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# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## Division of Health Care Quality

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119  
(16 Del.C. §1119C & 29 Del.C. §10119)  
16 DE Admin. Code 4402

## EMERGENCY

### EMERGENCY SECRETARY'S ORDER

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

16 DE Admin. Code 4402 Regulations for Adult Day Care Facilities

### 4402 Regulations for Adult Day Care Facilities

#### AUTHORITY

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 DE Admin. Code 4402 Regulations for Adult Day Care Facilities. Additionally, 29 Del.C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del.C. §10115. Moreover, 16 Del.C. §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for adult day care facilities.

#### REASON FOR THE EMERGENCY ORDER

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

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 **DE Reg.** 23 (07/01/21).

In addition, adult day care facility staff must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 16.0.

### **EFFECTIVE DATE OF ORDER**

It is hereby ordered, that 16 **DE Admin. Code** 4402 Regulations for Adult Day Care Facilities, specifically, Section 16.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

#### **16.0 Infection Control**

##### **16.4 Specific Requirements for COVID-19**

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

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

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

16.5 The adult day care facility shall amend their policies and procedures to include:

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

16.5.2 Staff refusals to participate in COVID-19 testing;

16.5.3 Staff refusals to authorize release of testing results or vaccination status to the adult day care facility;

16.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

16.5.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

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

### **PETITION FOR RECOMMENDATIONS**

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

### **ORDER**

It is hereby ordered, this 10th day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 4402 Regulations for Adult Day Care Facilities, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS

Cabinet Secretary

### **4402 Regulations for Adult Day Care Facilities**

#### **1.0 Purpose**

The regulations for Adult Day Care Facilities apply to any program that provides health, social, and related support services as described in these regulations for four or more functionally impaired adults who reside in the community and are in need of these services as determined by a pre-admission assessment. Adult Day Care facilities do not include programs intended exclusively or primarily to provide activities or training to persons with developmental disabilities or mental illness. These services are provided to adults for a period of less than 12 hours during the day and are provided in a setting other than a participant's home or the residence of the facility operator.

**6 DE Reg. 83 (07/01/02)**

#### **2.0 Glossary Of Terms**

**"Accessible"** means an environment which allows an individual using a wheelchair or support appliance to enter, exit and move about freely with no assistance from another person.

**"Activities of Daily Living"** means the tasks for selfcare which are performed either independently or with supervision or assistance. Activities of daily living include ambulating, transferring, grooming, bathing, dressing, eating, and toileting.

**"Adult"** means any person 18 years of age or older.

**“Aide/Assistant/Technician”** means individuals who provide care that does not require the judgment and skills of a licensed nurse. The care may include but is not limited to the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being for the person(s) to whom they are providing care.

**“Department”** means the Delaware Department of Health and Social Services.

**“Dietitian”** means a person currently registered by the Commission on Dietetic Registration of the American Dietetic Association and/or a Certified Dietitian/Nutritionist in the State of Delaware.

**“Functionally Impaired Adult”** means an adult who requires supervision due to cognitive or physical impairment or who cannot independently perform one or more Activities of Daily Living.

**“Nursing Services”** means those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of functionally impaired adults which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: irrigations; catheterization; application of dressings; supervision of special diets; objective observation of changes in participant condition as a means of determining required nursing care and the need for further medical diagnosis and treatment; special procedures contributing to rehabilitation; administration of medication and carrying out treatments prescribed by a physician or an Advanced Practice Nurse in accordance with the Rules and Regulations related to the law regulating the practice of nursing in Delaware which involve a like level of complexity and skill in administration.

**“Participant”** means an individual receiving services in an adult day care facility.

**“Representative”** means a person acting on behalf of the participant under Delaware law.

## **6 DE Reg. 83 (07/01/02)**

### **3.0 Licensing Requirements And Procedures**

3.1 No person shall establish, conduct or maintain in this State any adult day care facility without first obtaining a license from the Department of Health and Social Services.

#### **3.1.1 Issuance of Licenses**

##### **3.1.1.1 Provisional License:**

3.1.1.1.1 A provisional license shall be granted, for a period of less than one year, to all agencies/facilities:

3.1.1.1.1.1 which have completed the application process pending an on-site survey during the first ninety (90) days of operation; or,

3.1.1.1.1.2 which have experienced a change of ownership (CHOW), have completed the application process, and are pending an on-site survey during the first ninety (90) days of operation; or,

3.1.1.1.1.3 which are not in substantial compliance with these rules and regulations.

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

3.1.1.1.3 A provisional license may not be renewed unless a Plan for Corrective Action has been approved by the Department and implemented by the agency/facility.

3.1.1.2 License:

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

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

3.1.1.2.3 Agencies/Facilities must apply for licensure at least thirty (30) days prior to the expiration date of the license.

3.1.1.2.4 Agencies/Facilities which have not been inspected/surveyed during a licensure year may apply for and be issued a new license until an inspection/survey is completed.

3.1.1.2.5 A license may not be issued to an agency/facility which is not in substantial compliance with these regulations and/or whose deficient practices present an immediate threat to the health and safety of its patients/clients.

3.1.2 Suspension or Revocation of Licenses

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

3.1.2.1.1 Violation of any of the provisions of these rules and regulations.

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

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

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

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

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

3.1.2.3 The holder of the license may, within such 10-day period, give written notice of their desire to have a hearing. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Title 29, Chapter 101 of the Delaware Code and in accordance with applicable rules and regulations of the Department.

### 3.1.3 Order to Suspend a License

3.1.3.1 The Department may immediately suspend a license upon issuance of a written suspension order if the health, safety, or well-being of the participants is in jeopardy or imminent danger. The order shall state the reason(s) for the suspension.

3.1.3.2 Within ten (10) working days of the issuance of the suspension order, the Department shall hold a hearing with the licensee unless, prior to such hearing, the conditions upon which the suspension were based have been corrected and a new license issued.

