



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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**MEMORANDUM**

DATE: May 18, 2015

TO: The Honorable Michael Barbieri

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

RE: H.B. 111 (Administration of Medications)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 111 which would update the Delaware Code to clearly define the level of medication administration permitted by unlicensed personnel and the settings in which they can administer medications. As you know, SCPD previously provided you with preliminary comments via email on May 6<sup>th</sup> and received a response from the Division of Profession Regulation (DPR) on May 7<sup>th</sup> (see attached). While SCPD appreciates DPR's response, Council reviewed the bill again at its May 14<sup>th</sup> Policy and Law meeting and still has concerns with the proposed legislation consistent with the following observations.

First, the sponsors may wish to reconsider the amendment which substitutes the term "Delacare" regulations for "Delaware" regulations at line 11. The term "Delacare" regulations has historically referred to DSCY&F regulations applicable to the following facilities: 1) family child care homes; 2) large family child care homes; 3) early care and education and school-age centers; and 4) residential and day treatment program. These 4 facilities are subject to 4 corresponding sets of regulations, 9 DE Admin Code Parts 101, 103, 104 and 105. The term is used in the DSCY&F website to refer to regulations in the above contexts. See attachment. The term also appears sporadically in the actual regulations. See, e.g., 9 DE Admin Code 103.7.1. Administration of medications for 3 of the 4 entities covered by the Delacare regulations is covered by lines 27-32 of the bill. The only "Delacare" entity covered by new §1932 is "residential child care facilities and Day Treatment Programs" defined at 9 DE Admin Code 105 (line 90). None of the other entities described in §1932 are covered by the Delacare regulations. The conflict is that the amended definition of "Limited Lay Administration of Medications (LLAM)" appears to limit it to conformity with Delacare regulations while the actual LLAM statute authorizes administration in 4 of 5 entities not covered by the Delacare regulations.

Second, lines 62-65 authorize trained individuals to assist with medications on field trips and off-campus activities. This provision was added to the Code through S.B. 257 in 2012. The sponsors may wish to consult the Department of Education (DOE) to assess the value of an amendment at line 62. The authorization to have staff "assist" (but not administer) medications is ostensibly limited to schools serving students "in kindergarten through grade 12". While some students with disabilities are eligible for public

education at birth (e.g. deaf-blind; blind), most are eligible upon their third birthday. See Title 14 Del.C. §1703(d)(1) and §3101(1). Students with disabilities have a right to participate in field trips with accommodations. See e.g., attached Delaware Attorney General's Opinion, "Nurse in Attendance on Field Trips" (January 20, 1994). Therefore, it may be beneficial to amend line 62 to cover pre-kindergarten students. The sponsors could simply amend line 62 by substituting "pre-kindergarten" for "kindergarten".

Third, SCPD notes that the renumbering of §1921(a)(18) and (19) at lines 66-71 could affect an overlapping reference in H.B. 110, line 52. Hopefully, the Code Revisers would identify the overlap and conform the references.

Fourth, the following description (lines 91-92) of settings in which LLAM can occur is problematic:

(3) Foster homes, group homes or adult day habilitation centers for individuals who are developmentally disabled regulated by the State under Chapter 55 of Title 16.

There are multiple problems with this reference:

A. The term "developmentally disabled" is inconsistent with Title 29 Del.C. §608(b).

B. Title 16 Del.C. Chapter 55 does not regulate foster homes, group homes or adult day habilitation centers.

C. The term "adult day habilitation centers" is limiting. This is a major concern. Consistent with the attached January 2015 DDDS census, of 2,152 clients with day services, only 787 are in day habilitation. The balance are served in pre-vocational and supported employment settings. As a result, LLAM will only be available in day-hab settings which provides a disincentive for individual to be served in pre-vocational settings and supported employment. Providers will be deterred from allowing clients to be employed off-site if they need medication during the work-day. This is inconsistent with Title 16 Del.C. §§743-744 which requires that policies support vocational opportunities in integrated settings.

