

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES

## DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C (16 Del.C. §1119C)  
16 DE Admin. Code 3230

### FINAL

### ORDER

#### 3230 Rest (Residential) Home Regulations

##### **Nature of The Proceedings**

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Rest Residential Homes. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code Section 1119C.

On June 1, 2020, DHSS published in the *Delaware Register of Regulations* its notice of emergency regulations pursuant to 16 Del.C. §1119C and 29 Del.C. §10119. On October 1, 2020 (Volume 24, Issue 4), DHSS published in the *Delaware Register of Regulations* its notice of both emergency and proposed regulations, pursuant to 16 Del.C. §1119C and 29 Del.C. §10119 and 29 Del.C. §10115, respectively. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by November 2, 2020, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

##### **Summary of Proposal**

Effective December 1, 2020, DHSS/Division of Health Care Quality (DHCQ) is publishing the final regulations governing Rest Residential Homes.

##### **Background**

Rapid and widespread transmission of COVID-19 is of significant concern within congregate settings, particularly within nursing facilities, assisted living facilities, rest (residential) facilities, and intermediate care facilities for persons with intellectual disabilities.

Because asymptomatic or presymptomatic residents and staff might play an important role in transmission in facilities, additional prevention measures merit consideration, including using testing to guide the use of transmission-based precautions, isolation, and cohorting strategies. The ability to test large numbers of residents and staff may significantly decrease transmission of COVID-19 within facilities.

##### **Statutory Authority**

16 Del.C. §1119C

##### **Purpose**

The purpose of the amendment was to update the regulatory language to include the emergency regulations published on June 1, 2020. This language expands definitions, documentation, emergency preparedness, and testing requirements for rest residential homes.

##### **Fiscal Impact**

N/A

#### **SUMMARY OF EVIDENCE**

##### STATE OF DELAWARE REGULATIONS GOVERNING REST RESIDENTIAL HOMES

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Rest Residential Homes were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (October 1, 2020 through November 2, 2020).

Public comments and the DHSS (Department) responses are as follows:

## **Ann C. Fisher, Chairperson Governor's Advisory Council for Exceptional Citizens**

**Comment:** The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS)/Division of Health Care Quality (DHCQ) Emergency and Proposed regulations governing testing for COVID-19 in nursing homes, immediate care nursing facilities, assisted living facilities and rest (residential) facilities. Council understands that the emergency regulations (304, 306 and 308) extend the mandatory testing and other protocols for each type of facility for 60 days, based on the Governor's Emergency Orders. The proposed regulations (315, 317 and 320) are identical to the emergency regulations and allow the public an opportunity to provide comments. Council would like to share the following observations and will group our comments as they all pertain to each of the facility types noted.

First, section 6.11.1.1 [9.3.1.1] suggests but does not compel resident testing upon identification of another resident with symptoms consistent with COVID-19 or if staff have tested positive. The Division of Public Health (DPH) could mandate testing of residents. Shouldn't residents be tested if staff are suspected of COVID rather than waiting for positive test results before testing?

**Response:** Thank you for your comment. Staff with symptoms or signs of COVID-19 must be tested for COVID-19 and are expected to be restricted from the facility pending the results of COVID-19 testing. Residents who have signs or symptoms of COVID-19 should also be tested for COVID-19. While test results are pending, residents with signs or symptoms should be placed on transmission-based precautions (TBP) in accordance with Centers for Disease Control and Prevention guidance. Upon identification of a single new case of COVID-19 infection in any staff, all residents should be tested per the Centers for Disease Control and Prevention and the Division of Public Health guidance. Per 16 Delaware Code §1121, each resident has the right to refuse medication or treatment. The skilled and intermediate care nursing facility must offer COVID-19 testing and explain the consequences of not testing; however, the facility cannot force a resident to be tested for COVID-19.

**Comment:** Second, section 6.11.1.2 [9.3.1.2] states that all other testing should be consistent with DPH guidance **during the emergency**. Council feels this should be mandatory language beyond the pandemic. Is it up to the facility to decide whether to follow DPH guidance? Even when COVID-19 is no longer at pandemic level it will still be a dangerous infectious disease, particularly for residents of these types of facilities. Therefore, it should still be a requirement to test for positive cases until the Centers for Disease Control (CDC) and state health department indicate that there is no remaining threat of transmission.

**Response:** Thank you for your comment. The Department of Health and Social Services will address this issue in a future revision.

**Comment:** Third, section 6.11.1.3 [9.3.1.3] states that all testing must be documented in the medical record and section 6.11.1.4 [9.3.1.4] states that all resident results must be reported to DPH. Likewise, section 6.11.2.1 [9.3.2.1] states that all staff, vendors and volunteers must be tested within two weeks of the effective date of the regulation. This language is confusing. Are the facilities being asked to do a new run of testing or keep going with the existing protocol?

Fourth, section 6.11.2.2 [9.3.2.2] states that all new staff, vendors and volunteers who cannot provide proof of a previous positive testing must be tested prior to their start date. There is no evidence regarding the duration of any immunity that previous infection may create. There is no timeframe for when any prior positive test might have occurred. Therefore, any new staff, vendor or volunteer needs to have a recent (within several days) negative test prior to accessing any facility.

**Response:** Thank you for your comment. All long term care facilities are required to document all test results in the resident medical record. In addition, all test results must be reported to the Division of Public Health. Long term care facilities have been completing COVID-19 testing in accordance with the Division of Public Health guidance since June 2020. Due to the changing guidance regarding the testing of persons that previously tested positive for COVID-19, the regulations will be clarified as follows:

6.11.2.1 [9.3.2.1] remove

6.11.2.2 [9.3.2.2] Prior to their start date, all new staff, vendors and volunteers must be tested in accordance with the Delaware Division of Public Health Guidance.

**Comment:** Fifth, section 6.11.2.3 [9.3.2.3] states that all staff, vendors and volunteers must be retested consistent with DPH guidelines for the duration of the public health emergency. Council queries what happens after the public health emergency? Should facilities be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis until the CDC and DPH indicate there is no remaining threat of transmission?

**Response:** Thank you for your comment. The Department of Health and Social Services will address the testing of staff, vendors and volunteers after the public health emergency in a future revision.

**Comment:** Sixth, section 6.11.2.5 [9.3.2.5] is confusing. It states that facilities must follow the recommendations of CDC and DPH regarding provision of care and services for residents by staff, vendor or volunteer found to be positive for COVID-19. Is this suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? Council understands there was some discussion early in the pandemic about allowing

asymptomatic COVID-19 positive staff to continue to work because of shortages. Council would not endorse this practice and asks for clarification on the meaning of this section.

