DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Regulatory Initiatives

Date: August 8, 2014

I am providing my analysis of thirteen (13) regulatory initiatives. Given time constraints, the commentary should be considered preliminary and non-exhaustive.

1. DSS Final Food Supp. Program Household Definition Reg. [18 DE Reg. 147 (8/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in June, 2014. The Councils endorsed the initiative since the Division of Social Services is required by State law to treat different-gender and same-gender spouses the same in its regulations. DSS has now reproduced the Councils' commentary (p. 148), thanked the Councils for endorsing the revision, and adopted a final regulation with no further changes.

I recommend no further action.

2. DSS/DMMA Final Case Processing Procedures Reg. [18 DE Reg. 139 (8/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in June. A copy of the SCPD's June 25, 2014 memorandum is attached for facilitated reference.

In a nutshell, the Councils supported the proposed regulation which was intended to resolve a DLP-identified discrepancy among standards covering time periods to process Medicaid applications. However, the Councils also recommended two (2) revisions to remove related ambiguities. The Division of Social Services has now published a final regulation which adopts both of the Councils' recommended revisions.

Since the regulation is final, and DSS adopted both revisions suggested by the Councils, I recommend no further action.

3. DSS Final Food Supp. Program Unearned Income Verification Reg. [18 DE Reg. 142 (8/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in June. A copy of the SCPD's June 25, 2014 memorandum is attached for facilitated reference.

In a nutshell, federal regulations give the Division of Social Services the option of using an Income and Eligibility Verification System ("IEVS") when determining eligibility for and amounts of food benefits. DSS proposed to use the system for earned income while using "alternative methods" to verify unearned income. The rationale for the decision to only use the system for earned income was not provided. Therefore, the Councils declined to take a position on the initiative given the lack of information.

DSS has now adopted a final regulation with no further changes. The Division did include the following observation:

> "Alternative Methods" will not be identified in this section of the policy. DSS intends to propose clarifying rules addressing "alternative methods" in a future issue of the Delaware Register of Regulations.

Since the regulation is final, and DSS intends to clarify "alternative methods" in a future regulation, I recommend no further action.

4. DSS Final TANF Employment & Training Program Sanction Reg. [18 DE Reg. 143 (8/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in March. A copy of the SCPD's March 28, 2014 memorandum is attached for facilitated reference.

The Councils endorsed the initiative which removed a mandatory 1-month case closure from the sanction protocol for persons who fail to meet TANF work requirements. However, the Councils also proffered two (2) recommendations.

First, the Councils noted that a single custodial parent could qualify for an exemption from work standards based on the unavailability of child care. The Councils suggested that the current standard (child care within a 1 hour drive of home or workplace) was unreasonable. DSS agreed and revised the standard to "within ten (10) miles of either the home or work".

Second, the Councils identified an apparent inconsistency in a recital that "(w)hile a parent may not be sanctioned as a result of child care being unavailable, the parent is not exempt from TANF work participation requirements or TANF time limits." In response, DSS revised the section to delete the reference to TANF work participation requirements.

Since the regulation is final, and DSS adopted revisions based on both concerns raised by the Councils, I recommend no further action.

5. DSS Final Child Care Subsidy Eligibility Reg. [18 DE Reg. 148 (8/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in May. A copy of the SCPD's May 29, 2014 memorandum is attached for facilitated reference. The Councils endorsed the initiative subject to the following amendments.

First, the Councils recommended the addition of punctuation throughout the regulation. The Division of Social Services agreed and incorporated more than a dozen semicolons and periods.

Second, the Councils recommended a revised reference to "GED program" to conform to a recent Delaware Department of Education regulation adopting the term "secondary credential assessment". DSS added the Councils' proposed revision verbatim.

Since the Division amended the final regulation consistent with the two (2) suggestions submitted by the Councils, I recommend no further action.

6. DPH Final Skilled Home Health Agency Director Qualifications Reg. [18 DE Reg. 133 (8/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in May. A copy of the SCPD's May 29, 2014 memorandum is attached for facilitated reference. The Councils endorsed the initiative which requires more robust credentials to qualify as a director of a skilled home health agency. The Councils included one (1) recommendation, i.e., that the Division of Public Health clarify whether the existing directors were "grandfathered".

The Division has now adopted a final regulation with no further changes. The Division also clarified that the enhanced eligibility standards will only apply prospectively to newly appointed directors.

Since the regulation is final, and DPH addressed the Council's inquiry regarding the application of the standards to existing directors, I recommend no further action.

7. DPH Final Hospice Disposal of Medications Regulation [18 DE Reg. 135 (8/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in April. A copy of the SCPD's April 30, 2014 memorandum is attached for facilitated reference. The Councils shared several observations and recommendations with the Division of Public Health.

First, the Councils noted that the proposed standards established general guidelines rather than prescriptive standards. The Councils observed that reasonable persons might differ on whether this approach conformed to the statutory requirement of a "standardized protocol". In response, the Division noted that appropriate latitude was provided given the uniqueness of each hospice.

Second, the Councils identified some anomalies in punctuation. The Division added punctuation to several sections.

Third, the Councils suggested substitution of "was" for "were". The Division retained the reference to "were".

Fourth, the Councils identified some "odd introductory symbols in some subsections. The Division responded that it removed the bullets and added appropriate punctuation.

Fifth, the GACEC noted that Appendix A was unclear on the responsibilities of hospice staff versus family members. The Division added a conjunction ("or") between §A.2.b. and §A.2.c.

Since the regulation is final, and DPH addressed each concern raised by the Councils, I recommend no further action.

8. DOE Final H.S. Graduation Requirements & Diploma Regulation [18 DE Reg. 127 (8/1/14)]

The SCPD and GACEC commented on the proposed version of this regulation in June. A copy of the SCPD's June 25, 2014 letter is attached for facilitated reference. Consistent with the letter, the Councils shared five (5) concerns with the proposed standards. The Department of Education has now adopted a final regulation with no changes. It dismissed the Councils' five (5) concerns with the following sentence: "The Department does not believe that further clarification is needed within the regulation with regard to these items." At 127. However, the DOE did compile individual responses to the Councils' recommendations in the attached July 31, 2014 correspondence.

Since the regulation is final, and the DOE adopted no amendments based on the Councils' commentary, I recommend no further action.

9. DOE Final Limitations on Use of Seclusion & Restraint Reg. [18 DE Reg. 130 (8/1/14)]

The SCPD and GACEC commented on a pre-publication version of this regulation in May. The Department of Education incorporated some suggested edits into a revised version which was published in the June Register of Regulations. The Councils submitted another set of comments on the published version of the regulation. A copy of the SCPD's June 25, 2014 letter is attached for facilitated reference. The DOE also noted that comments were received from "representatives from two of the special programs operating in Delaware". I recommend that the Councils solicit a copy of the comments submitted by these representatives and any DOE responses to the comments which should be available pursuant to Title 29 Del. C. §10112(a).

The DOE has now adopted a final regulation which incorporates several revisions. The DOE's rationale for adopting or rejecting Council recommendations is reflected in the attached July 31, 2014 DOE letter. Parenthetically, the Department appears to have adopted a standard practice of not reproducing a summary of comments and its findings in the regulation itself. Instead, it sends letters to each commenting agency. This is ostensibly inconsistent with Title 29 Del.C. §10118(b) which requires publication of "a brief summary of the evidence and information submitted" and "a brief summary of its findings of fact with respect to the evidence and information". This statutory mandate is intended to provide the public with useful information on the basis for regulatory changes. In contrast, the identity of the two commenting special programs is not disclosed, nor the gist of their comments. This does not conform to the APA.

First, the Councils recommended adding a reference to "chemical restraint" to §2.0. The DOE inserted the reference.

Second, the Councils recommended adding a reference to 14 Del.C. §3110. The reference was not added.

Third, the Councils recommended insertion of a conjunction in the definition of mechanical restraint. No change was made.

Fourth, the Councils recommended striking the extraneous "and" at the end of §3.2.9. The DOE deleted the term.

Fifth, the Councils recommended adoption of more robust training standards in §4.1. The DOE incorporated some minor changes (e.g. training would have to be "completed", not simply "received").

Sixth, the Councils recommended conversion of "Written" in §6.1.2 to lower case ("written"). The change was made.

Seventh, the Councils stressed the need to report on the "duration" of restraint in §7.1.3.1. No change was made.

Eighth, in §8.1.2.1, the Councils recommended deletion of an extraneous "and". The change was made.

Ninth, the Councils recommended adoption of some time standards for the waiver process. The DOE incorporated some edits to §§8.2 and 8.4.

Since the regulation is final, I recommend no further action apart from the following: a) requesting copies of comments submitted by representatives of the unidentified special education programs; b) requesting copies of any DOE correspondence to these programs in response to the comments; and c) requesting copies of the written report form/protocol described in §6.1.2 and the waiver form/protocol described in §8.1.

10. DPH Prop. Hospital Locked Bathroom Door Access Regulation [18 DE Reg. 119 (8/1/14)]

As background, a 14 year old girl experienced a medical emergency while locked in a hospital bathroom and staff were unable to unlock the door prior to her death. This prompted the introduction and eventual enactment of H.B. No. 129 which the Governor signed on June 10, 2014. H.A. No. 1 and the engrossed version of the legislation, labeled "Christina's Law", are attached for facilitated reference. The preamble to H.A. No. 1 provides details on the inability of hospital staff to reach Christina without undue delay.

The legislation requires the Department of Health & Social Services to "adopt regulations to ensure that hospital staff have ready access to a locked hospital bathroom in the event of an emergency." The Division of Public Health is implementing the statutory mandate by proposing the addition of the following subsection to its regulations covering hospital construction, maintenance, and operation:

> 4.4. Hospitals must develop and implement policies and procedures for hospital staff to have ready access to a locked hospital bathroom in the event of an emergency.

I have a few observations.

First, placement of this sentence in the personnel-related "§4.0 Governing Body, Organization and Staff" regulation is counterintuitive. If someone were looking for a standard on bathroom access, it may be more logical to place the sentence in "§3.0 Physical Environment".

Second, it's unclear what process will be used to alert hospitals of the new regulation and what time line applies to "development and implementation" of the policies and procedures. Are hospitals out of compliance if a policy is not operational on the effective date of the regulation (e.g. October 1, 2014) or do they enjoy some time to develop and implement the policies and procedures. DHSS may wish to consider either inserting a firm effective date (e.g. December 1, 2014) or communicating an expectation through a sub-regulatory letter or guidance document.

Third, in reviewing the regulation, I noted that 1977 and 1981 versions of national standards are incorporated by reference. See §§3.1 and 4.1. DPH may wish to review these references to determine if they should be updated. Literally, the 1977 and 1981 versions of standards are binding.

I recommend sharing the above observations with DPH, Debbie Gottschalk, and the DHSS Secretary.

11. DOE Prop. CPR Instruction Regulation [18 DE Reg. 104 (8/1/14)]

As background, legislation (H.B. No. 299) was introduced in 2012 to require public school students, as a condition of receiving a diploma, to complete a CPR training program which incorporates psychomotor skills necessary to perform CPR and operation of an automated external defibrillator (AED). The bill was tabled in committee. It was revised and reintroduced as H.B. No. 249 in 2014. It was not released from committee. The rationale for the initiative is included in the attached preamble to H.B. No. 249. The attached fiscal note estimated an annual cost in the initial year of implementation of $38,935 to acquire training kits.