D. The terms "foster homes" and "group homes" are limiting. They would not encompass "supported living" settings. See attached DDDS census listing 34 individuals in such settings. Some clients may benefit from "drop-in" support consisting of assistance with administration of medication at least during a transition period upon initial residency.

E. Although children served in AdvoServ (regulated by DSCY&F) would be covered by line 90, adults served in AdvoServ (regulated by DLTCRP under 16 DE Admin Code 3320) may not be covered by the reference.

SCPD recommends consideration of the following substitute and renumbering of Pars. (4) and (5) as (5) and (6) respectively:

(3) Group homes, foster homes, or supported living settings for individuals with developmental disabilities either regulated by the State under Chapter 11 of Title 16 or operating through contractual arrangement with the Division of Developmental Disabilities Services.

(4) Supported employment, vocational, pre-vocational, and day habilitation settings regulated or operating through contractual arrangement with the Division of Developmental Disabilities Services.

In assessing the above substitute, we note that the terms “supported living, supported employment, foster care, vocational, and day habilitation are used in the DDDS enabling statute [29 Del.C. §7909A]. Council also notes that foster homes with only one DDDS client are not licensed pursuant to 16 Del.C. §1102(4) but would be under contractual arrangement with DDDS. The term “group home” is broader than “neighborhood home” in recognition of AdvoServ using some group homes that are not licensed as neighborhood homes. We used the term “regulated by the State under Chapter 11 of Title 16” since that is the language used in lines 90, 96, and 97. The sponsors could consider amending all references to “licensed by the State under Chapter 11 of Title 16”. Finally, SCPD notes there are very few [e.g. 16 DE Admin Code 3320.3.0, definition of “resident”] published DHSS regulations applicable to day programs but, Council surmises, there are some unpublished regulatory or contractual standards imposed by DDDS.

Fifth, SCPD believes the bill should incorporate cross-disability based provisions given the Americans with Disabilities Act (ADA), Olmstead decision and Governor Markell’s community-based and employment initiatives.

Finally, SCPD would appreciate receiving a copy of any draft amendment for review prior to introduction.

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

cc: The Honorable Bethany Hall-Long  
Ms. Jill Rogers  
Ms. Deborah Gottschalk  
Ms. Maryann Mieczkowski  
Ms. Mary Peterson  
Ms. Jane Gallivan  
Mr. David Mangler  
Ms. Pamela Zickafoose  
Ms. Pamela Tyranski  
Mr. Brian Hartman  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

HB 111 administration of medications 5-18-15

## Hodges, Kyle (DSHS)

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**From:** Mangler, David (DOS)  
**Sent:** Thursday, May 07, 2015 9:24 AM  
**To:** Hodges, Kyle (DSHS); Barbieri, Michael (LegHall)  
**Cc:** Brian Hartman (bhartman@declasi.org); Gottschalk, Deborah I (DHSS); Mieczkowski, Maryann (K12); Peterson, Mary (DHSS); Gallivan, Jane (DHSS); Maichle, Pat (DSHS); Strauss, Wendy (K12); Zickafoose, Pamela C (DOS); 'Pamela Tyranski'  
**Subject:** RE: HB 111 (Administration of Medications)

Kyle – thank you for sharing this. It was forwarded to Pam Zickafoose, the Executive Director for the Board of Nursing as well as the Chair of the Board’s Practice & Education Committee, Pam Tyranski.

The Board’s and the AWSAM Committee’s work was directed to accomplish the goal of producing updated language around the existing statute and associated Rules & Regulations to be consistent with other sections and current practice, to resolve obsolete provisions, to update the curriculum to current practice and science, and to produce the supporting updated documents for use by licensed entities for adoption in those specified sites – essentially a “clean it up” assignment.

The Board was not instructed to expand its scope, i.e., the Board of Nursing has no authority to expand the scope of other areas covered under the current definitions of entities approved in the current AWSAM (Assistance with Self-Administration of Medication) language. The Board of Nursing’s scope does not extend to employers, nor should it. Please recall that the AWSAM portion of Chapter 19 is “odd” in that it is an expansive description, along with detailed Rules & Regulations, around a licensure exemption and as such is in no way regulating unlicensed assistive persons’ work. The expansive language and associated Rules make it appear that the Board of Nursing has authority over and regulates unlicensed assistive persons – it does not.