**Response:** Thank you for your comment. This regulation requires skilled and intermediate care nursing facilities to follow the recommendations and guidance from the Centers for Disease Control and Prevention and the Delaware Division of Public Health, both of which are based on nationally recognized standards of practice.

**Comment:** Seventh, section 6.11.2.6 [9.3.2.6] discusses a series of provisions requiring facilities to amend communicable diseases policies and procedures regarding work exclusion and return to work protocols, staff refusals to test, staff refusals to consent to release of test results, procedures to obtain staff authorizations for obtaining test results, and plans to address staffing shortages and facility demands. Council notes that this particular regulation provides no particulars or guidance about the parameters or requirements for these policies. For example, would it not make sense to indicate that staff that refuse testing should be suspended from work until they agree and are tested? Without having some degree of specificity and guidelines, this requirement is essentially meaningless. Can facilities each make up their own rules for when a positive employee can return to work?

**Response:** Thank you for your comment. Facilities must base policies and procedures on recognized standards of practice. Per regulation 6.11.2.5 [9.3.2.5], facilities must follow the recommendations of the Centers for Disease Control and Prevention and the Delaware Division of Public Health.

**Comment:** Eighth, section 8.3 [6.0] adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. Council appreciates this requirement.

**Response:** Thank you for your comment.

#### **Terri Hancharick, Chairperson, State Council for Persons with Disabilities (SCPD)**

**Comment:** The State Council for Persons with Disabilities (SCPD) has reviewed the Division of Health Care Quality's (DHCQ's) emergency and proposed regulations regarding COVID-19 testing at Skilled and Intermediate Care Nursing Facilities, Assisted Living Facilities and Rest (Residential) Facilities. The emergency regulations were published as 24 DE Reg. 304, 306 and 308, and the proposed regulations were published at 315, 317 and 320 in the October 1, 2020 issue of the Register of Regulations. The emergency regulations appear to renew policies for mandatory testing and other protocols for each type of facility and the proposed regulations offer an opportunity for public input. SCPD has the following observations.

6.11.1.1 [9.3.1.1] suggests, but does not compel, resident testing upon identification of another resident with symptoms consistent with COVID or if staff have tested positive. SCPD believes DHCQ could mandate testing of residents and strongly recommends such testing. In addition, shouldn't they test residents if staff are suspected of COVID and not wait for a positive test?

**Response:** Thank you for your comments. Staff with symptoms or signs of COVID-19 must be tested for COVID-19 and are expected to be restricted from the facility pending the results of COVID-19 testing. Residents who have signs or symptoms of COVID-19 should also be tested for COVID-19. While test results are pending, residents with signs or symptoms should be placed on transmission-based precautions (TBP) in accordance with Centers for Disease Control and Prevention guidance. Upon identification of a single new case of COVID-19 infection in any staff, all residents should be tested per the Centers for Disease Control and Prevention and the Division of Public Health guidance. Per 16 Delaware Code, §1121, each resident has the right to refuse medication or treatment. The skilled and intermediate care nursing facility must offer COVID-19 testing and explain the consequences of not testing; however, the facility cannot force a resident to be tested for COVID-19.

**Comment:** 6.11.1.2 [9.3.1.2] states that all other testing should be consistent with DPH guidance during the emergency. SCPD strongly recommends that this be mandatory language? Is it up to the facility to decide whether to follow DPH guidance? Shouldn't the requirement to test if there are positive cases continue even if the public health emergency is no longer in effect? It is absolutely conceivable that coronavirus will be in existence after the emergency has ended.

**Response:** Thank you for your comment. The testing is mandatory and Department of Health and Social Services will address the issue of the timeframe in a future revision.

**Comment:** 6.11.1.3 [9.3.1.3] requires that all testing be documented in the medical record.

6.11.1.4 [9.3.1.4] requires that all resident results be reported to DPH.

6.11.2.1 [9.3.2.1] requires all staff, vendors and volunteers be tested within two weeks of the effective date of the regulation. SCPD believes it makes no sense to keep this language. Are they asking for the facilities to do a new run of testing or keep going with the existing protocol?

6.11.2.2 [9.3.2.2] requires all new staff, vendors and volunteers who cannot provide proof of a previous positive testing be tested prior to their start date. There is no evidence regarding the duration of any immunity that previous infection may create. There is no timeframe for when any prior positive test might have occurred. Therefore, any new staff, vendor or volunteer needs to have a recent (within several days) negative test prior to accessing any facility.

**Response:** Thank you for your comment. All long term care facilities are required to document all test results in the resident medical record. In addition, all test results must be reported to the Division of Public Health. Long term care facilities have been completing COVID-19 testing in accordance with the Division of Public Health guidance since June 2020. Due to the changing guidance regarding the testing of persons that previously tested positive for COVID-19, the regulations will be clarified as follows:

6.11.2.1 [9.3.2.1] remove

6.11.2.2 [9.3.2.2] Prior to their start date, all new staff, vendors and volunteers must be tested in accordance with the Delaware Division of Public Health Guidance.

**Comment:** 6.11.2.3 [9.3.2.3] requires all staff, vendors and volunteers be retested consistent with DPH guidelines for the duration of the public health emergency. Again, what about after the public health emergency? Facilities should be screening staff, vendors and volunteers for COVID-19 in some fashion on an ongoing basis?

**Response:** Thank you for your comment. The Department of Health and Social Services will address the testing of staff, vendors and volunteers after the public health emergency in a future revision.

**Comment:** 6.11.2.4 [9.3.2.4] requires that facilities must report all staff, vendor and volunteer testing results to DPH.

6.11.2.5 [9.3.2.5] requires that facilities follow recommendations of CDC and DPH regarding provision of care and services for residents by staff vendor or volunteer found to be positive for COVID-19. SCPD is not entirely sure what this means. Is it suggesting that facilities can allow staff and others who test positive to continue to care for residents consistent with CDC guidelines? There was some discussion early in the pandemic about allowing asymptomatic COVID positive staff to continue to work because of shortages. This section may be more to do with how long staff need to stay off work or get negative testing, although that appears to be addressed in Section 6.11.2.6 [9.3.2.6]. SCPD respectfully requests clarification on this issue.