### 3.1.4 Renewal of License after Suspension or Revocation

3.1.4.1 If and when the conditions upon which the suspension or revocation of a license are based have been corrected and after a proper inspection has been made, a new license may be granted.

### 3.1.5 Fees

3.1.5.1 Fees shall be in accordance with DE Code, Title 16, Part I, Chapter 1, Subchapter II, Section 122(3).s.2.

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

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

## 3.2 Separate Licenses

3.2.1 Separate licenses are required for facilities maintained in separate locations, even though operated under the same management.

3.2.2 A separate license is not required for separate buildings maintained by the same management on the same grounds.

## 3.3 Inspection

3.3.1 Every adult day care facility for which a license has been issued under this chapter shall be periodically inspected by a representative of the Department. Regular inspections shall occur at least once every three years.

## 3.4 Application Process

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

3.4.2 Applicants shall submit to the Department the following information:

3.4.2.1 The names, addresses and types of facility owned or managed by the applicant;

#### 3.4.2.2 Identity of:

3.4.2.2.1 each officer and director of the corporation if the entity is organized as a corporation;

3.4.2.2.2 each general partner or managing member if the entity is organized as an unincorporated entity;

3.4.2.2.3 the governing body if the entity is government operated;

3.4.2.2.4 proof of not-for-profit status if claiming tax-exempt status; and

3.4.2.2.5 any officers/directors, partners, or managing members, or members of a governing body who have a financial interest of five (5) percent or more in a licensee's operation or related businesses.

3.4.2.3 Disclosure of any officer, director, partner, employee, managing member, or member of the governing body with a felony criminal record;

3.4.2.4 Name of the individual (director/administrator/etc.) who is responsible for the management of the adult day care facility; and

3.4.2.5 Policy and procedure manuals and any other information required by the Department.

#### **6 DE Reg. 83 (07/01/02)**

### **4.0 General Requirements**

4.1 The adult day care provider shall neither knowingly admit, nor continue to care for, participants whose needs cannot be met by the program.

4.2 All records maintained by the adult day care facility shall at all times be open to inspection by the authorized representatives of the Department.

4.3 No policies shall be adopted by the adult day care facility which are in conflict with these regulations.

4.4 The adult day care facility shall establish written policies regarding the rights and responsibilities of participants, and these policies and procedures shall be made available to authorized representatives of the Department.

4.5 The adult day care facility shall establish policies and procedures that address the handling and documentation of incidents, accidents, medical emergencies and the prevention of wandering away from safe areas by participants with cognitive disabilities. Reports of these events shall be kept on file at the facility.

4.6 Emergency telephone numbers for each participant shall be available to staff at all times.

4.7 A procedure, approved by the Department, and including the participants and families right to report concerns/complaints to the Department of Health and Social Services, shall be established to enable participants and their families or representatives, if any, to have their concerns addressed without fear of reprisal.

4.8 The adult day care facility shall advise the Department in writing within fifteen (15) days following any change in the designation of the director/administrator of the facility.

## **5.0 Plant, Equipment And Physical Environment**

### **5.1 Construction**

5.1.1 Minimum construction requirements are set forth herein.

5.1.2 All construction, new/renovations/remodeling, must conform to the design and construction standards recognized by the Department.

5.1.3 In the event that there is a conflict between the design and construction standard utilized by the Department and the minimum standard set forth herein, the higher standard or requirement shall prevail.

5.1.4 When a facility is classified under this law or regulation and plans to construct, extensively remodel or convert any buildings, one (1) copy of properly prepared plans and specifications for the entire facility shall be submitted to the Department.

5.1.5 An approval, in writing, shall be obtained from the Department before construction/renovation/remodeling work is begun.

5.1.6 Upon completion of construction/renovation/remodeling, in accordance with the plans and specifications, the Department will inspect and approve the site prior to occupancy/use by the agency/facility.

### **5.2 Site Provisions**

5.2.1 Each adult day care facility shall be located on a site which is approved in advance and considered suitable by the Department. Site must be safe, easily drained, must be suitable for disposal of sewage and furnishing a potable water supply.

5.3 The adult day care facility shall comply with all local and state building codes and ordinances as pertain to this occupancy.

### **5.4 Building**

5.4.1 All facilities shall either be at grade level or shall be equipped with ramps or elevators to allow easy access for persons with disabilities.

5.4.2 The building shall be so constructed and maintained to prevent the entrance or existence of rodents and insects at all times. All exterior openings used for ventilation shall be effectively screened. Screen doors shall open outward and shall be equipped with self-closing devices.

5.4.3 The roof, exterior walls, doors, skylights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.

5.4.4 The exterior of the site shall be free from hazards and also from the accumulation of waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other litter.

5.4.5 Floor and wall surfaces of bathrooms and kitchens shall be constructed and maintained to be impervious to water and to permit the floor and walls to be easily kept in a clean condition.

5.4.6 The adult day care facility must be accessible as defined at Section 2.0. The entrance and circulation areas shall meet appropriate American National Standards Institute (A.N.S.I.) standards and all applicable State and Federal standards.

5.4.7 Each adult day care facility, when located in a facility housing other services, shall have its own separate identifiable space.

5.4.8 Outdoor recreation and/or relaxation area for participants, if provided, shall be safe, secure, free of accident hazards, accessible to indoor areas and accessible to those with disabilities. Outdoor areas shall have a fence or landscaping to create a boundary which prevents participants from wandering away and shall be easily supervised.

## 5.5 Water Supply and Sewage Disposal

5.5.1 The plumbing shall meet the requirements of all municipal or county codes. Where there are no local codes, the provisions of the Department Sanitary Plumbing Code shall prevail.

5.5.2 The water supply and the sewage disposal system shall be approved by the Department and the Department of Natural Resources and Environmental Control respectively.

5.5.3 The water system shall be designed to supply adequate hot and cold water, under pressure, at all times.

5.5.4 Hot water at shower, bathing and hand washing facilities shall not exceed 110°F (43°C).

## 5.6 Heating, Ventilation and Air Conditioning

5.6.1 The heating equipment for all areas shall be adequate, safe, protected, and easily controlled. It shall be capable of maintaining the temperature in each room used by participants between 70°F and 80°F. Portable heating devices shall not be used.