While proponents of "hands-on" CPR training were unsuccessful in securing enactment of their legislation, they were successful in incorporation of a CPR training mandate in the attached §306 of the FY15 budget bill (S.B. No. 255). See also Par. 10 at p. 104 of the proposed regulation. Section 306 also authorizes devotion of $40,000 to procure materials (e.g. training kits).

The Department of Education is now proposing to implement §306 by amending its health education program regulation. The regulation already required at least two (2) hours of instruction in CPR awareness. This standard is being converted to an actual "instructional program which uses the most current evidence-based emergency cardiovascular care guidelines, and incorporates psychomotor skills learning into the instruction." In a nutshell, the intent is to train students to actually conduct CPR and use an AED. Schools would be required to implement the new training no later than the 2015-2016 school year.

I have the following observations.

First, the existing regulation required schools to include CPR awareness and organ/tissue donation awareness components into the health education course no later than the 2014-15 school year. I assume many schools have already modified their curricula/instructional planning to meet that requirement. Indeed, the earliest the revised regulation could take effect is October 1, 2014 and the health classes will already be underway. The proposed regulation unnecessarily postpones such awareness instruction another year. It would make more sense to retain the existing deadline for the CPR and organ/tissue donation "awareness" instruction while deferring the "hands-on" CPR instruction to the 2015-16 school year.

Second, H.B. No. 249 contained the following provision prompted by the Councils:

> (b) The individualized education plan (IEP) or 504 plan of a student with a disability ...may modify the content of instruction for CPR required by this section or, if such modification would be ineffective, exempt such student from application of this section.

This concept has not been incorporated into the proposed regulation. Obviously, there may be students with orthopedic or physical limitations who may lack the "psychomotor skills" to perform CPR and operate an AED. It would be preferable to include a provision equivalent to the above excerpt from H.B. No. 249. This is particularly important since successful completion of the health course is a categorical requirement of graduation.

I recommend sharing the above commentary with the DOE, SBE, Marianne Mieczkowski, and the Division of Public Health.

12. DMMA Prop. PASRR Regulation [18 DE Reg. 106 (8/1/14)]

Background to this initiative is provided at p. 107. Federal law was adopted decades ago to prevent the inappropriate placement of individuals with mental illness or intellectual disabilities in nursing facilities. States are required to conduct an initial Level 1 screening to determine if an applicant for nursing facility admission may have a mental illness or intellectual/developmental disability. If that screening supports the existence of a mental illness or intellectual disability, a Level II screening is undertaken which results in a determination of need, appropriate setting, and identification of any "specialized services" if the individual is admitted to the nursing facility. States are authorized to adopt a "short cut"to the Level II screening if certain criteria are met. Such "categorical determinations" may be based on certain diagnoses, severity of illness, or brevity of anticipated stay.

The Division of Medicaid & Medical Assistance (DMMA) is proposing to amend the Medicaid State Plan PASRR standards to conform to a CMS template. There are two (2) main features. First, DMMA is identifying seven (7) qualifiers for a "categorical determination": 1) convalescent care; 2) terminal illness; 3) medical dependence; 4) delirium; 5) emergency situations; 6) respite; and 7) dementia combined with intellectual disability. At p. 114. Second, DMMA is defining each of these qualifiers. At pp. 112-113.

I have following observations.

First, at the top of page 112, the definition of "convalescent care" may have omitted a word. It recites as follows:

> X. Convalescent Care: NF services are needed for from an acute physical illness which required hospitalization, and does not meet all the criteria for an exempt hospital discharge.

The serial prepositions (for from) are grammatically odd. I suspect the term should be "for or from" an acute physical illness. DMMA may wish to review this sentence.

Second, in the past, there was considerable discussion of which agency issues the final PASRR decision. See ,e.g., 15 DE Reg. 86, 88, "Seventh" Paragraph (July 1, 2011). The proposed regulation would benefit from a clarifying amendment to avoid confusion. There is some "tension" between the recital that DSAMH/DDDS adopt "the final determination" versus the recital that DMMA issues the final determination. See Pars. 9 and 10 at p. 115. For example, Par. 9 could be revised as follows:

9. DSAMH/DDDS notifies DMMA of the agency's Level II Evaluation determination.

Third, it may not be intuitive that the final DMMA PASRR is appealable to DSS. See 16 DE Admin Code 5001, Subsection 2.D; 5304; 5304.1; and 5401, Subsection 1.C.4. DMMA could consider amending Par. 10 on p. 115 as follows:

10. Final PASRR determinations will be issued by DMMA and are subject to 16 DE Admin Code 5000.

Fourth, DMMA and DSS may wish to review 16 DE Admin Code 5304.1 which reads as follows:

> Individuals adversely affected by determinations made by the Division of Substance Abuse and Mental Health (DSAMH)or the Division of Developmental Disabilities Services (DDDS) as a result of a pre-admission screening resident review PASRR may appeal the decision to the Division of Social Services (DSS). The hearing is conducted by DSS and the decision is binding on the Department of Health and Social Services. ... Final PASRR determinations will be issued by DMMA.

There is some "tension" between the notion that DMMA issues the final PASRR determination but the decision subject to hearing is the DSAMH or DDDS determination. DMMA may wish to consider whether this regulation merits prospective modification.

I recommend sharing the above observations with DHSS.

13. DFS Prop. Res. Child Care Facility & Day Treatment Prog. Reg [18 DE Reg. 122 (8/1/14)]

The Councils previously commented on earlier proposed revisions of this regulation in June, 2013, August, 2013, January, 2014, and May, 2014. A copy of the latest, May 29, 2014 SCPD memorandum is attached for facilitated reference. Instead of adopting a final regulation, the Division of Family Services has opted to publish a revised 77-page proposed regulation. The latest regulation includes a list of Council comments and the Division's amendments, if any, prompted by each comment. At pp. 123-124.

The SCPD's itemized comments and gist of the Division's italicized responses are as follows:

1. In §1.3, definition of "residential child care facility", psychiatric hospitals and foster homes are excluded from coverage. However, the status of a pediatric skilled nursing facility is unclear. Exceptional Care for Children in Newark is an example. DHSS ostensibly licenses such facilities pursuant to Title 16 Del.C. §§1119B and 1119C. However, such facilities may also meet the DFS definition of "residential child care facility". DFS may wish to clarify coverage or non-coverage of pediatric nursing facilities.

Response: DFS does not regulate pediatric skilled nursing facilities and foster homes are regulated under a different set of DFS regulations. No change was made to regulation.

2. In §1.4, definition of "Administrative Hearing", the reference to "...place the facility on the enforcement actions of Warning..." is awkward language. DFS may wish to revise the reference.

Response: The definition was revised.

3. Section 17.3 contemplates HRC review of "restrictive procedures" and "proper treatment". It is unclear if DFS envisions HRCs reviewing psychotropic medications. Section 1.4, definition of "restrictive procedure", only covers drugs which qualify as a "chemical restraint". The definition of "chemical restraint" excludes "the planned and routine application of a prescribed psychotropic drug". Therefore, if a child were prescribed heavy daily doses of multiple psychotropic drugs, the HRC may arguably lack jurisdiction to review. By analogy the DDDS HRCs review regularly prescribed psychotropic drugs administered in covered facilities, including co-DHSS/DFS regulated AdvoServ. DFS may wish to consider whether HRC review of psychotropic drugs excluded from the definition of "chemical restraint" merit HRC review.

Response: The HRC determines if "children in care are receiving proper treatment" which would include review of psychotropic medications regardless of whether they amount to a "restrictive procedure".

4. In §1.4, definition of "Consultant", there is a plural pronoun (their) with a singular antecedent (practitioner). Consider substituting "the practitioner's" for "their".

Response: Grammar has been corrected.

5. In §1.4, definitions of "Exclusion" and "Locked Isolation", it is somewhat anomalous to categorically bar use of unlocked exclusion for kids under age 6 but have no equivalent limit for locked isolation. DFS may wish to consider adding a similar age standard in the definition of "locked isolation".

Response: "Locked isolation" is a "restrictive procedure" which, by definition, may not be used for on any child under age 6. However, the definition of "restrictive procedure" has been modified to provide additional clarity.

6. In §1.4, the definitions of "exclusion" and "time-out technique" are not well differentiated. Placing a child in an unlocked classroom or office would fit both definitions. Section 3.12.9.3.2 reinforces the overlap by stating that "time-out" may not occur in closet, bathroom, unfinished basement or attic. The implication is that placement in other rooms is an acceptable use of "time-out". If a provider were considering placement of a child under age 6 in an unlocked room, that would be barred under the "exclusion" definition (and §17.1.2) but allowed per §3.12.9.3.3 if characterized as "time-out".

Response: Additional wording has been added to insure continuous monitoring of children under age 6 while in time-out and the time frame for monitoring of children over age 6 has been changed.

7. A related anomaly to that described in the preceding paragraph is that an exclusion requires "continuous" monitoring (§1.4, definition of "exclusion"; §17.5.1.1) while time-out only requires a visual check every 30 minutes (§3.12.9.3.2). If a provider wishes to avoid the continuous monitoring requirement, the provider would simply characterize placing a child in an unlocked room as "time-out". Moreover, the implication of 30-minute checks is that "time-out" periods are extended. Clinically, a time-out should permit some time to reflect and regain self-control. A time-out should not last for hours. Cf. §3.12.9.3.3, time-out for children under 6 should not exceed 1 minute for each year of age.

Response: The regulation has been amended and the monitoring time changed for time-out for both children over and under 6 years of age to provide additional clarity.

8. Section 17.5.1.1 raises a similar concern. Within each two (2)hours of a restrictive procedure, a child is given an opportunity for 10 minutes of release. Based on the definition of "restrictive procedure", this suggests that extended periods of mechanical restraint, locked isolation, and exclusion are acceptable norms. This section could also be interpreted to authorize a facility to limit access to a toilet to once every two hours. The structure of the DFS regulations appear to allow sequential use of restrictive procedures resulting in extended isolation. For example, §17.5.1.1, in combination with §17.7.1.3, authorize a 2 hour locked isolation followed by a 10 minute break, another 2 hour locked isolation followed by a 10 minute break, and then a third 2 hour locked isolation. Similarly, per §§17.5.1.1. and 17.6.1 and 17.6.2, "exclusions" can be "stacked" resulting in removal of a child to an unlocked room for an hour, followed by a 10 minute break, which can be repeated for an aggregate of six (6) hours. Similarly, per §§17.5.1.1 and 17.9.1.4, "mechanical restraints" can be "stacked" resulting in 2 hours of mechanical restraint, followed by a 10 minute break, followed by another 2 hours of mechanical restraint. Temporal limits on "consecutive minutes" of a restrictive procedure (e.g. §17.7.5 and 17.9.1.4) are easily circumvented by allowing short breaks to toilet or stretch. DFS may wish to consult DPBHS to assess whether the above regulations conform to contemporary clinical standards in the field. The Terry Center has converted its former seclusion room to a children's store.

Response: The regulations have been amended to place further limits on the use of restraints.

9. There is some "tension" between §3.12.10.1.3 and 17.5.1.1. The former section contemplates the release of a child from a restraint after no more than 15 minutes while the latter would authorize restraint for at least 2 hours.

Response: Additional text has been added to §17.5.1.1 to provide clarity.

10. In §3.5.5, DFS requires a "direct care worker" (who only needs a high school diploma) to be at least 21 years of age. Some states have promoted college students working as support staff in group homes and similar facilities since they generally represent a demographic group with some intellectual wherewithal. Students seeking degrees in social work, psychology, etc. may be very interested in working in an RTC or specialized child care setting for experience. However, since §3.5.5 requires a direct care worker to be 21, many college students would be categorically barred from such employment. DFS could consider either: a) reducing the age to 18; or 2) adopting a standard of at least 21 or, if the applicant is a college student, 18. DFS could also consider only allowing employment of 18-20 year old college students with a minimum number of credits in a social services field (e.g. social work; psychology).

