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TITLE 16

Health and Safety

Local Boards of Health; Health Programs

CHAPTER 1. Department of Health and Social Services

Subchapter II. Powers and Duties Generally; Regulations and Orders

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

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

33 Del. Laws, c. 57, §§ 4, 9 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=33&chapter=57>); 34 Del. Laws, c. 69, § 1

(<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=34&chapter=69>); Code 1935, § 744; 43 Del. Laws, c. 91, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=43&chapter=91>); 16 Del. C. 1953, § 121; 70 Del. Laws, c. 544, § 9

(<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=544>);

§ 122. Powers and duties of the Department of Health and Social Services.

The Department shall have the following general powers and duties:

- (1) Supervision of all matters relating to the preservation of the life and health of the people of the State.
- (2) Supreme authority in matters of quarantine; it may declare and enforce such quarantine, when necessary and where no quarantine exists, and may modify, relax or abolish it, where it has been established.
- (3) Adopt, promulgate, amend, and repeal regulations consistent with law, which regulations shall not extend, modify or conflict with any law of this State or the reasonable implications thereof, and which shall be enforced by all state and local public health officials, to do all of the following:
 - a. Prevent and control the spread of all diseases that are dangerous to the public health;
 - b. Prevent and control nuisances which are or may be detrimental to the public health;

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

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

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

A. The Department shall create an Advisory Council to assist the Secretary in implementing the requirements of this paragraph (3)c.1.

B. The Department shall have the authority to create a temporary variance program for water systems upon the loss of their operator.

C. All decisions of the Secretary with regard to issuance or renewal of a variance pursuant to paragraph (3)c.1.B. of this section shall be final and conclusive. Where the applicant for issuance or renewal of a variance is in disagreement with the action of the Secretary, such applicant may appeal the Secretary's decision to the Superior Court within 30 days of the postmarked date of the copy of the decision mailed to the holder. The appeal shall be decided on the record and shall proceed as provided in §§ 10142-10145 of Title 29.

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

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

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

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

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

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

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

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

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

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

C. In the event of a Tier 1, Tier 2 or Tier 3 drinking water contaminant incident, the public drinking water supplier shall immediately notify the Department. If the Department deems it necessary, the public drinking water supplier shall also notify its affected customers in accordance with paragraph (3)c.6.D. of this section and Department regulations and such notice shall include, to the maximum extent practicable, the following information:

- I. A description of the violation or situation, including contaminant levels, if applicable;
- II. When the violation or situation occurred;
- III. Recognized potential adverse health effects using standard health effects language as approved by the Division of Public Health;
- IV. The affected population;
- V. Whether alternative drinking water supplies should be used;
- VI. What action consumers should take;
- VII. What the public drinking water provider is doing to correct the violation or situation;
- VIII. When the public drinking water provider expects the system to return to compliance or the situation to be resolved;
- IX. The name, business address and phone number of the public drinking water system owner or operator; and
- X. A statement encouraging distribution of the notice to others, where applicable.

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

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

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

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

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

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

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

include any voluntary activities undertaken by the drinking water supplier to reduce health risks from identified contaminants, including source water assessments, installation of new treatment processes, or such similar environmental improvements undertaken within the previous year or planned for the next 5 years.

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

- d. Provide for the sanitary control of public swimming pools except that no regulation currently existing or hereafter adopted shall require a life guard to be on duty at any pool of any motel, hotel or private campground facility;
- e. Regulate plumbing in the interests of the public health;
- f. Provide for the sanitary production, distribution and sale of market milk and dairy products and other foods;
- g. Provide for the sanitary control of tourist camps, trailer camps and other public camps;
- h. Protect and promote the health of all mothers and children;
- i. Provide for proper sanitation, ventilation and hygiene in schools and for sanitary and health requirements for food handlers in the schools not less stringent than the requirements for food handlers in public eating places;
- j. Protect and promote the public health generally in this State, and carry out all other purposes of the laws pertaining to the public health;
- k. Provide the mechanism for yearly medical examination of all persons engaged in the preparation and service of food and drink for human consumption in commercial establishments or public and private educational institutions where such persons come in physical contact with the food and drink prepared or served, such examinations to include whatever tests the Director of the Division of Public Health of the State Department of Health and Social Services shall deem necessary;
- l. Provide the mechanism for medical examinations of all applicants for food handling employment if such employment involves preparation of food and drink for human consumption in commercial establishments or public and private educational institutions where such persons come in physical contact with the food or drink prepared or served, such examinations to include whatever tests the Director of the Division of Public Health of the State Department of Health and Social Services shall deem necessary;
- m. Establish standards for quality assurance in the operation of hospice programs, which shall include, but not be limited to establishing and implementing standardized protocol with respect to the safe disposal of unused prescription medication following the death of an in-home hospice patient, and control the practice of such programs. Upon receipt of an application for license and the application fee of \$100, the Department shall issue a license if the hospice meets requirements established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee of \$50. A provisional license, as authorized by the Department, shall be issued when health requirements are not met and a licensure fee of \$50 has been submitted. A hospice which has been issued a provisional license shall resubmit the application fee for reinspection prior to the issuance of an annual license;
- n. Prevent and control the spread of vaccine-preventable diseases in children, including regulation of nonpublic elementary and secondary schools and daycare and other preschool facilities; provided, however, that nothing in this paragraph shall require medical treatment for the minor child of any person who is a member of a recognized church or religious denomination and whose religious convictions, in accordance with the tenets and practices of the person's church or religious denomination, are against medical treatment for disease;
- o. Establish standards for public health quality assurance in the operation of home health agency programs and regulate the public health practice of such programs.
 - 1. A home health agency is any business entity or subdivision thereof, whether public or private, proprietary or not-for-profit, which provides home health-care services.
 - A. Home health-care services include but are not limited to the following:
 - I. Licensed nursing;
 - II. Physical therapy;
 - III. Speech therapy;

- IV. Audiology;
- V. Occupational therapy;
- VI. Nutrition;
- VII. Social Services; or
- VIII. Home health aides.

B. Home health agencies shall provide:

- I. Two or more home health-care services, 1 of which must be either licensed nursing services or home health aide services; or
- II. Home health aide services exclusively which shall include, but not be limited to:

- (A) Feeding;
- (B) Bathing;
- (C) Dressing;
- (D) Grooming; and
- (E) Incidental household services.

2. For purposes of this paragraph (3)o., the following shall also apply:

- A. Home health agency services are provided directly through employees of the agency or through contract arrangements, including those contracts with individuals considered to be independent contractors.
- B. Home health agency services are provided to individuals primarily in their home or private residence.
- C. All home health agency services must be supervised by a registered nurse.
- D. Home health agencies shall utilize written financial agreements between the agency and the consumer. These agreements shall minimally include:
 - I. Description of services purchased and the associated cost;
 - II. Acceptable method of payment or payments for these services; and
 - III. Outline of the billing procedures.

