § 3; 77 Del. Laws, c. 431, § 18.)

Subchapter III
Delaware Health Program

§ 9909 Delaware Healthy Children Program.

(a) The Delaware Health Care Commission shall develop a program to help Delaware children without access to health insurance to obtain health insurance at affordable cost to their families. The Program shall promote the important objectives of improving the health of uninsured Delaware children and reducing the cost-shifts to policyholders and hospitals caused by uncompensated care. Such program shall be called the Delaware Healthy Children Program (hereinafter in this section, the "Program" or "CHIP").

(b) The Program shall be administered and implemented by the Department of Health and Social Services [DHSS].

(c) The Program shall operate within the limits of the appropriations made for such purpose in the annual appropriations act. To the extent that private charitable or foundation support is available to implement the Program, such appropriations may be used for a public-private partnership to implement the Program in compliance with of this section.

(d) The Program shall be designed to provide the ability to purchase insurance at a reasonable cost to uninsured Delaware children without access to affordable health insurance through their parents'/guardians' employers. The Program shall offer a managed care product that may require participants to pay regular premiums and may require participants to pay co-payments, and shall be designed to create incentives for participants to use health services in a prudent and responsible fashion. The Program shall also be designed to minimize the ability of private employers who provide health insurance coverage for their employees to eliminate such coverage, and, to the extent practicable, provide incentives for employers who provide no health insurance coverage for their employees to begin to provide such coverage.

(e) The Program shall offer to children health insurance which emphasizes the prudent and responsible use of preventive services so as to improve the health of participants, promote the early detection of serious health problems such as cancer and to help reduce the need for more expensive care by addressing health problems which can be treated more inexpensively if identified in a timely manner. To this end, the health insurance plan offered by the Program shall offer participants the ability to obtain regular preventative health care in accordance with accepted medical guidelines.

(f) The Program shall be designed to integrate with other state health initiatives to ensure that state resources are used efficiently to extend health insurance access and not to duplicate services available through other state programs, including, but not limited to, the State's Medicaid program, particularly the primary care managed care plan known as the Diamond State Health Plan, the School-Based Health Center program, and the public-private children's health access initiative involving the Nemours Foundation. To the extent practicable, the Program shall be administered by the State Medicaid Office and the health insurance plan offered to participants shall be designed to operate in tandem with the Diamond State Health Plan so as to maximize service to participants, contain costs through coordinated purchasing and contracting and minimize administrative costs.

(g) The DHSS is authorized to promulgate rules and regulations and take such other actions as are necessary to implement this section and to secure federal funding to support the Program, including any actions necessary to comply with the Federal Child Health Assistance Act, Title XXI of the federal Social Security Act [42 U.S.C. § 1397aa et seq.]

(h) The Program shall be designed with the intent that program coverage could be extended to low-income uninsured adult Delawareans in the future if sufficient resources are appropriated for such purpose.

(i) The Program shall be designed with the intent that program coverage could be extended to families with incomes above 200% of the Federal poverty level.

(j)(1) The provision of health care insurance under CHIP shall be extended to eligible children under the age of 19 whose families have personal incomes above 200% of the Federal Poverty Level (FPL), as determined pursuant to 42 U.S.C. § 1397jj(c)(5).

(2) For an eligible child whose family income is greater than 200% of the FPL, the family may purchase a healthcare benefit package, determined by DHSS and subject to any necessary approval under federal law, that provides benefits identical to those provided to an eligible child covered under this section.

(3) To be eligible for coverage under CHIP where family income is greater than 200% of the FPL, a child over 2 years of age must have been uninsured for a continuous period of not less than 3 consecutive months immediately preceding enrollment in CHIP unless:

a. The child's parent is eligible to receive benefits pursuant to the State's unemployment compensation laws, as set forth in Title 19;

b. The child's parent was covered by a health insurance plan, a self-insurance plan or a self-funded plan and involuntarily lost coverage; or

c. A child is transferring from 1 government-subsidized health care program to another.

(4) DHSS shall have the authority to establish and adjust the levels of co-payments, premiums, and deductibles for children enrolled under this subsection for the purpose of ensuring that the state cost of the plan does not exceed funds specifically appropriated for purposes of this subsection.

(k) The program shall be designed such that program coverage shall include the provision of dental services to children enrolled in the program.

(l) By September 1 of each calendar year beginning in 2008, DHSS shall develop a form and instructions for school districts to use in communicating to DHSS the information regarding free and reduced price meal eligibility whose submission is required by § 4134 of Title 14. Said form and instructions shall be communicated by October 1 of each calendar year to each school district.

(m) By January 1 of each calendar year beginning in 2009, DHSS shall communicate in writing with the family of each child who may be eligible for the CHIP or Medicaid programs based upon information submitted by the school districts pursuant to § 4134 of Title 14. Said communication shall inform the family that its children may be eligible for free or reduced price health insurance based upon income information received from the school district, and provide information to the family for applying for the CHIP and Medicaid programs. The form provided to families notified pursuant to this subsection shall allow DHSS to calculate how many families have enrolled in the CHIP or Medicaid programs as a result of such notification, and the Department of Insurance shall reimburse DHSS for any administrative costs incurred as a result of such additional enrollments. No funds transferred pursuant to this subsection shall be used to fund insurance benefits for the CHIP or Medicaid programs.

(n) Only persons authorized to carry out initial processing of Medicaid or CHIP applications or make eligibility determinations with respect to Medicaid or CHIP applicants may review information received from the school districts pursuant to § 4134 of Title 14.

(o) Prior to August 1, 2008, DHSS shall enter into written agreements with each of the school districts meeting the requirements of § 4134(e) of Title 14.

(p) "School district" as used in this section shall have the meaning assigned to it in § 4134(g) of Title 14.

(q) DHSS shall cooperate with the school districts and the Insurance Commissioner in developing the written materials required by subsections (l) and (o) of this section. DHSS shall cooperate with the Insurance Commissioner in developing the written materials required by subsection (m) of this section.

(71 Del. Laws, c. 452, § 1; 75 Del. Laws, c. 407, § 1; 76 Del. Laws, c. 241, §§ 2, 3; 77 Del. Laws, c. 206, § 1.)

Subchapter IV

Delaware Health Information Network

§§ 9920 -9927. Purpose; creation of Delaware Health Information Network; powers and duties; Immunity from suit; limitation of liability; property rights; regulations; resolution of disputes; privacy; protection of information; no pledge of state credit; no assumption of liability by State.

Transferred to §§ 10301 to 10308 of this title by 77 Del. Laws, c. 368, § 16, effective Jan. 1, 2011.

Subchapter V

Delaware Institute for Dental Education and Research

§ 9940 Findings.

(a) The General Assembly finds and declares that the original purposes for DIDER enacted in 1981 remain sound and should be continued and strengthened.

(b) The General Assembly finds and declares that the original DIDER statute anticipated multiple purposes for the organization, but that administrative and other resources have limited DIDER to 1 purpose — that of becoming a funding conduit for supporting hospital based residency training programs as required in Chapter 11, Title 24.

(c) The General Assembly finds and declares that DIDER can play a pivotal role in implementing many programs that could result in improved access to dental care for Delawareans.

(d) The General Assembly finds and declares that a new structure of the DIDER Board will more appropriately reflect DIDER's abilities to meet its responsibilities outlined in this legislation.

(e) The General Assembly finds and declares that placing the administration of DIDER within the Delaware Health Care Commission will enhance its ability to accomplish its goals and ensure that DIDER's future functions will be focused on promoting dental education and helping the State to meet its health care needs, in concert with DIMER and other state health care policy activities.

(73 Del. Laws, c. 4, § 3.)

§ 9941 Creation of a Board.

(a) There is hereby established the Board of Directors of the Delaware Institute for Dental Education and Research ("Board") which shall serve as an advisory board to the Health Care Commission.

(b) The Board shall consist of 10 members. One shall be a public member, appointed by the Governor. Three shall be members of the Delaware State Dental Society, appointed by the Society. One shall be appointed by the Board of Directors of Christiana Care Health Services. One shall be a member of the Delaware Health Care Commission, appointed by the Health Care Commission. One shall be a member of the State Board of Dentistry and Dental Hygiene, to be appointed by the State Board of Dentistry and Dental Hygiene. One shall be a dental hygienist to be appointed by the Delaware Dental Hygienist Association. One shall represent the Delaware Higher

Education Office to be appointed by the Delaware Higher Education Office, subject to the approval of the Secretary of Education. The Delaware State Dental Director shall serve as an ex officio member of the Board.

(c) All members, other than the ex officio member, shall be appointed for a term of 3 years, except the initial appointments. Of the appointed positions, 3 will initially be for 1 year, 3 will initially be for 2 years, and 3 will be for 3 years, to allow for staggered terms. Members may be re-appointed 3 times and may serve no longer than 9 years. Any member appointed to fill a vacancy shall be appointed only for the unexpired term.

(d) The Chair shall be elected by the members from among the Board members.

