TITLE 16

Health and Safety

Local Boards of Health; Health Programs

CHAPTER 1. Department of Health and Social Services

Subchapter I. General Provisions

§ 101. Definitions.

As used in this title, unless otherwise provided or the context requires a different meaning:

(1) "County Public Health Administrator" means the Division of Public Health employee responsible for managing the operations of all public health programs within an assigned county.

(2) "Department" means the Department of Health and Social Services.

(3) "Director" means the Director of the Division of Public Health, or such persons as may be designated by the Director.

(4) "Division" means the Division of Public Health.

(5) "Peace Officer" means any public officer authorized by law to make arrests in a criminal case.

(6) "Secretary" means the Secretary of the Department of Health and Social Services or such persons as may be designated by the Secretary.

16 Del. C. 1953, § 101; 57 Del. Laws, c. 591, § 1 (https://legis.delaware.gov/SessionLaws?volume=57&chapter=591); 70 Del. Laws, c. 149, § 17 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=149); 70 Del. Laws, c. 186, § 1 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=186);

§ 102. Headquarters.

The Department shall establish headquarters in the City of Dover and if no suitable place shall be provided in the State House or in other state property, the Department shall have authority to select some suitable place for the establishment of such headquarters.

33 Del. Laws, c. 57, § 3 (https://legis.delaware.gov/SessionLaws?volume=33&chapter=57); 34 Del. Laws, c. 69, § 1 (https://legis.delaware.gov/SessionLaws?volume=34&chapter=69); Code 1935, § 744; 43 Del. Laws, c. 91, § 1 (https://legis.delaware.gov/SessionLaws?volume=43&chapter=91); 16 Del. C. 1953, § 104; 70 Del. Laws, c. 544, § 4 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=544);

§ 103. Deputy state health officers — Appointment; term; compensation; removal.

(a) Subject to the approval of the Department, the Secretary shall appoint for each county in the State a deputy state health officer, who shall be a person trained and experienced in public health. Each deputy state health officer shall be appointed for a term of 4 years and shall devote full time to the duties of office. The deputy health officer shall receive such compensation as is fixed by the Department and necessary expenses, which shall be paid monthly out of state funds.

(b) The Department may remove deputy state health officers for cause, upon charges and after a hearing, and may appoint a suitable person to fill any unexpired term.

33 Del. Laws, c. 57, § 2 (https://legis.delaware.gov/SessionLaws?volume=33&chapter=57); 34 Del. Laws, c. 69, § 1 (https://legis.delaware.gov/SessionLaws?volume=34&chapter=69); Code 1935, § 744; 43 Del. Laws, c. 91, § 1 (https://legis.delaware.gov/SessionLaws?volume=43&chapter=91); 16 Del. C. 1953, § 107; 57 Del. Laws, c. 591, § 3 (https://legis.delaware.gov/SessionLaws?volume=57&chapter=591); 70 Del. Laws, c. 186, § 1 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=186); 70 Del. Laws, c. 544, § 5 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=544);

§ 104. Deputy state health officers — Powers and duties.

The deputy state health officers for and under the direction of the Department shall enforce the laws of the State pertaining to the public health, shall enforce all rules, regulations and orders adopted or promulgated by the Department in accordance with law, shall undertake such other duties as may be assigned to them by the Department and shall supervise all public health matters within their respective counties, and in the City of Wilmington, but not in other incorporated cities or towns having duly constituted boards of health. The governing authorities of any incorporated city or town, other than the City of Wilmington, may by resolution duly adopted and approved by the Department designate a deputy state health officer to act as health officer of such incorporated city or town, and the deputy health officer shall then exercise the powers and perform the duties of the local board of health.

33 Del. Laws, c. 57, § 2 (https://legis.delaware.gov/SessionLaws?volume=33&chapter=57); 34 Del. Laws, c. 69, § 1 (https://legis.delaware.gov/SessionLaws?volume=34&chapter=69); Code 1935, § 744; 43 Del. Laws, c. 91, § 1 (https://legis.delaware.gov/SessionLaws?volume=43&chapter=91); 16 Del. C. 1953, § 108; 57 Del. Laws, c. 245 (https://legis.delaware.gov/SessionLaws?volume=57&chapter=245); 57 Del. Laws, c. 591, § 4 (https://legis.delaware.gov/SessionLaws?volume=57&chapter=591); 70 Del. Laws, c. 149, § 18 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=149); 70 Del. Laws, c. 186, § 1 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=186); 70 Del. Laws, c. 544, § 6 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=544);

§ 105. Authorization to receive federal funds; disposition.