5.6.2 The adult day care facility shall be adequately ventilated. Air conditioning equipment shall be adequate and capable of maintaining the temperature in each room used by participants between 70°F and 80°F.

## 5.7 Lighting

5.7.1 Each room shall be suitably lighted at all times for maximum safety, comfort, sanitation and efficiency of operation particularly in areas that present safety hazards. Careful attention shall be given to avoid glare.

## 5.8 Safety Equipment

5.8.1 To prevent slipping, staircases shall have stair treads and sturdy handrails.

5.8.2 Stairways, ramps and porches shall have adequate lighting and handrails.

5.8.3 Hallways shall have handrails located on at least one side.

5.8.4 Floor surfaces, especially in heavy traffic areas shall be durable, yet non-abrasive and slip-resistant. Area rugs on hard finished floors shall have a non-skid backing. Carpeting shall be maintained in a clean and slip-resistant condition.

## 5.9 Bathrooms and Hand Washing Facilities

5.9.1 At least one (1) window or mechanical ventilation to the outside shall be provided in each bathroom. Floors shall not be slippery.

5.9.2 Bathroom design shall be accessible as defined at Section 2.0 and meet appropriate American National Standards Institute (A.N.S.I.) Standards.

5.9.3 Toilets, bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

5.9.4 There shall be at least one toilet of appropriate size for every twelve participants.

5.9.4.1 Each toilet shall be equipped with a toilet seat.

5.9.4.2 Toilet tissue shall be readily accessible at each toilet.

5.9.5 There shall be at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand washing facilities shall be readily accessible to participants and staff.

5.9.6 Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

5.9.7 Bathroom areas shall be equipped with mirrors for personal grooming. Mirrors shall be installed in such a way to minimize the danger of breakage.

5.9.8 Soap, paper towels and a trash receptacle(s) shall be provided at all times and shall be within reach of the participants.

5.9.9 Signaling devices shall be installed or placed in the bathroom areas, restroom stalls, and showers, if any.

## 5.10 Program Area

5.10.1 When a multipurpose room is used, it shall have sufficient space to accommodate all activities and to prevent interference with each other. There shall be sufficient space to permit privacy and confidentiality.

### 5.10.2 Square Footage

5.10.2.1 Minimum space requirements are as follows:

5.10.2.1.1 100 square feet for each of the first five participants; and

5.10.2.1.2 60 square feet for each of the participants thereafter.

5.10.2.2 Space requirements do not include office space, bathrooms, storage, examination room, or dining room (unless the dining room is also used for activities).

5.10.3 A telephone shall be available to participants to make and receive calls. Telephones shall be in an area which affords privacy during use.

5.10.4 The adult day care facility shall maintain comfortable sound levels. Background noise shall be minimized and sound transmission shall be controlled. Sound transmission may be controlled by use of acoustical ceiling surfaces, partitions between activity areas, and separation of noisy rooms. Sound levels shall enhance privacy and encourage interaction when social participation is desired.

5.10.5 There shall be adequate storage space for program supplies and for participants' outer garments and possessions.

5.10.6 The dining area shall be large enough to provide table and chair space to accommodate all participants.

5.10.7 The adult day care facility shall provide a separate rest area to permit privacy for assessments and to isolate participants who become ill. A bed, cot or other appropriate lounging or reclining furniture shall be available for participants in this area.

5.10.8 Adult day care facilities which provide rehabilitation services shall have separate additional space and equipment for carrying out each type of therapy that may be provided. At a minimum, the following shall be provided:

5.10.8.1 Provisions for wheelchair participants;

5.10.8.2 Additional storage for supplies and equipment;

5.10.8.3 Provisions for participant privacy; and

5.10.8.4 Hand washing facilities within the rehabilitation area.

## 5.11 Furnishings

5.11.1 Furniture shall be sturdy and secure so that it cannot easily tip when used for support while walking or seating. Furniture shall be scaled so that it is easily used by persons with limited agility and shall permit feet to rest on the floor. Chairs used for dining shall have armrests or be free of armrests in accordance with each participant's physical needs and preferences.

5.11.2 All rugs and floor coverings shall be tacked down securely. Any mat used at a doorway shall be non-slip with edges that do not cause a tripping hazard.

5.11.3 All equipment and furnishings shall be in good condition and safe for usage by participants and staff. The adult day care facility shall provide:

5.11.3.1 One chair for each participant and staff person;

5.11.3.2 Adequate table space for all participants; and

5.11.3.3 Reclining lounge chairs, the number to be determined by the needs and numbers of participants.

## 5.12 Emergency Equipment and Supplies

5.12.1 The adult day care facility shall provide adequate emergency equipment and supplies readily available for treating shock, burns and wounds, including:

5.12.1.1 First aid kit containing sterile gauze dressings and bandages, antiseptic, tape and scissors;

5.12.1.2 Thermometers; and,

5.12.1.3 Sphygmomanometers and stethoscopes.

5.12.2 Special equipment as needed by the participant (i.e. suction equipment, oxygen, etc.) may be supplied by the adult day care facility or the participant.

## 5.13 Sanitation and Housekeeping

5.13.1 All rooms and every part of the building shall be kept clean, orderly and free of offensive odors.

5.13.2 Policy manuals shall be prepared and followed which outline maintenance and cleaning procedures, safe storage of cleaning materials and pesticides and other potentially toxic materials, and safe storage and handling of soiled linen and clothing.

5.13.3 A ventilated janitor's closet shall contain a service sink and provide for the locked safe storage and use of housekeeping items.

5.13.4 Chemicals and disinfection agents shall be stored separate from participant care items and food.

## 5.14 Existing Facilities

5.14.1 Adult day care facilities that have been in operation before the adoption of these regulations and do not meet the minimum square footage, dining area and bathroom ratio requirements set forth in Section 5.0 must be brought into full compliance within a five (5) year period. All other provisions of these regulations apply upon their adoption except as otherwise expressly provided.