(e) No member of the Board shall receive compensation for that member's duties other than normal travel expenses incurred in carrying out the responsibilities as members.

(f) A majority of the members of the Board shall constitute a quorum and shall be sufficient for any action by the Board.

(g) The Board may establish working committees to assist in completing its work.

(73 Del. Laws, c. 4, § 3; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 431, § 19; 77 Del. Laws, c. 463, § 3.)

§ 9942 Purposes of the Board.

The purpose of the Board shall be to support, encourage and promote:

(1) Accredited general practice residencies in dentistry at any general hospital in the State that will provide a comprehensive postgraduate training program pursuant to the requirements of Chapter 11 of Title 24.

(2) Expansion of opportunities for Delaware residents to obtain dental education and training at all levels.

(3) A strengthening of the factors favoring the decision of qualified dental personnel to practice in Delaware, including, but not limited to, tools such as loan repayment programs as approved by the Delaware Health Care Commission.

(4) Dental needs of the community at large and particularly those who do not have ready access to dental care.

(5) Expansion of opportunities for Delaware residents to obtain training at a reasonable cost in the dental professions.

(6) Incentives for qualified personnel in the dental professions to practice in Delaware.

(7) Support of graduate and postgraduate training programs, including emphasis on those programs targeted to meet the State's health care needs.

(73 Del. Laws, c. 4, § 3.)

§ 9943 Duties.

The Board shall be responsible for implementation of policies designed to accomplish the purposes set forth in § 9942 of this title, and shall report to the Commission on its progress. Its activities and responsibilities shall include:

(1) Working in conjunction with the State Board of Dentistry and Dental Hygiene, development of programs to encourage and allow dentists to practice in under-served areas of the State, as designated by the Delaware Health Care Commission, in lieu of hospital-based residency training as a condition of licensure. Such programs may include preceptorships and reciprocity.

(2) Loan repayment programs designed to attract dental personnel to Delaware's under-served areas, as approved by the Delaware Health Care Commission.

(3) Development of expanded opportunities for dental school graduates to obtain general practice training in Delaware. Examples of such opportunities may include, but not be limited to: satellite sites; partnerships with dental schools; and partnerships with local hospitals.

(4) Developing recruitment programs designed to attract dental personnel to Delaware.

(5) Developing plans for enhanced education opportunities for Delawareans interested in pursuing a dental education.

(6) Developing plans for improving access to dental care, particularly for the underserved populations.

The Board may develop working relationships and affiliation agreements with other institutions to facilitate carrying out the purposes of this chapter. Any such agreements shall be approved by the Delaware Health Care Commission, which shall be a signatory to any documents setting the terms of the agreement.

(73 Del. Laws, c. 4, § 3; 77 Del. Laws, c. 463, § 3.)

Part XII
Emergency Services
Chapter 100
911-ENHANCED EMERGENCY NUMBER SERVICE

§ 10001 Purpose.

The purpose of this chapter is to establish an integrated wireline and wireless 911-Enhanced Emergency Number Service throughout this State in order to improve and/or enhance emergency communication procedures.

(66 Del. Laws, c. 270, § 1; 67 Del. Laws, c. 57, § 2; 69 Del. Laws, c. 256, § 1; 73 Del. Laws, c. 115, § 1.)

§ 10002 Definitions.

As used in this chapter:

(1) "911 Emergency Report Center" means any facility which maintains a 911 telephone call-in feature for the Enhanced System.

(2) "911-Enhanced Emergency Reporting System" means a system capability to identify automatically the geographical location and the calling number of the telephone being used by the caller and to provide a display of the location information on 911 Emergency Reporting Center. 911-Enhanced System includes, but is not necessarily limited to the following features: Automatic number identification, automatic location identification, fixed transfer, selective routing, alternate routing and forced disconnect.

(3) "911-Enhanced Emergency Reporting System capability" shall mean the network and database functions required to ensure that both the 911 call and the information identifying the telephone number of the caller and associated geographic location of the caller are automatically and simultaneously forwarded to the public safety answering point.

(4) "Board" means the Enhanced 911 Emergency Reporting System Service Board.

(5) "Commission" shall mean the Public Service Commission.

(6) "E-911 state plan" means a document to be prepared, maintained and kept current by the Board regarding the operation, maintenance, upgrading and funding of a statewide-integrated E-911 system.

(7) "Emergency medical dispatch (EMD) center" shall mean any dispatch center that receives 911 calls requesting emergency medical assistance, processes those calls, or dispatches emergency medical service resources.

(8) "FCC E-911 order" means all orders issued by the Federal Communications Commission pursuant to the proceeding entitled "Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems" (CC Docket No. 94-102; RM-8413), or any successor proceeding, regarding the delivery of wireless automatic number identification and wireless automatic location information as of the dates and according to the other criteria established therein.

(9) "Fund" means the 911 Emergency Reporting System Service Fund created by Chapter 101 of this title.

(10) "Provider" shall mean a telecommunications service provider, including a wireless provider, any other provider that is required to or opts to provide 911 service, or any intermediate entity or pass through agent providing telecommunications services.

(11) "Public safety answering point" or "PSAP" shall have the same meaning as "911-Enhanced Report Center."

(12) "Secretary" shall mean the Secretary of the Department of Safety and Homeland Security.

(13) "Wireless automatic location information" means the delivery or receipt of the approximate geographic location, as specified in the FCC E-911 Order, of the wireless device being used to place a call to a 911 system or to a wireless E-911 system.

(14) "Wireless automatic number identification" means the delivery or receipt of the telephone number when available assigned to the wireless device being used to place a call to a 911 system or to a wireless E-911 system.

(15) "Wireless E-911 service" means enhanced 911 service provided by a wireless provider, pursuant to the FCC E-911 order.

(16) "Wireless E-911 state plan" or "wireless plan" means a document to be prepared, maintained and kept current by the Board providing for all aspects of the development, implementation, operation and maintenance of a statewide wireless E-911 system, including the exclusive authority to approve wireless provider service agreements, advise regarding technical standards, formulate technical plans and determine permitted uses of and amounts disbursed from the 911-Enhanced Emergency Reporting Fund to wireless carriers as of January 1, 2002, pursuant to § 10104 of this title.

(17) "Wireless E-911 system" means an E-911 system which permits wireless service users dialing 911 to be connected to a public safety answering point for the reporting of police, fire, medical or other emergency situations and which permits the wireless number identification and/or associated location information to be automatically forwarded at the same time to the public safety answering point.

(18) "Wireless provider" means a person engaged in the business of providing wireless service to end-use customers and resellers of such service in this State or commercial mobile radio service providers as defined by the Federal Communications Commission.

(19) "Wireless service" means commercial mobile radio service as defined under sections 3(27) and 332(d) of the Communications Act of 1934, as amended by the Federal Telecommunications Act of 1996 (47 U.S.C. § 151 et seq.).

(20) "Wireless service customer" means a person who is billed by a wireless provider for wireless service within the State.

(21) "Wireline" means telecommunications service provided in part over fixed physical access facilities, such as wires and cables, between residences or businesses and a telephone company switching office.

(66 Del. Laws, c. 270, § 1; 67 Del. Laws, c. 57, § 2; 69 Del. Laws, c. 256, § 1; 72 Del. Laws, c. 137, § 26; 73 Del. Laws, c. 115, § 2; 74 Del. Laws, c. 110, § 138; 76 Del. Laws, c. 183, §§ 1, 2.)

§ 10003 Establishment of 911-Enhanced Emergency Reporting System.

There is hereby established a statewide 911-Enhanced Emergency Reporting System whereby all 911 Emergency Report Centers in this State shall be equipped with and/or maintain a 911-Enhanced Emergency Reporting System by January 1, 1989.

(66 Del. Laws, c. 270, § 1; 67 Del. Laws, c. 57, § 2; 69 Del. Laws, c. 256, § 1.)

§ 10004 Authority of Commission.

(a) The Commission shall require all telegraph corporations, telephone corporations or any corporation supplying wireline telephone service within this State to provide a 911-Enhanced Emergency Reporting System capability to every 911 Emergency Reporting Center.

(b) The Commission shall further authorize said telegraph corporation, telephone corporation or corporation supplying wireline telephone service within this State to recover the expense of providing said service through such fees or tariffs as may be necessary. The Commission shall permit, but not require, the recovery of such expense through a separately identified charge.

(c) The Public Service Commission shall review telephone rates charged by any provider which as of June 1, 2001, had E-911 costs embedded in such rates and shall assure that such rates are adjusted as of January 1, 2002, to account for the removal of the embedded costs from them.

(d) To the extent of the Commission's authority relative to assignment of "N11" telephone numbers, the Commission shall not authorize telegraph corporations, telephone corporations or any corporation supplying telephone service within the State to:

(1) Establish any 3-digit number with "11" as the last 2 digits for any commercial purpose; or

(2) Establish any 3-digit number with "11" as the last 2 digits for public safety purposes except as recommended by a review committee established by subsection (d) of this section.