The changes contained in the House Amendment 1 were done purposeful and provided by the respective individuals representing the various referenced statutes and/or Regulations. Again, purposefully not expanding the scope of the Board’s authority.

Language referencing schools and the Department of Education continued to be included in HB111, including any new language, with a great deal of reluctance as the Board found sufficient and abundant language existing in other statutes and Regulations outside of Chapter 19 of Title 24 that more than adequately covered situations in those settings. It was as a result of a coalition of parents with diabetic children threatening non-support of the Bill that resulted in including language for schools, field trips, etc. that will ultimately be statutorily redundant. DOE representation was present during the clean-up work to create the draft bill that has become HB 111. Further, the language referencing schools was left as it was at the request of the DOE representative on the Committee.

Thank you.

David C. Mangler, MS, RN

Director

**Delaware Department of State**

**Division of Professional  
Regulation**

Phone: (302) 744-4501

Fax: (302) 739-2711



*"Delivering Innovative and Responsive Services Through  
Individual & Team Initiative, Creativity and Leadership."*

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**From:** Hodges, Kyle (DSHS)

**Sent:** Wednesday, May 06, 2015 5:29 PM

**To:** Barbieri, Michael (LegHall)

**Cc:** Brian Hartman (bhartman@declasi.org); Gottschalk, Deborah I (DHSS); Mieczkowski, Maryann (K12); Peterson, Mary (DHSS); Mangler, David (DOS); Gallivan, Jane (DHSS); Maichle, Pat (DSHS); Strauss, Wendy (K12)

**Subject:** HB 111 (Administration of Medications)

Rep. Barbieri – below and attached (PDF file with attachments) are observations and recommendations that you may want to consider for an amendment to H.B. 111. I have copied Divisions and Departments that are impacted by H.B. 111 and/or our recommendations. Thank you for your efforts regarding this issue and consideration of our comments.

David – you may want to forward to Robert Contino who is listed on the DPR website as President of the Board of Nursing. I do not have contact information for him.

## MEMORANDUM

DATE: May 6, 2015

TO: The Honorable Michael Barbieri

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

RE: H.B. 111 (Administration of Medications)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 111 which will update the Delaware Code to define the level of medication administration permitted by unlicensed personnel and the settings in which they can administer medications. SCPD has the following observations and recommendations for your consideration.

First, you may wish to reconsider the amendment which substitutes the term “Delacare” regulations for “Delaware” regulations at line 13. The term “Delacare” regulations has historically referred to DSCY&F regulations applicable to the following facilities: 1) family child care homes; 2) large family child care homes; 3) early care and education and school-age centers; and 4) residential and day treatment program. These 4 facilities are subject to 4 corresponding sets of regulations, 9 DE Admin Code Parts 101, 103, 104 and 105. The term is used in the DSCY&F website to refer to regulations in the above contexts. See attachment. The term also appears sporadically in the actual regulations. See, e.g., 9 DE Admin Code 103.7.1. Administration of medications for 3 of the 4 entities covered by the Delacare regulations is covered by lines 27-32 of the bill. The only “Delacare” entity covered by new §1932 is “residential child care facilities and Day Treatment Programs” defined at 9 DE Admin Code 105 (line 90). None of the other entities described in §1932 (lines 91-98) are covered by the Delacare regulations. The conflict is that the amended definition of “Limited Lay Administration of Medications (LLAM)” appears to limit it to conformity with Delacare regulations while the actual LLAM statute authorizes administration in 4 of 5 entities not covered by the Delacare regulations.

Second, lines 62-65 authorize trained individuals to assist with medications on field trips and off-campus activities. This provision was added to the Code through S.B. 257 in 2012. You may wish to consult the Department of Education to assess the value of an amendment at line 62. The authorization to have staff “assist” (but not administer) medications is ostensibly limited to schools serving students “in kindergarten through grade 12”. While some students with disabilities are eligible for public education at birth (e.g. deaf-blind; blind), most are eligible upon their third birthday. See Title 14 Del.C. §1703(d)(1) and §3101(1). Students with disabilities have a right to participate in field trips with accommodations. See e.g., attached Delaware Attorney General’s Opinion, “Nurse in Attendance on Field Trips” (January 20, 1994). Therefore, it may be beneficial to amend line 62 to cover pre-kindergarten students. The sponsors could simply amend line 62 by substituting “pre-kindergarten” for “kindergarten”.