Response: Because children in care could be 17 years of age, the Division would like to preserve a desirable age span difference between workers and children. No change was made to regulation.

11. In §3.12.5.5, DFS may wish to add a reference to referrals to the Pathways to Employment program for qualifying adolescents. See 17 DE Reg. 1070 (May 1, 2014).

Response: DFS prefers to keep the listing of services for adolescent children non-specific, allowing the licensee to incorporate appropriate and available programs that may change over time. No change was made to regulation.

12. There are several authorizations to use restraint to prevent destruction of property. See, e.g. §1.4, definition of "non-violent physical intervention strategies"; and §3.12.10.1.2. When the Legislature adopted S.B. No. 100 in 2013, it did not authorize use of restraints in public school educational settings based on property destruction. See 14 Del.C. §4112F(b)(2). If a child is tearing paper, throwing a pencil or eraser, or ripping buttons off his/her clothes, the DFS regulation authorizes use of physical and possibly mechanical restraint. DFS may wish to at least consider a more "restrained" authorization. For example, if the property destruction implicates a threat of bodily harm (e.g. throwing a desk or punching a wall), restraint may be justified. The DFS regulation is simply too "loose" in authorizing restraint based on any, even minor, property destruction.

Response: This authorization has been removed.

13. Section 4.7.1 can be interpreted in two ways: a) facilities must be free of lead paint hazards if they accept kids under 6 who either have an intellectual disability or severe emotional disturbance; or b) facilities must be free of lead paint hazards if they accept kids under age 6 OR with intellectual disabilities of any age OR with severe emotional disturbance of any age. I suspect DFS intends the latter. Moreover, the term "severely emotionally disturbed" violates Title 29 Del.C. §608 and should be modified.

Response: The lead paint reference and the reference to "severely emotionally disturbed" have been revised.

14. In §7.0, DFS should consider adding a provision to address electronic cigarettes. See attached statement of the American Lung Association and articles describing H.B. No. 241 and H.B. No. 309.

Response: Wording was added.

15. Section 3.12.10.1.4 requires persons implementing physical intervention strategies to be "specifically trained in its use...and have current certification, if applicable." This is a rather ambiguous standard. When is a certification applicable? Does some in-house training suffice?

Response: Text has been amended to improve clarity.

I have the following observations on the revised proposed regulations published in the August, 2014 Register:

1. In §1.0, the definition of "parent" encompasses guardians. However, there are many references throughout the regulation to "parent or guardian". See, e.g., §§3.12.3, 3.12.11.1.3, and 5.2.1.4. The Division may wish to employ a "search" tool to locate such extraneous references to guardians and convert them to simple "parent" or "parents".

2. In §1.0, definition of "restrictive procedure", it would be preferable to amend the reference to "appropriately trained and credentialed personnel". This would be consistent with §3.12.10.1.3. Moreover, only a physician or advance practice nurse should be authorized to order a chemical restraint.

3. In §2.10, final bullet, DFS may wish to delete "during operating hours". For example, if the facility reported a death "after working hours" per §3.1.1, DFS may not wish to wait until normal business hours to arrive on-site. Evidence could be stale or compromised. The "operating hours" limitation is not contained in §2.2.2. By analogy, long-term care licensing standards do not limit staff access to business or operating hours. See, e.g. Title 16 Del.C. §§1105(4) and particularly 1107(c): "Any duly authorized employee or agent of the Department may enter and inspect any facility licensed under this chapter without notice at any time."

4. In §2.11, "AppeaL" should be "Appeal".

5. In §3.12.7.7, consider adding "trampoline jumping". See attached September 24, 2012 article describing position of American Academy of Pediatrics.

6. Section 3.12.9.3.2 merits amendment.

A. While §3.12.9.3.3 requires continuous monitoring of a child under age 6 in time-out, §3.12.9.3.2 allows children ages 6 and above to be placed in time-out with only visual checks at 15 minute intervals. This is highly objectionable. The child placed in time-out may be very emotional and upset. For example, §3.121.9.3 contemplates extended time-out up of "60 consecutive minutes) if the child refuses to cooperate within the time-out." Having 15 minutes checks under these circumstances is dangerous. By analogy, "exclusion" of children age 6 or older requires continuous visual monitoring. See §17.6.3.1.

B. A second concern with §3.12.9.3.3. is that it allows "stacking". A child age 6 or older could be subjected to a 60 minute time-out, given a 5 minute bathroom break, subjected to another 60 minute time-out, given a 5 minute break, subjected to another 60 minute time out, etc. During this time, the child may be isolated in a separate room as long as the room is not a "closet, a bathroom, or an unfinished basement or attic." See §3.12.9.3.2. While "exclusion" and "locked isolation" contain some cumulative standards to deter "stacking" (§§17.6.2 and 17.7.1.3), there are no such limits on time-out.

7. Section 4.1.6 requires the premises to be rodent-free. At a minimum, the Division may wish to consider addressing bed bugs as well given the highly -publicized prevalence of infestations. In a related context, the Division may wish to consider requiring zippered mattress and pillow protectors for two reasons: a. protection from bed bugs, dust mites, etc; and b. protection from fluids. See, e.g., attached CDS Bed Bugs FAQs and excerpt from USBedBugs.com. For example, §19.11.2.6 literally requires a mattress wet by an infant to be immediately replaced. Replacing a mattress every time a leaky diaper wets a mattress is not realistic. Section 9.14.2.2 requires mattresses to be "cleanable". This standard could be embellished to require a mattress protector which is more easily cleaned than mattress fabric or a cloth mattress pad.

8. While there are standards on dishwashing to deter spread of germs (§4.2.3), I did not notice equivalent standards regarding laundry sanitation. For example, if cloth diapers among various infants are laundered together, that can spread diseases, especially since there are no temperature, bleach, or disinfectant standards. See, e.g., §§5.6.2.1 (allowing cloth diapers); 19.11.2.7 (allowing mixed laundering); and 19.11.2.9 (allowing mixed laundering). The implication of §5.6.2.2 (requiring separate bag of soiled diaper/training pants with infant name) is that laundering should be separate and not commingled. See also §9.9.1, third bullet. However, this is not explicit and facilities may simply launder clothes together. DFS may wish to consider clarifying expectations.

9. Section 17.1.2 categorically bars use of restrictive procedures on children below age 6. DFS may wish to consider whether this includes a physician order for a chemical restraint (§17.8.1). Reasonable persons may differ on the use of drugs to affect behavior on children below age 6.

10. Sections 17.5-17.9 contain some safeguards for extended use of restrictive procedures, including HRC and chief administrator review. DFS may wish to consider requiring facilities to report instances of extended use of restrictive procedures above a certain threshold to the Division. This provides an additional deterrent to "overuse" and enhances monitoring. Compare Title 16 Del..C. §5162.

11. DFS may wish to consider adding "mat wraps" to §17.9.3.

I recommend sharing the above observations with the Division.

Attachments

8g:legreg/814bils
F:pub/bjh/leg/2014p&I/814bils

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MEMORANDUM

DATE: June 25, 2014

TO: Ms. Sharon L. Summers, DSS
Policy, Program & Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 1138 [DSS Proposed Case Processing Procedures Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its regulations regarding *Case Processing Procedures*. The proposed regulation was published as 17 DE Reg. 1138 in the June 1, 2014 issue of the Register of Regulations.

It is Council's understanding that the Disabilities Law Program (DLP) prompted this amendment by identifying to DMMA the following inconsistency in regulations covering the time frames for processing initial Medicaid applications:

> Section 14100.5.1 was amended in November, 2013. It provides "90 day" and "45 day" time periods for processing Medicaid applications. However, Section 2000 also covers applications for "medical assistance" and Section 2000.5 establishes a "30 day" time frame for processing the application. These sections are ostensibly inconsistent.

DMMA responded that the reference in §2000 is incorrect and would be removed to clarify that §2000.5 is inapplicable to Medicaid.

The proposed regulation implements the above consensus. In a nutshell, §2000 is amended to clarify that policies specific to Medical Assistance applications are compiled in §14100. However, the regulation could be improved . For example, the 2000 series still contains some references to Medical Assistance (e.g. §§2002.1.1 and 2012) and there is no exclusion in §2000.5 for Medical Assistance cases. Therefore, ambiguity is still present.

DHSS could consider the following:

1) Amend the new reference in §2000 as follows: "Policies specific to Medical Assistance applications and processing time lines are found in DSSM policy section 14100."

2) Amend the title to §2000.5 as follows: "Non-Medical Assistance Filing Dates and Processing Standards". This approach is consistent with other headings which are more program-specific. See, e.g. §§2002, 2007, and 2008.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Ms. Elaine Archangelo
Mr. Stephen Groff
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

17reg1138 dss-dmma case processing procedures 6-23-14

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MEMORANDUM

DATE: June 25, 2014

TO: Ms. Sharon L. Summers, DSS
Policy, Program & Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 1140 [DSS Proposed Food Supplement Program Unearned Income Verification Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its regulations regarding the Food Supplement Program published as 17 DE Reg. 1140 in the June 1, 2014 issue of the Register of Regulations.

As background, DSS recites that federal regulations give state agencies the option of using an Income and Eligibility Verification System "IEVS)" to verify income when determining eligibility for and the amount of benefits. DSS is opting to not use the IEVS system to obtain information on unearned income. Instead, "DSS will continue to use alternative methods to document and verify unearned income." Both earned and unearned income are considered when assessing eligibility. See 16 DE Admin Code 9054-9057.

The rationale for opting to use "alternative methods" to verify unearned income is not provided. The justification could be based on cost, accuracy of information, or difficulty in acquiring information.

SCPD is unable to offer comments (pro or con) given lack of information on the justification for using unearned income verification sources other than the federal IEVS.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the proposed regulation.

cc: Ms. Elaine Archangelo
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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MEMORANDUM

DATE: March 28, 2014

TO: Ms. Sharon L. Summers, DSS
Policy & Program Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 897 [DSS Proposed TANF Employment & Training Program Sanction Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to adopt revised TANF Employment & Training Program standards which primarily focus on sanctions. The proposed regulation was published as 17 DE Reg. 897 in the March 1, 2014 issue of the Register of Regulations. SCPD has the following observations.

As background, families participating in the program are generally subject to sanctions if they do not comply with work activity requirements. The current sanction protocol requires the TANF case to be closed, followed by 4 consecutive weeks of participation in work activities to justify reopening, and closure of the case for at least 1 month. DSS proposes to revamp this approach based on the following rationale:

> When examining TANF work participation rates it was discovered that many families begin to immediately re-participate and that the mandatory one month closure was a significant hardship since they were incurring expenses as a result of participating. Additionally, these families while participating were not reflected in the TANF work participation rate because they were not receiving a grant.
>
> The policy change would remove the requirement that the case be closed for at least one (1) month and reopen the TANF case at the beginning of the four (4) week participation period.
>
> This change allows families to immediately reengage and potentially not see a reduction in their TANF grant, while also raising the TANF work participation rate by an estimate three (3) percent.

> Approximately, thirty-two (32) more families a month will receive TANF benefits because of the rule change.

SCPD endorses the proposed regulation since the primary change in standards promotes employment activities and program participation. However, Council as two (2) observations.