(e) A committee to review the need for a 3-digit number for public safety purposes is hereby established consisting of the following:

(1) A representative from the Department of Safety and Homeland Security appointed by the Secretary of Safety and Homeland Security.

(2) A representative from the State Fire Prevention Commission appointed by the Chair of the Commission.

(3) A representative from the Delaware Volunteer Firefighter's Association appointed by the President of the Association.

(4) A representative from the Delaware State Police appointed by the Superintendent of State Police.

(5) A representative from the Delaware State Police Chief's Council appointed by the Chairperson of the Council.

(6) A representative from the Delaware 911 Users Group elected from its members.

(7) A representative appointed by the Governor.

The Committee shall select a chair from its members and review the use of such numbers upon request. The committee by majority vote shall either approve or disapprove the request, and shall submit its recommendation to the Commission. The Committee shall conduct its meetings and hearings in accord with the Freedom of Information Act, Chapter 100 of Title 29 of the Delaware Code.

(66 Del. Laws, c. 270, § 1; 67 Del. Laws, c. 57, § 2; 69 Del. Laws, c. 256, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 60, § 1; 73 Del. Laws, c. 115, §§ 3, 4; 74 Del. Laws, c. 110, § 138; 77 Del. Laws, c. 378, § 1.)

§ 10005 Creation of Enhanced 911 Emergency Service Board.

(a) There is hereby established an Enhanced 911 Emergency Reporting System Service Board.

(b) The Board shall act in an advisory capacity to the Governor, the Secretary and the General Assembly on all matters related to the E-911 system, service and funding thereof.

(c) The Board shall be comprised of 7 members appointed by the Governor with the advice and consent of the Senate. The Governor shall designate a chairperson who shall serve an unlimited term at the pleasure of the Governor. At least 3 members shall have technical or financial expertise on telecommunications issues and at least 1 member shall be a representative from the Delaware Association of County Governments. The term of each member, excluding the chairperson who shall serve at the pleasure of the Governor, shall be for 3 years except that for the initial members of the Board, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 2 years, and 2 members shall be appointed for a term of 3 years. The members of the Board shall be permitted to attend by proxy no more than 3 times in a calendar year. A proxy vote shall have the same force and effect as if the proxy vote had been taken by the actual appointed member of the Board who designated the proxy.

(d) Members of the Board shall serve without compensation except that they shall be reimbursed for reasonable and necessary expenses incidental to their duties as members of the Board.

(e) The Department of Safety and Homeland Security shall provide administrative support to the Board and may seek reimbursement from the Fund for reasonable costs incurred with administering the Board and Fund.

(f) The Board's duties and responsibilities shall include the following.

(1) The Board shall develop and adopt a comprehensive E-911 state plan by February 1, 2004, which shall cover a period of not less than 3 years and which shall include a wireless E-911 state plan. The plan shall be reviewed, updated and prioritized on an annual basis.

(2) No later than March 1 of each year, beginning in 2002, the Board shall provide an annual report to the Governor, Secretary, Department of Technology and Information, or its successor agency, and General Assembly, which shall, at a minimum, include a summary of the progress on the wireless E-911 system, an evaluation of the E-911 system as a whole, the capital improvements and expenditures proposed for the upcoming fiscal year, expected revenues from the surcharges in the next fiscal year, and a summary of the revenues and expenses for the prior fiscal year. In no event shall the proposed annual expenses associated with the E-911 system exceed the anticipated annual revenues of the Fund.

(3) The Board shall develop, evaluate, establish, recommend and adopt a wireless E-911 state plan pursuant to the FCC E-911 order. The wireless plan shall cover a period of not less than 3 years and shall provide for the systematic deployment of wireless E-911 service across the State.

(4) The Board shall conduct a public meeting in each of the 3 counties in this State prior to the adoption of the E-911 state plan and the wireless E-911 state plan.

(5) When the wireless E-911 state plan is fully implemented, the Board shall insure that wireless service in all communities is or can be selectively routed to one or more public safety answering points.

(6) The Board shall conduct a comprehensive review of the entire E-911 system no later than November 15, 2004, and every 3 years thereafter, and make a written report on its findings and recommendations regarding the adequacy of the system, service thereunder, and funding to the Governor, Secretary, Department of Technology and Information, or its successor agency, and General Assembly. The Board is authorized to retain the services of professionals, as needed, to assist it in its duties under this subsection.

(g) Actions by the Board shall be by a majority of those present at Board meetings where a quorum has been established. All voting shall be done in person and at regular or special meetings of the Board, except as provided in subsection (c) of this section.

(h) The Board shall work in concert with the Department of Safety and Homeland Security, providers, emergency service providers, counties and municipal governments offering 911 service and any other appropriate department, agency or committee focusing on statewide emergency service affected by the development and maintenance of the E-911 System.

(i) The Board may exercise all powers and conduct such activities as are necessary in carrying out its responsibilities under this chapter and Chapter 101 of this title.

(j) All providers as defined § 10002(10) of this title shall officially designate a person to coordinate with, and provide information to, the Board as required by the Board.

(67 Del. Laws, c. 57, § 1; 69 Del. Laws, c. 256, § 1; 73 Del. Laws, c. 115, § 5; 74 Del. Laws, c. 110, § 138; 74 Del. Laws, c. 128, § 4; 74 Del. Laws, c. 137, § 1; 76 Del. Laws, c. 183, § 3; 76 Del. Laws, c. 384, §§ 1-3.)

§ 10006 Establishment of 911-Emergency Medical Dispatch System.

(a) There is hereby established a statewide 911 Emergency Medical Dispatch (EMD) System whereby all 911 Emergency Report Centers in this State providing emergency medical dispatch shall, through a contract with the Department of Safety and Homeland Security:

(1) Provide systematized caller interrogation questions; systematized prearrival instruction; and use and adhere to State EMD dispatch protocols matching the dispatchers evaluation of injury or illness severity with vehicle response mode and configuration;

(2) Electronically collect data regarding calls for assistance and all times related thereto, EMD dispatch protocol information, and ANI/ALI information;

(3) Measure all time increments in increments of seconds;

(4) Electronically transfer all required information collected to a central database maintained by OEMS on a real time basis;

(5) Use computerized case entry, case management and quality inspection software approved by OEMS;

(6) Have the capability of handling multiple (2 or more) calls simultaneously, including the ability to provide prearrival instructions consistent with the medical protocols. This capability must exist 24 hours per day throughout the entire year; and

(7) Have the capability to one-button transfer all data related to a call for medical assistance to the county PSAPs and must utilize that capability. Specifically, when a local PSAP determines that a call for assistance requires ALS, an immediate one-button transfer of all data must be made to the county PSAP. The transferred data must include the first call pickup time (time call received by local PSAP) and the time the local PSAP transferred the call to the EMD.

(8) Be accredited by the National Academy of Emergency Medical Dispatch (NAEMD) by August 1, 2003.

(b) All 911 Emergency Report Centers in this state receiving 911 calls and transferring them to a center providing emergency medical dispatch shall, through a contract with the Department of Safety and Homeland Security:

(1) Electronically collect data regarding calls for assistance including all times related thereto and ANI/ALI information;

(2) Measure all time increments in increments of seconds; and

(3) Have the capability to one-button transfer all data related to a call for medical assistance to the county PSAPs and must utilize that capability. The transferred data must include the first call pickup time (time call received by local PSAP) and the time the local PSAP transferred the call to the EMD.

(72 Del. Laws, c. 137, § 27; 74 Del. Laws, c. 1, § 1; 74 Del. Laws, c. 110, § 138.)

§ 10007 Compliance with wireless E-911 service plan.

After the Board has developed a wireless E-911 state plan consistent with the FCC E-911 order, all PSAPs and wireless providers shall provide wireless E-911 service in accordance with the plan, unless granted an extension by the Secretary or by any other operation of law. The Secretary shall have the power and authority to enforce compliance with the wireless E-911 state plan and may adopt rules and regulations necessary to carry out such enforcement.

(73 Del. Laws, c. 115, § 6.)

§ 10008 Limitation of liability.

No person involved in the provision of E-911 or 911 service who in good faith receives, develops, collects or processes information for the enhanced 911 data bases, relays, transfers, operates, maintains or provides enhanced 911 services or system capabilities, or provides emergency telephone and radio communications for ambulance, police and fire departments, shall be liable for damages in any civil action for any act or omission that results in death, injury or loss to person or property unless such action or inaction constitutes gross negligence or an intentional tort. This section shall be construed to include 911 service that utilizes in whole or in part Internet Protocol or other next generation 911 technologies.

(73 Del. Laws, c. 115, § 6; 78 Del. Laws, c. 301, § 1.)

§ 10009 Provider Records.

Pursuant to a nondisclosure agreement with the Board and only to the extent required to develop and implement the wireline or wireless E-911 state plans or to accomplish any other lawful purpose directly related to the 911-Enhanced Emergency Reporting System, each provider shall provide relevant information as requested in writing by the Board relating to subscribers, provider specific revenues and expenses and automatic location information. Such information shall remain the exclusive property of the provider notwithstanding any other provision of law and, shall not be disclosed by the Board except pursuant to the terms of the nondisclosure agreement with the provider.