Third, SCPD notes that the renumbering of §1921(a)(18) and (19) at lines 66-71 could affect an overlapping reference in H.B. No. 110, line 52. Hopefully, the Code Revisers would identify the overlap and conform the references.

Fourth, the following description (lines 93-95) of settings in which LLAM can occur is problematic:

(3) Foster homes, group homes or adult day habilitation centers for individuals who are developmentally disabled regulated by the State under Chapter 55 of Title 16.

There are multiple problems with this reference:

A. The term “developmentally disabled” is inconsistent with Title 29 Del.C. §608(b).

B. Title 16 Del.C. Chapter 55 does not regulate foster homes, group homes or adult day habilitation centers.

C. The term “adult day habilitation centers” is limiting. This is a major concern. Consistent with the attached January 2015 DDDS census, of 2,152 clients with day services, only 787 are in day habilitation. The balance are served in pre-vocational and supported employment settings. As a result, LLAM will only be available in day-hab settings which provides a disincentive for individuals to be served in pre-vocational settings and supported employment. Providers will be deterred from allowing clients to be employed off-site if they need medication during the work-day. This is inconsistent with Title 16 Del.C. §§743-744 which requires that policies support vocational opportunities in integrated settings.

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SCPD recommends consideration of the following substitute and renumbering of Pars. (4) and (5) as (5) and (6) respectively:

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In assessing the above substitute, SCPD notes that the terms “supported living, supported employment, foster care, vocational, and day habilitation are used in the DDDS enabling statute [29 Del.C. §7909A]. Council also notes that foster

homes with only 1 DDDS client are not licensed pursuant to 16 Del.C. §1102(4) but would be under contractual arrangement with DDDS. The term "group home" is broader than "neighborhood home" in recognition of AdvoServ using some group homes that are not licensed as neighborhood homes. SCPD used the term "regulated by the State under Chapter 11 of Title 16" since that is the language used in lines 90, 96, and 97". You could consider amending all references to "licensed by the State under Chapter 11 of Title 16". Finally, SCPD notes there are no published DHSS regulations applicable to day programs but, Council surmises, there are some unpublished regulatory or contractual standards imposed by DDDS.

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

cc: Ms. Jane Gallivan, DDDS  
Ms. Deborah Gottschalk, DHSS  
Ms. Mary Peterson, DLTCRP  
Ms. MaryAnn Mieczkowski, DOE  
Mr. David Mangler, DPR  
Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

HB 111 admin of meds 5-6-15


Kyle Hodges  
State Council for Persons with Disabilities  
410 Federal Street – Suite 1  
Dover, DE 19901  
Phone: (302) 739-3620  
Email: [Kyle.Hodges@state.de.us](mailto:Kyle.Hodges@state.de.us)  
Website: <http://scpd.delaware.gov>

DeIAWARE DisABILITY HUB (<http://www.deldhub.com>)

For Centers

# For Centers

Part 101

Click  to view or hide more details.

## Regulations

\* Applicants are required to follow DELACARE: Rules for Early Care and Education and School-Age Centers to operate a licensed center.