First, a single custodial parent of a child under age 6 may qualify for an exemption from a sanction if child care is not available. Unavailability based on lack of a proximate day care option is based on the following standard (§3011.2., Par. 1.2a):

> Appropriate child care is unavailable within a reasonable distance from their home or work. Reasonable distance is defined as care that is located in proximity to either a parent's place of employment or the parent's home; generally care that is within a one hour drive from either home or work.

SCPD recommends that DSS reconsider the "one hour drive" standard. For example, if a single parent lived and worked in Wilmington, and child care were only available in Dover, that would be presumptively a "reasonable distance". This means the parent would have to drive 45 miles to drop off the child in Dover, drive 45 miles back to Wilmington to work, drive 45 miles back to Dover after work to pick up the child, and then drive 45 miles back to Wilmington with the child, an aggregate of 180 miles. The same analysis would apply to a single parent living and working in Georgetown who could only locate child care in Dover. The parent would have to drive 36 miles to drop off the child in Dover, drive 36 miles back to Georgetown to work, drive 36 miles back to Dover to pick up child after work, and then drive 36 miles back to Georgetown with the child, an aggregate of 144 miles. The "one hour distance" standard does not appear in the attached federal regulations, 45 C.F.R. §§261.15 and 261.56. DSS could adopt a different standard.

Second, §3011.2.1, Par. 5, recites as follows: "While a parent may not be sanctioned as a result of child care being unavailable, the parent is not exempt from TANF work participation requirements or the TANF time limits." The statement that the parent who proves the unavailability of child care may not sanctioned but "is not exempt from TANF work participation" is odd and ostensibly contradictory. If the parent proves a lack of available child care, the parent should logically be exempt from work participation. DSS may wish to review the accuracy of the recital.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Ms. Elaine Archangelo
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

17reg897 dss-tanf 3-28-14

45 CFR 261.56 - WHAT HAPPENS IF A PARENT CANNOT OBTAIN NEEDED CHILD CARE?

PREV | NEXT

CFR Updates Authorities (U.S. Code)

§ 261.56 What happens if a parent cannot obtain needed child care?

(a)

(1) If the individual is a single custodial parent caring for a child under age six, the State may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an inability to obtain needed child care for one or more of the following reasons:

(i) Appropriate child care within a reasonable distance from the home or work site is unavailable;

(ii) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(iii) Appropriate and affordable formal child care arrangements are unavailable.

(2) Refusal to work when an acceptable form of child care is available is not protected from sanctioning.

(b)

(1) The State will determine when the individual has demonstrated that he or she cannot find child care, in accordance with criteria established by the State.

(2) These criteria must:

(i) Address the procedures that the State uses to determine if the parent has a demonstrated inability to obtain needed child care;

(ii) Include definitions of the terms "appropriate child care," "reasonable distance," "unsuitability of informal care," and "affordable child care arrangements"; and

(iii) Be submitted to us.

(c) The TANF agency must inform parents about:

(1) The penalty exception to the TANF work requirement, including the criteria and applicable definitions for determining whether an individual has demonstrated an inability to obtain needed child care;

(2) The State's process or procedures (including definitions) for determining a family's inability to obtain needed child care, and any other requirements or procedures, such as fair hearings, associated with this provision; and

(3) The fact that the exception does not extend the time limit for receiving Federal assistance.

[64 FR 17884, Apr. 12, 1999; 64 FR 40291, July 26, 1999]

45 CFR 261.15 - CAN A FAMILY BE PENALIZED IF A PARENT REFUSES TO WORK BECAUSE HE OR SHE CANNOT FIND CHILD CARE?

§ 261.15 Can a family be penalized if a parent refuses to work because he or she cannot find child care?

(a) No, the State may not reduce or terminate assistance based on an individual's refusal to engage in required work if the individual is a single custodial parent caring for a child under age six who has a demonstrated inability to obtain needed child care, as specified at § 261.56.

(b) A State that fails to comply with the penalty exception at section 407(e)(2) of the Act and the requirements at § 261.56 may be subject to the State penalty specified at § 261.57.

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MEMORANDUM

DATE: May 29, 2014

TO: Ms. Sharon L. Summers, DSS
Policy, Program & Development Unit

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 1038 [DSS Proposed Child Care Subsidy Eligibility Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to amend its regulations regarding the Child Care Subsidy Program. Specifically, the Division proposes some discrete changes to the eligibility standards for persons seeking subsidized child care assistance funded by the federal Child Care Development Fund. The proposed regulation expands eligibility to cover parents/caretakers who need services based on the following: 1) enrolled and attending middle school or high school; or 2) enrolled and participating in a General Education Diploma (GED) program. The proposed regulation was published as 17 DE Reg. 1038 in the May 1, 2014 issue of the Register of Regulations. The SCPD endorses the proposed regulation subject to consideration of the following amendments.

First, the entire regulation would benefit from addition of punctuation.

Second, the reference to GED program merits revision. Consistent with the attached 17 DE Reg. 724 (January 1, 2014), the Delaware Department of Education has recently expanded the scope of tests equivalent to the traditional GED. The DOE now uses the term "secondary credential assessment". Therefore, DSS may wish to adopt the following reference in Section 1.A.9: "Enrolled and participating in a General Education Diploma (GED) program or similar secondary credential assessment approved by the Delaware Department of Education."

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Ms. Elaine Archangelo
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

17reg1038 dss-child care subsidy eligibility 5-2914

IV. ORDER

It is hereby ordered that the proposed amendments to the Department's regulations are adopted; the text of the final regulation shall be in the form attached hereto as Exhibit A; and the effective date of this Order shall be ten (10) days from date this Order is published in the Delaware *Register of Regulations*.

***Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 146 (17 DE Reg. 146). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

601 Delaware Pesticide Rules and Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 910

REGULATORY IMPLEMENTING ORDER

910 Delaware Requirements for Issuance of the GED® Test Credential

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the GED® Test Credential. The regulation name has been changed to 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential. This regulation is being reviewed in order to provide greater access to a secondary credential assessment in Delaware.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **November 2, 2013,** in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The title of the regulation was changed in the proposed published version to expand the regulation beyond the GED® credential. The Department has reviewed the various Delaware Code sections related to the various references to "GED," "General Equivalency Diploma" or other language that infers a different secondary credential other than a high school diploma, and plans to address as appropriate.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the GED® Test Credential to 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential in order to provide greater access to a secondary credential assessment in Delaware.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the GED® Test Credential. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** Delaware Requirements for Issuance of the Secondary Credential attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** Delaware Requirements for Issuance of the Secondary Credential amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** Delaware Requirements for Issuance of the Secondary Credential in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **December 19, 2013.** The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations.*

IT IS SO ORDERED the 19th day of December 2013.

Department of Education
Mark T. Murphy, Secretary of Education

Approved this 19th day of December 2013
State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt
Gregory B. Coverdale, Jr.
Terry M. Whittaker, Ed.D.
Randall L. Hughes II

910 Delaware Requirements for issuance of the ~~GED® Test~~ Secondary Credential

~~The~~ A Delaware ~~GED® test credential~~ secondary credential is given to persons who satisfactorily pass ~~the GED® Test~~ a recognized secondary credential assessment approved by the Delaware Department of Education.

1.0 Eligibility to take ~~the GED® test~~ a secondary credential assessment

1.1 For persons 18 years of age or older, an applicant shall:

1.1.2 Be a resident of Delaware or, if a resident of another state, be currently employed in Delaware and have been so employed for a minimum of six months prior to taking the test; and

1.1.2 Certify under his or her signature on the ~~GED®~~ secondary credential assessment application form that he or she is not enrolled in a public or non public school program~~; and~~.

~~1.1.3 Provide a verified copy of the Official GED Practice Test® indicating the applicant has passed the Official GED Practice Test™ with a score of 2450 or better and not less than 470 on each of the 5 sub test areas.~~

1.2 For a person 16 or 17 years of age an applicant shall:

1.2.1 Seek a waiver of the 18 years of age requirement by completing a written application to the Delaware Department of Education that includes showing good cause for taking the test early and designating where the test will be taken; and

1.2.2 Be a resident of the State of Delaware; and

1.2.3 Verify that they are at least 16 years of age at the time of the application for the waiver of the age requirement using a birth certificate, ~~drivers~~ driver's license, a State of Delaware Identification Card or other comparable and reliable documentation of age; and

1.2.4 Provide verification of withdrawal from the applicant's public or non public school program; and

1.2.5 Provide a transcript from the applicant's public or non public school program~~; and~~.

~~1.2.6 Provide a verified copy of the Official GED Practice Test™ indicating the applicant has passed the Official GED Practice Test™ with a score of 2450 or better and not less than 470 on each of the 5 sub-test areas.~~

2.0 Scores Required for ~~the Delaware GED® test~~ a Delaware secondary Credential

An individual shall ~~have a standard score of not less than 410 on each of the five tests with an average standard score of not less than 450 for all five tests and a total standard score of not less than 2250 in order to be issued a GED® test credential~~ attain the minimum passing standard as approved by the Delaware Department of Education.

3.0 ~~Retesting~~ Assessment Approval Process

~~Forty-five days shall lapse prior to retesting and instruction is recommended before retesting.~~

3.1 The assessment provider must complete a DOE approved application. The application must include at minimum the following:

3.1.1 provider's qualification and experience;

3.1.2 assessment content and form;

3.1.3 validation and norming processes;

3.1.4 assessment delivery;

3.1.5 technology processes;

3.1.6 security provisions;

3.1.7 accommodations processes;

3.1.8 assessment scoring and reporting processes;

3.1.9 assessment data access requirements;

3.1.10 practice test and supplementary instructional materials;

3.1.11 staff training;

3.1.12 alignment with college and career readiness standards and Delaware accountability system; and

3.1.13 cost and timeframe for implementation.

4.0 Currently Recognized Assessments and Publication

4.1 The GED® Test has been previously approved and is a Department of Education recognized secondary credential assessment.

4.2 DOE will publish annually a list of approved assessments.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1503

REGULATORY IMPLEMENTING ORDER

1503 Educator Mentoring

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1503 Educator Mentoring. The regulation applies to the comprehensive induction program, including mentoring and professional development required of educators, pursuant to 14 **Del.C.** §1210. It is necessary to amend this regulation in order

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MEMORANDUM

DATE: May 29, 2014

TO: Ms. Deborah Harvey
Division of Public Health

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 1037 [DPH Proposed Skilled Home Health Agency Director Qualifications Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposal to amend its regulations covering skilled home health agencies. The proposed regulation was published as 17 DE Reg. 1037 in the May 1, 2014 issue of the Register of Regulations.

The current regulation requires a director of a skilled home health agency to "have a Baccalaureate Degree in health or a related field". The Division proposes to require more robust credentials. A director would be required to meet the following standards:

> (1) Have a Baccalaureate Degree with five years healthcare experience and at least one year supervisory experience (full-time or equivalent in home health care); or
> (2) Be a registered nurse with five years health care experience and at least one year of supervisory experience (full-time or equivalent) in home health care.

SCPD endorses the proposed regulation. However, the Council recommends that the Division clarify whether existing directors are "grandfathered" or if the regulation will be applied to disqualify existing directors who do not meet the new standards.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed regulation.

cc: Dr. Karyl Rattay
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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MEMORANDUM

DATE: April 30, 2014

TO: Ms. Deborah Harvey
Division of Public Health

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 961 [DPH Proposed Hospice Disposal of Medications Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Public Health's (DPH's) proposal to amend it "Delivery of Hospice Services regulation." As background, S.B. 119 was enacted in the summer of 2013. It requires the Department of Health & Social Services to establish standards for disposal of unused prescription medications following the death of an in-home hospice patient. DPH is now issuing this proposed regulation to implement the new law. The proposed regulation was published as 17 DE Reg. 961 in the April 1, 2014 issue of the Register of Regulations. SCPD has the following observations.