(73 Del. Laws, c. 115, § 6; 74 Del. Laws, c. 137, § 7[8].)

§ 10010 Confidentiality of information and release of information.

(a) Identifying information of provider subscribers, provider-specific revenues and expenses, trade secrets, commercial information and other such information shall be treated as confidential and, notwithstanding other provisions of law, shall not be subject to public disclosure by the State or its representatives. The information made available to the State, its representatives or providers of emergency services shall be used solely for purposes of delivering or assisting in the delivery of E-911 emergency services or services that notify the public of an emergency.

(b) No provider shall be liable for releasing subscriber information, including private listing information, for purposes of complying with the requirements of this chapter, Chapter 101 of this title or as otherwise required by law.

(73 Del. Laws, c. 115, § 6; 74 Del. Laws, c. 137, §§ 8, 9[9, 10].)

Part XII
Emergency Services
Chapter 101
ENHANCED 911 EMERGENCY REPORTING SYSTEM FUND [EFFECTIVE UNTIL JAN. 1, 2015]
Subchapter I
Creation of Fund; Administration; Disbursements [Effective Jan. 1, 2015]

§ 10101 Purpose [Effective until Jan. 1, 2015]

The State shall create a special fund designated as the Enhanced 911 Emergency Reporting System Fund, which shall be used to reimburse the State, counties, local governments and providers of telecommunications services in this State for costs associated with the E-911 Emergency Reporting System.

(69 Del. Laws, c. 256, § 2; 73 Del. Laws, c. 115, § 7.)

§ 10102 Definitions [Effective until Jan. 1, 2015]

As used in this chapter:

(1) "911 Emergency Report Center" shall have the same meaning assigned to such term in § 10002(1) of this title.

(2) "911-Enhanced Emergency Reporting System" shall have the same meaning assigned to such term by § 10002(2) of this title.

(3) "Board" shall mean the Enhanced 911 Emergency Reporting System Service Board.

(4) "Business telephone service" shall mean network access telephone service where the use of such service is primarily for business purposes.

(5) "FCC E-911 Order" shall have the same meaning assigned to such term in § 10002(8) of this title.

(6) "Fund" shall mean the 911 Emergency Reporting System Fund created by this chapter.

(7) "Provider" shall have the same meaning assigned to such term in § 10002(10) of this title.

(8) "Residential telephone service" shall mean network access telephone service where the use of such service is primarily for social or domestic purposes.

(9) "Secretary" shall mean the Secretary of the Department of Safety and Homeland Security.

(10) "System" shall mean a 911-Enhanced Emergency Reporting System.

(11) "Wholesale services" shall mean services that a provider furnishes to another provider, rather than to end-use customers.

(12) "Wireless E-911 State plan" shall have the same meaning assigned to such term in § 10002(16) of this title.

(13) "Wireless provider" shall have the same meaning assigned to such term in § 10002(18) of this title.

(14) "Wireless service" shall have the same meaning assigned to such term in § 10002(19) of this title.

(69 Del. Laws, c. 256, § 2; 73 Del. Laws, c. 115, § 8; 74 Del. Laws, c. 110, § 138.)

§ 10103 E-911 Emergency Reporting System Fund [Effective until Jan. 1, 2015]

(a) The Fund shall be funded by means of a monthly surcharge of up to 60 cents per month imposed by providers on subscribers of telecommunications services in this State as follows.

(1) *Residential telephone service.* — The surcharge shall be imposed by each provider providing such service on all Delaware residential subscribers per residence exchange access line or per Basic Rate Interface ("BRI") ISDN arrangement, where the residence exchange access service is provided via a BRI ISDN arrangement. The surcharge shall not be applied to residence exchange access lines provided to Lifeline subscribers.

(2) *Business telephone service.* — The surcharge shall be imposed by each provider providing such service on all Delaware business subscribers per business exchange access line and trunk or per BRI ISDN arrangement where the business exchange access service is provided via a BRI ISDN arrangement. Each Centrex access line shall be charged the equivalent of 1/9 of the surcharge; provided, however, that where a Centrex customer has fewer than 9 lines, the maximum monthly charge for those lines will be the surcharge imposed on each business exchange access line or trunk divided by the customer's Centrex lines. Each Primary Rate Interface ISDN system shall be charged a rate equal to 5 times the surcharge. The surcharge shall not be applied to lines provided under wholesale arrangements.

(3) *Wireless service.* — The surcharge shall be imposed by each wireless provider on all wireless service customers for each wireless telephone number for which they are billed by such provider.

(4) *Nontraditional communication services.* — The surcharge shall be imposed by each provider of nontraditional communications service on subscribers of such services where such provider is required to or opts to provide 911 service.

(b) The surcharge amounts shall be deposited into the Fund as described below, along with any other state funds the General Assembly may from time to time appropriate.

(c) The provider shall impose the surcharge on the person purchasing the service but shall collect it on behalf of the State. The surcharges collected by a provider shall not be subject to taxes or charges levied by the State or any political subdivision thereof, nor shall they be considered revenue of the provider for any purpose.

(d) Each provider imposing the surcharge shall state such surcharge as a clearly identifiable, separate item on all subscriber invoices rendered after January 1, 2002.

(e) The surcharge shall not apply to wholesale services.

(f) All surcharges imposed by subsection (a) of this section shall be collected by providers from subscribers to telecommunications service with each invoice for service and shall be paid by providers on a monthly basis to the Department of Finance no later than the 15th day of the month following its collection and shall be deposited into the fund on a monthly basis.

(g) Each provider collecting such surcharges shall be entitled to recover the actual incremental costs of billing, collecting and remitting such surcharges, as well as the costs of compliance with any memorandum of understanding as described in subsection (h) of this section, through a credit against them. This cost is defined as the additional incremental expense incurred by the provider that is in addition to the normal expense of billing and collecting the charges for the provision of the provider's normal telephone service. Where moneys collected by the provider are equal to or less than the total charge for the telephone service provided to subscribers or customers by that provider, not including the surcharge, all moneys collected will be applied to the charges for the actual telephone service provided.

(h) Each provider collecting such surcharges shall not be responsible for uncollectable surcharges. The State may also enter into a memorandum of understanding with each provider which shall include, but need not be limited to, the terms related to the collection and distribution of funds pursuant to this chapter and provide for reporting to the Board the names and addresses of subscribers that fail to pay the surcharge. However, nothing in this chapter shall be construed to prevent the State or the Board from taking appropriate actions to collect such surcharges designated by a provider as uncollectable.

(i) Each provider collecting such surcharge is fulfilling a governmental function and in so doing is immune from suit for damages of any kind and is not liable for refunds except to the extent that the provider has failed to collect or remit surcharges to the Fund in accordance with the requirements of this chapter.

(j) The Fund is created as a nonappropriated special fund. Balances in the Fund on June 30 of each year shall carry forward and shall not revert to the General Fund.

(69 Del. Laws, c. 256, § 2; 73 Del. Laws, c. 115, § 9; 74 Del. Laws, c. 137, § 2; 76 Del. Laws, c. 183, § 5.)

§ 10104 Disbursements from the Fund [Effective until Jan. 1, 2015]

(a) Disbursements from the Fund shall be made for the following purposes.

(1) Nonrecurring costs, including but not limited to costs for purchasing and installing the customer premises terminal equipment ("CPE") required to establish or upgrade public safety answering points, purchasing E-911 network equipment or upgrading equipment as required to ensure proper functioning of the E-911 service and related software, developing wireless data bases, and initial training in the use of CPE equipment.

(2) Recurring costs, including but not limited to costs for network access fees and other telephone charges, software, equipment, data base management, maintenance and improvement, public education, language translation services, ongoing training in the use of CPE equipment, and network and equipment maintenance.

(3) Expenses of the Board and the Department of Safety and Homeland Security incurred under this chapter for the purposes of administering the Fund and expenses incurred in connection with the Board's responsibilities under Chapter 100 of this title.

(b) Each county shall receive an amount from the Fund equal to $0.50 per month, less the costs identified in subsection (g) of section 10103 of this title, for each residence exchange access line or residential Basic Rate Interface ("BRI") ISDN arrangement from which the monthly surcharge is collected in that county or the amount received by that county in calendar year 2000 from telephone providers from E-911 surcharges, whichever is greater. Disbursements from the Fund shall be made to the counties by the 15th day of the month following the month in which the wireline residential surcharges are deposited into the Fund by the provider. The amount disbursed to a county for any calendar year shall be subject to a true up at the end of the such year to reflect the amount received by the county in calendar year 2000 from E-911 surcharges but only in the event that such amount is greater than the amount disbursed from the Fund to the county in the current calendar year. The counties shall use these revenues to offset the costs incurred by them in connection with the administration, staffing, street addressing, necessary capital equipment, and training necessary to support the provision of E-911 emergency reporting service. Costs incurred shall be verified by an annual audit as directed by the Board.