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

3. A home health agency does not include:

- A. Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a registered church or religious denomination.
- B. An agency which solely provides services as defined in Chapter 94 of this title.
- C. An agency which provides staffing exclusively to other agencies (including but not limited to nursing facilities, home health agencies, and hospitals).

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

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

6. [Repealed.]

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

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

- A. The seriousness of the violation, including the nature, circumstances, extent and gravity of the violation and the threat or potential threat to the health or safety of a consumer or consumers;
- B. The history of violations committed by the person or the person's affiliate(s), employee(s), or controlling person(s);
- C. The efforts made by the agency to correct the violation or violations;
- D. The culpability of the person or persons who committed the violation or violations;
- E. Any misrepresentation made to the Department; and
- F. Any other matter that affects the health, safety or welfare of a consumer or consumers.

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

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

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

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

2. "Freestanding emergency department" means a facility, physically separate from a hospital, which is established, maintained and operated for the purpose of providing immediate and emergent care to individuals suffering from a life-threatening medical condition, and which is subject to the following requirements:

- A. Services are provided 24 hours per day, 7 days per week on an outpatient basis for medical conditions that include those manifested by symptoms of sufficient severity that, in the absence of immediate medical attention, could result in any of the following:
 - I. Placing the patient's health in jeopardy.
 - II. Serious impairment to bodily functions.

III. Serious dysfunction of any bodily organ or part.

IV. Development or continuance of severe pain.

B. The freestanding emergency department shall maintain the services, staff, equipment and drugs necessary to provide an initial evaluation and stabilization of a patient of any age who presents with symptoms as noted herein.

I. There shall be a full time physician serving as director of the freestanding emergency department who is board-certified in emergency medicine.

II. Each physician practicing in the freestanding emergency department shall be licensed to practice medicine in the State and:

(A) Be board-certified in emergency medicine; or

(B) Be board-eligible for certification in emergency medicine and attain certification within 3 years of completion of a residency program; or

(C) Have at least 3 years of full-time clinical experience in emergency medicine within the past 5 years, be American Board of Medical Specialties or American Osteopathic Association certified in a medical specialty, and hold current certifications in advanced cardiac life support, advanced pediatric life support and advanced trauma life support.

III. Resident physicians and nonphysician providers may work in the freestanding emergency department as long as there are procedures in place for prompt consultation and communication with a physician on-site who meets the criteria in paragraph (3)p.2.B.II. of this section.

IV. All registered nurses practicing in the freestanding emergency department shall be licensed as a registered nurse in the State and hold, or attain within 6 months of hire, certifications, or equivalents as approved by the Department, in advanced cardiac life support and pediatric advanced life support.

V. There must be at least 1 physician, who meets the requirements of paragraph (3)p.2.B.II. of this section, and 1 registered nurse, with current certifications, or equivalents as approved by the Department, in advanced cardiac life support and pediatric advanced life support, present in the freestanding emergency department at all times.

VI. Each freestanding emergency department shall provide on-the-premises clinical laboratory services and diagnostic radiology services to meet a patient's emergency needs, including provision of results, during all hours of operation.

(A) Radiological services must include X ray, computed tomography scan, and ultrasound.

(B) Clinical laboratory services must include collection and processing.

C. Patient transfer agreements, including a plan for transportation, must be in effect with 1 or more general acute care hospitals that provide basic or comprehensive emergency medical services wherein patients requiring more definitive care will be expeditiously transferred to receive prompt hospital care.

D. Each freestanding emergency department shall participate in the Delaware Health Information Network as data senders and end users by January 27, 2017.

E. To receive emergency medical services patients, the freestanding emergency department must comply with the requirements and procedures for medical command facility designation set forth by the Division of Public Health's Office of Emergency Medical Services.

F. Each freestanding emergency department must maintain malpractice insurance coverage.

G. A freestanding emergency department is exempt from licensure requirements if all of the following are satisfied:

I. The freestanding emergency department is owned and operated by a hospital licensed under Chapter 10 of this title.

II. The freestanding emergency department is a service of such hospital deemed by an accreditation organization as approved by the Centers for Medicare and Medicaid Services.

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

which shall have an attending staff.

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

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

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

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

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

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

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

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

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

A. *Restriction.* — The Administrator shall only permit an owner of target housing to forego compliance with a regulation under this paragraph if:

I. No pregnant woman or child under the age of 6 resides in the target housing as of the date on which the renovation or remodeling commences; and

II. The owner submits to the renovation or remodeling contractor written certification that:

(A) The renovation or remodeling project is to be carried out at the target housing of the owner;

(B) No pregnant woman or child under the age of 6 resides in the target housing as of the date on which the renovation or remodeling commences; and

(C) The owner acknowledges that, in carrying out the project, the renovation or remodeling contractor will be exempt from employing the work practices required by a regulation promulgated under this paragraph.

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

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

Notwithstanding any regulation to the contrary, the owner of a food establishment or beer garden may permit leashed dogs in the owner's beer garden or on the owner's licensed outdoor patio.

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

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

<u>Food Establishment Permit</u>	
<u>Type of Establishment</u>	<u>Fee</u>
Public Eating Place	\$100
Retail Food Store	\$100
Ice Manufacturers	\$30
Commercial Food Processors	\$30
Vending Machine Location	\$25

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

<u>Food Establishment Plan Review</u>	
<u>Square Footage</u>	<u>Fee</u>
1000 or less	\$50
1001-5000	\$100
5001-10000	\$150
10001-15000	\$200
15001-above	\$250

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

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

w. Establish standards for the sanitary operation of tattoo parlors and body piercing establishments. For purposes of this paragraph, "tattoo parlor" means a person or business that makes permanent marks on human skin by puncturing the skin and inserting an indelible color or by producing scarring. For purposes of this paragraph, "body piercing establishment"

means a person or business that perforates any human body part or human tissue and places a foreign object in the perforation for nonmedical purposes except for a person or business that perforates only ears. Upon receipt of an application for a permit and a permit fee of \$100, the Department of Health and Social Services shall issue a permit to a tattoo parlor or body piercing establishment if it meets the requirements established under Department regulations. The Secretary shall be authorized to issue restricted, provisional and other types of permits and to revoke or suspend any permit in accordance with Department regulations. A permit, unless sooner suspended or revoked, shall be renewed annually upon filing by the permittee and payment of an annual permit fee of \$100, provided that an applicant meets the requirements set forth in Department regulations.

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

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

2. "Personal assistance services" means the provision of services that do not require the judgment and skills of a licensed nurse or other professional. The services are limited to individual assistance with, or supervision of, activities of daily living, homemaker services, companion services, and those other services as set out in § 1921(a)(15) of Title 24.

3. A personal assistance services agency does not include:

A. An agency providing skilled professional health-care services.

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

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

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

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

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

A. Evidence that the personal assistance services agency is complying with the State's criminal background check policy as set forth in § 1145 of this title.