**Response:** Thank you for your comment. This regulation requires skilled and intermediate care nursing facilities to follow the recommendations and guidance from the Centers for Disease Control and Prevention and the Delaware Division of Public Health, both of which are based on nationally recognized standards of practice.

**Comment:** 6.11.2.6 [9.3.2.6] includes provisions requiring facilities to amend communicable diseases policies and procedures regarding work exclusion and return to work protocols, staff refusals to test, staff refusals to consent to release of test results, procedures to obtain staff authorizations for obtaining test results, and plans to address staffing shortages and facility demands. SCPD recommends that this section of the regulation provides particulars or guidance about the parameters or requirements for these policies – it currently does not provide such information. For example, wouldn't it make sense to indicate that staff that refuse testing should be suspended from work until they get tested? Without having some degree of specificity and guidelines, this requirement is essentially meaningless. Can facilities each make up their own rules for when a positive employee can return to work?

**Response:** Thank you for your comment. Facilities must base policies and procedures on recognized standards of practice. Per regulation 6.11.2.5 [9.3.2.5], facilities must follow the recommendations of the Centers for Disease Control and Prevention and the Delaware Division of Public Health.

**Comment:** 12.8.3 [6.3] adds the requirement that facilities include plans to address staff shortages and facility demands as part of their Emergency Preparedness Plan. SCPD endorses this requirement.

SCPD strongly encourages DHCQ to implement the aforementioned recommendations. Regarding outbreaks at long-term care facilities, a Delaware Online October 30<sup>th</sup> article reports that, "(of) the state's 704 coronavirus-related deaths, 409 (58%) were residents in such facilities." <https://www.delawareonline.com/story/news/coronavirus-in-delaware/2020/10/30/delawares-covid-19-death-count-tops-700-latest-state-update-coronavirus-in-delaware/6089390002/>

Delaware continues to be far worse than the national average in protecting residents in long-term care facilities. An October 30<sup>th</sup> New York Times article reported that (s)ince the outbreak, the deaths of residents of long-term care facilities swelled to account for almost 40 percent of the country's 229,600 coronavirus deaths. [https://gcc02.safelinks.protection.outlook.com/](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F10%2F30%2Fus%2Fnews-homes-isolation-virus.html&data=04%7C01%7CKyle.Hodges%40delaware.gov%7Cfec60f17a67745e79ccf08d87daa5cee%7C8c09e56951c54deeabb28b99c32a4396%7C0%7C0%7C637397517964119292%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwWlCjJXVCi6Mn0%3D%7C1000&sdata=9ZdWVGzDBMZWL%2FuQuwMdSF2%2FGIB%2FMSahxfNqY2SskLw%3D&reserved=0)

[?url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F10%2F30%2Fus%2Fnews-homes-isolation-virus.html&data=04%7C01%7CKyle.Hodges%40delaware.gov%7Cfec60f17a67745e79ccf08d87daa5cee%7C8c09e56951c54deeabb28b99c32a4396%7C0%7C0%7C637397517964119292%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwWlCjJXVCi6Mn0%3D%7C1000&sdata=9ZdWVGzDBMZWL%2FuQuwMdSF2%2FGIB%2FMSahxfNqY2SskLw%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.nytimes.com%2F2020%2F10%2F30%2Fus%2Fnews-homes-isolation-virus.html&data=04%7C01%7CKyle.Hodges%40delaware.gov%7Cfec60f17a67745e79ccf08d87daa5cee%7C8c09e56951c54deeabb28b99c32a4396%7C0%7C0%7C637397517964119292%7CUnknown%7CTWFpbGZsb3d8eyJWlloiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwWlCjJXVCi6Mn0%3D%7C1000&sdata=9ZdWVGzDBMZWL%2FuQuwMdSF2%2FGIB%2FMSahxfNqY2SskLw%3D&reserved=0)

Delaware, in the short-term, must implement mandatory standards to reverse this trend. In addition, it has become evident that living in congregate living facilities is literally dangerous and far more unsafe than living in the community. Therefore, as SCPD has long advocated, more funding is needed now and in the future for home and community-based services.

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

or recommendations on the proposed regulations.

**Response:** Thank you for your comments.

### **Findings of Fact:**

Non-substantive changes were made to the regulations based on the comments received and detailed in the "Summary of Evidence." The Department finds that the proposed regulations, as set forth in the attached copy with additions pursuant to 29 Delaware Code Section 10118(c), should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Rest Residential Homes is adopted and shall become effective December 11, 2020, after publication of the final regulation in the *Delaware Register of Regulations*.

11/16/2020

Date

Molly K. Magarik, Secretary, DHSS

## **3230 Rest (Residential) Home Regulations**

### **1.0 Scope**

- 1.1 "Rest (Residential) Home" is a facility that provides resident beds and personal care services in a homelike environment for persons who are normally able to manage activities of daily living. The home should provide friendly understanding to persons living there as well as appropriate supportive care in order that the resident's self-esteem, self-image, and role as a contributing member of the community may be reinforced. The regulations contained here within are based on the common needs of the rest (Residential) care recipients and are minimal health standards.
- 1.2 The facility must be in compliance with all State and local laws and regulations applicable to the facility's personnel, provision of services and the physical plant.

### **2.0 Definitions**

**"Activities of Daily Living" ("ADLs")** means normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating, and toileting.

**"Continuous"** means available at all times without cessation, break or interruption.

**"Direction"** means authoritative policy or procedural guidance for the accomplishment of a function or activity.

**"Department"** means Department of Health and Social Services

**"Division"** means Division of Long Term Care Residents Protection.

**"Facility"** means the site, physical structure and equipment necessary to provide the required services.

**"Homelike"** means having the qualities of a home, including privacy, comfortable surroundings supported by the use of residential building materials and furnishings, and the opportunity to modify one's living area to suit one's individual preferences, in accordance with the facility's policies. A homelike environment provides residents with an opportunity for self-expression and encourages interaction with community, family, and friends.

**"Incident"** means an occurrence or event, a record of which must be maintained in facility files, which includes all reportable incidents and the additional occurrences or events listed in Section 10.6 and 10.7 of these regulations. (Also see Reportable Incident, 10.7)

**"Legal Representative"** means a resident's guardian, agent acting through a power of attorney, advanced health care directive or similar document or authorized representative pursuant to Title 16 **Del.C.** §1121(34) and 1122.