Delacare: Rules for Early Care and Education and School-Age Centers (/pdfs/occl regulations plain jan 2007.pdf)

- Administrative Code  
(<http://regulations.delaware.gov/AdminCode/title9/Division of Family Services Office of Child Care Licensing/100/101.shtml#TopOfPage>)
- Modifications During Emergencies  
(/pdfs/occl ermodifyrules ECESAC April2010.pdf)
- Guidance and Technical Assistance Bulletins
  - Bed Covering Items  
(/pdfs/occl gtab ECESAC 2013-2 bedcover.pdf)
  - Forged Document  
(/occl/pdf/occl gtab ECESAC 2012-1 forgeddocument s.pdf)
  - Nutrition  
(/pdfs/occl gtab ECESAC 2012-2 nutrition.pdf)
  - Safe Sleep Environment for Infants  
(/pdfs/occl gtab ECESAC 2013 11 SafeSleepEnvironmentInfants.pdf)
    - Preventing Sleep-Related Infant Death  
(/pdfs/occl gtab SafeSleepingProviderBrief 2013 .pdf)
  - Training Hours  
(/pdfs/occl gtab ECESAC 2013-1 traininghours.pdf)
  - TB Requirement Change (/occl/pdf/bulletin-center-TB-RequirementChange-2013-12.pdf)

Delacare: Requirements for Day Care Centers  
(/pdfs/occl reqs dcc.pdf)

Former Requirements - some requirements may still be applicable to Centers licensed prior to January 1, 2007

**Division of Family Services(/fs/fs.shtml)**

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**Office of Child Care Licensing(/occl/occl.shtml)**

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For Providers  
(/occl/providers.shtml)

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Start a Child Care Business  
(/occl/business.shtml)

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Careers in Child Care  
(/occl/careers.shtml)

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Regulations and Exemptions  
(/occl/regs-exempts.shtml)

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For Parents  
(/occl/parents.shtml)

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Search for Child Care  
(<http://www.apex01.kids.delaware.gov:8081/occl/>)

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Make a Complaint  
(/occl/complaint.shtml)

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FAQs (/occl/faqs.shtml)




DeIAWARE DisABILITY HUB (<http://www.deldhub.com>)


## For Family Child Care

# For Family Child Care

Part 103

Click  to view or hide more details.

### Regulations

\* Family child care providers are required to follow DELACARE: Rules for Family Child Care Homes to operate a licensed family child care home. 

Delacare: Rules for Family Child Care Homes  
([../pdfs/occl DelacareRule FCC Jan2009 En.pdf](http://pdfs.occl.delaware.gov/occl/DelacareRule_FCC_Jan2009_En.pdf))

- Administrative Code  
(<http://regulations.delaware.gov/AdminCode/title9/Division of Family Services Office of Child Care Licensing/100/103.shtml#TopOfPage>)
- Modifications During Emergencies  
([/pdfs/occl ermodifyrules FCCH April2010.pdf](http://pdfs.occl.delaware.gov/occl/ermodifyrules_FCCH_April2010.pdf))
- Guidance and Technical Assistance Bulletins
  - Bed Covering Items  
([/pdfs/occl gtab FCCH 2013-2 bedcover.pdf](http://pdfs.occl.delaware.gov/occl/gtab_FCCH_2013-2_bedcover.pdf))
  - Household Members  
([/pdfs/occl gtab FCCH 2012-1 householdmembers.pdf](http://pdfs.occl.delaware.gov/occl/gtab_FCCH_2012-1_householdmembers.pdf))
  - Training Hours  
([/pdfs/occl gtab FCCH 2013-1 traininghours.pdf](http://pdfs.occl.delaware.gov/occl/gtab_FCCH_2013-1_traininghours.pdf))
  - Safe Sleep Environment for Infants  
([/pdfs/occl gtab FCCH 2013 11 SafeSleepEnvironmentInfants.pdf](http://pdfs.occl.delaware.gov/occl/gtab_FCCH_2013_11_SafeSleepEnvironmentInfants.pdf))
    - Preventing Sleep-Related Infant Death  
([/pdfs/occl gtab SafeSleepingProviderBrief 2013 .pdf](http://pdfs.occl.delaware.gov/occl/gtab_SafeSleepingProviderBrief_2013.pdf))
  - TB Requirement Change ([/occl/pdf/bulletin-fcc-TB-RequirementChange-2013-12.pdf](http://occl.pdf/bulletin-fcc-TB-RequirementChange-2013-12.pdf))

Delacare: Reglas par las guarderías y hogares de cuidados infantiles  
([../pdfs/occl DelacareRule FCC Jan2009 Sp.pdf](http://pdfs.occl.delaware.gov/occl/DelacareRule_FCC_Jan2009_Sp.pdf))