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

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

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

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

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

- B. The history of violations committed by the person or person's affiliate(s), employee(s), or controlling person(s);
- C. The efforts made by the Personal Assistance Services Agency to correct the violation or violations;
- D. The culpability of the person or persons whom committed the violation or violations;
- E. Any misrepresentation made to the Department; and
- F. Any other matter that affects the health, safety, or welfare of a consumer or consumers.

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

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

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

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

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

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

3. For purposes of this paragraph (3)y.:

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

I. The death or serious injury of any patient at a facility;

II. A reasonable determination by the Department that death or serious injury may result from any unsafe or unsanitary condition at a facility; or

III. The initiation of any criminal investigation arising out of or relating to any diagnosis, treatment or other medical care at a facility.

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

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

D. "Office-based surgery" means any medical procedure, including dental and podiatric procedures, including any of the following:

I. Surgical abortions.

II. Procedures in which the facility utilizes anesthesia, major conduction anesthesia, or sedation.

III. Procedures in which the spine (i.e. epidural, facet joint) is the target of an injection.

IV. Procedures in which the accepted standard of care requires anesthesia, major conduction anesthesia, or sedation.

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

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

z. *Establish standards for a facility accreditation program.* — 1. A. To operate in this State, any facility not licensed by the Department where office-based surgery is performed must maintain accreditation by an accrediting organization approved by the Department. For an accrediting organization to be approved it must be entirely independent from the facility and there shall be no conflict of interest. For purposes of this paragraph (3)z., "facility" and "office-based surgery" mean as defined in paragraph (3)y. of this section. All such offices or facilities must register with the Department utilizing a form created for this purpose by the Department.

B. I. An accrediting organization shall report to the Department, at a minimum, all of the following regarding facilities the organization has accredited under this paragraph:

(A) Findings of surveys.

(B) Findings of complaint and incident investigations.

(C) Data for all facilities that perform office-based surgery.

II. Documents provided under this paragraph (3)z.1.B. are not public records under the Freedom of Information Act, Chapter 100 of Title 29.

2. All facilities where office-based surgery is performed shall submit proof of the facility's accreditation, as required, to the Department. Any newly opened facility where office-based surgery is performed shall submit proof of the facility's accreditation to the Department within 12 months of the first day of operation of such facility.

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

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

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

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

aa. Establish standards for public health quality assurance in the operation of dialysis centers and regulate the public health practice of such programs, which shall include but not be limited to a standard requirement for all dialysis machines to be connected to an emergency power source so that all dialysis machines will operate for at least 4 hours following a power shutdown or outage. In addition, the emergency power source must be in working condition at all times and the dialysis center must conduct and document at least a monthly test of those emergency power sources. For purposes of this section, a "dialysis center" means an independent or hospital-based unit approved to furnish outpatient dialysis services directly to end stage renal disease (ESRD) patients maintenance dialysis services, or home dialysis training and support services, or both to end stage renal disease patients. To perform these functions, the Department shall have the authority to collect and retain reasonable fees necessary to defray costs of these functions. At all times there must be a facility that meets the requirements of this section in each of the following locations: the City of Wilmington, New Castle County, Kent County, and Sussex County. Dialysis centers operating as of July 1, 2015, are to be compliant with all

aspects of this section immediately but may be granted a hardship exemption to immediate compliance but only until at the latest January 1, 2021. Hardship exemptions may be granted for facilities in long term leases, other issues regarding real estate, and any other reason as determined by the Department. Dialysis centers that are newly constructed or relocated after July 1, 2015, must be compliant with all aspects of this section prior to occupancy.

1. The amount charged for each fee imposed under this section shall approximate and reasonably reflect all costs necessary to defray the expenses incurred by the Department. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Department, or any other state agency acting on its behalf, shall compute for each separate service or activity the appropriate fees for the coming year.
2. Upon receipt of an application for licensure and the nonrefundable application fee, the Department shall issue a license if the dialysis center meets the requirements established under this chapter. A license, unless sooner suspended or revoked, shall be renewed annually upon filing by the licensee and payment of an annual licensure fee.
3. A provisional license, as authorized by the Department, shall be issued when health requirements are not met and a licensure fee has been submitted. A dialysis center which has been issued a provisional license shall resubmit the application fee for reinspection prior to the issuance of an annual license.
4. The Department may impose sanctions singly or in combination when it finds a licensee or former licensee has:
 - A. Violated any of these regulations;
 - B. Failed to submit a reasonable timetable for correction of deficiencies;
 - C. Failed to correct deficiencies in accordance with a timetable submitted by the applicant and agreed upon by the Department;
 - D. Exhibited a pattern of cyclical deficiencies which extends over a period of 2 or more years;
 - E. Engaged in any conduct or practices detrimental to the welfare of the patients;
 - F. Exhibited incompetence, negligence or misconduct in operating the dialysis center or in providing services to patients;
 - G. Mistreated or abused patients cared for by the dialysis center;
 - H. Violated any statutes relating to medical assistance or Medicare reimbursement for those facilities who participate in those programs; or
 - I. Refused to allow the Department access to the dialysis center or records for the purpose of conducting inspections/surveys/investigations as deemed necessary by the Department.
5. Disciplinary sanctions include any of the following:
 - A. Permanent revocation of a license which extends to:
 - I. The dialysis center;
 - II. Any owner;
 - III. Officers/directors, partners, managing members or members of a governing body who have a financial interest of 5% or more in the dialysis center; and
 - IV. Corporation officers.
 - B. Suspension of a license;
 - C. A letter of reprimand;
 - D. Placement on provisional status with the following requirements:
 - I. Report regularly to the Department upon the matters which are the basis of the provisional status;
 - II. Limit practice to those areas prescribed by the Department;
 - III. Suspend operations;
 - E. Refusal of a license;

F. Refusal to renew a license; and/or

G. Other disciplinary action as appropriate.

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

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

B. In determining the amount of any civil or administrative penalty imposed, the Court or the Department shall consider the following factors:

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

II. The history of violations committed by the person or the person's affiliate, agent, employee or controlling person;

III. The efforts made by the dialysis center to correct the violation or violations;

IV. Any misrepresentation made to the Department; and

V. Any other matter that affects the health, safety or welfare of a patient.

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

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

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

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

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

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

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

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

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

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

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

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

9. *Application for licensure after revocation or voluntary surrender of a license in avoidance of revocation action.* — A. The application for license after termination of rights to provide services shall follow the procedure for initial licensure application.

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

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

D. A license will be granted to the dialysis center after the provisional licensure period if:

I. The dialysis center has remained in substantial compliance with these rules and regulations; and

II. The dialysis center fulfilled the expectations of the detailed plan of correction that was created to address the deficient practices that gave rise to the license termination action.