## 5.15 Waiver of Requirements

5.15.1 Waiver of a standard requires Department approval. Waiver requests must be made in writing, include the full justification behind the request and address issues of safety and infection control. They are an exception to established standards and will only be approved for compelling reason.

5.15.1.1 Waiver requests which could potentially impact the health, safety or welfare of the participants must be shared with the participants and their representatives prior to submission of the waiver request to the Department.

5.15.1.1.1 Participants must be informed that they may voice their objections to any waiver request by contacting the Department.

## **6.0 Fire Safety**

6.1 Fire safety in adult day care facilities shall comply with the adopted rules and regulations of the State Fire Prevention Commission. Enforcement of Fire Regulations is the responsibility of the State Fire Prevention Commission. All applications for a license or renewal of a license must include, with the application, a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of noncompliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for revocation of a license.

6.2 The adult day care facility shall have a minimum of two (2) exits remote from each other which shall be clearly marked.

6.3 Staff and participants shall be trained in executing the evacuation plan. A written record of fire safety training, including content of the training and persons attending shall be maintained.

6.4 Evacuation fire drills shall be held and documented at least quarterly for all staff and participants.

## **7.0 Admission Agreement, Assessment And Discharge**

7.1 The adult day care facility shall have written admission policies which describe admission and discharge criteria.

7.2 The admission policies shall be discussed with each participant entering the program, and their representative, if any.

7.3 The adult day care facility shall only admit those individuals whose needs can be met by the facility.

7.4 All participants shall be 18 years of age or older and functionally impaired as defined at Section 2.0.

7.5 There shall be a written agreement between the participant and the adult day care program. The agreement shall:

7.5.1 Specify the services to be provided by the facility, scheduled days, financial arrangements, transportation agreements, emergency procedures and conditions for dismissal or discharge and appeal;

7.5.2 Be signed by the participant, if he is able, and representative, if any, and the adult day care facility;

7.5.3 Be given to the participant and representative, if any, and a copy shall be kept at the facility; and

7.5.4 Be reviewed and updated as necessary to reflect the change in the services or the financial arrangements.

## 7.6 Assessment

7.6.1 The facility shall be responsible for conducting a written assessment of an applicant within 30 days prior to admission. The assessment shall include input as required from physicians, licensed nurses, social workers, physical and occupational therapists, and other personnel with expertise as required by the participant's needs.

7.6.2 The assessment shall be completed by the adult day care facility in conjunction with the participant and her/his representative, if any.

7.6.3 The assessment shall include at a minimum a description of the participant's:

7.6.3.1 Physical condition, including ability to perform activities of daily living, such as ambulating, eating, toileting, and sensory limitations such as sight, hearing, and speech completed by a licensed nurse;

7.6.3.2 Social situation, including living arrangements and the availability of family and community support; and,

7.6.3.3 Mental status, including any cognitive impairment and known psychiatric, emotional, and behavioral problems.

7.6.4 The initial assessment shall be reviewed and updated on a scheduled basis, but at least annually. This reassessment shall become a permanent part of the participant's record.

7.6.5 A reassessment shall be conducted when the needs of the participant change which indicate a revision to the plan of care is needed.

## 7.7 Discharge

7.7.1 No participant shall be discharged from an adult day care facility except for the following:

7.7.1.1 The participant's needs can no longer be met by the program of care;

7.7.1.2 Medical reasons;

7.7.1.3 Non-participation in the plan of care or non-compliance with the written admission agreement;

7.7.1.4 The participant's own welfare or the welfare of the other participants; or

7.7.1.5 Nonpayment of justified charges.

7.7.2 The participant and her/his representative, if any, shall be informed of and participate in discharge planning. A minimum of 2 weeks notice shall be given by the adult day care facility to the participant and representative, if any. However, the notice period may be waived if the care needs of the participant undergo a sudden change which necessitates immediate transfer to a facility or program able to provide a higher level of care. If the notice provisions are waived, the facility shall be responsible for assisting in suitable placement for the participant.

7.7.3 The adult day care facility shall develop a written plan of discharge which outlines the services needed by the participant upon discharge.

## **8.0 Plan Of Care**

8.1 Prior to admission, a preliminary written plan of care, based upon the initial assessment shall be developed for each participant.

8.2 A written individual plan of care shall be developed within thirty (30) calendar days of the participant's first day in the program. The plan shall be based on a functional assessment and information obtained from the participant, participant's family, physician, and the referring agency (if appropriate).

8.3 The plan shall be developed to improve or maintain the functional capabilities of the participant. The plan shall include:

8.3.1 A description of the participant's needs;

8.3.2 The activities, programming and services in which the person will participate in order to meet those needs; and

8.3.3 Realistic goals for the participant, designated roles of the responsible parties, and if appropriate, the timeline for each goal.

8.4 The written plan of care and personal information shall be revised as frequently as warranted by the participant's condition, but shall be reviewed at least every six (6) months with the participant and representative, if any, and updated on an annual basis. All revisions to the plan of care shall be in writing.

## **9.0 Support Services**

9.1 Aide/Assistant/Technician as defined at Section 2.0 or licensed nurses shall provide supervision and assistance in activities of daily living, such as feeding and toileting, to participants who require those services. Facilities that have been in operation before the adoption of these regulations shall comply with this requirement within 12 months of the adoption date of the regulations.

9.2 Rehabilitation services, including occupational therapy, physical therapy, and speech therapy, if provided, shall be ordered by the participant's physician and be performed by qualified therapists or therapy aides under supervision of a qualified therapist.

### **9.3 Medication Management**

9.3.1 Medication shall not be administered to a participant unless prescribed by a licensed practitioner with independent prescriptive authority as provided by Delaware Code.

9.3.2 All adult day care programs shall have an up-to-date drug reference manual/compendium which lists drug actions, interactions, and side effects.