First, the proposed standards are comprehensive but only establish guidelines for hospice providers. Hospice agencies must adopt policies which conform to an outline rather than adhering to specific standards. For example, each hospice agency could adopt a different timetable for medication disposal (§A.2) and a different approach if there is evidence of missing unused prescription medication (§A.7). Reasonable persons could differ on whether this approach conforms to the statutory requirement of a "standardized protocol".

Second, there are some anomalies in punctuation. For example, there is no period at the end of §A.3.

Third, in §C.2.a, the word "was" should be substituted for "were" since the subject (documentation) is singular.

Fourth, §§B.1.b, B.2, C.2.b, and D1 have "odd" introductory symbols prior to subsections amounting to a bullet with a dash underneath. It's unclear what this symbol represents. If it is

intended to be construed as "and/or", that term "should never be used". See Delaware Administrative Code Drafting & Style Manual, §6.6. Moreover, the Delaware Administrative Code Drafting & Style Manual (§2.3.1; §2.4.2) only permits numeric subparts and disallows bullets. If numeric subparts were used, appropriate punctuation (currently absent from the subparts) could also be added. See Manual, Figure 2.2.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding observations or recommendations on the proposed regulation.

cc: Dr. Karyl Rattay
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council
17reg961 dpli-hospice disposal of medications 4-30-14

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June 25, 2014

Ms. Susan K. Haberstroh, Associate Secretary
Education Supports & Innovative Practices Branch
Department of Education
35 Commerce Way – Suite 1
Dover, DE 19904

RE: DOE Proposed High School Graduation Requirements & Diploma Regulation [17 DE Reg. 1127 (6/1/14)]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend its regulation regarding graduation and diploma eligibility. The DOE notes that the significant changes are in the following contexts: 1) requiring an advisement process to the student success planning; 2) modifying definitions; 3) revising the date for which diplomas may be awarded to the previous graduating class; and 4) addressing students in the custody of the DSCY&F. The proposed regulation was published as 17 DE Reg. 1127 in the June 1, 2014 issue of the Register of Regulations. SCPD has the following observations, concerns and recommendations.

First, the Department maintains a requirement (§4.1.4) that a credit in Mathematics shall be earned during the senior year. SCPD questions the justification for the requirement. Students must achieve 4 credits in math (§4.1) so why should it matter when the credits are obtained? There is no analogous requirement that an English or Science credit be obtained in the senior year. If a student were to earn a 4th credit through on-line learning or a summer program prior to the onset of the senior year, the student should not be penalized.

Second, §5.1 establishes the need for a Student Success Plan for students in grades 8-12. It would be preferable to clarify that grade 12 encompasses students through the end of their eligibility for education. See Title 14 Del.C. §1703(d) which recites as follows: "Grade 12 is defined as enrollment until receipt of a regular high school diploma or the end of the school year in which the student attains the age of 21, whichever occurs first, as defined in Chapter 31 of this title." This clarification could be accomplished through the addition of a definition of "twelfth grade student".

Third, §5.1 requires the Student Success Plan to incorporate the transition plan required by 14 DE Admin Code 925. The transition plan must also be incorporated in the IEP. See 14 DE Admin Code 925, §20.2. These competing directives may result in confusion. Do educators place the transition plan in the IEP or the SSP?

Fourth, §9.3 provides as follows: "Diplomas from one school year shall not be issued after ~~December 31~~ September 15 of the next school year." SCPD recommends retaining the existing standard. What harm results from retention of the existing standard? Moreover, it's unclear what happens if a student completes credit requirements between September 16th and December 31st. Does the student receive a diploma in the Fall or have to wait until the following calendar year? Delaying receipt of a diploma can affect job qualifications, qualifications to enter the military, and qualifications to enter post-secondary education.

Fifth, in §10.2, it would be preferable to add an explicit standard that the districts and charter schools will defer to any full and partial awards of credit by DSCY&F educational settings. For example, the Ferris School for Boys [Title 31 Del.C. §5112] is a public school and the DSCY&F should be able to award credits which would be honored by other schools. Other DSCY&F settings also provide comprehensive full day education by certified teachers. See attached p. 44 from December 19, 2013 MOU among DSCY&F and the public school system. Parenthetically, the attached p. 18 of the same MOU directs schools receiving transfer students to "immediately apply full credits" while also encouraging the receiving schools to "accept partial credits to benefit the student". It would be preferable to include similar guidance in §10.0.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

Sincerely,

Daniese McMullin-Powell

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy, Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Ms. Jennifer Ranji, Secretary - DSCYF
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Ms. Ilona Kirshon, Esq.
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

17reg1127 doe-high school graduation requirements and diploma 6-23-14 doc

EXCERPTS
12-19-13 MSN
AMONG DOE
DSCYF &
DISTRICTS

children. Services may include in-home services, placement, family reunification, or other permanency options including adoption, guardianship, and independent living.

Division of Management Support Services (DMSS)

Education Programs

1. ***Ferris School*** - Education is provided on site by certified school personnel to youth in the secure treatment facility. Students transitioning through Mowlds Cottage either continue in the Ferris Program or return to the home school. Regular and special education courses are offered through a schedule which mirrors any local public high school. Electives include art, technology, media literacy, school to work and JDG classes.
2. ***New Castle County Detention Center*** - All students attend a full day of courses which include all the Core Courses. GED is available to youth meeting criteria for entry into the Program. Special education services are provided in accordance with state and federal law.
3. ***Grace and Snowden Cottages*** - This program is a residential treatment program for adjudicated males and females. Students are typically between the ages of 12-18. The program, located on the Wilmington Campus, is operated directly by the Division of Youth Rehabilitative Services. Education is provided on site by certified school personnel who are employed by DSCYF.
4. ***Terry Children's Psychiatric Center*** - This DPBHS program is a Residential Treatment Center providing inpatient and day hospital services for youth under the age of 14. Education is provided on-site by certified school personnel. Special education services are provided in accordance with state and federal law.
5. ***Northeast Treatment*** - This program is operated by Northeast Treatment Centers, LKEC (Delaware) Inc. under contract to the DPBHS. Students ages 12-17 receive a full day of education by certified teachers. Special education services are provided in accordance with state and federal law.
6. ***Silver Lake Treatment Center*** - This DPBHS program provides day treatment and educational services to youth ages 12-17. Full complement of core courses is provided by teachers certified by Delaware Department of Education. Special education services are provided in accordance with state and federal law.
7. ***Stevenson House Detention Center*** - All students attend a full day of courses which include all the Core Courses. GED is available to youth meeting criteria for entry into the Program. Special education services are provided in accordance with state and federal law.
8. ***People's Place II*** - Peoples' Place II is a non-secure detention environment for non-adjudicated males and females ages 12-18. While in placement youth are required to attend school. The certified educator employed by Department of Services for Children, Youth, and Their Families, Education Unit works closely with the youth's "home school" to make sure the on-site education provided while in placement is aligned with the child's "home school" class assignments. The DSCYF teacher also ensures compliance with special education regulations as required and assists in arranging a smooth return to a more conventional school environment upon discharge from the non-secure detention placement. Education is provided year round, on site, and in compliance with state and federal regulations. Peoples' Place II is located in Milford, DE
9. ***Seaford House Treatment Center*** - This program provides day treatment and educational services at the treatment center operated by Children and Families First under contract with DPBHS. Students ages 12-17 receive a full day of education by certified teachers. Special education services are provided in accordance with state and federal law.
10. ***Delaware Day Treatment Center*** - There are two Delaware Guidance programs: one in Kent County and one in Sussex County. Both programs are operated by Delaware Guidance Inc. under contract to the DPBHS. Students ages 6-15 are provided with day treatment and educational services. Education is provided on site by certified teachers

Enclosed: 12-19-13
MOU Among DOE, DSCYF and Districts

their school of origin and be provided transportation to the school of origin when a change in foster care placement occurs, when in the best interest of the child.

b. Enroll a child in foster care (based on the results of the Best Interest Meeting) within two school days of referral in a new school even if DSCYF is unable to produce records, or the sending school has not yet transferred the records, such as previous academic records, medical records, proof of residency, and/or other documentation if all parties (child, school, parent/legal guardian/Relative Caregiver, Guardian ad litem, CASA, and DSCYF staff) agree that it is in the best interest of the child to change schools according to the McKinney-Vento Act.

c. Ensure that the receiving school promptly obtains school and medical records from the sending school for a newly enrolled child in foster care.

d. Transfer school and medical records from the sending school immediately (within three school days during the school year, or five working days in the summer) to a new school for a child in foster care who is transferring schools.

e. The receiving school shall immediately apply full credits and is encouraged to accept partial credits to benefit the student. The receiving and sending schools should determine, for transferring seniors, which school will provide the diploma.

f. Accept a DSCYF letterhead statement as proof of residency of a child in foster care with the placement resource identified.

g. Accept registration materials from DSCYF case managers via fax and schedule a meeting or a teleconference with the caseworker for a later date, within five business days, to discuss other educational information that may not have been shared.

h. Host meetings with necessary parties to develop the best educational plan for a child or youth in foster care, as may be needed from time to time.

i. Host a meeting in May or June, with all involved parties (district/school liaison, caseworker, parent, Guardian ad litem, CASA, and child) to determine whether it is in the best interest of the child to remain in the school of origin or be transferred to the district in which they are now living for the subsequent year. The school liaison will schedule the meeting and be responsible for scheduling other school personnel.

17 DE Reg. 1127

Delaware Department of Education

DEPARTMENT OF EDUCATION

The Townsend Building
401 Federal Street Suite 2
Dover, Delaware 19901-3639
DOE WEBSITE: http://www.doe.k12.de.us

Mark T. Murphy
Secretary of Education
Voice: (302) 735-4000
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July 31, 2014

AUG 5 2014

Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities
Margaret M. O'Neill Building
410 Federal Street, Suite 1
Dover, DE 19901

Dear Ms. McMullin-Powell:

The Delaware Department of Education (DDOE) is in receipt of your June 25, 2014 letter with comments regarding the proposed regulation currently published as **DE Admin Code 505 High School Graduation Requirements and Diplomas**. The Department received several comments on this regulation and all comments were taken into consideration before final revision and publication.

The Department amended the regulation with the purpose of requiring an advisement process to the student success planning, modifications to definitions, revising the date for which diplomas may be awarded to the previous graduating class; and addressing students in the custody of the Department of Services of Children, Youth and Their Families (DSCYF).

SCPD Comment
First, the Department maintains a requirement (§4.1.4) that a credit Mathematics shall be earned during the senior year. Council questions the justification for the requirement. Students must achieve four credits in math (§4.1) so why should it matter when the credits are obtained? There is no analogous requirement that an English or Science credit be obtained in the senior year. If a student earns a 4th credit through on-line learning or a summer program prior to the onset of the senior year, the student should not be penalized.

Department Response
The Department believes that this requirement is necessary in order to maintain a continuity of knowledge of mathematics from the time a student leaves high school and enters college. There is no change in the mathematics credit requirement for students in their senior year. Please refer to the State Board of Education website for the report by the Graduation Requirement Subcommittee done in 2007.

