

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

SUBCHAPTER 140-10.2

ALIEN EMPLOYEE SCREENING REQUIREMENTS RULES AND REGULATIONS

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Subchapter Authority: 1 CMC §§ 2603 and 2605.

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Subchapter History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Amdts Adopted 21* Com. Reg. 16559 (Feb. 18, 1999); Amdts Proposed 20 Com. Reg. 16395 (Dec. 15, 1998); Amdts Adopted 20 Com. Reg. 15955 (June 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15842 (Feb. 15, 1998) (effective for 120 days from Feb. 13, 1998); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 15, 1996).

*Commonwealth Register volume 21, number 2, pages 16459-16571 are mislabeled as volume 20.

Commission Comment: PL 1-8, tit. 1, ch. 12, codified as amended at 1 CMC §§ 2601-2633, created the Department of Public Health and Environmental Services within the Commonwealth government. See 1 CMC § 2601. 1 CMC § 2603(a) and (b) authorizes the Department to maintain and improve health conditions and minimize and control communicable disease in the CNMI. 1 CMC § 2605 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. According to Executive Order 94-3 §§ 105 and 305:

Section 105. Department of Public Health. The Department of Public Health and Environmental Services is re-designated the Department of Public Health.

...

Section 305. Department of Public Health.

(a) Board of Public Health and Environmental Quality. The Board of Public Health and Environmental Quality is abolished and its functions transferred to the Secretary of Public Health.

(b) Federally-Mandated Councils. The State Planning Council on Development Disabilities and the State Rehabilitation Advisory Council are allocated to the Department of Public Health for the purposes of administration and coordination.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

Section 702 of the Consolidated Natural Resources Act of 2008 (Pub. L. No. 110-229, codified at 48 U.S.C. § 1806) removed the CNMI's authority to create and manage its own immigration laws. On March 22, 2010, the Governor signed PL 17-1, removing all references to immigration and deportation functions from the Commonwealth Code. To the extent these regulations conflict with Pub. L. No. 110-229 or PL 17-1, they are superseded.

Public Law 16-51 (effective Jan. 15, 2010), the "Commonwealth Healthcare Corporation Act of 2008," codified at 3 CMC § 2801 et seq., established the Commonwealth Healthcare Corporation, which assumed the duties of the Department of Public Health as of January 15, 2011.

Part 001 - General Provisions

§ 140-10.2-001 Purpose and Findings

(a) The purpose of the rules and regulations in this subchapter is to establish procedures and protocols for the issuance of health certificates to all alien employees. Upon adoption of these rules and regulations, all alien employees, and their family members entering the CNMI, will be required to obtain a general physical examination and health screenings for specified communicable diseases before a health certificate is issued to them. These new requirements are intended not only to maintain the health of all alien employees who enter and reside in the CNMI to provide employee services to employers pursuant to the provisions of the Nonresident Worker Act, 3 CMC §§ 4411, et seq., but also to ensure the health of CNMI residents by preventing the spread of certain infectious and communicable diseases. It is the intent of the Division of Public

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Health to provide minimum requirements for the protection of life, health, safety, and welfare of CNMI residents by instituting these rules and regulations.

(b) The Division of Public Health has determined that many alien employees and their families are coming from countries that have endemic communicable diseases that could ultimately become a public health concern for the residents of the CNMI. Furthermore, the Division of Public Health has found that diseases transmitted by alien employees frequently originate from an infected employee who shows little outward appearance of being ill. As a result, a wide range of communicable diseases and infections may be unknowingly transmitted by infected personnel to other employees and the general public. The Division of Public Health has thus concluded that an effective means of controlling the spread of specific communicable diseases is to screen the alien employees and their families for these diseases upon their entry into the CNMI, and every year subsequent.

(c) The health screening of the alien employees will not only be beneficial to these workers and the residents of the CNMI, but will also be advantageous to employers. By overseeing compliance with the health screenings of alien employees required by the rules and regulations in this subchapter, the employer can minimize the high costs of medical treatment here in the CNMI, and avoid the added cost of deportation in the event the alien employee is later found to have a communicable disease. Also relevant to employers is that alien employees afflicted with communicable diseases are less productive. By ensuring that alien employees obtain the required health screenings, employers can assure the relative health of the alien employees they employ.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

The 2001 amendments readopted and republished the Alien Employee Screening Requirements Rules and Regulations in their entirety. The Commission, therefore, cites the 2001 amendments in the history sections throughout this subchapter.