9.3.3 All medication administered to participants shall be ordered in writing, dated and signed by the attending physician. All prescription medications shall be properly labeled in accordance with DE Code, Title 24, Chapter 25, Subchapter III, §2536. The label shall contain the following information:

9.3.3.1 The prescription number;

9.3.3.2 The date such drugs were originally dispensed to the participant;

9.3.3.3 The participant's full name;

9.3.3.4 The brand or established name and strength of the drug to the extent that it can be measured;

9.3.3.5 The physician's directions as found on the prescription;

9.3.3.6 The physician's name;

9.3.3.7 The name and address of the dispensing pharmacy or physician.

9.3.4 Medications may be self-administered or administered in accordance with all State and Federal laws, including the State of Delaware Nurse Practice Act. Those participants who, upon admission, are incapable of self-administration or who become incapable of self-administration shall have their medications administered according to the Nurse Practice Act.

9.3.5 The adult day care facility shall maintain a record of all medication provided to a participant indicating time of day, type of medication, dose, route of self-administration/administration, by whom given and any reactions noted.

#### 9.3.6 Medication Storage

9.3.6.1 If medications are administered on site, provisions for the locked storage of medications shall be provided. The key to the medication storage must be in the possession of or accessible only to authorized licensed personnel responsible for the distribution for self-administration/administration of medications.

9.3.6.2 Prescription medication not requiring refrigeration shall be kept in the original container stored in a locked cabinet or drawer, and clearly labeled for the specific participant. These medications shall be stored within the U.S.P. recommended temperature range of 59° - 86°F unless the manufacturer's labeling states otherwise.

9.3.6.2 Prescription medication requiring refrigeration shall be stored in a separate and secured locked container within the refrigerator. The temperature must be maintained within the U.S.P. recommended range of 36° - 46°F.

9.3.6.3 For the safety and welfare of all participants, medication to be self-administered shall be stored as noted and distributed to the participant as requested.]

9.3.6.4 Schedule II substances/prescriptions shall be kept in separately locked, securely fixed boxes (approved under Delaware law and standards) or drawers in the secure locked medication cabinet. Medication cabinets utilized will have a 2-lock system.

9.3.6.4.1 Schedule II substances shall be handled in the manner outlined by the State and Federal laws and regulations.

9.3.6.4.2 Schedule II substances brought to the facility by the participant/family on a daily basis shall be counted with the participant/family when received in the facility and shall be counted with the participant/family before removed from the facility.

9.3.6.4.3 Schedule II substances brought to the facility and remaining in the facility shall be counted with the participant/family when received in the facility and the empty container shall be returned to the participant/family for disposition.]

9.3.6.4.4 All unused Schedule II substances shall be returned to the participant or representative for disposition.

9.3.6.4.5 The adult day care facility must develop policies to prevent possible diversion of controlled substances.

9.3.6.5 Internal medications shall be stored separately from external medications.

9.3.7 The adult day care facility shall ensure that prescription medication is not used by other than the participant for whom the medication was prescribed.

9.3.8 The adult day care facility shall develop policies to permit those participants who are able to self-administer medication to keep and use such over-the-counter products as cough drops, lip balm and skin moisturizer.

9.3.9 The center may maintain a supply of over-the-counter medications, such as antacids and aspirin. However, over-the-counter medications shall only be administered upon the order of the participant's physician.

9.3.10 Used needles and syringes shall not be recapped, but placed immediately after use into an approved and secured Sharps container and disposed of properly.

#### 9.4 Transportation Services

9.4.1 When transportation services are provided directly or under contract by the adult day care facility:

9.4.1.1 The vehicle shall be accessible and appropriate to the participants using it, considering any physical disabilities and impairments.

9.4.1.2 Every participant shall have a seat in the vehicle, except those participants who remain in their wheelchairs.

9.4.1.3 Wheelchairs shall be secured when the vehicle is in motion.

9.4.1.4 Each participant shall be seated while the vehicle is in motion.

9.4.1.5 Vehicles shall have adequate seat belt and securement devices for ambulatory and wheelchair bound passengers.

9.4.1.6 Participants shall not be left unsupervised (must always be within eyesight of the driver/attendant) while in a vehicle.

9.4.1.7 Assistance by a driver or attendant shall be provided from the ground floor of the passenger's residence to the ground floor of the day care facility.

9.4.1.8 The driver shall have a valid and appropriate Delaware driver's license. The driver shall meet any state requirements for licensure or certification for the vehicle operated.

9.4.1.9 Each vehicle shall have a first aid kit, along with fire extinguisher and safety triangles.

9.4.1.10 The driver or attendant shall be trained in first aid procedures which include but are not necessarily limited to the following:

9.4.1.10.1 Cardiopulmonary Resuscitation (CPR);

9.4.1.10.2 Care during a seizure;

9.4.1.10.3 Care of minor scrapes and abrasions; and,

9.4.1.10.4 Summoning help in the event of an emergency.

9.4.1.11 The driver or attendant shall have medical and emergency information in the vehicle for participants being transported.

9.4.1.12 All transportation vehicles shall be equipped with a device for two-way communication.

## 9.5 Nutrition and Food Services

### 9.5.1 Kitchen and Food Storage Areas

9.5.1.1 If meals are prepared by the adult day care facility the State of Delaware Food Code shall apply.

9.5.2 The adult day care facility shall assure the availability of meals and supplemental snacks in accordance with each participant's individual plan of care.

9.5.3 The adult day care facility shall provide or make arrangements for a minimum of one meal daily which is of suitable quality and quantity for participants who are in the center for four (4) or more hours. The meal shall meet at least one-third (1/3) of an adult's current recommended dietary allowance (RDA) of the Food and Nutrition Board, National Academy of Sciences-National Research Council.