SCPD Comment
Second, §5.1 establishes the need for a Student Success Plan for students in grades 8-12. It

would be preferable to clarify that grade 12 encompasses students through the end of their eligibility for education. See Title 14 Del.C. § 1703(d) which recites as follows: "Grade 12 is defined as enrollment until receipt of a regular high school diploma or the end of the school year in which the students attains the age of 21, whichever occurs first, as defined in Chapter 31 of this title." This clarification could be accomplished through the addition of a definition of "twelfth grade student."

Department Response
The Department reviewed this comment and notes that the student would still be a twelve grade student regardless of age. We are in agreement that services would be provided through age twenty-one, thus a change to the regulation is not needed at this time.

SCPD Comment
Third, §5.1 requires the Student Success Plan (SSP) to incorporate the transition plan required by 14 DE Admin Code 925. The transition plan must also be incorporated in the IEP. See 14 DE Admin Code 925, §20.2. These competing directives may result in confusion. Do educators place the transition plan in the IEP or the SSP?

Department Response
The Department reviewed this comment and notes that the SSP is aligned with the IEP, therefore no change is needed to the regulation with regard to this issue.

SCPD Comment
Fourth, §9.3 provides as follows: "Diplomas from one school year shall not be issued after ~~December 31~~ September 15 of the next school year." SCPD recommends retaining the existing standard. What harm results from retention of the existing standards? Moreover, it's unclear what happens if a student completes credit requirements between September 16th and December 31st. Does the student receive a diploma in the Fall or have to wait until the following calendar year? Delaying receipt of a diploma can affect job qualifications, qualifications to enter the military and qualifications to enter post-secondary education.

Department Response
The Department reviewed this comment and notes that the change is related to which grade/class the student is attributed to. This is in line with federal policies.

SCPD Comment
Fifth, in §10.2, it would be preferable to add an explicit standard that the districts and charter schools will defer to any full and partial awards of credit by DSCY&F educational settings. For example, the Ferris School for Boys [Title 31 Del.C. §5112] is a public school and the DSCY&F should be able to award credits which would be honored by other schools. Other DSCY&F settings also provide comprehensive full day education by certified teachers. See attached p. 44 from December 19, 2013 MOU among DSCY&F and the public school system. Parenthetically, the attached p. 18 of the same MOU directs schools receiving transfer students to "immediately apply full credits" while also encouraging the receiving schools to "accept partial credits to benefit the student." It would be preferable to include similar guidance in §10.0.

Department Response
The Department reviewed this comment and notes that credits are reviewed and attributed to the student. We believe the regulation is specific to this matter.

The Department appreciates the time and effort the SCPD has provided in connection with the development and promulgation of this regulation.

Sincerely,

Tina M. Shockley
Education Associate – Policy Advisor

TMS/tms

cc: Mark T. Murphy, Secretary of Education
Teri Quinn Gray, State Board of Education
Susan Haberstroh, Department of Education
Michael Watson, Department of Education
Mary Ann Mieczkowski, Department of Education
Michelle Whalen, Department of Education
Paula Fontello, Esq.
Terry Hickey, Esq.
Ilona Kirshon, Esq.

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

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TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

June 25, 2014

Ms. Susan K. Haberstroh, Associate Secretary
Education Supports & Innovative Practices Branch
Department of Education
35 Commerce Way – Suite 1
Dover, DE 19904

RE: DOE Proposed Limitations on Use of Seclusion & Restraint Regulation [17 DE Reg. 1133 (6/1/14)]

Dear Ms. Haberstroh:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposal to amend Title 14 of the Delaware Administrative Code by adopting a new *Limitations on Use of Seclusion and Restraint* regulation. The proposed regulation was published as 17 DE Reg. 1133 in the June 1, 2014 issue of the Register of Regulations. SCPD submitted comments on an initial, pre-publication version of this regulation on May 8 2014 (attached). SCPD has the following observations which includes references to the previous SCPD commentary by number.

First, consistent with earlier Comment #1, §1.1 omits any reference to "chemical" restraint. Compare §2.0, definition of "chemical restraint"; and §3.1.1. The first sentence could be amended as follows: "The purpose...physical restraint, chemical restraint, mechanical restraint..."

Second, consistent with earlier Comment #2, add a reference to 14 Del.C. §3110.

Third, consistent with earlier Comment §5, in §2.0, definition of "mechanical restraint", second bullet, insert "or" between "movement" and "stability".

Fourth, in §3.2.9, strike "; and" and substitute a period.

Fifth, consistent with earlier Comment #11, the training standards in §4.1 are too weak. The reference to " nationally recognized training programs" is an insufficient standard. The term "approved by the Department" should be inserted after "programs". Compare 14 DE Admin Code 910 (DOE must approve alternatives to GED testing).

Sixth, in §6.1.2, first line, convert "Written" to low case. Compare §6.1.3.

Seventh, consistent with earlier Comment #22, insert "duration" of restraint. This is a very important component of a restraint, i.e., did it last 5 minutes or an hour. Compare §8.3.3 and Title 16 Del.C. §5162(a).

Eighth, in §8.1.2.1, delete the word "and" at the end.

Ninth, in §8.2, the 60 day period for the review committee to issue a decision would be followed by a review period for the Secretary to "consider the whole record of the case and the committee's recommendations" (§8.4) followed by mailing of a decision. If a student is manifesting extreme behaviors during this period, a quicker review may be in everyone's interests. At a minimum, consider the following revision to §8.2: "All requests.....shall be rendered as soon as practicable but in no event more than 60 days from receipt of the waiver request."

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

Sincerely,

Daniese McMullin-Powell

Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Mark Murphy, Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski
Ms. Paula Fontello, Esq.
Ms. Terry Hickey, Esq.
Ms. Ilona Kirshon, Esq.
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens

17reg1133doe-limitations on use of seclusion and restraint 6-23-14 doc

17 DE Reg 1133

Delaware
Department of Education

DEPARTMENT OF EDUCATION
The Townsend Building
401 Federal Street Suite 2
Dover, Delaware 19901-3639
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July 31, 2014

Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities (SCPD)
Margaret M. O'Neill Building
410 Federal Street, Suite 1
Dover, DE 19901

Dear Ms. McMullin-Powell:

The Delaware Department of Education (DDOE) is in receipt of your June 25, 2014 letter with comments regarding the proposed regulation currently published as **DE Admin Code 610 Limitations on Use of Seclusion and Restraint.** Because this was a new regulation, the Department had a great deal of interaction with district and charter school personnel, as well as your organization and others. All comments were taken into consideration before final revision and publication.

The Department was to promulgate regulations with the purpose of establishing standards and procedures for the use of physical restraint, chemical restraint, mechanical restraint, and seclusion to provide safety for all individuals. The regulations set forth permitted and prohibited uses of restraint and seclusion, required training for public school, private program, or alternative program personnel, required documentation and reporting of incidents of restraint and seclusion, required notification to parents, and waiver procedures for individual students.

SCPD Comment
First, consistent with earlier Comment #1, §1.1 omits any reference to "chemical" restraint. Compare §2.0, definition of "chemical restraint"; and §3.1.1. The first sentence could be amended as follows: "The purpose...physical restraint, chemical restraint, mechanical restraint..."

Department Response
The Department adopted the recommended change.

SCPD Comment
Second, consistent with earlier Comment #2, add a reference needs to be made to 14 Del. C. §3110 as originally mentioned in the April 24 letter, item #2.

Department Response
The Department reviewed this comment and did not believe that the reference to 14 Del. C. § 3110 is necessary, as the enabling statute is 14 Del. C. § 4112F.

SCPD Comment
Third, consistent with earlier Comment #5, in §2.0, definition of "mechanical restraint", second bullet, to insert "or" between "movement" and "stability."

Department Response
The Department reviewed this comment and did not believe that the language should be inserted because the definition is that which is contained in Delaware Code at 14 Del. C. § 4112F(a)(2).

SCPD Comment
Fourth, in §3.2.9, strike "; and" and substitute a period.

Department Response
The Department adopted the recommended change.

SCPD Comment
Fifth, consistent with earlier Comment #11, the training standards in §4.1 are too weak. The reference to "nationally recognized training programs" is an insufficient standard. The term "approved by the Department" should be inserted after "programs". Compare 14 DE Admin Code 910 (DOE must approve alternatives to GED testing).

Department Response
The Department reviewed this comment and did not believe the language needed to be inserted. Although there is no national accreditation organization which endorses specific school crisis prevention and intervention training programs, there are numerous nationwide and regional programs that offer such training. Districts retain the discretion to review program content and to determine which training best meets their needs.

SCPD Comment
Sixth, in §6.1.2, first line, convert "Written" to low case. Compare §6.1.3.

Department Response
The Department reviewed this comment and discussed it with the Registrar. It was determined that it should be a lowercase word, as it is common in nature and not a proper name of a report.

SCPD Comment
Seventh, consistent with earlier Comment #22, insert "duration" of restraint. This is a very important component of a restraint, i.e., did it last 5 minutes or an hour. Compare §8.3.3 and Title 16 Del.C. §5162(a).

Department Response
The Department reviewed this comment and did not believe the language needed to be inserted. The written report must be provided in a uniform format as determined by the Department and

the language references the minimum required information. The Department anticipates that the uniform format will include, among other things, a field to document the duration of the restraint.

SCPD Comment
Eighth, in §8.1.2.1, delete the word "and" at the end.

Department Response
The Department adopted the recommended change.

SCPD Comment
Ninth, in §8.2 the 60 day period for the review committee to issue a decision would be followed by a review period for the Secretary to "consider the whole record of the case and the committee's recommendations" (§8.4) followed by mailing of a decision. If a student is manifesting extreme behaviors during this period, a quicker review may be in everyone's interest. At a minimum, consider the following revision to §8.2: "All requests...shall be rendered as soon as practicable but in no event more than 60 days from receipt of the waiver request.

Department Response
The Department made changes to the terminology for clarity. The Secretary of Education shall issue a decision no later than ten (10) calendar days from receipt of the recommendation of the waiver review committee.

The Department appreciates the time and effort the SCPD has provided in connection with the development and promulgation of this regulation.

Sincerely,

Tina M. Shockley
Education Associate – Policy Advisor

TMS/tms

cc: Mark T. Murphy, Secretary of Education
Teri Quinn Gray, State Board of Education
Susan Haberstroh, Department of Education
Michael Watson, Department of Education
Mary Ann Mieczkowski, Department of Education
Michelle Whalen, Department of Education
Paula Fontello, Esq.
Terry Hickey, Esq.
Ilona Kirshon, Esq.

SPONSOR: Rep. Kenton

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

TO

HOUSE BILL NO. 129

WHEREAS, Christina Lee Ann Atkins, a Delaware high school freshman, went to the hospital on May 26, 2011 after feeling ill; and

WHEREAS, Christina experienced a medical emergency while locked in the hospital restroom; and

WHEREAS, Christina's mother alerted hospital staff after checking on Christina and hearing her gasp for air; and

WHEREAS, hospital staff made several unsuccessful attempts to unlock the bathroom door to assist Christina, including efforts to remove the door from its hinges; and

WHEREAS, after approximately ten (10) minutes a hospital security guard was finally able to unlock the door; and

WHEREAS, hospital staff were unable to revive Christina. She was fourteen (14) years old; and

WHEREAS, the efforts of Christina's parents, Chris and Bonnie Atkins, have been instrumental in the development of House Bill No. 129 so that the events of May 26, 2011 are not repeated.

NOW, THEREFORE:

AMEND House Bill No. 129 by inserting the following after line 7:

Section 2. This Act shall be known as "Christina's Law."