(c) Upon a wireless providers receipt of a request for wireless E-911 service from the State, a wireless provider also shall:

(1) Be reimbursed for any recurring costs associated with the development, implementation, operation and maintenance of wireless E-911 service in the geographic area served.

(2) Be reimbursed for any nonrecurring costs associated with the development, implementation, operation and maintenance of wireless E-911 service in the geographic area served.

In no event shall any expenditure be reimbursed for payment of costs that are not related to a wireless provider's compliance with requirements established by the wireless E-911 state plan and the FCC E-911 order, or incurred at the request of the State.

(d) Disbursements may not be made for:

(1) Personnel costs for public safety answering points, except as set forth in subsection (b) of this section.

(2) Construction, purchase, renovation or furnishings for real estate to house public safety answering points, except as set forth in subsection (b) of this section.

(3) Vehicles, including ambulances, fire engines or other emergency vehicles, associated equipment and utilities.

(4) Two-way radios.

(e) *Pro rata sharing of Fund amounts.* — If the total amount of money in the Fund after paying the amounts due to the counties under subsection (b) of this section is insufficient to pay reimbursable costs at any given time, each entity requesting reimbursement shall receive a pro rata share of the total amount in the Fund at such time. Any remaining unpaid reimbursable costs shall be carried forward for payment as soon as sufficient funds become available.

(f) Providers may request reimbursement on a monthly basis, and payments from the Fund to providers shall be made by the State Treasurer within 60 days of receipt of such request.

(g) The annual expenditures from the Fund shall not exceed the annual revenues deposited into it.

(h) An annual audit of the Fund shall be completed by an independent auditor to be designated by the Board.

(73 Del. Laws, c. 115, § 9; 74 Del. Laws, c. 110, § 138; 74 Del. Laws, c. 137, § 3; 76 Del. Laws, c. 183, §§ 6, 7, 8.)

§ 10105 Regulations [Effective until Jan. 1, 2015]

The Secretary and, to the extent the collection of surcharges under this chapter is delegated to or performed by the Director of Revenue, each is authorized to adopt such regulations as are necessary to carry out the purpose of this chapter.

(73 Del. Laws, c. 115, § 9; 74 Del. Laws, c. 137, § 4.)

§ 10101 Purpose [Effective Jan. 1, 2015]

The State shall create a special fund designated as the Enhanced 911 Emergency Reporting System Fund, which shall be used to reimburse the State, counties, local governments and providers of telecommunications services in this State for costs associated with the E-911 Emergency Reporting System.

(69 Del. Laws, c. 256, § 2; 73 Del. Laws, c. 115, § 7; 79 Del. Laws, c. 332, § 1.)

§ 10102 Definitions [Effective Jan. 1, 2015]

As used in this chapter:

(1) "911 Emergency Report Center" shall have the same meaning assigned to such term in § 10002(1) of this title.

(2) "911-Enhanced Emergency Reporting System" shall have the same meaning assigned to such term by § 10002(2) of this title.

(3) "Board" shall mean the Enhanced 911 Emergency Reporting System Service Board.

(4) "Business telephone service" shall mean network access telephone service where the use of such service is primarily for business purposes.

(5) "FCC E-911 Order" shall have the same meaning assigned to such term in § 10002(8) of this title.

(6) "Fund" shall mean the 911 Emergency Reporting System Fund created by this chapter.

(7) "Provider" shall have the same meaning assigned to such term in § 10002(10) of this title.

(8) "Residential telephone service" shall mean network access telephone service where the use of such service is primarily for social or domestic purposes.

(9) "Secretary" shall mean the Secretary of the Department of Safety and Homeland Security.

(10) "System" shall mean a 911-Enhanced Emergency Reporting System.

(11) "Wholesale services" shall mean services that a provider furnishes to another provider, rather than to end-use customers.

(12) "Wireless E-911 State plan" shall have the same meaning assigned to such term in § 10002(16) of this title.

(13) "Wireless provider" shall have the same meaning assigned to such term in § 10002(18) of this title.

(14) "Wireless service" shall have the same meaning assigned to such term in § 10002(19) of this title.

(69 Del. Laws, c. 256, § 2; 73 Del. Laws, c. 115, § 8; 74 Del. Laws, c. 110, § 138; 79 Del. Laws, c. 332, § 1.)

§ 10103 E-911 Emergency Reporting System Fund [Effective Jan. 1, 2015]

(a) The Fund shall be funded by means of a monthly surcharge of up to 60 cents per month imposed by providers on subscribers of telecommunications services in this State as follows.

(1) *Residential telephone service.* — The surcharge shall be imposed by each provider providing such service on all Delaware residential subscribers per residence exchange access line or per Basic Rate Interface ("BRI") ISDN arrangement, where the residence

exchange access service is provided via a BRI ISDN arrangement. The surcharge shall not be applied to residence exchange access lines provided to Lifeline subscribers.

(2) *Business telephone service.* — The surcharge shall be imposed by each provider providing such service on all Delaware business subscribers per business exchange access line and trunk or per BRI ISDN arrangement where the business exchange access service is provided via a BRI ISDN arrangement. Each Centrex access line shall be charged the equivalent of 1/9 of the surcharge; provided, however, that where a Centrex customer has fewer than 9 lines, the maximum monthly charge for those lines will be the surcharge imposed on each business exchange access line or trunk divided by the customer's Centrex lines. Each Primary Rate Interface ISDN system shall be charged a rate equal to 5 times the surcharge. The surcharge shall not be applied to lines provided under wholesale arrangements.

(3) *Wireless service.* — The surcharge shall be imposed by each wireless provider on all wireless service customers for each wireless telephone number for which they are billed by such provider.

(4) *Nontraditional communication services.* — The surcharge shall be imposed by each provider of nontraditional communications service on subscribers of such services where such provider is required to or opts to provide 911 service.

(b) The surcharge amounts shall be deposited into the Fund as described below, along with any other state funds the General Assembly may from time to time appropriate.

(c) The provider shall impose the surcharge on the person purchasing the service but shall collect it on behalf of the State. The surcharges collected by a provider shall not be subject to taxes or charges levied by the State or any political subdivision thereof, nor shall they be considered revenue of the provider for any purpose.

(d) Each provider imposing the surcharge shall state such surcharge as a clearly identifiable, separate item on all subscriber invoices rendered after January 1, 2002.

(e) The surcharge shall not apply to wholesale services.

(f) All surcharges imposed by subsection (a) of this section shall be collected by providers from subscribers to telecommunications service with each invoice for service and shall be paid by providers on a monthly basis to the Department of Finance no later than the 15th day of the month following its collection and shall be deposited into the fund on a monthly basis.

(g) Each provider collecting such surcharges shall be entitled to recover the actual incremental costs of billing, collecting and remitting such surcharges, as well as the costs of compliance with any memorandum of understanding as described in subsection (h) of this section, through a credit against them. This cost is defined as the additional incremental expense incurred by the provider that is in addition to the normal expense of billing and collecting the charges for the provision of the provider's normal telephone service. Where moneys collected by the provider are equal to or less than the total charge for the telephone service provided to subscribers or customers by that provider, not including the surcharge, all moneys collected will be applied to the charges for the actual telephone service provided.

(h) Each provider collecting such surcharges shall not be responsible for uncollectable surcharges. The State may also enter into a memorandum of understanding with each provider which shall include, but need not be limited to, the terms related to the collection and distribution of funds pursuant to this chapter and provide for reporting to the Board the names and addresses of subscribers that fail to pay the surcharge. However, nothing in this chapter shall be construed to prevent the State or the Board from taking appropriate actions to collect such surcharges designated by a provider as uncollectable.

(i) Each provider collecting such surcharge is fulfilling a governmental function and in so doing is immune from suit for damages of any kind and is not liable for refunds except to the extent that the provider has failed to collect or remit surcharges to the Fund in accordance with the requirements of this chapter.

(j) The Fund is created as a nonappropriated special fund. Balances in the Fund on June 30 of each year shall carry forward and shall not revert to the General Fund.

(69 Del. Laws, c. 256, § 2; 73 Del. Laws, c. 115, § 9; 74 Del. Laws, c. 137, § 2; 76 Del. Laws, c. 183, § 5; 79 Del. Laws, c. 332, § 1.)

§ 10104 Disbursements from the Fund [Effective Jan. 1, 2015]

(a) Disbursements from the Fund shall be made for the following purposes.

(1) Nonrecurring costs, including but not limited to costs for purchasing and installing the customer premises terminal equipment ("CPE") required to establish or upgrade public safety answering points, purchasing E-911 network equipment or upgrading equipment as required to ensure proper functioning of the E-911 service and related software, developing wireless data bases, and initial training in the use of CPE equipment.

(2) Recurring costs, including but not limited to costs for network access fees and other telephone charges, software, equipment, data base management, maintenance and improvement, public education, language translation services, ongoing training in the use of CPE equipment, and network and equipment maintenance.

(3) Expenses of the Board and the Department of Safety and Homeland Security incurred under this chapter for the purposes of administering the Fund and expenses incurred in connection with the Board's responsibilities under Chapter 100 of this title.