9.5.4 A morning snack shall be offered daily to participants. Those participants remaining in the facility for more than three (3) hours after completion of lunch shall be offered a mid-afternoon snack. Facilities open in the evening shall serve an evening meal. Evening meals shall be served approximately four (4) hours after completion of lunch, but no later than seven (7) p.m. Beverages shall be available to participants at all times and shall be offered periodically to promote good hydration. Snacks shall have nutritional value.

9.5.5 Food shall be stored, prepared, served, or any combination of these on site in accordance with the State of Delaware Food Code.

9.5.6 Food that is prepared for the adult day facility at an alternate site shall be prepared in a facility which is in compliance with the State of Delaware Food Code and has been issued a permit.

9.5.7 Menus shall be planned and written for a minimum of a two-week cycle, if meals are prepared on-site, and approved by a dietitian.

9.5.8 The menu shall be dated for the week of service and posted in a prominent area for the availability to the participant and representative, if any.

9.5.9 A therapeutic diet shall be provided for a participant when prescribed in writing by a physician. Therapeutic diet menus shall be prepared by a dietitian.

9.5.10 A dietitian shall be available for consultation with staff on basic and special nutritional needs and proper food handling techniques and shall provide in-service training to staff on these topics at least annually.

9.5.11 Appropriate food containers and utensils shall be available as needed for use by disabled participants.

9.5.12 Equipment for adequate refrigeration to maintain foods at 40°F and for the heating of foods shall be provided if needed to assist in the provision of meals and snacks.

9.5.13 Drinking water shall be easily accessible to the participants and provided by either an angle jet drinking fountain with mouth guard or by a running water supply with individual service drinking cups.

## 9.6 Nursing Services

9.6.1 Nursing services may be provided by the adult day care facility in accordance with the Delaware Nurse Practice Act and shall meet the needs of the participants.

## 10.0 Activities

10.1 Each facility licensed under these regulations shall provide appropriate programming for each participant. Programming shall take into consideration individual differences in age, health status, sensory deficits, lifestyle, ethnicity, religious affiliation, values, experiences, needs, interests, abilities, and skills by providing opportunities for a variety of types and levels of involvement.

10.2 Activities shall be planned to support the plans of care for the participants, and shall be consistent with the program statement and the admission policies.

10.3 Activities shall be planned and shall include:

10.3.1 Group activities for all participants; and

10.3.2 Personalized options for individuals with varying interests and needs.

10.4 Activity Schedule

10.4.1 The adult day care program shall provide planned activities during at least sixty-five percent (65%) of the time that the program is open for daily operations.

10.4.2 A written schedule of activities shall be developed at least monthly.

10.4.3 Changes in activities shall be noted on the schedule.

10.4.4 The current month's schedule of activities shall be posted in a conspicuous place and made available to participants and their representatives, where applicable, including the name or type, date and hour of the activity.

10.4.5 The schedule of activities for the past twelve months shall be maintained by the adult day care facility.

#### 10.5 Activities Coordinator

10.5.1 There shall be an Activities Coordinator who shall have either:

10.5.1.1 A Bachelor's Degree plus one year of experience (full-time or equivalent) in developing and conducting activities for the population to be served; or

10.5.2 An Associates Degree in a related field plus two years of appropriate experience; or

10.5.3 National Certification as an activity or therapeutic recreational professional plus two years of appropriate experience.

10.5.4 A high school diploma or equivalent plus three years of experience in developing and conducting activities for the population to be served in the program.

10.5.5 Existing facilities shall have twelve (12) months from the adoption of these regulations to comply with this requirement.

#### 10.6 Equipment and Supplies

10.6.1 The facility shall provide equipment to encourage active participation and group interaction and materials shall be geared to the interests and backgrounds of the participants.

10.6.2 Environmental aids and supplies for activities shall be provided as required by the participants' needs and the goals of the program.

### 11.0 Rights Of Participants

11.1 Each participant shall be treated as an adult, with respect and dignity.

11.2 Each participant shall have the right to participate in a program of services and activities which promotes positive attitudes regarding one's usefulness and capabilities.

11.3 Each participant shall have the right to participate in a program of services designed to encourage learning, growth and awareness of constructive ways to develop one's interests and talents.

11.4 Each participant shall have the right to be encouraged and supported in maintaining one's independence to the extent that conditions and circumstances permit, and to be involved in a program of services designed to promote personal independence.

11.5 Each participant shall have the right to self-determination and choice within the adult day care setting, including the opportunity to:

11.5.1 Participate in developing one's plan for services;

11.5.2 Decide whether or not to participate in any given activity; and

11.5.3 Be involved, to the greatest extent possible, in program planning and operation.

11.6 Each participant shall have the right to privacy and confidentiality.

11.7 Each participant shall have the right to be protected from abuse, neglect, mistreatment, financial exploitation, solicitation and harassment.

11.8 Each participant shall have the right to voice grievances without discrimination or reprisal.

11.9 Each participant shall have the right to be free from physical and chemical restraints. When a restraint becomes necessary, the facility must comply with federal law 42 CFR 482.13 and 42 CFR 483.13 and state law (16 Del.C. §1121).

11.10 Each participant shall have the right to be fully informed, as evidenced by the participant's written acknowledgment of these rights, and of all rules and regulations regarding participant conduct and responsibilities.

11.11 Each participant shall have the right to be fully informed, at the time of acceptance into the program, of services and activities available and related charges.

## **12.0 Staffing**

12.1 There shall be at least two adult day care facility staff on duty at all times when participants are present. If separate sections are established within each facility, each separate section shall independently comply with the staffing requirements of this section. The minimum staffing requirements shall not include volunteers or employees who have not yet completed the required orientation program.

12.2 For facilities with more than sixteen (16) participants there shall be a minimum of one adult staff person on duty for each eight participants (1:8). Facilities may not use rounding in determining staffing requirements, i.e., for seventeen to twenty-four (17-24) participants at least three (3) staff members would be required, for twenty-five to thirty-two (25-32) participants at least four (4) staff members, etc.

12.2.1 As the number or acuity of participants with functional and cognitive impairments increase the staff-participant ratio shall be adjusted accordingly to meet the needs of the participants.