§ 140-10.2-005 Definitions

As used throughout the rules and regulations in this subchapter, the following terms shall have the meanings set forth below:

(a) “Adequate” means the Secretary’s determination that a recommended action will sufficiently fulfill the requirements for a proposed objective.

(b) “Alien employee” means any foreign national, other than those citizens from United States Compact of Free Association Nations, who has entered the CNMI for the purpose of providing services or labor in exchange for remuneration by an employer.

(c) “Communicable disease” means a disease caused by an infectious agent or the toxic

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product of an infectious agent and which can be transmitted directly or indirectly from one individual to another.

(d) “Department” means the Department of Public Health, a department within the executive branch of the CNMI government.

(e) “Dependent” means the alien employee’s spouse, children under the age of 21, or parents who are not United States citizens.

(f) “Deportation” means the return of an alien to his or her country of origin as provided by the Commonwealth Entry and Deportation Act of 1983, specifically 3 CMC § 4341.

(g) “Division” means the Division of Public Health, a division within the Department of Public Health.

(h) “Duly authorized representative” means the Deputy Secretary of Public Health Administration, the Medical Director of Public Health, the Sanitation Services Officer, or Sanitarian, as appointed by the Secretary.

(i) “Employer” means any individual, partnership, association, corporation, or other legal entity which hires, employs, or otherwise engages for compensation any individual to perform services or labor within the Commonwealth, including any branch, agency, or instrumentality of the Commonwealth, but does not include the United States government.

(j) “Health certificate” means an authorization issued by the Secretary to an alien employee certifying that the alien employee has been examined and found to be in good health, and free of specified communicable diseases.

(k) “HIV” means the human immunodeficiency virus which infects humans principally through sexual intercourse, the exchange of bodily fluids, including blood and blood products, or the sharing of needles among intravenous drug users, and which may eventually lead to the development of acquired immuno-deficiency syndrome (AIDS).

(l) “Person-in-charge” means the individual present in a place of employment who is the apparent supervisor of the business establishment and the supervisor of the alien employees at the time of inspection, or in the event no designated supervisor is present, then any employee working at the place of employment.

(m) “Physical examination” means a medical examination performed by a physician.

(n) “Physically fit and in good health” means a condition of sufficient physical and mental health to enable the individual to perform the work he or she is being hired to do without compromising his or her health.

(o) “Physician” means a CNMI licensed physician.

(p) “Secretary” means the Secretary of the Department of Public Health, or a duly authorized representative.

(q) Syphilis means a sexually transmitted disease caused by the organism *Treponema pallidum*, and screened by means of a rapid plasma reagin (RPR) test.

(r) Tuberculosis means a potentially communicable disease caused by the organism *Mycobacterium tuberculosis*, which may be diagnosed based on clinical, laboratory, radiological, and tuberculin skin testing. Active tuberculosis is considered communicable and highly contagious.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Amdts Adopted 20 Com. Reg. 15955 (June 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15842 (Feb. 15, 1998) (effective for 120 days from Feb. 13, 1998); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Commission Comment: The 1998 amendments deleted former subsections (a) and (m), re-designated the remaining subsections accordingly and amended subsection (r). The 2001 amendments added a new subsection (n).

The Commission inserted quotation marks around terms defined.