Division of Family Services([fs/fs.shtml](http://fs/fs.shtml))

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Office of Child Care Licensing([occl/occl.shtml](http://occl/occl.shtml))

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For Providers  
([occl/providers.shtml](http://occl/providers.shtml))

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Start a Child Care Business  
([occl/business.shtml](http://occl/business.shtml))

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Careers in Child Care  
([occl/careers.shtml](http://occl/careers.shtml))

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Regulations and Exemptions  
([occl/regs-exempts.shtml](http://occl/regs-exempts.shtml))

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For Parents  
([occl/parents.shtml](http://occl/parents.shtml))

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Search for Child Care  
(<http://www.apex01.kids.delaware.gov:8081/occl/>)

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Make a Complaint  
([occl/complaint.shtml](http://occl/complaint.shtml))

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FAQs ([occl/faqs.shtml](http://occl/faqs.shtml))

DeIAWARE DisABILITY HUB (<http://www.deldhub.com>)


## For Large Family Child Care

# For Large Family Child Care

Part 104

Click  to view or hide more details.

### Regulations

\* Large family child care providers are required to follow **DELACARE: Rules for Large Family Child Care Homes** to operate a licensed large family child care home. 

[Delacare: Rules for Large Family Child Care Homes \(/pdfs/occl/DelacareRule\\_LFCC\\_Jan2009\\_En.pdf\)](#)

- [Administrative Code \(http://regulations.delaware.gov/AdminCode/title9/Division of Family Services Office of Child Care Licensing/100/104.shtml#TopOfPage\)](#)
- [Modifications During Emergencies \(/pdfs/occl/ermodifyrules\\_LFCCH\\_April2010.pdf\)](#)
- [Guidance and Technical Assistance Bulletins](#)
  - [Bed Covering Items \(/pdfs/occl/gtab\\_LFCCH\\_2013-2\\_bedcover.pdf\)](#)
  - [First Aid \(/pdfs/occl/gtab\\_LFCCH\\_2012-2\\_cpfirstaid.pdf\)](#)
  - [Household Members \(/pdfs/occl/gtab\\_LFCCH\\_2012-1\\_householdmembers.pdf\)](#)
  - [Safe Sleep Environment for Infants \(/pdfs/occl/gtab\\_LFCCH\\_2013\\_11\\_SafeSleepEnvironmentInfants.pdf\)](#)
    - [Preventing Sleep-Related Infant Death \(/pdfs/occl/gtab\\_SafeSleepingProviderBrief\\_2013.pdf\)](#)
  - [Training Hours \(/pdfs/occl/gtab\\_LFCCH\\_2013-1\\_traininghours.pdf\)](#)
  - [TB Requirement Change \(/occl/pdf/bulletin-lfcc-TB-RequirementChange-2013-12.pdf\)](#)

[Delacare: Requirements for Large Family Child Care Homes \(/pdfs/occl/reqs\\_lfch.pdf\)](#)

Former Requirements - some requirements may still be applicable to Family Child Care Homes licensed prior to January 1, 2009

<a href="#">Division of Family Services(/fs/fs.shtml)</a>
<a href="#">Office of Child Care Licensing(/occl/occl.shtml)</a>
<a href="#">For Providers (/occl/providers.shtml)</a>
<a href="#">Start a Child Care Business (/occl/business.shtml)</a>
<a href="#">Careers in Child Care (/occl/careers.shtml)</a>
<a href="#">Regulations and Exemptions (/occl/regs-exempts.shtml)</a>
<a href="#">For Parents (/occl/parents.shtml)</a>
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<a href="#">Make a Complaint (/occl/complaint.shtml)</a>
<a href="#">FAQs (/occl/faqs.shtml)</a>


DeIAWARE DisABILITY HUB (<http://www.deldhub.com>)

## For Residential and Day Treatment

# For Residential and Day Treatment


For Residential Child Care Facilities and Day Treatment Programs

Part 105

Click  to view or hide more details.