(b) Each county shall receive an amount from the Fund equal to $0.50 per month, less the costs identified in subsection (g) of section 10103 of this title, for each residence exchange access line or residential Basic Rate Interface ("BRI") ISDN arrangement from which the

monthly surcharge is collected in that county or the amount received by that county in calendar year 2000 from telephone providers from E-911 surcharges, whichever is greater. Disbursements from the Fund shall be made to the counties by the 15th day of the month following the month in which the wireline residential surcharges are deposited into the Fund by the provider. The amount disbursed to a county for any calendar year shall be subject to a true up at the end of the such year to reflect the amount received by the county in calendar year 2000 from E-911 surcharges but only in the event that such amount is greater than the amount disbursed from the Fund to the county in the current calendar year. The counties shall use these revenues to offset the costs incurred by them in connection with the administration, staffing, street addressing, necessary capital equipment, and training necessary to support the provision of E-911 emergency reporting service. Costs incurred shall be verified by an annual audit as directed by the Board.

(c) Upon a wireless providers receipt of a request for wireless E-911 service from the State, a wireless provider also shall:

(1) Be reimbursed for any recurring costs associated with the development, implementation, operation and maintenance of wireless E-911 service in the geographic area served.

(2) Be reimbursed for any nonrecurring costs associated with the development, implementation, operation and maintenance of wireless E-911 service in the geographic area served.

In no event shall any expenditure be reimbursed for payment of costs that are not related to a wireless provider's compliance with requirements established by the wireless E-911 state plan and the FCC E-911 order, or incurred at the request of the State.

(d) Disbursements may not be made for:

(1) Personnel costs for public safety answering points, except as set forth in subsection (b) of this section.

(2) Construction, purchase, renovation or furnishings for real estate to house public safety answering points, except as set forth in subsection (b) of this section.

(3) Vehicles, including ambulances, fire engines or other emergency vehicles, associated equipment and utilities.

(4) Two-way radios.

(e) *Pro rata sharing of Fund amounts.* — If the total amount of money in the Fund after paying the amounts due to the counties under subsection (b) of this section is insufficient to pay reimbursable costs at any given time, each entity requesting reimbursement shall receive a pro rata share of the total amount in the Fund at such time. Any remaining unpaid reimbursable costs shall be carried forward for payment as soon as sufficient funds become available.

(f) Providers may request reimbursement on a monthly basis, and payments from the Fund to providers shall be made by the State Treasurer within 60 days of receipt of such request.

(g) The annual expenditures from the Fund shall not exceed the annual revenues deposited into it.

(h) An annual audit of the Fund shall be completed by an independent auditor to be designated by the Board.

(73 Del. Laws, c. 115, § 9; 74 Del. Laws, c. 110, § 138; 74 Del. Laws, c. 137, § 3; 76 Del. Laws, c. 183, §§ 6, 7, 8; 79 Del. Laws, c. 332, § 1.)

§ 10105 Regulations [Effective Jan. 1, 2015]

The Secretary and, to the extent the collection of surcharges under this chapter is delegated to or performed by the Director of Revenue, each is authorized to adopt such regulations as are necessary to carry out the purpose of this subchapter and subchapter II of this chapter.

(73 Del. Laws, c. 115, § 9; 74 Del. Laws, c. 137, § 4; 79 Del. Laws, c. 332, § 1.)

§§ 10106/ - 10109. [Reserved.] [Effective Jan. 1, 2015]

(79 Del. Laws, c. 332, § 1.)

Subchapter II

Prepaid Wireless Retail Transactions [Effective Jan. 1, 2015]

§ 10110 Definitions [Effective Jan. 1, 2015]

In addition to the definitions set forth in subchapter I of this chapter, the following definitions shall be applicable to this subchapter:

(1) "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

(2) "Prepaid wireless E911 surcharge" means the surcharge that is required to be collected by a seller from a consumer in the amount established under § 10112 of this title.

(3) "Prepaid wireless provider" means a person that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

(4) "Prepaid wireless telecommunications service" means a wireless telecommunications service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines in a known amount.

(5) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

(6) "Seller" means a person who sells prepaid wireless telecommunications service to another person.

(79 Del. Laws, c. 332, § 1.)

§ 10111 Imposition of charge [Effective Jan. 1, 2015]

(a) There shall be a prepaid wireless E911 surcharge on each retail transaction. The initial rate of the surcharge shall be 60 cents per retail transaction. Any rate changes shall be implemented under the provisions of subsection (f) of this section.

(b) The prepaid wireless E911 surcharge shall be collected by the seller from the consumer for each retail transaction occurring in this State. The amount of the prepaid wireless E911 surcharge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

(c) For purposes of determining whether a retail transaction is subject to the prepaid wireless E911 surcharge, the following transactions are deemed to occur in Delaware and are subject to the surcharge imposed under this section:

(1) The retail transaction is effected in person by the consumer at a business location of the seller if that business location is in Delaware; or

(2) The prepaid wireless telecommunications service is physically delivered to a consumer at a Delaware address provided to the seller; or

(3) The seller's records that are maintained in the regular course of business indicate that the consumer's address is in Delaware and the records are not kept or made in bad faith; or

(4) The consumer gives a Delaware address during the consummation of the retail transaction, including the customer's payment instrument if no other address is available, and the address is not given in bad faith; or

(5) The consumer's mobile telephone number is associated with a Delaware location.

(d) The prepaid wireless E911 surcharge is the liability of the consumer and not of the seller or of any prepaid wireless provider, except that the seller shall remit all prepaid wireless E911 surcharges that the seller collects from consumers as provided in this section, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.

(e) The amount of the prepaid wireless E911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this State, any political subdivision of this State, or any intergovernmental agency.

(f) The prepaid wireless E911 charge shall be proportionately increased or reduced, as applicable, upon any change to rate of the surcharge as determined under the provisions of § 10103(a) of this title. Provided, however, that any rate changes shall only be effective on the first day of the calendar quarter not less than 60 days after the Board provides final notice of such rate change. The Division of Revenue shall provide not less than 30 days of advance notice of such increase or reduction on the Division's website.

(g) If a minimal amount of prepaid wireless telecommunications service is sold with a prepaid wireless device for a single, nonitemized price, then the seller may elect not to apply the surcharge imposed by this section to such transaction. For purposes of this paragraph, an amount of service denominated as 10 minutes or less, or $5.00 or less, is minimal.

(h) The surcharge shall not be applied to prepaid wireless telecommunications service provided to a person through the Lifeline program.

(79 Del. Laws, c. 332, § 1.)

§ 10112 Administrative provisions [Effective Jan. 1, 2015]

(a) Prepaid wireless E911 surcharges collected by sellers shall be remitted to the Division of Revenue quarterly on forms issued by the Director of Revenue and subject to such regulations and requirements as shall be prescribed by the Director of Revenue.

(b) The Director of Revenue shall deposit remitted prepaid wireless E911 surcharges to the credit of the Fund established under § 10103 of this title.

(c) The Division of Revenue shall establish procedures by which a seller of prepaid wireless telecommunications service may document that a sale is a sale for resale transaction and not a retail transaction.

(d) To the extent practicable, the audit, appeal, and other administrative provisions of Chapters 3 and 5 of Title 30 shall apply to the administration of the prepaid wireless E911 surcharge.

(e) A seller shall be permitted to deduct and retain 3% of prepaid wireless E911 surcharges that are collected by the seller from consumers.

(79 Del. Laws, c. 332, § 1.)

§ 10113 Liability; records; confidentiality [Effective Jan. 1, 2015]

(a) The provisions of §§ 10008, 10009, and 10010 of this title shall apply to providers and sellers of prepaid wireless telecommunications service.

(b) No provider or seller of prepaid wireless telecommunications service shall be liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or law-enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state, in connection with any lawful investigation or other law-enforcement activity by such law-enforcement officer.

(79 Del. Laws, c. 332, § 1.)

§ 10114 Only permissible E911 surcharge on prepaid wireless service [Effective Jan. 1, 2015]

The prepaid wireless E911 surcharge imposed by this subchapter shall be the only E911 funding obligation imposed with respect to prepaid wireless telecommunications service in this State, and no tax, fee, surcharge, or other charge shall be imposed by this State, any political subdivision of this State, or any intergovernmental agency, for E911 funding purposes, upon any prepaid wireless provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

(79 Del. Laws, c. 332, § 1.)

Part XII
Emergency Services
Chapter 102
THE 2-1-1 COMMUNITY SOCIAL SERVICES HELPLINE [SUSPENDED FOR FISCAL YEAR 2015; SEE 79 DEL. LAWS, C. 290, § 68].

§ 10201 Purpose [Suspended for Fiscal Year 2015; see 79 Del. Laws, c. 290, § 68]

The purpose of this chapter is to establish a 2-1-1 Community Social Services Helpline (2-1-1 Helpline) to provide community social services information and referral services at a centralized location, 24 hours a day, 7 days a week.