Part 100 - Physical Examination

§ 140-10.2-101 Period for Obtaining Physical Examination

Within ten days after authorized entry into the CNMI for employment, an alien employee shall schedule an appointment for a physical examination as required by the Nonresident Worker Act, 3 CMC § 4438(b) to establish that he or she is physically fit and in good health. A record of the physical examination shall be completed by the physician on a physical examination form approved by the Division. Yearly physical examinations for alien employees shall be performed at least forty-five days prior to the annual renewal of the employment contract, or forty-five days prior to the anniversary of the entry date into the CNMI, whichever date is first.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-105 Filing of Physical Examination Forms

The physician performing the alien employee’s physical examination shall provide the Division with a copy of the completed physical examination form for the alien employee in a sealed envelope marked “confidential” within forty-five days from the date of the alien employee’s initial physical examination, and forty-five days from the date of each annual physical examination thereafter.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Amdts Adopted 21 Com. Reg. 16559 (Feb. 18, 1999); Amdts Proposed 20 Com. Reg. 16395 (Dec. 15, 1998); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-110 Cost of Physical Examination

The cost of the alien employee's physical examination shall be the financial responsibility of the alien employee's employer.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Part 200 - Screening for Communicable Disease

§ 140-10.2-201 Introduction

All alien employees entering the CNMI shall be screened for specified communicable diseases which can not only jeopardize the health and life of the alien employees, but also threaten the resident CNMI population and tourists visiting the CNMI. Screenings shall be limited to those communicable diseases which can be easily tested and monitored, including tuberculosis, HIV, syphilis, and any other communicable disease specified by the Secretary through health advisories as being a potential risk to the CNMI community.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Commission Comment: This section was originally the introduction to part IV, codified at part 200. The Commission created the section title.

§ 140-10.2-205 Procedures for Screening

Concurrent with the performance of the physical examination, the alien employee shall obtain health screening tests for the communicable diseases specified in the rules and regulations in this subchapter, and any others required by the Secretary through health advisories. All chest radiographs required by these rules and regulations shall be read by a physician, or may be sent to the center for tuberculosis and lung disease at the Commonwealth Health Center for reading.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-210 Filing of Screening Test Results with the Division

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The alien employee's physician shall provide the Division with a copy of all screening test results required by this part 200 and by the Secretary's health advisories within forty-five days from the date of the alien employee's initial physical examination, and forty-five days from the date of each annual physical examination thereafter. The screening test results shall be included in the sealed envelope marked "confidential" containing the physical examination form.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Amdts Adopted 21 Com. Reg. 16559 (Feb. 18, 1999); Amdts Proposed 20 Com. Reg. 16395 (Dec. 15, 1998); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-215 Cost of Screening Tests

The cost of the alien employee's screening tests for the communicable diseases set forth in the rules and regulations in this subchapter, and any other tests required by the Secretary through health advisories shall be the financial responsibility of the alien employee's employer.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-220 Required Screening Tests for Communicable Diseases

At a minimum, all alien employees shall obtain screening tests for the following communicable diseases:

- (a) **Tuberculosis Screening.** Every alien employee shall obtain a single view PA chest radiograph upon entry into the CNMI, and then annually thereafter. The yearly test shall be performed at least forty-five days prior to the annual renewal of the employment contract, or forty-five days prior to the anniversary of the entry date into the CNMI, whichever date is first.
- (b) **HIV Screening.** Every alien employee shall obtain an HIV antibody test first upon entry into the CNMI, and then annually thereafter. The yearly test shall be performed at least forty-five days prior to the annual renewal of the employment contract, or forty-five days prior to the anniversary of the entry date into the CNMI, whichever date is first.
- (c) **Syphilis Screening.** Every alien employee shall obtain a rapid plasma reagin (RPR) test first upon entry into the CNMI, and then annually thereafter. The yearly test shall be performed at least forty-five days prior to the annual renewal of the employment contract, or forty-five days prior to the anniversary of the entry date into the CNMI, whichever date is first.
- (d) **Other Communicable Diseases.** All alien employees who contract other infectious or communicable diseases should be seen promptly by a physician. Any physician who diagnoses an alien employee as having a communicable disease shall immediately report the alien employee to the Division.

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Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Amdts Adopted 20 Com. Reg. 15955 (June 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15842 (Feb. 15, 1998) (effective for 120 days from Feb. 13, 1998); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Commission Comment: The 1998 amendments amended subsection (a).