SYNOPSIS

This amendment names House Bill No. 129 "Christina's Law" in honor of Christina Lee Ann Atkins.

SPONSOR: Rep. Kenton & Sen. Pettyjohn
Reps. D. Short, Smyk, Carson, Kowalko, Osienski, Walker;
Sens. Hocker, Lopez, Sokola

HOUSE OF REPRESENTATIVES

147th GENERAL ASSEMBLY

HOUSE BILL NO. 129
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO ACCESS TO HOSPITAL BATHROOMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1007, Title 16 of the Delaware Code by making insertions as shown by underlining as follows:

§ 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.

Section 2. This Act shall be known as "Christina's Law."

HR : MJH : AFJ:0801470526
LC : MJC : RAY:4801470054

SPONSOR: Rep. Ramone & Rep. D. Short & Rep. B. Short & Sen. Cloutier;
Reps. Hudson, Gray, Wilson, Mitchell; Sens. Hocker, Lopez

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 249

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO CARDIOPULMONARY RESUSCITATION EDUCATION.

WHEREAS, 80 percent of cardiac arrests occur at home; and

WHEREAS, across the United States nearly 300,000 out-of-hospital sudden cardiac arrests occur annually; and

WHEREAS, effective bystander CPR provided immediately after sudden cardiac arrest can double or triple a victim's chance of survival, but only 32 percent of cardiac arrest victims get CPR from a bystander; and

WHEREAS, a study published in a recent issue of Circulation: Cardiovascular Quality and Outcomes showed that people who view a CPR-instructional video are significantly more likely to attempt life-saving resuscitation; and

WHEREAS, hands-only CPR (CPR with just chest compressions) has been proven to be as effective as CPR with breaths in treating adult cardiac arrest victims; and

WHEREAS, through the teaching of lifesaving CPR and AED skills, Delawareans who suffer an out-of-hospital cardiac arrest will have a much improved chance of surviving sudden cardiac arrests.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 41, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4137. Cardiopulmonary Resuscitation Graduation Requirement.

(a) Beginning with the Class of 2017 all students must have participated in a CPR educational program to be granted a high school diploma from a Delaware high school, regardless of whether the school is public, non-public, or a charter school. This CPR educational program must incorporate both the psychomotor learning and skills necessary to perform cardiopulmonary resuscitation and the use of an automated external defibrillator. A licensed teacher shall not be required to be a certified trainer of cardiopulmonary resuscitation to facilitate, provide, or oversee such instruction. But, any course which results in a certification being earned is required to be taught by an authorized CPR/AED instructor, and the course must use:

HR : MJH : AFJ
0801470408

Released: 03/12/2014 09:43 AM

(1) an instructional program developed by the American Heart Association or the American Red Cross; or

(2) an instructional program which is nationally recognized and is based on the most current national evidence-based Emergency Cardiovascular Care guidelines for cardiopulmonary resuscitation and the use of an external defibrillator.

(b) The individualized education plan (IEP) or 504 plan of a student with a disability identified under Chapter 31 of this title may modify the content of instruction for CPR required by this section or, if such modification would be ineffective, exempt such student from application of this section.

SYNOPSIS

This bill requires Delaware students to learn CPR to be granted a high school diploma from a Delaware high school beginning with the Class of 2017.

HR : MJH : AFJ
0801470408

Released: 03/12/2014 09:43 AM

147TH GENERAL ASSEMBLY

FISCAL NOTE

BILL:	HOUSE BILL NO. 249
SPONSOR:	Representative Ramone
DESCRIPTION:	AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO CARDIOPULMONARY RESUSCITATION EDUCATION.

ASSUMPTIONS:

1. Effective upon signature of the Governor.

2. This bill requires Delaware students in public and non-public schools to learn CPR to be granted a high school diploma from a Delaware high school beginning with the Class of 2017 (current year freshman).

3. The American Heart Association produces CPR in Schools Training Kits that can be used to meet the requirements of the legislation at a cost of $599/per kit. The kits can serve 10 students at a time where each manikin can withstand a maximum of 300,000 compressions lasting at least 3 years.

4. Public schools with an enrollment of 200 students or greater are assumed to receive 2 CPR kits while public schools with an enrollment of less than 200 students are assumed to receive 1 CPR kit. Non-public schools are not included in the estimated cost given the legislation is unclear whether they should receive state support to implement the training.

	Total 9th Grade Enrollment	**# of CPR kits for schools with greater than 200 students**	**# of CPR kits for schools with less than 200 students**	**Total # of CPR Kits**
Public Schools	9,755	52 (26 schools)	13 (13 schools)	65 (39 schools)

5. Based on feedback from the American Heart Association, costs may be minimized if public schools are able to work with local emergency medical service agencies, health care providers, and other organizations to obtain loaned equipment.

Cost:

Fiscal Year 2015:	$38,935
Fiscal Year 2016:	$0
Fiscal Year 2017:	$0

Office of Controller General
March 20, 2014
MJ:MJ
0271470016

(Amounts are shown in whole dollars)

Section 305. Section 1 of this Act appropriates $1,938.9 to Public Education, Department of Education (95-01-01) for World Language Expansion. To provide an opportunity for students to become more competitive in the global economy, this appropriation shall assist in evaluating and implementing additional foreign language offerings in schools. The department shall submit quarterly reports to the Director of the Office of Management and Budget and the Controller General indicating program expenditures and accomplishments to date.

Section 306. Section 1 of this Act provides appropriations to Public Education, Department of Education (95-01-01) for the operation and administration of the department. Of this amount, or utilizing other non-state sources of funding, $40.0 shall be made available by the Department of Education for disbursement to school districts, vocational technical school districts and charter schools for cardiopulmonary resuscitation (CPR) instruction. Said funding, beginning in the 2015-16 school year, shall be used for materials needed to incorporate psychomotor skills learning into instruction as required by 14 Administrative Code, Section 851, 1.1.3.4.

Section 307. The Department of Education is authorized to perform a comprehensive, annual review of the delivery of special education services within the public school system. The department is authorized to establish 1.0 FTE within its existing complement of positions for the purposes of coordinating, among various stakeholders, said review and managing the implementation of recommended initiatives. Said review shall include, but not be limited to, the provision and funding of assistive technology in the classroom; the coordination and distribution of information on services available for children with disabilities that cross multiple state agencies; and creating a strategic plan for special education services. The Department of Education shall convene an oversight group on a semi-annual basis to provide status updates on said review as well as to share initiatives for implementation that may have a fiscal impact. The oversight committee shall consist of the members of the Interagency Resource Management Committee (IRMC), a representative from the Governor's Office and the Co-Chairs of the Joint Finance Committee.

Section 308. Section 1 of this Act provides an appropriation to Public Education, Department of Education (95-01-01) for State Testing Computers. The New Castle County Vocational Technical School District is authorized to use its Fiscal Year 2015 State Testing Computers allocation to offset Fiscal Year 2014 local expenses incurred for upgrading school testing technology that is consistent with the allowable uses of said state appropriation.

Section 309. Notwithstanding the provisions of 14 Del. C. § 1305(m), (n) and (o), for those employees who have achieved certification from the National Board for Professional Teaching Standards (NBPTS) and serve as

STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: May 29, 2014

TO: Ms. Elizabeth Timm, DFS
Office of Child Care Licensing

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: 17 DE Reg. 1043 [DFS Proposed Residential Child Care & Day Treatment Program Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS)/Office of Child Care Licensing's proposal to amend the *DELACARE: Requirements for Residential Child Care Facilities and Day Treatment Programs*. The proposed regulation was published as 17 DE Reg. 1043 in the May 1, 2014 issue of the Register of Regulations. The SCPD submitted extensive comments on earlier versions of this regulation and has the following observations on this latest version.

First, in §1.3, definition of "residential child care facility", psychiatric hospitals and foster homes are excluded from coverage. However, the status of a pediatric skilled nursing facility is unclear. Exceptional Care for Children in Newark is an example. DHSS ostensibly licenses such facilities pursuant to Title 16 Del.C. §§1119B and 1119C. However, such facilities may also meet the DFS definition of "residential child care facility". DFS may wish to clarify coverage or non-coverage of pediatric nursing facilities.

Second, in §1.4, definition of "Administrative Hearing", the reference to "...place the facility on the enforcement actions of Warning..." is awkward language. DFS may wish to revise the reference.

Third, Section 17.3 contemplates HRC review of "restrictive procedures" and "proper treatment". It is unclear if DFS envisions HRCs reviewing psychotropic medications. Section 1.4, definition of "restrictive procedure", only covers drugs which qualify as a "chemical restraint". The definition of "chemical restraint" excludes "the planned and routine application of a prescribed psychotropic drug". Therefore, if a child were prescribed heavy daily doses of multiple psychotropic drugs, the

HRC may arguably lack jurisdiction to review. By analogy the DDDS HRCs review regularly prescribed psychotropic drugs administered in covered facilities, including co-DHSS/DFS regulated AdvoServ. DFS may wish to consider whether HRC review of psychotropic drugs excluded from the definition of "chemical restraint" merit HRC review.

Four, in §1.4, definition of "Consultant", there is a plural pronoun (their) with a singular antecedent (practitioner). Consider substituting "the practitioner's" for "their".

Fifth, in §1.4, definitions of "Exclusion" and "Locked Isolation", it is somewhat anomalous to categorically bar use of unlocked exclusion for kids under age 6 but have no equivalent limit for locked isolation. DFS may wish to consider adding a similar age standard in the definition of "locked isolation".

Sixth, in §1.4, the definitions of "exclusion" and "time-out technique" are not well differentiated. Placing a child in an unlocked classroom or office would fit both definitions. Section 3.12.9.3.2 reinforces the overlap by stating that "time-out" may not occur in closet, bathroom, unfinished basement or attic. The implication is that placement in other rooms is an acceptable use of "time-out". If a provider were considering placement of a child under age 6 in an unlocked room, that would be barred under the "exclusion" definition (and §17.1.2) but allowed per §3.12.9.3.3 if characterized as "time-out". In general, SCPD believes that children should not be left unobserved when in "exclusion" or "time-out".

Seventh, a related anomaly to that described in the preceding paragraph is that an exclusion requires "continuous" monitoring (§1.4, definition of "exclusion"; §17.5.1.1) while time-out only requires a visual check every 30 minutes (§3.12.9.3.2). If a provider wishes to avoid the continuous monitoring requirement, the provider would simply characterize placing a child in an unlocked room as "time-out". Moreover, the implication of 30-minute checks is that "time-out" periods are extended. Clinically, a time-out should permit some time to reflect and regain self-control. A time-out should not last for hours. Cf. §3.12.9.3.3, time-out for children under 6 should not exceed 1 minute for each year of age. In general, as noted in Par. 6, SCPD believes that children should not be left unobserved when in "exclusion" or "time-out".