(76 Del. Laws, c. 177, § 1; 76 Del. Laws, c. 280, § 80; 77 Del. Laws, c. 84, § 78; 77 Del. Laws, c. 327, § 71; 77 Del. Laws, c. 328, § 3; 78 Del. Laws, c. 78, § 71; 78 Del. Laws, c. 290, § 68; 79 Del. Laws, c. 78, § 65; 79 Del. Laws, c. 290, § 68.)

§ 10202 Definitions [Suspended for Fiscal Year 2015; see 79 Del. Laws, c. 290, § 68]

(a) "Board" means the 2-1-1 Advisory Board.

(b) "Director" means the Director of the Office of Management and Budget.

(c) "Office" means the Office of Management and Budget.

(76 Del. Laws, c. 177, § 1; 76 Del. Laws, c. 280, § 80; 77 Del. Laws, c. 84, § 78; 77 Del. Laws, c. 327, § 71; 77 Del. Laws, c. 328, § 3; 78 Del. Laws, c. 78, § 71; 78 Del. Laws, c. 290, § 68; 79 Del. Laws, c. 78, § 65; 79 Del. Laws, c. 290, § 68.)

§ 10203 Powers and duties of the Office [Suspended for Fiscal Year 2015; see 79 Del. Laws, c. 290, § 68]

(a) The Office shall implement the nonemergency 2-1-1 telephone number to provide human social services information concerning the availability of governmental and nonprofit services and to provide referrals to community social services and disaster-related information agencies.

(b) The Office shall register the 2-1-1 Community Social Services Helpline with the 9-1-1 Committee established by § 10004(e) of this title, all phone companies, the Association of Information and Referral Services, and the United Way of America.

(c) The Office shall designate the Delaware Helpline, Inc. as the primary service provider for the 2-1-1 Helpline and contract with a private phone service to ensure 24-hour operation of the 2-1-1 Helpline.

(d) The Office shall be responsible for raising community awareness about the 2-1-1 Helpline and website through, but not limited to, the use of marketing and outreach activity forums that include presentations on statewide community social services that are available through the government and not-for-profit-agencies.

(76 Del. Laws, c. 177, § 1; 76 Del. Laws, c. 280, § 80; 77 Del. Laws, c. 84, § 78; 77 Del. Laws, c. 327, § 71; 77 Del. Laws, c. 328, § 3; 78 Del. Laws, c. 78, § 71; 78 Del. Laws, c. 290, § 68; 79 Del. Laws, c. 78, § 65; 79 Del. Laws, c. 290, § 68.)

§ 10204 The 2-1-1 Advisory Board [Suspended for Fiscal Year 2015; see 79 Del. Laws, c. 290, § 68]

(a) The 2-1-1 Advisory Board is established to advise the Governor, the Director, and the General Assembly on matters related to the 2-1-1 Community Social Services Helpline system and service.

(b) The Governor shall appoint 1 representative from each of the following offices or agencies as a member of the Board: the Delaware Helpline, Inc.; the Department of Health and Social Services; the Department of Safety and Homeland Security; the Delaware Emergency Number Association, the Department of Technology and Information; and the United Way of Delaware. The Governor shall also appoint to the Board 3 members of the public, 1 representing the Latino community, 1 representing the senior citizen community, and 1 representing persons with disabilities. The Governor shall designate a chairperson for the Board from among the Board's members. Each member serves a term of 2 years and may be reappointed to serve additional terms.

(c) Members of the Board serve without compensation; however, they may be reimbursed for reasonable and necessary expenses incidental to their duties as members of the Commission.

(d) The Office of Management and Budget shall provide administrative support to the Board.

(76 Del. Laws, c. 177, § 1; 76 Del. Laws, c. 280, § 80; 77 Del. Laws, c. 84, § 78; 77 Del. Laws, c. 327, § 71; 77 Del. Laws, c. 328, § 3; 78 Del. Laws, c. 78, § 71; 78 Del. Laws, c. 290, § 68; 79 Del. Laws, c. 78, § 65; 79 Del. Laws, c. 290, § 68.)

§ 10205 Duties and responsibilities of the Board [Suspended for Fiscal Year 2015; see 78 Del. Laws, c. 290, § 68]

(a) The Board shall review the 2-1-1 Community Social Services system and services and submit recommendations to the Office for changes, modifications, or deletions.

(b) The Board shall schedule and conduct at least 4 regular meetings during the first year of operation of the 2-1-1 Helpline. The public must be given an opportunity to express views concerning the 2-1-1 Helpline system and service. Thereafter, the Board shall meet at such times and places as the members consider necessary and at such times as requested by the Director.

(76 Del. Laws, c. 177, § 1; 76 Del. Laws, c. 280, § 80; 77 Del. Laws, c. 84, § 78; 77 Del. Laws, c. 327, § 71; 77 Del. Laws, c. 328, § 3; 78 Del. Laws, c. 78, § 71; 78 Del. Laws, c. 290, § 68; 79 Del. Laws, c. 78, § 65; 79 Del. Laws, c. 290, § 68.)

Part XIII
Delaware Health Information Network
Chapter 103
DELAWARE HEALTH INFORMATION NETWORK

§ 10301 Purpose.

(a) The purpose of this subchapter is to create a public instrumentality of this State known as the Delaware Health Information Network ("DHIN") which is a not-for-profit body both politic and corporate, which shall have the rights, obligations, privileges and purpose to promote the design, implementation, operation and maintenance of facilities for public and private use of health care information in the State. The DHIN shall be the State's sanctioned provider of health information exchange services.

(b) It is intended that the DHIN be a public-private partnership for the benefit of all of the citizens of this State.

(c) The DHIN shall ensure the privacy of patient health care information.

(71 Del. Laws, c. 177, § 1; 77 Del. Laws, c. 368, §§ 1, 16.)

§ 10302 Creation of Delaware Health Information Network.

(a) There is hereby established the Delaware Health Information Network, which will be managed and operated by a Board of Directors consisting of 19 members. It is intended that the membership of the Board include individuals with various business, technology and healthcare industry skills committed to managing the Corporation in an efficient, effective and competitive manner. The Board shall be comprised of the following members:

(1) The Director of the Office of Management and Budget or the Director's designee;

(2) The Chief Information Officer of the Department of Technology and Information or the Chief Information Officer's designee;

(3) The Secretary of the Department of Health and Social Services or the Secretary's designee;

(4) The Controller General or the Controller General's designee;

(5) Six members, appointed by the Governor, including at least 1 person who shall represent the interests of medical consumers and at least 3 with experience and/or expertise in the healthcare industry;

(6) Three members appointed by the Governor representing hospitals or health systems;

(7) Three members appointed by the Governor representing physicians;

(8) One member appointed by the Governor representing businesses or employers; and

(9) Two members appointed by the Governor representing health insurers or health plans.

The Chair of the Board shall be elected from among its members by a majority of the Directors and shall serve a 3-year term. Each member shall serve a 3-year term, with such initial terms being staggered as set by the Governor and each member continuing to serve beyond such term until a successor is appointed. Any member absent without adequate reason for 3 consecutive meetings, or who fails to attend at least half of all regular business meetings during any calendar year, may be removed from the Board with the approval of the Governor upon a recommendation from the Board. The Board, the Delaware Healthcare Association, the Medical Society of Delaware, Delaware State Chamber of Commerce, and other interested organizations may make nonbinding recommendations to the Governor for appointments to the Board.

(b) No state officer or employee appointed to the Board or serving in any other capacity for the Board shall be deemed to have resigned from public office or employment by reason of such appointment or service. Members of the Board who are serving on January 1, 2011, shall continue to serve until a successor is appointed by the Governor or otherwise designated by the ex officio members.

(c) The Board is authorized to conduct its business by a majority of a quorum. A quorum is a simple majority of the members appointed.

(71 Del. Laws, c. 177, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(8); 75 Del. Laws, c. 389, § 1; 77 Del. Laws, c. 368, §§ 2-5, 16.)

§ 10303 Powers and duties.