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

bb. Regulate the training and educational qualifications for the certification of animal welfare officers. The Department shall:

1. Develop requirements for certification and curricula preparing a person for certification;
2. Develop criteria and standards for evaluating educational programs preparing a person for training and certification; including in conjunction with the Delaware Department of Agriculture and the Delaware Department of Natural Resources and Environmental Control concerning livestock, poultry, and wildlife for animal welfare officers;
3. Approve such programs that meet the requirements of this chapter and of the Department;
4. Deny or withdraw approval from educational programs for failure to meet approved curricula or other criteria;
5. Certify and renew certification of duly qualified applicants;
6. Keep current a registry of all persons certified as animal welfare officers in the State;
7. Establish requirements for mandatory continuing education and certification renewal; and
8. Impose disciplinary sanctions and conduct hearings upon charges that may result in disciplinary sanctions outlined in this chapter in conformance with the Administrative Procedures Act, Chapter 101 of Title 29, and the Freedom of Information Act [Chapter 100 of Title 29].

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

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

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

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

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

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

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

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

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

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

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

19 Del. Laws, c. 642, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=19&chapter=642>); 22 Del. Laws, c. 327, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=22&chapter=327>); Code 1915, § 738; 33 Del. Laws, c. 57, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=33&chapter=57>); 34 Del. Laws, c. 69, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=34&chapter=69>); Code 1935, § 745; 43 Del. Laws, c. 91, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=43&chapter=91>); 16 Del. C. 1953, § 122; 50 Del. Laws, c. 312, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=50&chapter=312>); 51 Del. Laws, c. 80, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=51&chapter=80>); 52 Del. Laws, c. 103 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=52&chapter=103>); 56 Del. Laws, c. 284 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=56&chapter=284>); 56 Del. Laws, c. 383, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=56&chapter=383>); 56 Del. Laws, c. 389, §§ 1, 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=56&chapter=389>); 57 Del. Laws, c. 743 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=57&chapter=743>); 57 Del. Laws, c. 751, § 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=57&chapter=751>); 58 Del. Laws, c. 52, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=58&chapter=52>); 63 Del. Laws, c. 332, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=63&chapter=332>); 64 Del. Laws, c.

471, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=64&chapter=471>); 65 Del. Laws, c. 69, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=65&chapter=69>); 65 Del. Laws, c. 301, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=65&chapter=301>); 66 Del. Laws, c. 397, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=66&chapter=397>); 67 Del. Laws, c. 266, §§ 1, 2, 3, 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=67&chapter=266>); 67 Del. Laws, c. 344, § 6 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=67&chapter=344>); 68 Del. Laws, c. 200, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=68&chapter=200>); 69 Del. Laws, c. 302, § 7 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=69&chapter=302>); 69 Del. Laws, c. 452, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=69&chapter=452>); 70 Del. Laws, c. 150, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=150>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 267, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=267>); 70 Del. Laws, c. 405, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=405>); 70 Del. Laws, c. 470, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=470>); 70 Del. Laws, c. 536, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=536>); 70 Del. Laws, c. 544, §§ 2, 3, 10-20 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=544>); 71 Del. Laws, c. 85, §§ 1, 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=71&chapter=85>); 71 Del. Laws, c. 322, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=71&chapter=322>); 71 Del. Laws, c. 441, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=71&chapter=441>); 72 Del. Laws, c. 124, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=72&chapter=124>); 72 Del. Laws, c. 181, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=72&chapter=181>); 72 Del. Laws, c. 402, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=72&chapter=402>); 73 Del. Laws, c. 10, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=73&chapter=10>); 73 Del. Laws, c. 118, §§ 1-5 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=73&chapter=118>); 73 Del. Laws, c. 193, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=73&chapter=193>); 73 Del. Laws, c. 347, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=73&chapter=347>); 73 Del. Laws, c. 355, § 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=73&chapter=355>); 74 Del. Laws, c. 78, §§ 2, 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=74&chapter=78>); 75 Del. Laws, c. 286, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=75&chapter=286>); 75 Del. Laws, c. 308, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=75&chapter=308>); 78 Del. Laws, c. 15, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=78&chapter=15>); 78 Del. Laws, c. 80, §§ 1, 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=78&chapter=80>); 78 Del. Laws, c. 303, § 5 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=78&chapter=303>); 79 Del. Laws, c. 92, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=79&chapter=92>); 79 Del. Laws, c. 150, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=79&chapter=150>); 79 Del. Laws, c. 153, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=79&chapter=153>); 79 Del. Laws, c. 154, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=79&chapter=154>); 79 Del. Laws, c. 375, §§ 2, 5 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=79&chapter=375>); 79 Del. Laws, c. 424 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=79&chapter=424>); , § 1; 80 Del. Laws, c. 13, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=13>); 80 Del. Laws, c. 72, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=72>); 80 Del. Laws, c. 83, § 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=83>); 80 Del. Laws, c. 119, §§ 1, 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=119>);

volume=80&chapter=119); 80 Del. Laws, c. 123, § 1
(<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=123>); 80 Del. Laws, c. 235, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=235>); 80 Del. Laws, c. 248, § 8 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=248>); 80 Del. Laws, c. 258, § 7
(<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=258>); 80 Del. Laws, c. 404, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=404>); 81 Del. Laws, c. 305, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=81&chapter=305>); 81 Del. Laws, c. 417, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=81&chapter=417>); 82 Del. Laws, c. 100, § 1
(<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=82&chapter=100>); 82 Del. Laws, c. 141, § 17 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=82&chapter=141>); 82 Del. Laws, c. 237, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=82&chapter=237>);

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

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

(b) If any proprietor, manager, principal, superintendent, officer or physician in charge refuses and neglects to make a report when requested to do so by the Department of Health and Social Services, that person shall be fined not less than \$5.00 nor more than \$25, together with costs.

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

- (1) Delaware State Board of Medical Licensure and Discipline;
- (2) Delaware State Board of Dentistry and Dental Hygiene;
- (3) Delaware State Board of Nursing;
- (4) Delaware State Board of Professional Counselors;
- (5) Delaware State Board of Examiners of Psychologists;
- (6) Delaware State Board of Clinical Social Work Examiners;
- (7) Delaware State Board of Podiatry;
- (8) Delaware State Board of Chiropractic;
- (9) Delaware State Board of Occupational Therapy Practice;
- (10) Delaware State Board of Examiners in Optometry;
- (11) Delaware State Board of Pharmacy;
- (12) Delaware State Examining Board of Physical Therapists and Athletic Trainers;
- (13) Delaware State Board of Examiners of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers;
- (14) Delaware State Board of Examiners of Nursing Home Administrators; and
- (15) Delaware State Committee of Dietetics/Nutrition.