(a) The Department may apply for and receive funds made available to the Department by any agency or department of the federal government authorized to make grants-in-aid of any of the present or future health programs undertaken, maintained or proposed by the Department, namely, maternal and child health, aid to crippled children, venereal disease control, public health work under 42 U.S.C. § 246 and other health programs that may be developed.

(b) All moneys received from any federal agency or department, as provided in this section, shall be paid into the State Treasury and shall be for the use of the Department. The moneys so received shall be used solely for the purpose or purposes for which the grant or grants shall have been made and for no other purpose.

45 Del. Laws, c. 84, §§ 1, 2 (https://legis.delaware.gov/SessionLaws?volume=45&chapter=84); 16 Del. C. 1953, § 110; 70 Del. Laws, c. 149, § 19 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=149); 70 Del. Laws, c. 186, § 1 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=186); 70 Del. Laws, c. 544, § 7 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=544);

§ 106. Prosecutions and proceedings for violations; disposition of fines.

All prosecutions and proceedings instituted by the Department or Division for the violation of any law or laws to be enforced by the Department or Division, or for the violation of any order or regulation of the Department or Division shall be instituted by the Secretary or the Secretary's designated representative. All laws prescribing the modes of procedure and penalties or judgments applicable to local boards of health shall apply to the Department or Division and the violation of its laws and orders. All fines or judgments collected or received shall be paid over to the State Treasurer, and applied to the General Fund of the State.

22 Del. Laws, c. 642, § 12 (https://legis.delaware.gov/SessionLaws?volume=22&chapter=642); 22 Del. Laws, c. 327, § 7 (https://legis.delaware.gov/SessionLaws?volume=22&chapter=327); Code 1915, § 744; 33 Del. Laws, c. 57, § 4 (https://legis.delaware.gov/SessionLaws?volume=33&chapter=57); 34 Del. Laws, c. 69, § 1 (https://legis.delaware.gov/SessionLaws?volume=34&chapter=69); Code 1935, § 750; 43 Del. Laws, c. 91, § 1 (https://legis.delaware.gov/SessionLaws?volume=43&chapter=91); 16 Del. C. 1953, § 112; 57 Del. Laws, c. 591, § 5 (https://legis.delaware.gov/SessionLaws?volume=57&chapter=591); 70 Del. Laws, c. 149, §§ 20, 21 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=149); 70 Del. Laws, c. 186, § 1 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=186);

§ 107. Neglect of duty; penalty.

(a) Whoever refuses, fails or neglects to perform the duties required under this chapter, or violates, neglects or fails to comply with the duly adopted regulations or orders of the Department of Health and Social Services, shall be fined not less than $100 and not more than $1000, together with costs, unless otherwise provided by law.

(b), (c) [Repealed.]

(d) (1) Notwithstanding the foregoing, whoever refuses, fails or neglects to perform duties required of trained and certified individuals and firms under § 122(3)t. of this title, or who violates, neglects or fails to comply with duly adopted regulations or orders of the Department regarding the standards for regulation of lead-based paint, including the training and certification of companies and workers engaged in lead-based paint activities, work practice standards and the accreditation of lead-based paint hazard training programs, shall be subject to a criminal penalty up to $10,000 per day, together with costs, for every day from and after the effective date of an order of the Department specifically directing compliance until such time compliance has been achieved. The Justice of the Peace Courts shall have jurisdiction to adjudicate offenses under this subsection.

(2) In appropriate cases, Department-issued orders concerning lead-based paint activities and duties imposed by law upon such persons engaged in lead-based paint activities governed by this code may be compelled by mandamus or injunction.

(3) At the discretion of the Department, in lieu of criminal action pursuant to paragraph (d)(1) of this section, the Secretary shall be authorized to impose an administrative penalty of up to $10,000 per violation in accordance with the Administrative Procedures Act [Chapter 101 of Title 29] against any person or entity who violates the provisions of this chapter or the regulations promulgated pursuant to it. 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. Under this paragraph, each day a violation continues constitutes a separate violation.