12.2.2 Supervision of each participant shall be based upon the comprehensive assessment of the individual's needs.

12.3 Programs serving mainly participants with severe cognitive or physical disabilities shall have a staff-participant ratio of at least one to four (1:4) for all severely disabled participants.

12.4 There shall be at least one RN or LPN on the premises at all times, when participants are present, for those facilities serving participants requiring nursing services as defined at 2.0.

12.5 There shall be at least one employee on the premises at all times, when participants are present, who is certified in cardiovascular pulmonary resuscitation (CPR).

12.6 The individual (director/administrator/etc.) or designee responsible for the management of the adult day care program shall be present and in charge during all hours that participants are on the premises.

### **13.0 Personnel/administrative**

13.1 Adult day care providers must comply with the special employment practices relating to health care and child care facilities (19 Del.C. §708 and 11 Del.C. §8563) and adult abuse registry check (11 Del.C. §8564) and the regulations promulgated by the Department of Labor regarding same.

13.2 No employee shall be less than 18 years of age and no person shall be employed who has been convicted of a crime where the victim was a person regardless of whether the crime was a felony or a misdemeanor.

13.3 The facility shall have written personnel policies and procedures that adequately support sound care and services to participants.

13.4 Personnel records of each employee shall be kept current and available upon request by the Department's representatives and shall contain sufficient information to support placement in the positions to which assigned.

13.5 Minimum requirements for pre-employment and annual tuberculosis (TB) testing are those currently recommended by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

13.5.1 No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to participants.

13.5.2 Any person having a positive skin test but a negative X-ray must complete a statement annually attesting that they have experienced no symptoms which may indicate active TB infection.

13.5.3 A report of all test results and all attestation statements shall be on file at the facility of employment.

13.6 All new employees shall be required to have a pre-employment physical examination. A copy of the pre-employment physical examination shall be maintained in individual personnel files.

13.7 Any individual who cannot adequately perform her/his duties or who may jeopardize the health or safety of the participants shall be relieved of his duties and removed from the center until such time as the condition is resolved. This includes infections of a temporary nature.

13.8 The adult day care provider shall provide for systematic performance review to communicate expectations and responsibilities, recognize achievement, and identify areas for skill development and work performance improvement. Performance reviews shall be completed annually and shall be maintained in the employee personnel record.

13.9 The director/administrator shall be responsible for complying with the regulations herein contained. In the absence of the director, a qualified substitute shall be authorized, in writing, to be in charge.

13.10 The director's/administrator's responsibilities shall include, but not be limited to, the following areas:

13.10.1 The development of the content of the program offered to the participants;

13.10.2 Programmatic functions, including orientation, training, and scheduling of all staff whether or not the director personally performs these functions; and

13.10.3 Assignment of a sufficient number of qualified staff to meet the participant's needs for:

13.10.3.1 Adequate nutrition;

13.10.3.2 Health supervision and maintenance;

13.10.3.3 Personal care;

13.10.3.4 Socialization;

13.10.3.5 Recreation;

13.10.3.6 Activities and stimulation; and,

13.10.3.7 Supervision, protection, and safety.

13.11 The director shall have a Bachelor's Degree in health or social services or a related field, with one (1) year supervisory experience (full-time or equivalent) in a social or health service setting; have comparable technical and human service training with demonstrated competence and experience managing in a health or human service setting; or, be a registered nurse with two (2) years of supervisory experience (full-time or equivalent) in a social or healthcare setting.

13.12 Volunteers

13.12.1 All volunteers shall be under the supervision of the director/administrator or designated staff person.

13.12.2 The duties of volunteers shall be clearly defined.

13.12.3 The adult day care facility shall maintain a record of volunteer hours/activities and provide appropriate supervision of volunteers.

#### 13.13 Aides/Assistants/Technicians

13.13.1 All aides must meet the following minimum criteria:

13.13.1.1 Completion of an orientation/training program which meets the requirements contained within these regulations; AND,

13.13.1.2 Certification as a nurse aide (CNA); or,

13.13.1.3 Possession of one year of experience in a health care setting; or,

13.13.1.4 Enrollment in a nursing program and completion of a medical surgical clinical practicum.

13.13.2 All aides must pass a competency evaluation test prior to providing unsupervised care to participants in the program.

13.13.3 It is the responsibility of the adult day care program to ensure that aides are proficient to carry out the care assigned in a safe, effective, and efficient manner.

#### 13.14 Staff Training and Development

13.14.1 Prior to assuming job responsibilities, all personnel shall receive training in:

13.14.1.1 Their individual responsibilities in the event of fire, including the location and operation of any fire extinguisher and fire alarm box;

13.14.1.2 Their individual responsibilities in the event of illness or injuries, including the location and use of the first aid emergency supplies;

13.14.1.3 Their individual responsibilities in the event of any emergency;

13.14.1.4 Infection control, body mechanics and first aid; and

13.14.1.5 Special needs of the elderly, persons with cognitive disabilities or persons with other disabilities, including the specific needs of the participants being served.

13.14.2 Ongoing staff development is required to maintain and improve the skills of the adult day care team and should include:

13.14.2.1 The needs of the elderly and persons with disabilities.

13.14.2.2 Assisting participants to achieve maximum self-reliance through re-learning and modifying activities of daily living.

13.14.2.3 Physical restraint and the use of less restrictive alternatives.

13.14.2.4 Maintaining an environment that encourages morale building and self-help.

13.14.2.5 Review of participant care policies and procedures.

13.14.2.6 Prevention and control of infection.

13.14.2.7 Confidentiality of participant information.

13.14.2.8 Rights of participants.

13.14.3 Personnel who are primarily responsible for the direct care of the participants shall attend at least twelve (12) hours annually of staff development activities which shall consist of in-service training programs, workshops, or conferences related to adult day care or specific needs of participants.

13.15 Aide Orientation and Training

13.15.1 An orientation/training program should be based on an instruction plan that includes learning objectives, clinical content and minimum acceptable performance standards.