**"Licensed Nurse"** means an individual who has the "authorization to practice nursing within this State granted by the Delaware Board of Nursing and includes the authorization to practice in Delaware under the Interstate Nurse Licensure Compact" Title 24 **Del.C.** §1902(h).

**"Licensed Nursing Home Administrator"** means a person who is licensed by the Board of Examiners of Nursing Home Administrators of the State of Delaware.

**"Nurse Aide/Nurse Assistant/Resident Assistant"** means an individual who provides care that does not require the judgment and skills of a licensed nurse. The care may include but is not limited to the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well being of the resident for whom care is provided.

**"Personal Care Services"** means those services that include general supervision of, and direct assistance to, individuals in their activities of daily living to ensure their safety, comfort, nutritional needs and well being.

**"Physician"** means an allopathic doctor of medicine and surgery or a doctor of osteopathic medicine and surgery who is registered and certified to practice medicine" pursuant to 24 **Del.C.** §1702(8).

**"Rehabilitation"** means the restoration of an ill or injured person to self sufficiency at his or her highest attainable level.

**"Reportable Incident"** means an occurrence or event which must be reported immediately to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation as those terms are defined in 16 **Del.C.** §1131. Reportable incident also includes an occurrence or event listed in Section 10.7 of these regulations.

**"Resident"** means an individual 18 years old or older who lives in a Rest Residential Home. Where appropriate in the context of these regulations, "resident" as used herein includes a legal representative as defined in 2.0.

**"Resident Beds"** means accommodations with supportive services (such as: food, laundry and housekeeping) for persons who generally stay in excess of twenty four (24) hours.

**"Supervision"** means direct overseeing and inspection of the act of accomplishing a function or activity by a responsible person who is not a resident.

**"Vendor"** means any individual who is not employed by the facility but provides direct services to one or more facility residents.

### **3.0 General Requirements**

- 3.1 The term "Rest Residential Home" shall not be used as part of the name of any facility in this State unless it has been so licensed by the Division.
- 3.2 Each Rest Residential Home shall develop written policies pertaining to the services provided.
- 3.3 A Rest Residential Home shall not adopt any policy which conflicts with applicable statutes or regulations.
- 3.4 Inspections and monitoring by the Division shall be carried out in accordance with 16 **Del.C.** §1107.
- 3.5 Upon receipt of a report of any violation(s) of these regulations, the facility shall submit a written plan of action to correct cited deficiencies within 10 working days or such other time period as may be specified. The plan of action shall address corrective actions and include all measures and completion dates to prevent their recurrence as follows:
  - 3.5.1 How the corrective action will be accomplished for a resident(s) affected by the deficient practice;
  - 3.5.2 How the facility will identify other residents having the potential to be affected by the same deficient practice;
  - 3.5.3 What measures or systemic changes will be put in place to ensure that the deficient practice will not recur;
  - 3.5.4 What program will be put into place to monitor the continued effectiveness of the corrective actions.
- 3.6 The Division shall be notified, in writing, upon any changes in the administrator, assistant administrator or director of nursing positions.
- 3.7 The Rest Residential Home shall comply with 16 **Del.C.** §1121 regarding the rights of residents. Those rights shall be made available in writing to residents, guardians, representatives or next of kin.
- 3.8 Each facility shall provide, in writing, the refund and prepayment policy at the time of admission, and in the case of residents admitted while awaiting approval of third-party payment, an exact statement of responsibility in the event of retroactive denial. The facility shall notify residents, in writing, at least 30 days prior to a rate increase.
- 3.9 A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract to provide for facility payment from the resident's income or resources. However, in doing so, the facility shall not require the individual to incur personal financial liability for the facility expenses.
- 3.10 The Residential Home shall cooperate fully with the state protection and advocacy agency, as defined in 16 **Del.C.** §1102(7), in fulfilling functions authorized by Title 16, Chapter 11.
- 3.11 The Patient's Bill of Rights (Title 16) is posted in a conspicuous location within the residence to ensure easy access by individuals served.

### **4.0 Licensing Requirements and Procedures**

- 4.1 Licenses and renewals shall be issued to a Rest Residential Home which meets the requirements of 16 **Del C.** §1104. For initial licensure, the Rest Residential Home shall also demonstrate during a physical inspection of the premises that the facility complies with all applicable regulations.

- 4.2 The Division shall consider the applicant's compliance history in determining licensure eligibility. Accordingly, the applicant shall disclose the following;
- 4.2.1 The imposition of temporary management by any state jurisdiction against the applicant or associated entity during the preceding five years
  - 4.2.2 The imposition of immediate jeopardy against the applicant or associated entity during the preceding five years
  - 4.2.3 A substandard survey by any state jurisdiction against the applicant or associated entity during the preceding five years
  - 4.2.4 The imposition of a civil money penalty by any state jurisdiction against the applicant or associated entity during the preceding five years
  - 4.2.5 A ban on admissions by any state jurisdiction against the applicant or associated entity during the preceding five years
  - 4.2.6 A list of all facilities managed, owned or controlled by the applicant or associated entity in any jurisdiction during the preceding five years
  - 4.2.7 Information as required by 16 **Del.C.** §1104(e)
  - 4.2.8 The disclosure shall be supported by a sworn affidavit pursuant to 16 **Del.C.** §1104 (d).
- 4.3 Financial information disclosed to the Division as required by 16 **Del.C.** §1104(e) shall not be subject to Freedom of Information Act requests except as follows;
- 4.3.1 Any information known to the Division regarding a civil action for debt owed by a facility
  - 4.3.2 Any information known to the Division regarding current facility bankruptcy proceedings
  - 4.3.3 The name of any facility currently under intensive Division review for potential financial incapability
- 4.4 Each license shall be renewed on the anniversary date of initial licensure or as directed by the Division. Each license holder shall file an application for renewal at least 30 days prior to the expiration of the current license and pay the applicable fee as established in 16 **Del.C.** §1106(a).
- 4.5 A new license shall be required in the event of a change in the Rest Residential Home management company, building owner or controlling person as defined in 16 **Del.C.** §1102(1).
- 4.6 Each license shall specify the number of licensed beds. A facility seeking to change the number of licensed beds shall apply to the Division for a modified license authorizing the revised number of beds.
- 4.7 Separate licenses are required for facilities maintained in separate locations, even though operated under the same management.
- 4.8 When a facility plans to construct or extensively remodel a licensed facility or convert a building to a licensed facility, it shall submit one copy of properly prepared plans and specifications for the entire facility to the Division. An approval, in writing, shall be obtained before such work is begun. After the work is completed, in accordance with the plans and specifications, a modified license to operate shall be issued. All completed construction, extensive remodeling or conversions shall remain in accordance with the plans and specifications, as approved by the Division.