### Regulations

\*


Applicants are required to follow DELACARE: Requirements for Residential and Day Treatment Programs to operate a licensed facility. 

Delacare: Requirements for Residential Child Care Facilities and Day Treatment Programs (/pdfs/occl\_reqs\_rcdtdf.pdf)

- Administrative Code  
(<http://regulations.delaware.gov/AdminCode/title9/Division of Family Services Office of Child Care Licensing/100/105.shtml#TopOfPage>)

Back to top

### Forms

These forms are used for centers and will help you to follow DELACARE Rules. 

### Post a Job Opening

If you wish to hire staff, create a free job posting (</forms/occl-jobposting.shtml>). Your posting will automatically be deleted after 4 weeks.

### Useful Links

These websites (</occl/useful-links.shtml>) may be used to enhance your program, provide you with information, and help answer questions you may have.

 (</index.shtml>)

Division of Family Services(/fs/fs.shtm)
Office of Child Care Licensing(/occl/occl)
<u>For Providers</u> (/occl/providers.shtml)
<u>Start a Child Care Business</u> (/occl/business.shtml)
<u>Careers in Child Care</u> (/occl/careers.shtml)
<u>Regulations and Exemptions</u> (/occl/regs-exempts.shtml)
<u>For Parents</u> (/occl/parents.shtml)
<u>Search for Child Care</u> ( <a href="http://www.apex01.kids.delaware.gov:8081/occl/">http://www.apex01.kids.delaware.gov:8081/occl/</a> )
<u>Make a Complaint</u> (/occl/complaint.shtml)
<u>FAQs</u> (/occl/faqs.shtml)

ATTORNEY GENERAL'S OPINION - JANUARY 20, 1994

Letter to Pascale D. Forgione, Superintendent  
Delaware Department of Public Instruction

Re: Nurse in Attendance on Field Trips

"You have asked whether disabled children must be permitted to participate in school field trips and whether a nurse must be in attendance under any circumstances. You have also asked whether sick children must be permitted to participate in field trips and whether a nurse must be in attendance under any circumstances. The right of a disabled child to receive necessary medical services extends to non-scholastic activities as well as academic activities. If the disabled child requires a nurse to administer medications during the academic day, that same assistance should be afforded as an accommodation to that child while on a field trip. As to the second question, neither federal nor Delaware law specifically outlines the rights of children in school who are simply sick and generally sick children should be allowed on trips except under certain circumstances as discussed below.

As to disabled children, Section 504 of the Rehabilitation Act of 1973 as well as the Americans With Disabilities Act mandates that reasonable accommodations to the physical or mental limitations of any otherwise qualified disabled individual be made for that individual by a public entity, unless the entity can demonstrate the accommodation when imposed is an "undue hardship on the operation of its programs." 45 C.F.R. §84.12 (a).

The case law amply demonstrates that disabled children are entitled to receive necessary medical services while in school. Irving Independence School District v. Tatro, 468 U.S. 883 (1984). Further, other courts have held that schools must provide staff with the training to administer medical services and to assist the disabled child, if the need arises. Department of Education v. D., 531 F. Supp. 517 (D. Hawaii 1982); Department of Education, State of Hawaii v. Catherine D., 727 F. 2d 809 (9th Cir. 1983). Moreover, the right of a disabled child to receive necessary medical services extends to non-scholastic activity as well. 34 C.F.R. §104.37 (a) (2).

If disabled children can participate in field trips when provided with the same accommodations to which they are entitled at school, this accommodation must be offered to them. Quaker Valley (Pa) School District Complaint No. 03861077 Education for the Handicapped Law Report, 352:235 (Supp. 186 February 13, 1987.) A reasonable accommodation includes providing a nurse on school trips and other school outings. 45 C.F.R. §84-12(a).

As to the second question regarding sick children, federal and state law does not deny access to academic and school related activities for sick children but for when they suffer from contagious illnesses such as diphtheria, measles, scarlet fever or smallpox. This raises the question as to whether sick children can be assisted with medication while in school and on field trips by someone other than a licensed nurse. It has been argued that the assistance of medication is the practice of nursing. We do not believe that necessarily to be so. Accordingly, a parent should be permitted to designate a care provider to assist her/his sick child. A parent can also authorize a sick child to care for themselves.

