



EMERGENCY SECRETARY'S ORDER

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

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

AUTHORITY

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

REASON FOR THE EMERGENCY ORDER

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

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

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

EFFECTIVE DATE OF ORDER

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

16.0 Infection Control

16.4 Specific Requirements for COVID-19

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

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

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

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

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

16.5.2 Staff refusals to participate in COVID-19 testing;

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

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

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

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

PETITION FOR RECOMMENDATIONS

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

ORDER

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



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Cabinet Secretary