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

- 5.1 Site Provisions. Each Rest Residential Home shall be located on a site which is considered suitable by the Department of Health and Social Services. Site must have good drainage, be suitable for disposal of sewage and provide a potable water supply.
- 5.2 Water Supply and Sewage Disposal:
- 5.2.1 The water supply and the sewage disposal system shall be approved by the Division of Public Health and the Department of Natural Resources and Environmental Control, respectively.
  - 5.2.2 The water system shall be designed to supply adequate hot and cold water, under pressure, at all times.
- 5.3 Building:
- 5.3.1 All new construction, extensive remodeling or conversions shall comply with the applicable parts of the standards as set forth under the most recent edition of the Guidelines for Design and Construction of Health Care Facilities, a publication of the Department of Health, and Human Services, and its amendments.
  - 5.3.2 Existing Facilities shall have:
    - 5.3.2.1 Window space shall not be less than one-tenth (1/10) of the floor space. Up to a twenty-five (25%) reduction can be allowed when approved mechanical ventilation, is utilized in multi-bedrooms.
    - 5.3.2.2 All windows in rooms to be used by residents are to be so constructed to eliminate drafts and to provide adequate light and ventilation.

- 5.3.2.3 Residents' rooms shall open directly into a corridor.
- 5.3.2.4 Existing facilities accommodating residents who regularly require wheelchairs shall comply with the Americans With Disabilities Act standards.
- 5.4 The plumbing shall meet the requirements of all municipal and county codes. Where there are no local codes, the provisions of the Division of Public Health's Sanitary Plumbing Code shall prevail.
- 5.5 Heating and cooling systems (HVAC) in common areas shall be maintained at a temperature between 71°F and 81°F. A resident with an individual temperature controlled residential room or unit may heat and cool to provide individual comfort.
- 5.6 Lighting. Each room shall be suitably lighted at all times for maximum safety, comfort, sanitation and efficiency of operation. A minimum of thirty (30) foot candles of light shall be provided for all working and reading surfaces, and a minimum of ten (10) foot candles of light on all other areas. This includes hallways, stairways, storerooms, and bathrooms.
- 5.7 Safety Equipment:
  - 5.7.1 To prevent slipping, staircases shall have stair treads and sturdy handrails.
  - 5.7.2 Stairways shall be well lighted, with electric switches at both the top and bottom or continuous illumination or motion activated illumination.
  - 5.7.3 Hallways shall have night lights
  - 5.7.4 Low windows, open porches, changes in floor levels and areas on the ground shall not present safety hazards.
  - 5.7.5 Floor surfaces shall not be slippery and shall be kept in good repair. If rugs are used, they should be free of such hazards as curled edges, rips or potential for slipping.
  - 5.7.6 All doors for areas used by residents shall be capable of being opened from either side and comply with the Americans With Disabilities Act standards.
- 5.8 Bedrooms:
  - 5.8.1 Each bedroom shall be well lighted and well ventilated. Each bedroom shall be an outside room with at least one (1) window opening directly to the outside. The window sill shall be no more than three (3) feet above the floor and above grade. Windows shall be so constructed as to allow a maximum of sunlight and air and to eliminate drafts, and easy to open and close.
  - 5.8.2 Bedrooms for one (1) person shall be at least one hundred (100) square feet in size and bedrooms for more than one (1) person shall provide eighty (80) square feet of floor space per person, and be arranged for comfort. The ceiling shall not be less than seven (7) feet from the floor.
  - 5.8.3 Each bedroom is to have walls that go to the ceiling, and have a door that can be closed.
  - 5.8.4 The beds shall be at least four (4) feet apart in multi bedrooms.
  - 5.8.5 Adequate electrical outlets shall be conveniently located in each bedroom. A reading light shall be provided for each resident. At least one (1) light fixture shall be switched at the entrance of each bedroom.
  - 5.8.6 Walls shall be finished in colors which are light and cheerful.
  - 5.8.7 Facilities shall ensure adequate privacy.
  - 5.8.8 The maximum capacity per bedroom shall be two (2) residents.
- 5.9 Bathrooms:
  - 5.9.1 Bathrooms shall be constructed so that the walls and floors are impervious to water. At least one (1) window or mechanical ventilation to the outside shall be provided. Floors shall not be slippery.
  - 5.9.2 Bathtubs or showers shall be provided at the rate of one (1) for every four (4) residents. Each tub or shower shall be located in an individual room or enclosure which provides space for the private use or the bathing fixture and for drying and dressing.
  - 5.9.3 At least one (1) toilet for every four (4) residents and one (1) washbasin, with hot and cold water, for every four (4) residents shall be located on the floor occupied by the residents. When more than one (1) toilet is located in the same room, provisions for private use shall be made.
  - 5.9.4 Each toilet, bathtub or shower used by residents shall be provided with a substantial hand-grip.
  - 5.9.5 Hot water as shower, bathing and hand-washing facilities shall not exceed 115 degrees Fahrenheit.
- 5.10 Dayroom and Dining Area:
  - 5.10.1 There shall be provided one (1) or more areas that are adequate in size and furnished for resident dining, recreational and social activities. At least thirty (30) square feet per resident will be assigned to these areas.
  - 5.10.2 When a multi purpose room is used, it shall have sufficient space to prevent interference of one activity with another.