The mere assistance in taking medications is not the practice of nursing under 24 Del. C. Ch. 19. Twenty-four Del. C. §1902 (b) (6) states that a registered nurse execute regimens which include the dispensing and administration of medications. Twenty-four Del. C. §1902 (f) defines the administration of medication as a entire "process" whereby a nurse verifies the prescription drug order, removes the dose from a previously dispensed, properly labeled container, assesses the patient's status to assure it is given as prescribed to the proper patient and that no known contraindications to the drug or the dosage exists; gives a dose to the patient; then records the time and dose given. Further, under this statute the nurse would check the patient following the administration of the medication for possible side effects. *Id.*

If the parent of a sick child consents to that child self-administering medication or designates someone to assist with medications, that child should be allowed to participate in school field trips and a nurse need not be provided as there is no mandate under either federal or state law to accommodate a sick child. However, a parent cannot designate a care giver to act in such a way that the care giver is administering medicine as described above. Parents can consent to a care giver assisting with medications.

Assistance with medications' is defined in the nursing statute as follows:

(g) "Assistance with medications" means the designated care provider assist the patient in the self-administration of a drug, provided that the medication is in the original container, with proper label and direction. The designated care provider must hold the container for the patient, assist patient in taking the medication." 24 Del. C. §1902.

This statute does not include the assistance with medication as a practice to be performed only by nurses.

To conclude, if a child is disabled, the same accommodation afforded in an academic setting must be available on field trips as the child has a right under federal law to participate in non-academic and extracurricular activities. If that accommodation is a nurse, then the nurse must be in attendance on a field trip.

A nurse need not accompany sick children on field trips as parents can consent to self-administration of medication or appoint a designated care giver if necessary. However, the designated care giver must not take up the activities which would be considered administration of medication under the Nursing Act as described above.

Malcolm S. Cobin  
Assistant State Solicitor

Loretta G. LeBar  
Deputy Attorney General

Approved: Michael F. Foster  
State Solicitor

Division of Developmental Services  
MONTHLY CENSUS

Source: Division of Developmental Disabilities Services Client Registry System  
January 2015



*Number as of the  
last day of the month*

A. INSTITUTIONAL PLACEMENTS	NEW CASTLE	KENT	SUSSEX	OUT OF STATE
MARY ANN COVERDALE CENTER	0	0	54	0
102 WAPLES WAY (COTTAGE)	0	0	1	0
PSYCHIATRIC PLACEMENTS	2	0	0	0
NURSING HOMES	49	7	7	1

54
1
2
64
<b>A.</b> 121

B. COMMUNITY SERVICES/ RESIDENTIAL PLACEMENTS	NEW CASTLE	KENT	SUSSEX
NEIGHBORHOOD (GROUP) HOMES/CLAs	571	144	178
SHARED LIVING	41	32	25
SUPPORTED LIVING	12	5	17
OUT OF STATE	16	0	1
ETLA (Emergency Temporary Living Arrangement)	5	1	3

893
98
34
17
9
<b>B.</b> 1051

C. FAMILY SUPPORT	NEW CASTLE	KENT	SUSSEX
	1587	630	677


<b>C.</b> 2,894
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**TOTAL CENSUS (A+B+C)**

**4066**



Delaware Division of Developmental Disabilities Services Monthly Census Data



January, 2015

DDDS DAY SERVICES	NEW CASTLE	KENT	SUSSEX	QUINCY	TOTAL
DAY HABILITATION	168	182	174	64	787
PRE-VOCATIONAL SERVICE	366	26	65	0	695
SUPPORTED EMPLOYMENT	394	34	96	0	524
SUPPORTED EMPLOYMENT AND PV or DH	73	26	47	0	146
					<b>TOTAL</b> 2152

SPECIAL SCHOOL GRADUATE NEW DAY SERVICE ADMISSIONS \*\*

0

\* Please note that these individuals are already counted in the Family Support count.  
 \*\* Please note that these individuals are already counted in the Day Service totals above.