Eighth, Section 17.5.1.1 raises a similar concern. Within each two (2) hours of a restrictive procedure, a child is given an opportunity for 10 minutes of release. Based on the definition of "restrictive procedure", this suggests that extended periods of mechanical restraint, locked isolation, and exclusion are acceptable norms. This section could also be interpreted to authorize a facility to limit access to a toilet to once every two hours. The structure of the DFS regulations appear to allow sequential use of restrictive procedures resulting in extended isolation. For example, §17.5.1.1, in combination with §17.7.1.3, authorize a 2 hour locked isolation followed by a 10 minute break, another 2 hour locked isolation followed by a 10 minute break, and then a third 2 hour locked isolation. Similarly, per §§17.5.1.1. and 17.6.1 and 17.6.2, "exclusions" can be "stacked" resulting in removal of a child to an unlocked room for an hour, followed by a 10 minute break, which can be repeated for an aggregate of six (6) hours. Similarly, per §§17.5.1.1 and 17.9.1.4, "mechanical restraints" can be "stacked" resulting in 2 hours of mechanical restraint, followed by a

10 minute break, followed by another 2 hours of mechanical restraint. Temporal limits on "consecutive minutes" of a restrictive procedure (e.g. §17.7.5 and 17.9.1.4) are easily circumvented by allowing short breaks to toilet or stretch. DFS may wish to consult DPBHS to assess whether the above regulations conform to contemporary clinical standards in the field. The Terry Center has converted its former seclusion room to a children's store.

Ninth, there is some "tension" between §3.12.10.1.3 and 17.5.1.1. The former section contemplates the release of a child from a restraint after no more than 15 minutes while the latter would authorize restraint for at least 2 hours.

Tenth, in §3.5.5, DFS requires a "direct care worker" (who only needs a high school diploma) to be at least 21 years of age. Some states have promoted college students working as support staff in group homes and similar facilities since they generally represent a demographic group with some intellectual wherewithal. Students seeking degrees in social work, psychology, etc. may be very interested in working in an RTC or specialized child care setting for experience. However, since §3.5.5 requires a direct care worker to be 21, many college students would be categorically barred from such employment. DFS could consider either: a) reducing the age to 18; or 2) adopting a standard of at least 21 or, if the applicant is a college student, 18. DFS could also consider only allowing employment of 18-20 year old college students with a minimum number of credits in a social services field (e.g. social work; psychology).

Eleventh, in §3.12.5.5, DFS may wish to add a reference to referrals to the Pathways to Employment program for qualifying adolescents. See 17 DE Reg. 1070 (May 1, 2014).

Twelfth, there are several authorizations to use restraint to prevent destruction of property. See, e.g. §1.4, definition of "non-violent physical intervention strategies"; and §3.12.10.1.2. When the Legislature adopted S.B. 100 in 2013, it did not authorize use of restraints in public school educational settings based on property destruction. See 14 Del.C. §4112F(b)(2). If a child is tearing paper, throwing a pencil or eraser, or ripping buttons off his/her clothes, the DFS regulation authorizes use of physical and possibly mechanical restraint. DFS may wish to at least consider a more "restrained" authorization. For example, if the property destruction implicates a threat of bodily harm (e.g. throwing a desk or punching a wall), restraint may be justified. The DFS regulation is simply too "loose" in authorizing restraint based on any, even minor, property destruction.

Thirteenth, Section 4.7.1 can be interpreted in two ways: a) facilities must be free of lead paint hazards if they accept kids under 6 who either have an intellectual disability or severe emotional disturbance; or b) facilities must be free of lead paint hazards if they accept kids under age 6 OR with intellectual disabilities of any age OR with severe emotional disturbance of any age. SCPD suspects DFS intends the latter. SCPD recommends that the DFS regulations be more strident so there are requirements for a safe environment and requirements to remediate any lead paint hazard. In addition, the term "severely emotionally disturbed" violates Title 29 Del.C. §608 (respectful language when referring to persons with disabilities) and should be modified.

Fourteenth, in §7.0, DFS should consider adding a provision to address electronic cigarettes. See attached statement of the American Lung Association and articles describing H.B. 241 and H.B.

309.

Fifteenth, Section 3.12.10.1.4 requires persons implementing physical intervention strategies to be

"specifically trained in its use...and have current certification, if applicable." This is a rather ambiguous standard. When is a certification applicable? Does some in-house training suffice?

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Ms. Vicky Kelly
Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council
17reg1043 dscyf-dfs residential child care facility 5-29-14

August 8, 2014
HUFF POST PARENTS

Home Trampolines For Kids Are Too Dangerous, Pediatricians' Group Says

Posted: 09/24/2012 10:54 am EDT | Updated: 01/23/2014 6:58 pm EST

By: MyHealthNewsDaily Staff
Published: 09/24/2012 08:59 AM EDT on MyHealthNewsDaily

Trampolining is a dangerous activity for kids and should not be done at home, an influential group of doctors says.

The advice, announced today (Sept. 24) by the American Academy of Pediatrics (AAP), reaffirms earlier recommendations from the group regarding the use of trampolines.

In 2009, there were about 98,000 trampoline-related injuries in the U.S., resulting in 3,100 hospitalizations, according to the AAP. Although trampoline injury rates have gone down since 2004, when an estimated 111,800 injuries occurred, "the potential for severe injury remains relatively high," the AAP says.

The most common types of injuries — up to 50 percent — are to the lower extremities, including ankle sprains. Injuries to the head and neck are less common, accounting for about 10 to 17 percent of injuries, but can cause permanent neurological damage.

"Many injuries occur on the mat itself," and netting or padding don't significantly decrease the risk of injury, said Dr. Michele LaBotz, one of the authors of the new AAP policy statement. "Pediatricians need to actively discourage recreational trampoline use," LaBotz said.

Multiple people jumping on the trampoline at once increase the risk for injury, and smaller jumpers are 14 times more likely to be injured than heavier ones, the AAP says. Up to 40 percent of injuries occur from falls, and 20 percent from direct contact with the springs of the frame. Many injuries occur when an adult is watching.

Somersaults, flipping and falls put children at increased risk for injuries of the head and spine, the AAP says.

Although the rate of injury is higher among older children, younger children are more likely to experience fractures or dislocations from trampolines.

Parents who decide to have a trampoline in their home despite recommendations are advised to supervise their children on the trampoline at all times, restrict use of the trampoline to one jumper at a time, prohibit somersaults and flips, and verify that their insurance covers trampoline-related injuries, the AAP says.

Pass it on: Children should not use home trampolines.

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Bed Bugs FAQs

What are bed bugs?

Bed bugs (*Cimex lectularius*) are small, flat, parasitic insects that feed solely on the blood of people and animals while they sleep. Bed bugs are reddish-brown in color, wingless, range from 1mm to 7mm (roughly the size of Lincoln's head on a penny), and can live several months without a blood meal.

Where are bed bugs found?

Bed bugs are found across the globe from North and South America, to Africa, Asia and Europe. Although the presence of bed bugs has traditionally been seen as a problem in developing countries, it has recently been spreading rapidly in parts of the United States, Canada, the United Kingdom, and other parts of Europe. Bed bugs have been found in five-star hotels and resorts and their presence is not determined by the cleanliness of the living conditions where they are found.

Bed bug infestations usually occur around or near the areas where people sleep. These areas include apartments, shelters, rooming houses, hotels, cruise ships, buses, trains, and dorm rooms. They hide during the day in places such as seams of mattresses, box springs, bed frames, headboards, dresser tables, inside cracks or crevices, behind wallpaper, or any other clutter or objects around a bed. Bed bugs have been shown to be able to travel over 100 feet in a night but tend to live within 8 feet of where people sleep.

Do bed bugs spread disease?

Bed bugs should not be considered as a medical or public health hazard. Bed bugs are not known to spread disease. Bed bugs can be an annoyance because their presence may cause itching and loss of sleep. Sometimes the itching can lead to excessive scratching that can sometimes increase the chance of a secondary skin infection.

What health risks do bed bugs pose?

A bed bug bite affects each person differently. Bite responses can range from an absence of any physical signs of the bite, to a small bite mark, to a serious allergic reaction. Bed bugs are not considered to be dangerous; however, an allergic reaction to several bites may need medical attention.

What are the signs and symptoms of a bed bug infestation?

One of the easiest ways to identify a bed bug infestation is by the tell-tale bite marks on the face, neck, arms, hands, or any other body parts while sleeping. However, these bite marks may take as long as 14 days to develop in some people so it is important to look for other clues when determining if bed bugs have infested an area. These signs include:

- the bed bugs' exoskeletons after molting,
- bed bugs in the fold of mattresses and sheets,
- rusty–colored blood spots due to their blood-filled fecal material that they excrete on the mattress or nearby furniture, and
- a sweet musty odor.

How do I know if I've been bitten by a bed bug?

It is hard to tell if you've been bitten by a bed bug unless you find bed bugs or signs of infestation. When bed bugs bite, they inject an anesthetic and an anticoagulant that prevents a person from realizing they are being bitten. Most people do not realize they have been bitten until bite marks appear anywhere from one to several days after the initial bite. The bite marks are similar to that of a mosquito or a flea -- a slightly swollen and red area that may itch and be irritating. The bite marks may be random or appear in a straight line. Other symptoms of bed bug bites include insomnia, anxiety, and skin problems that arise from profuse scratching of the bites.

Because bed bug bites affect everyone differently, some people may have no reaction and will not develop bite marks or any other visible signs of being bitten. Other people may be allergic to the bed bugs and can react adversely to the bites. These allergic symptoms can include enlarged bite marks, painful swellings at the bite site, and, on rare occasions, anaphylaxis.

How did I get bed bugs?

Bed bugs are experts at hiding. Their slim flat bodies allow them to fit into the smallest of spaces and stay there for long periods of time, even without a blood meal. Bed bugs are usually transported from place to place as people travel. The bed bugs travel in the seams and folds of luggage, overnight bags, folded clothes, bedding, furniture, and anywhere else where they can hide. Most people do not realize they are transporting stow-away bed bugs as they travel from location to location, infecting areas as they travel.

Who is at risk for getting bed bugs?

Everyone is at risk for getting bed bugs when visiting an infected area. However, anyone who travels frequently and shares living and sleeping quarters where other people have previously slept has a higher risk of being bitten and or spreading a bed bug infestation.

How are bed bugs treated and prevented?

Bed bug bites usually do not pose a serious medical threat. The best way to treat a bite is to avoid scratching the area and apply antiseptic creams or lotions and take an antihistamine. Bed bug infestations are commonly treated by insecticide spraying. If you suspect that you have an infestation, contact your landlord or professional pest control company that is experienced with treating bed bugs. The best way to prevent bed bugs is regular inspection for the signs of an infestation.

This information is not meant to be used for self-diagnosis or as a substitute for consultation with a health care provider. If you have any questions about the parasites described above or think that you may have a parasitic infection, consult a health care provider.

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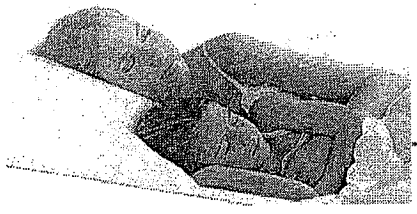

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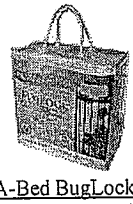

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Bed Bugs Info: Since everyone is at risk of inadvertently bringing bed bugs into their home, the number one prevention step is to encase all your mattresses and box springs. Why do you need encasements if you do not have bed bugs? Encasements take away the bed bugs favorite hiding and breeding ground. Without encasements, an infestation can go undetected for weeks, and it is very likely that the bed bugs may spread to any adjacent rooms.

With Protect-A-Bed encasements, bed bugs will be unable to hide and lay eggs in your mattress or box spring and forcing them to crawl up the sides of the bed at night to feed. The white color of the encasements makes it very easy to see the black fecal spots they leave after feeding. You are more likely to notice an infestation much quicker when using encasements and will be able to call an exterminator right away when there may be only a few bed bugs. You can't rely on finding itchy bites right away as a warning sign because many people do not react to the bites initially. Encasements protect your investment in bedding and take away the bed bugs favorite hiding spots.

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