- (d) All data must be submitted in a standardized electronic format as determined by the Division of Public Health in consultation with the Division of Professional Regulation and the Delaware Health Care Commission. Data must be submitted within 20 business days of a request.
- (e) For the purposes of measuring, tracking and projecting supply and demand of health-care professionals, the requesting entity shall provide to the Division of Professional Regulation any health workforce report developed from the data.
- (f) Any individual data provided pursuant to this section shall be confidential. No public employee, commission member, or contractor acting on behalf of a state agency or employee of such a contractor may:
- (1) Use any data provided pursuant to this section for any purpose other than the statistical, forecasting, and program purposes for which the data is furnished.
 - (2) Make public any of the data provided pursuant to this section that would allow the identity of any individual to be inferred by either direct or indirect means.
 - (3) Retain any personal data as provided in this section that is received by the Delaware Division of Public Health, the Delaware Health Care Commission or any contractor acting on behalf of these entities. Any personal data must be destroyed within 30 days of completion of its intended purpose as described in this section.
- (g) An intentional violation of subsection (f) of this section shall result in the imposition of a fine of not less than \$1,000 nor more than \$20,000 or imprisonment of not less than 30 days nor more than 6 months, or both. Justices of the Peace shall have jurisdiction of offenses under this section.

19 Del. Laws, c. 642, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=19&chapter=642>); 22 Del. Laws, c. 327, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=22&chapter=327>); Code 1915, § 738; 33 Del. Laws, c. 57, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=33&chapter=57>); 34 Del. Laws, c. 69, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=34&chapter=69>); Code 1935, § 745; 43 Del. Laws, c. 91, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=43&chapter=91>); 16 Del. C. 1953, § 123; 70 Del. Laws, c. 149, §§ 24-26 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 544, §§ 21, 22 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=544>); 75 Del. Laws, c. 228, §§ 1-5 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=75&chapter=228>); 77 Del. Laws, c. 319, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=77&chapter=319>); 77 Del. Laws, c. 463, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=77&chapter=463>);

§ 124. Fluoridation of a water supply.

- (a) In order to protect the dental health of all citizens, especially children, the Department of Health and Social Services shall promulgate rules to provide for the addition of fluoride to all municipal water supplies by the owners or official custodians thereof. Such rules shall provide for the addition of fluoride to the water supplies so as to maintain a fluoride content of not less than that currently specified by the Department's regulations.
- (1) By November 15, 1998, each municipal water system shall provide to the Department an estimate of the total capital costs to install the required fluoridation treatment and additional operating costs for the ongoing operation for fluoridation treatment.
 - (2) Subsection (b) of this section shall not apply to those municipalities which are required to comply with the mandates of subsection (a) of this section.
- (b) The Division of Public Health shall not require any water supply to be fluoridated which has not been fluoridated before March 26, 1974, until approval of such fluoridation is first obtained in the following manner by the users of such water supply:
- (1) When the Division determines that it is in the best interest of the users of a given water supply that such supply shall be fluoridated, it shall notify the administrator, owner or person who controls the water supply and the local government which it serves. Within 60 days from the receipt of such notice, the governing body of the majority of people involved shall conduct a

referendum among the people served by the water supply to determine whether or not such fluoridation shall take place. Prior to any such referendum the Division shall conduct an educational program in the community affected on the fluoridation process. The costs of the referendum shall be borne by the said governing body.

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

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

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

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

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

59 Del. Laws, c. 276, § 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 70 Del. Laws, c. 150, § 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=150>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 71 Del. Laws, c. 361, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=71&chapter=361>);

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

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

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

19 Del. Laws, c. 642, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=19&chapter=642>); 22 Del. Laws, c. 327, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=22&chapter=327>); Code 1915, § 738; 33 Del. Laws, c. 57, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=33&chapter=57>); 34 Del. Laws, c. 66, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=34&chapter=66>); 34 Del. Laws, c. 69, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=34&chapter=69>); Code 1935, §§ 745, 858; 43 Del. Laws, c. 91, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=43&chapter=91>); 16 Del. C. 1953, § 124; 57 Del. Laws, c. 591, §§ 6, 7 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=57&chapter=591>); 59 Del. Laws, c. 276, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 70 Del. Laws, c. 149, §§ 28, 29, 30 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

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

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

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

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

19 Del. Laws, c. 642, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=19&chapter=642>); 22 Del. Laws, c. 327, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=22&chapter=327>); Code 1915, § 738; 33 Del. Laws, c. 57, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=33&chapter=57>); 34 Del. Laws, c. 69, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=34&chapter=69>); Code 1935, § 745; 43 Del. Laws, c. 91, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=43&chapter=91>); 46 Del. Laws, c. 312, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=46&chapter=312>); 16 Del. C. 1953, § 125; 59 Del. Laws, c. 276, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 70 Del. Laws, c. 149, §§ 31, 32, 33 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

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

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

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

19 Del. Laws, c. 642, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=19&chapter=642>); 22 Del. Laws, c. 327, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=22&chapter=327>); Code 1915, § 738; 33 Del. Laws, c. 57, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=33&chapter=57>); 34 Del. Laws, c. 69, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=34&chapter=69>); Code 1935, § 745; 43 Del. Laws, c. 91, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=43&chapter=91>); 16 Del. C. 1953, § 126; 59 Del. Laws, c. 276, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 70 Del. Laws, c. 149, § 34 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 544, § 23 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=544>);

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

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

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

19 Del. Laws, c. 642, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=19&chapter=642>); 22 Del. Laws, c. 98, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=22&chapter=98>); Code 1915, § 739; 29 Del. Laws, c. 49, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=29&chapter=49>); 33 Del. Laws, c. 57, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=33&chapter=57>); 34 Del. Laws, c. 69, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=34&chapter=69>); Code 1935, § 746; 16 Del. C. 1953, § 127; 57 Del. Laws, c. 591, §§ 8-11 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=57&chapter=591>); 59 Del. Laws, c. 276, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 70 Del. Laws, c. 149, §§ 35-37 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 544, § 24 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=544>);

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

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

19 Del. Laws, c. 642, § 11 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=19&chapter=642>); 22 Del. Laws, c. 327, § 6 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=22&chapter=327>); Code 1915, § 742; 33 Del. Laws, c. 57, § 4 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=33&chapter=57>); 34 Del. Laws, c. 69, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=34&chapter=69>); Code 1935, § 748; 16 Del. C. 1953, § 128; 57 Del. Laws, c. 591, § 12 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=57&chapter=591>); 59 Del. Laws, c. 276, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 70 Del. Laws, c. 149, §§ 38-40 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 544, § 25 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=544>); 73 Del. Laws, c. 355, § 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=73&chapter=355>);

§ 130. Reporting of potential or existing public health emergencies.

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

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

conditions identified by the Division of Public Health as notifiable diseases.

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

- (1) An unusual increase in the number of prescriptions to treat fever, respiratory or gastrointestinal complaints;
- (2) An unusual increase in the number of prescriptions for antibiotics; and
- (3) Any prescription that treats a disease that is relatively uncommon or may be associated with bioterrorism.

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

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

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

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

73 Del. Laws, c. 355, § 5 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=73&chapter=355>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

§ 131. Survey of hospitals and health centers — Required.

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

- (1) Make a survey of the location, size and character of all existing public and private (proprietary as well as nonprofit) hospitals and health centers in the State;
- (2) Evaluate the sufficiency of such hospitals and health centers to supply the necessary physical facilities for furnishing adequate hospital, clinical and similar services to all the people of the State; and
- (3) Compile such data and conclusions, together with a statement of the additional facilities necessary, in conjunction with existing structures to supply such services.