- 5.11 Kitchen and Food Storage Areas. Facilities shall comply with the Delaware Food Code.
- 5.12 Sanitation and Housekeeping:
- 5.12.1 Waste materials, obsolete and unnecessary articles, tin cans, rubbish and other litter shall not be permitted to accumulate on the premises of the home.
  - 5.12.2 All rooms and every part of the building shall be kept clean, orderly and free of offensive odors.
  - 5.12.3 Infectious waste shall be stored in sanitary containers and disposed of in a sanitary manner.
  - 5.12.4 When a separate sink is not provided for janitorial duties, the sink shall be sanitized after each use.
  - 5.12.5 No laundry or janitorial operations can be carried out where food is prepared, served or stored.
  - 5.12.6 If linen chutes are used, they will be provided with adequate means of cleaning.
  - 5.12.7 All areas used for soiled linen are to be vented outside and have a higher air removal rate than the surrounding area.
  - 5.12.8 The laundry room shall provide for keeping the soiled linen separate from the clean, and have hand washing facilities accessible to this area. The laundry shall contain equipment sufficient to take care of a minimum of seven (7) days' needs. A laundry room is not required if all laundry is processed outside the facility.
  - 5.12.9 All bathrooms shall include hand washing facilities, soap and individual towels. The water temperature shall not exceed 115 degrees Fahrenheit.
  - 5.12.10 The facility shall contract with a licensed pest control vendor to ensure that the entire facility is free of live insects and other vermin. Preventive measures for insect and rodent control must be in effect. All exterior openings used for outside ventilation shall be effectively screened during the fly season. Screen doors shall open outward. All screening shall have at least sixteen (16) mesh per inch.
- 5.13 Equipment and Supplies:
- 5.13.1 Each resident shall be provided with:
    - 5.13.1.1 A bed in good repair and having a comfortable, well constructed mattress. This mattress shall be covered or protected with non porous material.
    - 5.13.1.2 A bedside stand.
    - 5.13.1.3 A minimum of two (2) drawers in a chest of drawers.
    - 5.13.1.4 A private and enclosed space of at least two (2) linear feet for hanging clothing.
    - 5.13.1.5 A chair.
    - 5.13.1.6 A means of communication shall be provided for residents to alert staff.

## **6.0 Emergency Preparedness**

- 6.1 Rest Residential Homes shall comply with the rules and regulations adopted and enforced by the State Fire Prevention Commission or the municipality with jurisdiction. Evidence of written notification of compliance with the Rules and Regulations of the State Fire Prevention Commission shall be provided to the Division to obtain an initial license. Written notification to the Division by the State Fire Marshal of noncompliance with these Rules and Regulations shall be grounds for revocation of license.
- 6.2 Regular fire drills shall be held at least quarterly on each shift. Written records shall be kept of attendance at such drills.
- 6.3 Each facility shall develop and maintain all-hazard emergency plans for evacuation and sheltering in place. The emergency plan shall conform to the template provided by the Division. The all-hazard emergency plan must include plans to address staffing shortages and facility demands.
- 6.4 The staff on all shifts shall be trained on emergency and evacuation plans. Evacuation routes shall be posted in a conspicuous place at each nursing station.
- 6.5 Each facility shall submit its all hazards emergency plan with their annual license renewal unless a different time is directed by the Division.

## **7.0 Personnel/Administrative**

- 7.1 Administrator:
  - 7.1.1 All administrators must be licensed by the Board of Examiners of Nursing Home Administrators. Administrators in a facility of 25 beds or more must be a full time employee. Administrators in a facility of 25 beds or less must be on duty at least 4 hours per day, 5 days per week. When an administrator is responsible for more than one licensed entity on the same campus, the criteria for the highest level of care would determines the administrator requirements for the entire facility.

- 7.1.2 The administrator enforces the rules and regulations relating to the level of health care and safety of residents, and to the protection of their personal and property rights.
- 7.1.3 The administrator plans, organizes and directs the overall responsibilities of the facility.
- 7.1.4 The administrator of a resident care facility shall be physically and mentally capable of performing the duties and responsibilities of the job.
- 7.1.5 In the absence of the administrator, an employee shall be authorized in writing, to act on the administrator's behalf.
- 7.2 Nursing Services
  - 7.2.1 The licensed nurse shall administer medications to residents who do not self administer.
  - 7.2.2 The Licensed Nurse shall ensure that an onsite review of the resident's cognitive ability is completed as specified in sections 8.1.6 and 8.1.7 for those residents who self medicate.
  - 7.2.3 The licensed nurse shall ensure that an on-site medication review is conducted as specified in section 8.1.8.
  - 7.2.4 Nursing and Nurse Aide/Nurse Assistant/Resident Assistant staff sufficient in number and adequately trained to meet the requirements of the residents shall be employed and must provide to at least 1.75 hours direct care per twenty four (24) hour period, per resident.
- 7.3 The Rest Residential Home shall have written personnel policies and procedures that support sound resident care. An application for employment and personnel records shall be maintained for all employees.
- 7.4 No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the Division of Public Health and the Division of Long Term Care Residents Protection.
- 7.5 Separate bathroom facilities shall be provided for the staff.
- 7.6 Adequate facilities shall be provided for the orderly storage of employee's clothing and personal belongings.

## **8.0 Services to Residents**

- 8.1 Medication Management
  - 8.1.1 A Rest Residential Home shall establish and adhere to written medication policies and procedures which shall address:
    - 8.1.1.1 Obtaining and refilling medication;
    - 8.1.1.2 Storing and controlling medication;
    - 8.1.1.3 Disposing of medication; and
    - 8.1.1.4 Administration of medication, self-administration of medication and medication management by an adult family member/support person.
    - 8.1.1.5 Provision for a quarterly pharmacy review conducted by a pharmacist which shall include:
      - 8.1.1.5.1 Rest Residential Home with the development and implementation of medication-related policies and procedures;
      - 8.1.1.5.2 Physical inspection of the medication storage areas;
      - 8.1.1.5.3 Review of each resident's medication regimen with written reports noting any identified irregularities or areas of concern.
  - 8.1.2 Each Rest Residential Home shall have a drug reference guide, with a copyright date no older than 2 years, available and accessible for use by employees.
  - 8.1.3 Medication stored by the Rest Residential Home shall be stored and controlled as follows:
    - 8.1.3.1 Medication shall be stored in a locked container, cabinet, or area that is only accessible to authorized personnel;
    - 8.1.3.2 Medication that is not in locked storage shall not be left unattended and shall not be accessible to unauthorized personnel;
    - 8.1.3.3 Medication shall be stored in the original labeled container;
    - 8.1.3.4 A bathroom or laundry room shall not be used for medication storage unless it is kept in a locked container under the circumstances addressed in 8.1.4; and
    - 8.1.3.5 All expired or discontinued medication, including those of deceased residents, shall be disposed of according to the Rest Residential Home's medication policies and procedures.
  - 8.1.4 Residents who self-administer medication shall be provided with a lockable container or cabinet. This requirement does not apply to medications which are kept in the immediate control of the individual

resident, such as in a pocket or in a purse. Facility policies must require that medications be secured in a locked container or in a locked room.