(a) In furtherance of the purposes of this subchapter, the DHIN shall have the following powers and duties:

(1) Develop and maintain a community-based health information network to facilitate communication of patient clinical and financial information, designed to:

a. Promote more efficient and effective communication among multiple health care providers, including, but not limited to, hospitals, physicians, payers, employers, pharmacies, laboratories and other health care entities;

b. Create efficiencies in health care costs by eliminating redundancy in data capture and storage and reducing administrative, billing and data collection costs;

c. Create the ability to monitor community health status; and

d. Provide reliable information to health care consumers and purchasers regarding the quality and cost-effectiveness of health care, health plans and health care providers;

(2) Develop or design other initiatives in furtherance of its purpose;

(3) Report and make recommendations to the Governor and General Assembly;

(4) Adopt bylaws to govern the conduct of its affairs and to carry out and discharge its powers, duties and functions and to adopt policies as appropriate to carry out and discharge its powers, duties, and functions, and to sue, but not be sued, to enter into contracts and agreements and to plan, control facilities and such real and personal property as it may deem necessary, convenient or desirable without applications of the provisions of Chapters 59, 69, or 70 of Title 29;

(5) All prior regulations and rules promulgated by the Delaware Health Care Commission regarding the DHIN shall remain in full force and effect until the DHIN replaces the aforementioned regulations and rules with bylaws and/or policies;

(6) The bylaws shall include a provision pertaining to conflicts of interest and that Board members, staff, committee members and others conducting business or associated with the DHIN shall be required to sign conflict of interest statements;

(7) To have and exercise any and all powers available to a corporation organized pursuant to Chapter 1 of Title 8, the Delaware General Corporation Law;

(8) To employ such personnel and provide such benefits as necessary to carry out its functions and to retain by contract engineers, advisors, and other providers of advice, counsel and services which it deems advisable or necessary in the exercise of its purposes and powers and upon such terms as it deems appropriate;

(9) To exercise all of the power and the authority with respect to the operation, development and maintenance of the DHIN;

(10) To do all acts and things necessary or convenient to carry out its functions, including without limitation, the authority to open and operate separate bank accounts in the name of the DHIN;

(11) To collect, receive, hold and disburse funds in accordance with the needs of the DHIN, including user fees set by the DHIN;

(12) Implement and operate a statewide integrated health information network to enable communication of clinical and financial health information, and other information and other related functions as deemed necessary by the Board;

(13) Promote efficient and effective communication among Delaware healthcare providers and stakeholders including hospitals, physicians, state agencies, payers, employers, and laboratories;

(14) Promote efficiencies in the healthcare delivery system;

(15) Provide a reliable health information exchange to authorized users;

(16) Work with governments and other states to integrate into or with the DHIN and/or assist them in providing regional integrated health information systems;

(17) Work towards improving the quality of health care and the ability to monitor community health status and facilitate health promotions by providing immediate and current outcome, treatment and cost data and related information so that patients, providers and payers can make informed and timely decisions about health care;

(18) The DHIN shall make annual reports to the Governor and members of the General Assembly setting forth in detail its operations and transactions, which shall include annual audits of the books and accounts of the DHIN made by a firm of independent certified public accountants mutually agreed to by the Auditor of Accounts and the Director of the Office of Management and Budget; and

(19) Perform any and all other activities in furtherance of the above.

(b) To carry out the above duties, the DHIN is granted all incidental powers, without limitation, including the following:

(1) To contract with sufficient third parties and/or employ nonstate employees, without applications of the provisions of Chapters 59, 69, or 70 of Title 29 respectively;

(2) To establish a nonappropriated special funds account in its budget in order to receive gifts and donations;

(3) To establish reasonable fees or charges for provision of its services to nonparticipant third parties; and

(4) To sell or license any copyrighted or patented intellectual property.

(71 Del. Laws, c. 177, § 1; 77 Del. Laws, c. 368, §§ 6-8, 16.)

§ 10304 Immunity from suit; limitation of liability.

(a) All members of the Board of Directors of the DHIN, whether temporary or permanent, shall not be subject to and shall be immune from claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken, performed or reached in good faith and without malice by any such member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this chapter, or any other State law, or duly adopted rules and regulations of the DHIN, good faith being presumed until proven otherwise, with malice required to be shown by a complainant. All employees and staff of the DHIN, whether temporary or permanent, shall enjoy the same rights and privileges concerning immunity from suit otherwise enjoyed by State employees pursuant to the Constitution of this State and §§ 4001 through 4005 of Title 10.

(b) The DHIN is not a health care provider and is not subject to claims under Chapter 68 of Title 18. No person or entity who participates or subscribes to the services or information provided by the DHIN shall be liable in any action for damages or costs of any nature, in law or equity, which result solely from that person's use or failure to use DHIN information or data that was imputed or retrieved in accordance with the rules or regulations of the DHIN. In addition, no person shall be subject to antitrust or unfair competition liability based on membership or participation in the DHIN as the State's sanctioned provider of health information services that are deemed to be essential to governmental function for the public health and safety.

(71 Del. Laws, c. 177, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 368, §§ 9, 10, 16.)

§ 10305 Property rights.

(a) All persons providing information and data to the DHIN shall retain a property right in that information or data, but grant to the other participants or subscribers a nonexclusive license to retrieve and use that information or data in accordance with the rules or regulation promulgated by the DHIN.

(b) All processes or software developed, designed or purchased by the DHIN shall remain its property subject to use by participants or subscribers in accordance with the rules or regulations promulgated by the DHIN.

(71 Del. Laws, c. 177, § 1; 77 Del. Laws, c. 368, §§ 11, 16.)

§ 10306 Regulations; resolution of disputes.

(a) The DHIN is hereby authorized to promulgate rules and regulations under and pursuant to subchapter II of Chapter 101 of Title 29 to carry out the objectives of this subchapter. All prior regulations and rules promulgated by the Delaware Health Care Commission in regards to the DHIN shall remain in full force and effect until amended or repealed by the DHIN.

(b) To resolve disputes under this subchapter or the rules and regulations promulgated herein among participants, subscribers or the public, the DHIN is hereby authorized to hear and determine case decisions under and pursuant to subchapter III of Chapter 101 of Title 29.

(c) Any person aggrieved by the unlawfulness of any rule or regulation of the DHIN herein, or any person against whom a case decision has been decided, may appeal to the Superior Court in accordance with subchapter V of Chapter 101 of Title 29.

(71 Del. Laws, c. 177, § 1; 77 Del. Laws, c. 368, §§ 12, 13, 16.)

§ 10307 Privacy; protection of information.

(a) The DHIN shall by rule or regulation ensure that patient specific health information be disclosed only in accordance with the patient's consent or best interest to those having a need to know.

(b) The health information and data of the DHIN shall not be subject to the Freedom of Information Act, Chapter 100 of Title 29, nor to subpoena by any court. Such information may only be disclosed by consent of the patient or in accordance with the DHIN's rules, regulations or orders.

(c) Any violation of the DHIN's rules or regulations regarding access or misuse of the DHIN health information or data shall be reported to the office of the Attorney General, and subject to prosecution and penalties under the Delaware Criminal Code or federal law.

(71 Del. Laws, c. 177, § 1; 77 Del. Laws, c. 368, §§ 14, 16.)

§ 10308 No pledge of state credit; no assumption of liability by State.

The DHIN shall have no power, except where expressly granted by separate act of the General Assembly, to pledge the credit or to create any debt or liability of the State or of any other agency or of any political subdivision of the State, and the State shall not assume or be deemed to have assumed any debt or liability of the DHIN as a result of any actions by the DHIN.

(71 Del. Laws, c. 177, § 1; 77 Del. Laws, c. 368, § 16.)

Part XIV
Community Firearm Recovery Program
Chapter 104
COMMUNITY FIREARM RECOVERY PROGRAM

§ 10401 Purpose.

The purpose of this chapter is to provide a mechanism to safely remove illegal, unsecured, abandoned, or unwanted firearms from local communities.

(78 Del. Laws, c. 134, § 1.)

§ 10402 Definitions.

For purposes of this chapter,

(1) "Agency" means local municipal police departments, the New Castle County Police Department and the Delaware State Police.

(2) "CFRP" shall mean Community Firearm Recovery Program.

(3) "Firearm" means any firearm as defined in § 222(12) of Title 11.

(4) "Secretary" shall mean the Secretary of Safety and Homeland Security.

(78 Del. Laws, c. 134, § 1.)

§ 10403 Program.

The CFRP is hereby established and shall be implemented by the agencies as funds are allocated. Within 3 months of receipt of funding, the agency shall:

(1) In coordination with the community groups within its jurisdiction, select a location site for purposes of implementing a Community Firearm Recovery Program; and,

(2) Designate dates and times when a participating individual may surrender a firearm as defined in § 10402(3) of this title in exchange for funds of a predetermined value, or gift certificate or coupon of equal value. The participating agency shall determine the amounts to be exchanged for each firearm surrendered.

(78 Del. Laws, c. 134, § 1.)

§ 10404 Funding.

Under this section, the "Firearms Recovery Fund" shall be established. The Secretary of Safety and Homeland Security shall promulgate rules and regulations for the implementation of this Program, the distribution of funds, and for the safe storage and disposal of recovered weapons in the possession of the participating law-enforcement agency. For purposes of this chapter, "disposal" may include the sale or transfer of the firearms to a federal licensed dealer, defined as a person licensed as a firearms collector, dealer, importer, or manufacturer under the provisions of 18 U.S.C. § 922 et seq., or destruction of the firearms.

(78 Del. Laws, c. 134, § 1.)

§ 10405 Personal identification and immunity.

Any individual who elects to surrender a firearm anonymously to a CFRP may do so and personal identification shall not be required to be presented at the time of redemption. Notwithstanding any law to the contrary, any person participating in a CFRP shall be immune from criminal prosecution for the criminal offenses defined in §§ 1442 and 1444 of Title 11, provided the person is, in good faith, on an immediate, direct route to the predetermined CFRP site.

(78 Del. Laws, c. 134, § 1.)