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

45 Del. Laws, c. 88, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=45&chapter=88>); 16 Del. C. 1953, § 130; 59 Del. Laws, c. 276, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 70 Del. Laws, c. 149, §§ 43, 44 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

§ 132. Acceptance of federal grants.

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

45 Del. Laws, c. 88, § 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=45&chapter=88>); 16 Del. C. 1953, § 131; 59 Del. Laws, c. 276, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 70 Del. Laws, c. 149, § 45 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>);

§ 133. Cancer; Delaware Cancer Consortium.

- (a) The Division of Public Health may use any money appropriated to it for the purpose of the detection of cancer, for research in cancer and for other purposes related to cancer prevention and control.
- (b) The Delaware Cancer Consortium ("Consortium") shall coordinate cancer prevention and control activities in the State of Delaware. The Consortium will:
 - (1) Provide advice and support to state agencies, cancer centers, cancer control organizations and health care practitioners regarding their role in reducing mortality and morbidity from cancer.
 - (2) Facilitate collaborative partnerships among public health agencies, cancer centers and all other interested agencies and organizations to carry out recommended cancer control strategies.
 - (3) On at least a biennial basis, analyze the burden of cancer in Delaware and progress toward reducing cancer incidence and mortality.
- (c) The Consortium's priorities and advocacy agenda shall be dictated by the recommendations contained in "Turning Commitment Into Action — Recommendations of the Advisory Council on Cancer Incidence and Mortality," published in April, 2002.
- (d) The Consortium's permanent membership shall be as follows:
 - (1) Two representatives of the Delaware House of Representatives and 2 representatives of the Delaware State Senate (1 selected by each caucus);
 - (2) One representative of the Governor's office;
 - (3) The Secretary of the Department of Health and Social Services or the Secretary's designee;
 - (4) One representative of the Department of Natural Resources and Environmental Control;
 - (5) One representative of the Medical Society of Delaware to be appointed by the Governor;
 - (6) One professor from Delaware State University or the University of Delaware, to be appointed by the Governor;
 - (7) Two physicians with relevant medical knowledge, to be appointed by the Governor;
 - (8) One representative of a Delaware hospital cancer center to be appointed by the Governor;
 - (9) Three public members with relevant professional experience and knowledge, to be appointed by the Governor.
- (e) Appointees to the Consortium shall serve at the pleasure of the person or entity that appointed them.
- (f) The Consortium's permanent members may enact procedures to appoint additional persons to the Consortium.
- (g) The Consortium shall have a chair and a vice-chair, to be appointed from among the permanent members by the Governor and to serve at the pleasure of the Governor. Staff support for the Consortium shall be provided by the Delaware Division of Public Health.

47 Del. Laws, c. 194, §§ 1, 3 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=47&chapter=194>); 16 Del. C. 1953, § 132; 59 Del. Laws, c. 276, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 70 Del. Laws, c. 149, §§ 46, 47 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>);

70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 544, §§ 26, 27 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=544>); 74 Del. Laws, c. 191, §§ 1, 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=74&chapter=191>);

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

- (a) No person shall operate any public eating place unless the Department of Health and Social Services shall approve the sanitary facilities thereof and issue a permit therefor.
- (b) Any person who proposes to erect or construct a building to be used as a public eating place or to alter, enlarge, reconstruct or convert an existing building for such purpose shall submit plans and specifications for such work, including a plot of the land detailing the sanitary facilities to be provided to the Department of Health and Social Services and no work shall be undertaken until the said Department of Health and Social Services shall approve the sanitary arrangements and facilities proposed in such plans and specifications.
- (c) The Department of Health and Social Services shall initiate a procedure for the inspection of public eating places prior to the issuance of the permit required under this section. There shall be no fee required for inspection; however, in the event that reinspection must be initiated in any given year, the Department shall establish a restaurant inspection fee, payable upon or prior to inspection, in the following manner:
- (1) The sum of \$50 shall be required for a second inspection;
 - (2) The sum of \$100 shall be required for a third inspection;
 - (3) The sum of \$150 shall be required for each subsequent inspection.
- (d) Notwithstanding the provisions of § 6102 of Title 29, the Division shall be allowed to retain and expend the portion of these fees up to the level authorized to fund the cost of the Department of Health and Social Services in connection with its duties hereunder.
- (e) The restaurant permit shall not be issued prior to the public eating place receiving a satisfactory rating in inspection as defined in the State of Delaware regulations governing public eating places.
- (f) The following entities shall be exempt from the restaurant inspection fee established in subsection (c) of this section:
- (1) Churches;
 - (2) Fire halls;
 - (3) Schools;
 - (4) Government agencies;
 - (5) Health care institutions; or
 - (6) Any nonprofit organization.

16 Del. C. 1953, § 133; 56 Del. Laws, c. 382, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=56&chapter=382>); 59 Del. Laws, c. 276, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=59&chapter=276>); 67 Del. Laws, c. 272, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=67&chapter=272>); 70 Del. Laws, c. 149, §§ 48, 49, 226 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 544, §§ 28-30 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=544>);

§ 135. Services to public water systems.

- (a) The Department will provide services to public water as follows:
- (1) Analyze drinking water for chemical and microbiological content.

- (2) Inspect public water systems.
- (3) Review plans for new systems and major improvements to existing systems.
- (4) Provide technical assistance to public water system as needed.
- (5) Provide a program to approve the qualifications and competency of laboratories conducting chemical and microbiological testing of potable water.
- (6) Provide a program to approve the qualifications and competence of potable water distribution and treatment plant operators in charge of operating public water systems.

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

(1) COMMUNITY WATER SUPPLIES

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

- (2) NON-COMMUNITY SUPPLIES _____ \$25
- (3) NON-TRANSIENT NON-COMMUNITY SUPPLIES _____ \$50

67 Del. Laws, c. 269, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=67&chapter=269>); 70 Del. Laws, c. 149, § 50 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=149>); 70 Del. Laws, c. 186, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=186>); 70 Del. Laws, c. 544, § 31 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=70&chapter=544>);

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

- (a) A Healthy Lifestyles and Tobacco-Related Disease Prevention Fund (hereinafter in this section, the “Fund”) is established within the Division of Public Health of the Department of Health and Social Services.
- (b) The Fund shall be used by the Public Health Director to encourage Delawareans to seek preventative health care, live healthy lifestyles, and to avoid unhealthy behavior, in particular, tobacco use. To that end, the Director shall: develop and implement programs to encourage healthy lifestyles and to promote avoidance of tobacco, alcohol and drug abuse; and provide Delawareans with accurate and understandable information regarding their health, including, but not limited to, information regarding the dangers of tobacco, alcohol and drug use; the preventive care Delawareans should seek to avoid and/or detect adverse health conditions, in particular cancer; and the effects of diet and physical exercise on health.
- (c) The Director shall prepare an annual plan for use of the Fund, which shall be approved or modified by the Secretary of the Department.