(4) The Department shall have the authority to collect administrative penalties. All fees and penalties assessed by the Department under this subsection are hereby appropriated to the Department to carry out the purposes of § 122(3)t. of this title.

(5) 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 the 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.

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

(e) All fees, fines, costs, and penalties assessed by the Department pursuant to this subsection shall be retained by the Department in order to defray associated costs. Superior Court shall have original jurisdiction to adjudicate criminal offenses under this subsection. Penalties sought or imposed pursuant to this section do not prohibit charges applicable under other titles of the Code, including but not limited to criminal fees, fines, costs, and penalties.

19 Del. Laws, c. 642, § 9 (https://legis.delaware.gov/SessionLaws?volume=19&chapter=642); Code 1915, § 743; 33 Del. Laws, c. 57, § 4 (https://legis.delaware.gov/SessionLaws?volume=33&chapter=57); 34 Del. Laws, c. 69, § 1 (https://legis.delaware.gov/SessionLaws?volume=34&chapter=69); Code 1935, § 749; 43 Del. Laws, c. 91, § 1 (https://legis.delaware.gov/SessionLaws?volume=43&chapter=91); 16 Del. C. 1953, § 113; 63 Del. Laws, c. 126, § 1 (https://legis.delaware.gov/SessionLaws?volume=63&chapter=126); 70 Del. Laws, c. 49, § 2 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=49); 70 Del. Laws, c. 149, §§ 22, 23 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=149); 70 Del. Laws, c. 186, § 1 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=186); 70 Del. Laws, c. 544, § 8 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=544); 73 Del. Laws, c. 269, § 1 (https://legis.delaware.gov/SessionLaws?volume=73&chapter=269); 74 Del. Laws, c. 78, § 1 (https://legis.delaware.gov/SessionLaws?volume=74&chapter=78); 79 Del. Laws, c. 146, § 1 (https://legis.delaware.gov/SessionLaws?volume=79&chapter=146); 79 Del. Laws, c. 154, § 1 (https://legis.delaware.gov/SessionLaws?volume=79&chapter=154); 80 Del. Laws, c. 258, § 8 (https://legis.delaware.gov/SessionLaws?volume=80&chapter=258);

§ 108. Jurisdiction of offenses; justices of the peace.

Justices of the peace shall have jurisdiction of offenses under this part and Part II of this title, except in cases where exclusive jurisdiction of any such offense is expressly vested in another court.

16 Del. C. 1953, § 114;

§ 109. Appeals.

From the decision of a justice of the peace exercising jurisdiction conferred by § 108 of this title, an appeal shall be allowed to the Court of Common Pleas of the same county.

16 Del. C. 1953, § 115; 69 Del. Laws, c. 423, § 18 (https://legis.delaware.gov/SessionLaws?volume=69&chapter=423);

§ 110. Transfer of Wilmington Department of Health personnel to state service.

Any former or present employee of the State Division of Public Health who was employed by the Wilmington Department of Health in the conduct of public health matters within the City of Wilmington and was so employed at the time the responsibility for the conduct of public health matters within the City of Wilmington was transferred to the State Division of Public Health (then State Board of Health) in implementation of 57 Del. Laws, c. 37 shall, subject to merit system maximums:

(1) Be authorized to transfer vacation leave and sick leave then accumulated;

(2) Receive full credit for the time employed by the City of Wilmington in computing seniority for merit system purposes; and

(3) Receive full credit for time so employed and compensated in computing the number of years service required to receive pension benefits and in computing the amount of such pension benefits under Chapter 55 of Title 29.

59 Del. Laws, c. 386, § 1 (https://legis.delaware.gov/SessionLaws?volume=59&chapter=386); 70 Del. Laws, c. 186, § 1 (https://legis.delaware.gov/SessionLaws?volume=70&chapter=186);

§ 111. Retaliation or discrimination against complainants; immunities and other protections.

Notwithstanding any law or regulation to the contrary, any psychiatric nursing or treatment facility owned by or operated by the Department shall be subject to the provisions of §§ 1117, 1135 and 1154 of this title whether or not such facility is licensed as a long-term care facility.

77 Del. Laws, c. 203, § 1 (https://legis.delaware.gov/SessionLaws?volume=77&chapter=203);