13.15.2 The orientation program must include at least forty (40) hours of instruction and supervised practicum.

13.15.3 An orientation/training program must include the following:

13.15.3.1 The aide's role as a member of the adult day care team.

13.15.3.2 Personal care services.

13.15.3.3 Principles of good nutrition.

13.15.3.4 Process of growth, development, and aging.

13.15.3.5 Principles of infection control.

13.15.3.6 Observation, reporting, and documentation of participant status.

13.15.3.7 Maintaining a clean, safe, and healthy environment.

13.15.3.8 Maintaining a least restrictive environment.

13.15.3.9 Verbal/nonverbal communication skills.

13.15.3.10 Principles of body mechanics.

13.16 The adult day care program must maintain sufficient documentation to demonstrate that all requirements of this section have been met.

13.17 An Adult Day Care facility that provides direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia shall provide dementia specific training each year to those healthcare providers who must participate in continuing education programs. The mandatory training must include: communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia; the psychological, social, and physical needs of those persons; and safety measures which need to be taken with those persons. This paragraph shall not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 of the **Delaware Code**.

15 DE Reg. 220 (08/01/11)

([http://regulations.delaware.gov/register/august2011/final/15 DE Reg 220 08-01-11.htm](http://regulations.delaware.gov/register/august2011/final/15%20DE%20Reg%20220%2008-01-11.htm))

## **14.0 Quality Improvement**

14.1 Each adult day care facility shall develop and implement a documented ongoing quality improvement program. The program shall include at a minimum:

14.1.1 An internal monitoring process that tracks performance measures;

14.1.2 A review of the program's goals and objectives at least annually;

14.1.3 A review of the grievance/complaint process;

14.1.4 A review of actions taken to address identified issues; and

14.1.5 A process to monitor the satisfaction of the participants and/or their representatives with the program.

## **15.0 Records And Reports**

15.1 There shall be a separate record maintained at the adult day care facility for each participant which shall contain:

15.1.1 Admission record: Including participant's name, birth date, home address, identification numbers, such as social security, Medicaid, Medicare, date of admission, physician's name, address and telephone number, diagnosis, names, addresses and telephone numbers of family members, friends, or other designated people to be contacted in the event of illness or an emergency;

15.1.2 A written history and physical examination performed by or under the direction of a physician within 6 months prior to admission;

15.1.3 Results of a medical evaluation or screening test for tuberculosis indicating the absence of active tuberculosis in an infectious stage within 1 year prior to admission;

15.1.4 Application and enrollment forms;

15.1.5 Assessment (initial and reassessments);

15.1.6 Nutritional status assessment as needed;

15.1.7 Individual plan of care (initial and reviews) and revisions;

15.1.8 Signed authorizations for releases of medical information and photos, as appropriate;

15.1.9 Signed authorization for participant to receive emergency medical care if necessary;

15.1.10 Ancillary reports;

15.1.11 Attendance and service records;

15.1.12 Transportation plans;

15.1.13 Where appropriate, medical information sheet; documentation of physicians' order; treatment, therapy, medication, and professional notes;

15.1.14 Progress notes, chronological and timely, including a monthly assessment of health, functional, and psychosocial status of participants;

15.1.15 Discharge plan;

15.1.16 Current photograph (taken as necessary) depicting an accurate likeness of the participant;

15.1.17 Advance healthcare directive form that complies with DE Code, Title 16, Part II, Chapter 25 or a statement that none has been signed.

15.1.18 A copy of the written agreement between the participant and the adult day care program including any updates made to the original reflecting changes in services or arrangements; and,

15.1.19 Written acknowledgment that the participant or the participant's representative has been fully informed of the participant's rights.

15.2 All participants' medical records shall be maintained in accordance with professional standards.

15.3 All program records shall be available for review by authorized representatives of the Department and to legally authorized persons; otherwise such records shall be held confidential. The consent of the participant or her/his representative if the participant is incapable of making decisions shall be obtained before any personal information is released from her/his records as authorized by these regulations or Delaware law.

15.4 The adult day care facility records shall be retained for a minimum of five (5) years before being destroyed.

15.5 Records shall be protected from loss, damage, and unauthorized use.

## **16.0 Infection Control**

16.1 The adult day care center shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.

16.1.1 The individual designated to lead the adult day care's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the adult day care's infection control outcomes.

16.2 The infection prevention and control program must include all services and each particular area of the adult day care center, including the appropriate personal protective equipment for all patients, staff, and visitors.

16.3 All adult day care staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.

16.4 Specific Requirements for COVID-19

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

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

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

16.5 The adult day care facility shall amend their policies and procedures to include:

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

16.5.2 Staff refusals to participate in COVID-19 testing;

16.5.3 Staff refusals to authorize release of testing results or vaccination status to the adult day care facility;

16.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

16.5.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

**17.0 Severability**

17.1 In the event any particular clause or section of these Regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

6 DE Reg. 83 (07/01/02)

15 DE Reg. 220 (08/01/11)

([http://regulations.delaware.gov/register/august2011/final/15 DE Reg 220 08-01-11.htm](http://regulations.delaware.gov/register/august2011/final/15%20DE%20Reg%20220%2008-01-11.htm))

25 DE Reg. 341 (10/01/21) (Emer.)

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[Laws of Delaware \(http://delcode.delaware.gov/sessionlaws\)](http://delcode.delaware.gov/sessionlaws)

[City & Town Charters \(http://charters.delaware.gov/index.shtml\)](http://charters.delaware.gov/index.shtml)

[Delaware General Assembly \(http://legis.delaware.gov/\)](http://legis.delaware.gov/)

[Style Manual \(/style\\_manual.shtml\)](/style_manual.shtml)

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[Citizen Participation \(/citizen.shtml\)](/citizen.shtml)

[FOIA Request Form \(http://delaware.gov/help/foia\\_request.shtml\)](http://delaware.gov/help/foia_request.shtml)