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

71 Del. Laws, c. 421, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=71&chapter=421>);

§ 137. Delaware Health Fund.

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

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

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

- (1) Expanding access to health care and health insurance for citizens of Delaware that lack affordable health care due to being uninsured or under insured;
- (2) Making long-term investments to enhance health-care infrastructure which meets a public purpose;
- (3) Promoting healthy lifestyles, including the prevention and cessation of the use of tobacco, alcohol and other drugs by the citizens of Delaware;
- (4) Promoting preventive care for Delawareans in order to detect and avoid adverse health conditions, particularly cancer and other tobacco-related diseases;
- (5) Working with the medical community by providing funding for innovative and/or cost effective testing regimens to detect and identify lesser-known but devastating and costly illnesses, such as sarcoidosis and hemochromatosis, fibromyalgia, lupus, Lyme disease and chronic fatigue immune deficiency syndrome;
- (6) Promoting a payment assistance program for prescription drugs to Delaware's low income senior and disabled citizens who are ineligible for, or do not have, prescription drug benefits or coverage through federal state or private sources;
- (7) Promoting a payment assistance program to Delaware's citizens who suffer from debilitating chronic illnesses, such as diabetes and kidney disease which are characterized by onerous recurring costs for equipment, tests and therapy; and/or
- (8) Such other expenditures as are deemed necessary in the best interests of the citizens of Delaware provided they shall be made for health-related purposes.

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

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

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

(g) There is hereby established The Delaware Health Fund Advisory Committee comprised of the Secretary of the Department of Health and Social Services, 2 members of the Senate designated by the President Pro Tempore, 2 members of the House of Representatives designated by the Speaker of the House of Representatives, the Chair of the Health Care Commission or the Chair may designate a board member or staff person of the Health Care Commission, 3 members of the public to be appointed and to serve at the pleasure of the Governor, 1 member of the public appointed by the President Pro Tempore of the Senate to serve at the pleasure of the President Pro Tempore of the Senate, and 1 member of the public appointed by the Speaker of the House of Representatives to serve at the pleasure of the Speaker of the House of Representatives. No public member appointed

to this Advisory Committee shall be directly associated with or represent 1 any organization or entity that will be a recipient or beneficiary of the Delaware Health Fund. The Secretary of the Department of Health and Social Services shall serve as the Chairperson of the Committee. Each year, the Committee will make recommendations, consistent with the purposes outlined in subsection (c) of this section, to the Governor and the General Assembly by November 15 for appropriating moneys expected to be received in the next fiscal year. The Committee shall, in the process of developing these recommendations, seek input from the public and private agencies concerned with the intended purposes of the Delaware Health Fund as described in subsection (c) of this section and conduct public hearings as necessary to provide an opportunity for public comment. The Committee shall also utilize the Delaware Health Care Commission to provide research relating to future health-care needs of Delaware citizens and data relating to past health-care programs in Delaware.

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

72 Del. Laws, c. 198, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=72&chapter=198>); 82 Del. Laws, c. 64, § 39 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=82&chapter=64>);

§ 138. Community-based Naloxone access program.

The Department shall:

- (1) Promote the safe use of Naloxone to reduce deaths from opioid overdoses.
- (2) Make education and training programs on the safe use of Naloxone available to people who hold doses of Naloxone for friends and family members who have an addiction to opioids.
- (3) Establish a community-based Naloxone access program after researching best practices and obtaining grant funding. At a minimum, a community-based Naloxone access program will require participants to complete an approved training and education program prior to receiving doses of Naloxone and/or administering Naloxone. Naloxone may be distributed to people who complete the requirements set forth for this program.

79 Del. Laws, c. 266, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=79&chapter=266>);

§ 139. Certification and procedures for animal welfare officers.

- (a) A person who acts as a certified animal welfare officer without certification from the Department is subject to penalties pursuant to § 107 of this title. For purposes of this subchapter, “animal welfare officer” means any person qualified to act pursuant to § 1325 of Title 11 and § 3041F of this title.
- (b) The Department may, by endorsement and without written examination, certify an animal welfare officer who has completed a training program that meets the educational requirements for certification defined by the Department and if, in the opinion of the Department or its designee, the applicant meets the qualifications specified by this chapter for an animal welfare officer.
- (c) *Dog control and animal cruelty educational programs.* — (1) Any organization or institution desiring to conduct an animal welfare officer education program shall apply to the Department and submit satisfactory evidence that it is ready and qualified to instruct students in the prescribed basic curriculum for certifying animal welfare officers and that it is prepared to meet other standards which may be established by the Department.
 - (2) If the Department determines that any approved educational program is not maintaining the standards required by this chapter and by the Department, written notice thereof, specifying the deficiency and the time within which the same shall be corrected, shall immediately be issued to the program. The Department shall withdraw such programs approval if it fails to correct the deficiency. The organization or institution may reapply for approval to the Department once the program meets standards established by the Department.
- (d) The Department may impose sanctions defined in this chapter singly or in combination when it finds a certified or former certified animal welfare officer committed any offense described below:
 - (1) Engages in fraud or deceit in procuring or attempting to procure a certification/license;
 - (2) Is guilty of a crime against person or property;

- (3) Has been found by an employer to be unfit or incompetent;
 - (4) Has had a certification or license to serve as an animal welfare officer suspended or revoked in any jurisdiction; or
 - (5) Has wilfully or negligently violated this chapter.
- (e) The Department shall establish procedures for documenting all complaints and conducting investigations of complaints filed against animal welfare officers that may result in sanctions.
- (f) Disciplinary sanctions are as follows:
- (1) Permanently revoke a certification or license to be an animal welfare officer;
 - (2) Refuse a certification or certification renewal;
 - (3) Suspend a certification or license;
 - (4) Place a certification or license on probationary status and require licensee to: report regularly to the Department upon the matters which are the basis of probation; limit practice to those areas prescribed by the Department; or continue or renew professional education until satisfactory degree of skill has been attained in those areas which are the basis of the probation;
 - (5) Issue a letter of reprimand; and
 - (6) Require additional training.

79 Del. Laws, c. 375, §§ 3, 5 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=79&chapter=375>); 80 Del. Laws, c. 248, § 9 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=248>);

§ 140. Lyme Disease Education Oversight Board [Expires Aug. 29, 2024, pursuant to 80 Del. Laws, c. 402, § 2].