- 8.1.5 A separate medication log must be maintained for each resident documenting administration of medication by staff.
- 8.1.6 Within 30 days after a resident's admission the Rest Residential Home shall arrange for an on-site review by an RN of the resident's medication regime if he or she self-administers medication. The purpose of the on-site review is to assess the resident's cognitive and physical ability to self-administer medication or the need for staff administration of medication.
- 8.1.7 The Rest Residential Home shall ensure that the review required by section 8.1.6 is documented in the resident's records, including any recommendations given by the reviewer.
- 8.1.8 The Rest Residential Home shall arrange for an on-site medication review by a registered nurse, for residents who self-administer or staff administration of medication, to ensure that:
  - 8.1.8.1 Medications are properly labeled, stored and maintained;
  - 8.1.8.2 Each resident receives the medications that have been specifically prescribed in the manner that has been ordered;
  - 8.1.8.3 The desired effect of each medication is achieved, and if not, that the appropriate authorized prescriber is so informed;
  - 8.1.8.4 Any undesired side effects, adverse drug reactions, and medication errors are identified and reported to the appropriate authorized prescriber; and
  - 8.1.8.5 Any unresolved discrepancy of controlled substances shall be reported to the Delaware Office of Narcotics and Dangerous Drugs.

## 8.2 Food Service

- 8.2.1 A minimum of three (3) meals shall be available and/or served in each twenty four (24) hour period.
- 8.2.2 The food served shall be suitably prepared and of sufficient quantity and quality to meet the nutritional needs of the residents.
- 8.2.3 Special diets served shall be, on the written prescription of the resident's physician.
- 8.2.4 A copy of the current week's menus regular and therapeutic shall be posted in the kitchen.
- 8.2.5 A copy of a recent diet manual shall be available for planning therapeutic menus and as a resource for physicians.
- 8.2.6 Menus showing food actually served each day shall be kept on file for three (3) months.
- 8.2.7 A Three (3) day supply of food for emergency feeding shall be on the premises.

## 9.0 Communicable Diseases

### 9.1 General Requirements

- 9.1.1 The facility shall follow Division of Public Health regulations for the Control of Communicable and Other Disease Conditions and Centers for Disease Control guidelines for communicable diseases.
- 9.1.2 The facility shall establish written policies and procedures implementing the Division of Public Health regulations and Centers for Disease Control guidelines for communicable diseases.
- 9.1.3 The Rest Residential Home shall ensure that the necessary precautions stated in the policies and procedures are followed.
- 9.1.4 A resident, when suspected or diagnosed as having a communicable disease, shall be placed on the appropriate precautions as recommended for that disease by the Centers for Disease Control. Residents infected or colonized with the same organism may share a room based on current standard of practice.
- 9.1.5 The admission of a resident with or the occurrence of a disease or condition on the Division of Public Health List of Notifiable Diseases/Conditions within a Rest Residential Home shall be reported to the resident's physician. The facility shall also report such an admission or occurrence to the Division of Public Health's Health Information and Epidemiology office and the Division of Long term Care Residents Protection.

### 9.2 Specific Requirements for Tuberculosis

- 9.2.1 A resident diagnosed with active tuberculosis in an infectious stage shall not continue to reside in a Rest Residential Home unless that facility has a room with negative pressure ventilation and staff trained to care for residents requiring respiratory isolation.
- 9.2.2 A resident of any facility unable to provide care as described above who is diagnosed with active tuberculosis in an infectious stage shall be transferred to an acute care hospital and the facility shall notify the Division of Public Health's Health Information and Epidemiology office immediately.

- 9.2.3 The facility shall have on file the results of tuberculin testing performed on all newly placed residents.
- 9.2.4 Minimum requirements for new employee tuberculosis (TB) testing require all employees to have a base line two step tuberculin skin test (TST) or single Interferon Gamma Release Assay (IGRA or TB blood test) such as QuantiFERON. Any required subsequent testing according to risk category shall be in accordance with the recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services. Should the category of risk change, which is determined by the Division of Public Health, the facility shall comply with the recommendations of the Center for Disease Control for the appropriate risk category.
  - 9.2.4.1 No person, including volunteers, found to have active tuberculosis in an infectious stage shall be permitted to give care or service to residents.
  - 9.2.4.2 Any person having a positive skin test but a negative X-ray shall receive an annual evaluation for signs and symptoms of active TB if they cannot provide documentation of completion of treatment for LTBI (latent TB infection).
  - 9.2.4.3 Persons with a prior BCG vaccination are required to be tested as set forth in 9.2.4.

### 9.3 Specific Requirements for COVID-19

#### 9.3.1 Residents

- 9.3.1.1 All residents should be tested upon identification of another resident with symptoms consistent with COVID-19, or if facility staff have tested positive for COVID-19.
- 9.3.1.2 All other resident testing should be consistent with Division of Public Health guidance for the duration of the public health emergency.
- 9.3.1.3 All testing and test results must be documented in the resident medical record.
- 9.3.1.4 Facilities must report all resident testing and test results, to the Delaware Division of Public Health.

#### 9.3.2 Staff, vendors and volunteers

- ~~[9.3.2.1 All staff, vendors and volunteers who have not previously tested positive for COVID-19 must receive a baseline COVID-19 test within 2 weeks of the effective date of this regulation.~~
- ~~9.3.2.2~~ 9.3.2.1 Prior to their start date, all ~~All~~ new staff, vendors and volunteers ~~[who cannot provide proof of previous positive testing must be tested prior to their start date must be tested in accordance with the Delaware Division of Public Health guidance].~~
- ~~[9.3.2.3~~ 9.3.2.2] All staff, vendors and volunteers who test negative must be retested consistent with Division of Public Health guidance for the duration of the public health emergency.
- ~~[9.3.2.4~~ 9.3.2.3] Facilities must report all staff, vendor and volunteer testing and test results, to the Delaware Division of Public Health.
- ~~[9.3.2.5~~ 9.3.2.4] Facilities must follow recommendations of the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- ~~[9.3.2.6~~ 9.3.2.5] Facilities shall amend their policies and procedures for communicable disease to include:
  - ~~[9.3.2.6.1~~ 9.3.2.5.1] Work exclusion and return to work protocols for staff tested positive for COVID-19.
  - ~~[9.3.2.6.2~~ 9.3.2.5.2] Staff refusals to participate in COVID-19 testing.
  - ~~[9.3.2.6.3~~ 9.3.2.5.3] Staff refusals to authorize release of their testing results to the facility.
  - ~~[9.3.2.6.4~~ 9.3.2.5.4] Procedures to obtain staff authorizations for release of laboratory test results to the facility so as to inform infection control and prevention strategies.
  - ~~[9.3.2.6.5~~ 9.3.2.5.5] Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

## **10.0 Records and Reports**

- 10.1 There shall be a separate record maintained on each resident. Every resident record shall contain:
  - 10.1.1 Admission record: Including resident's name, birth date, home address prior to entering the facility, identification numbers such as social security, Medicaid, Medicare, etc., date of admission, physician's name, address and phone number, next of kin (relationship, name, address and phone number).
  - 10.1.2 History and physical examination: Prepared by physician within (14) days of the residents admission to the home. If the resident has been admitted to the home immediately after discharge from a hospital, the resident's discharge summary, physical examination and history which were prepared at the hospital, if performed within seven (7) days prior to admission to the home, may be substituted in lieu of the above

records. Additionally, a record of an annual medical evaluation performed by a physician must be contained in each resident's file.