- (a) The Lyme Disease Education Oversight Board (“the Board”) is established to implement health-care professional education on Lyme disease to improve understanding of the disease. For administrative and budgetary purposes only, the Board shall be placed within the Department of Health and Social Services. The Delaware Division of Public Health shall provide staff support for the Board.
- (b) The Board shall consist of 9 members who possess the qualifications and are appointed as follows:
- (1) The Governor shall appoint:
 - a. Two members who are advocates for the prevention and treatment of Lyme disease, such as a Lyme disease patient or patient advocate.
 - b. One member who is licensed to practice medicine in Delaware.
 - c. One member who is licensed to practice nursing in Delaware.
 - d. One member who is a licensed health-care professional other than physicians or nurses.
 - e. One member who has knowledge and experience in the licensure and regulation of health care.
 - (2) The Pro Tempore of the Delaware State Senate shall appoint 1 member of the Lyme Disease Prevention Task Force established by Senate Joint Resolution No. 10 of the 147th General Assembly. Upon the resignation or replacement of that member, the Pro Tempore shall appoint a member to represent the public at large.
 - (3) The Speaker of the Delaware House of Representatives shall appoint 1 member of the Lyme Disease Prevention Task Force established by Senate Joint Resolution No. 10 of the 147th General Assembly. Upon the resignation or replacement of that member, the Speaker shall appoint a member to represent the public at large.
 - (4) The Director of the Division of Public Health, or the Director’s designee.
- (c) The Board shall:
- (1) Determine the content of Lyme disease medical education materials, ensuring quality and balanced medical education by including the philosophies of the Centers For Disease Control, the guidelines established by the International Lyme and Associated Diseases Society, as well as the latest scientific evidence and research.

- (2) Educate health-care professionals in the State that Lyme disease can be diagnosed clinically based on history and physical examination, and serologic antibody testing can confirm, but is not required to make, a clinical diagnosis.
 - (3) Educate health-care professionals to develop a high level of awareness of Lyme disease.
 - (4) In conjunction with the Medical Society of Delaware and the Delaware Nurses Association, develop continuing medical education credits and nursing continuing education units on Lyme disease and encourage health-care professionals to take the continuing education courses as soon as reasonably practicable.
 - (5) Host continuing medical education and nursing continuing education trainings in all 3 counties and, if reasonably practicable, at hospitals to encourage the largest possible attendance by health-care professionals.
 - (6) Deliver education in a variety of methods, using professional associations, medical journals, radio, Internet, conferences, and linking medical training with a public awareness campaign.
- (d) Appointment terms for the Board are as follows:
- (1) The members appointed by the Pro Tempore of the Senate and the Speaker of the House and the member who is an advocate for the prevention and treatment of Lyme disease are appointed for an initial term of 3 years.
 - (2) The member who is licensed to practice medicine and the member who is licensed to practice nursing are appointed for an initial term of 2 years.
 - (3) The member who is a health-care professional other than physician or nurse and the member who has knowledge and experience in the licensure and regulation of health care are appointed for an initial term of 1 year.
 - (4) After the initial terms, members are appointed or reappointed for terms of 3 years, but each appointing authority may appoint or reappoint members for a term of less than 3 years to ensure that no more than 3 members' terms expire annually.
- (e) The Board shall select a Chair and Vice Chair from among its members.
- (f) A majority of members appointed to the Board shall constitute a quorum to conduct official business.
- (g) If a vote by the Board results in a tie, the Board's Chair may vote a second time to break the tie.
- (h) Members of the Board shall serve without compensation, except that they shall be reimbursed for reasonable and necessary expenses incident to their duties as members of the Board excluding mileage. The Department shall pay such expenses.
- (i) The Department shall submit to the Governor and the General Assembly an annual report that contains, at a minimum, all of the following information:
- (1) The title, description, and schedule of continuing medical education and nursing continuing education courses related to Lyme disease education.
 - (2) Attendance of continuing medical education and nursing continuing education courses by the health-care professional population.
 - (3) Specific accounting of fees and costs.

80 Del. Laws, c. 402, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=80&chapter=402>);

§ 140A. Diabetes; prevention and control; report.

The Division of Medicaid and Medical Assistance, Division of Public Health, and the Human Resources Management Section of the Office of Management and Budget, referred to collectively as "the agencies" throughout this section, shall submit, by June 30 every 2 years, a comprehensive joint report to the General Assembly that includes all of the following:

- (1) Data reflecting the prevalence and burden of diabetes in the State.
- (2) Activities related to diabetes programs and initiatives throughout the State in the fiscal years following the most recent prior biennial report.
- (3) An estimate of the financial impact of diabetes on each of the agencies.
- (4) The number of people impacted or served by each of the agencies with regard to diabetes, including programs and initiatives designed to reach individuals with diabetes and prediabetes.

(5) A description of each of the agencies' implemented programs and activities aimed at improving diabetes care and preventing the disease, and an assessment of the expected benefits and outcomes for each program and activity.

(6) Current funding levels for each of the agencies to implement programs and activities aimed at reaching individuals with diabetes and prediabetes.

(7) Each of the agencies' individual plans, including recommendations to address the prevention and control of diabetes, the intended outcomes of the recommendations, and estimates of the funding and time required to implement the recommendations.

81 Del. Laws, c. 177, § 1 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=81&chapter=177>);

§ 140B. Default beverages offered in children's meals.

(a) A restaurant offering children's meals for sale that include a beverage must offer as a default beverage with the children's meal 1 or more of the following:

(1) Water, sparkling water, or flavored water that has no added sugar, corn syrup, or other natural or artificial sweeteners.

(2) Flavored or unflavored whole milk, nonfat or low-fat 1% or 2% dairy milk or no-dairy beverage that is nutritionally equivalent to fluid milk in a serving of 8 ounces or less.

(3) One hundred percent fruit juice or vegetable juice, combination of fruit juice and vegetable juice, or fruit juice or vegetable juice combined with water or carbonated water that has no added natural or artificial sweetener, in a serving size of 8 ounces or less.

(b) For purposes of this section:

(1) "Children's meal" means a combination of food and beverage, sold together at a single price by a restaurant, primarily intended for consumption by children.

(2) "Default beverage" means a beverage automatically included or offered as part of a children's meal absent a specific request for a substitute or alternate beverage by the purchaser of the children's meal.

(3) "Restaurant" means a commercial establishment that serves food to customers for consumption on or off the premises.

(c) The Department shall promulgate and enforce standards to regulate this section as empowered under § 122(3)u.1. of this title. The standards shall reflect that enforcement of this section, when considered separate from other violations, may not result in fines, fees or other monetary penalties.

(d) Nothing in this section shall prohibit a restaurant from selling, or a customer from purchasing, an alternative to the default beverage if requested by the purchaser of the children's meal.

82 Del. Laws, c. 100, § 2 (<http://web.archive.org/web/20210221211515/https://legis.delaware.gov/SessionLaws?volume=82&chapter=100>);

Delaware General Assembly (<http://web.archive.org/web/20210221211515/http://legis.delaware.gov/>)

Judicial (<http://web.archive.org/web/20210221211515/http://courts.delaware.gov/>)

Executive (<http://web.archive.org/web/20210221211515/http://delaware.gov/>)

Contact (<http://web.archive.org/web/20210221211515/http://delaware.gov/help/degov-contact.shtml>)

Twitter (http://web.archive.org/web/20210221211515/https://twitter.com/delaware_gov/)

Help (<http://web.archive.org/web/20210221211515/http://delcode.delaware.gov/help/default.html>)