- 10.1.3 A current individual medication inventory shall be maintained.
- 10.1.4 Accident reports.
- 10.1.5 Discharge records or notes, including place to which discharged.
- 10.1.6 Inter-agency transfer form, if the resident was admitted from an acute facility or any other long term care facility.
- 10.2 Records shall be made available to the resident or the resident's legal representative upon reasonable notice. Otherwise such records shall be held confidential. The consent of the resident or the resident's legal representative shall be obtained before any personal information is released.
- 10.3 Records shall be retained for five (5) years after discharge or three (3) years after death before being destroyed.
- 10.4 Incident reports, with adequate documentation, shall be completed for each incident. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities, when appropriate.
- 10.5 All incident reports whether or not required to be reported shall be retained in facility files for three years. Reportable incidents shall be communicated immediately, which shall be within eight hours of the occurrence of the incident, to the Division of Long Term Care Residents Protection. The method of reporting shall be as directed by the Division.
- 10.6 Incident reports which shall be retained in facility files are as follows:
  - 10.6.1 All reportable incidents as detailed below.
  - 10.6.2 Falls without injury and falls with minor injuries that do not require transfer to an acute care facility or neurological reassessment of the resident.
  - 10.6.3 Errors or omissions in treatment or medication.
  - 10.6.4 Injuries of unknown source.
  - 10.6.5 Lost items which are not subject to financial exploitation.
  - 10.6.6 Skin tears.
  - 10.6.7 Bruises of unknown origin.
- 10.7 Reportable incidents are as follows:
  - 10.7.1 Abuse as defined in 16 Del. C., §1131.
    - 10.7.1.1 Physical abuse with injury if resident to resident and physical abuse with or without injury if staff to resident or any other person to resident.
    - 10.7.1.2 Any sexual act between staff and a resident and any non-consensual sexual act between residents or between a resident and any other person such as a visitor.
    - 10.7.1.3 Emotional abuse whether staff to resident, resident to resident or any other person to resident.
  - 10.7.2 Neglect, mistreatment or financial exploitation as defined in 16 Del. C., §1131.
  - 10.7.3 Resident elopement under the following circumstances:
    - 10.7.3.1 A resident's whereabouts on or off the premises are unknown to staff and the resident suffers harm.
    - 10.7.3.2 A cognitively impaired resident's whereabouts are unknown to staff and the resident leaves the facility premises.
    - 10.7.3.3 A resident cannot be found inside or outside a facility and the police are summoned.
  - 10.7.4 Significant injuries.
    - 10.7.4.1 Injury from an incident of unknown source in which the initial investigation or evaluation supports the conclusion that the injury is suspicious. Circumstances which may cause an injury to be suspicious are: the extent of the injury, the location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma), the number of injuries observed at one particular point in time, or the incidence of injuries over time.
    - 10.7.4.2 Injury which results in transfer to an acute care facility for treatment or evaluation or which requires periodic neurological reassessment of the resident's clinical status by professional staff for up to 24 hours.
    - 10.7.4.3 Areas of contusions or bruises caused by staff to a dependent resident during ambulation, transport, transfer or bathing.

- 10.7.4.4 Significant error or omission in medication/treatment, including drug diversion, which causes the resident discomfort, jeopardizes the resident's health and safety or requires periodic monitoring for up to 48 hours.
- 10.7.4.5 A burn greater than first degree.
- 10.7.4.6 Any serious unusual and/or life-threatening injury.
- 10.7.5 Entrapment which causes the resident injury or immobility of body or limb or which requires assistance from another person for the resident to secure release.
- 10.7.6 Suicide or attempted suicide.
- 10.7.7 Poisoning.
- 10.7.8 Fire within a facility.
- 10.7.9 Utility interruption lasting more than eight hours in one or more major service including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephones.
- 10.7.10 Structural damage or unsafe structural conditions.
- 10.7.11 Water damage which impacts resident health, safety or comfort.
- 10.8 The facility shall maintain written policies and procedures, in accordance with 16 Del. C. Chapter 25, regarding health care decisions including advance directives. The facility shall provide written information to all residents explaining such policies and procedures.

## **11.0 Facility Closure**

- 11.1 In the event of the closing of a facility, the facility shall:
  - 11.1.1 Notify the Division of Long Term Care Residents Protection, the Ombudsman, the Division of Public Health and, if applicable, the Division of Medicaid and Medical Assistance and the Centers for Medicare and Medicaid Services at least 90 days before the planned closure.
  - 11.1.2 Notify each resident directly and his/her attending physician and, if applicable, his/her responsible party by telephone and in writing at least 90 days before the planned closure.
  - 11.1.3 Give the resident or the resident's responsible person an opportunity to designate a preference for relocation to a specific facility or for other arrangements.
  - 11.1.4 Arrange for relocation to other facilities in accordance with the resident's preference, if possible.
  - 11.1.5 Ensure that all resident records, medications, and personal belongings are transferred with the resident and, if to another facility, accompanied by the interagency transfer form.
  - 11.1.6 Provide an accounting of resident trust fund accounts which shall be transferred to each resident's possession or to the facility to which the resident relocates. A record of the accounting of the funds shall be maintained by the closing facility for audit purposes.
  - 11.1.7 Advise any applicant for admission to a facility which has a planned closure date in writing of the planned closure date prior to admission.

## **12.0 Severability**

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

**14 DE Reg. 1360 (06/01/11)**

**15 DE Reg. 192 (08/01/11)**

**16 DE Reg. 637 (12/01/12)**

**24 DE Reg. 584 (12/01/20) (Final)**