Part 300 - Issuance of Health Certificates

§ 140-10.2-301 Alien Employee Health Certificates

Within ten working days of receiving the alien employee's physical examination form, the Division shall determine whether the alien employee qualifies to receive a health certificate. If the alien employee has been found to be physically fit and in good health, and free from communicable diseases covered by the rules and regulations in this subchapter, the Secretary shall issue the alien employee a health certificate. The health certificate shall be valid for a period of one year from the date of issue.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-305 Suspension of Issuance of Health Certificate for Alien Employees Found to Have a Communicable Disease

Alien employees who test positive for a communicable disease covered by the rules and regulations in this subchapter shall be issued a health certificate subject to the recommendations of the Division.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-310 Cost of Health Certificates

The cost of an alien employee health certificate shall be twenty dollars, payable to the Department upon issuance of the health certificate. The employer of the alien employee shall be responsible for the cost of the health certificate.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-315 Employer to Maintain Files

The employer shall maintain the health certificates of all its alien employees in their respective employment files at all times. The employer shall be prepared to show these health certificates to a duly authorized representative, upon request during an inspection.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Part 400 - Division Record Keeping and Tracking Measures

§ 140-10.2-401 Public Health Notification Form

A “public health notification form” shall be completed in triplicate by every alien employee and every dependent entering the CNMI. The original public health notification form shall be given to the alien employee. One copy of the public health notification form shall be provided to the Division of Labor, Department of Labor and Immigration, and the second copy shall be provided to the Division.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-405 Database Records

The information contained on the public health notification form shall be used by the Division to develop an alien employee health database. The database shall be used to track all alien employees and dependents for compliance with the health screening requirements established in the rules and regulations in this subchapter. All public health notification forms shall be submitted to the Division within ten days of entry.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-410 Notice of Noncompliance

If a review of the Division’s database indicates that an alien employee has not been issued a health certificate within ninety days from the alien employee’s date of entry into the CNMI, Division staff shall send written notice to the alien employee of noncompliance with the rules and regulations in this subchapter. The alien employee shall have twenty days from the date of the notice to come into compliance with the requirements of these rules and regulations. Failure to respond to the Division’s notice shall subject the alien employee to penalties as set forth in § 140-10.2-705 of this subchapter. This section shall not apply to those alien employees who have not been issued health certificates because they are undergoing treatment for a

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communicable disease, and who remain fully compliant with the Division's prescribed treatment regimen for the duration of treatment. An alien employee undergoing treatment shall be issued a letter by the Division setting forth the date treatment is anticipated to be completed and when a health certificate can be issued.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Amdts Adopted 21 Com. Reg. 16559 (Feb. 18, 1999); Amdts Proposed 20 Com. Reg. 16395 (Dec. 15, 1998); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-415 Inspections by Duly Authorized Representatives

From time to time an employer's place of employment may be inspected by a duly authorized representative of the Department. Upon request by the duly authorized representative, the employer or person-in-charge shall grant the duly authorized representative access to the alien employees' employment files for purposes of inspecting the health certificates. Any alien employee who does not have a valid health certificate in his or her employment file shall be reported to the Division.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Part 500 - Alien Employees with Positive Test Results

§ 140-10.2-501 Handling of Alien Employees with Positive Test Results

(a) If an alien employee is found to have a communicable disease covered by the rules and regulations in this subchapter, the Division shall establish a treatment regimen for the alien employee to the extent treatment is available within the CNMI. If the alien employee fails to comply with the Division's treatment regimen, the Department shall prepare a written advisory to the Department of Labor and Immigration recommending that such alien employee be immediately deported back to his or her country of origin. The costs associated with the alien employee's deportation shall be the financial responsibility of the employer.

(b) Positive test results for tuberculosis, HIV, and syphilis shall be handled by the Division as follows:

(1) Tuberculosis. Alien employees found to have tuberculosis shall be required to comply with the Center for Tuberculosis and Lung Disease protocol for treating tuberculosis for the duration of their stay in the CNMI. Any alien employee diagnosed with tuberculosis who does not comply with prescribed treatment and therapy for tuberculosis, or who fails to comply with recommendations made by the Division may be referred by the Division to the Department of Labor and Immigration for deportation.

(2) HIV. Alien employees who test positive for HIV shall comply with the Division's protocol for HIV patients.

(3) Syphilis. Alien employees who test positive for syphilis shall be required to report to the

Division for treatment. Any alien employee diagnosed with syphilis who does not comply with prescribed treatment and therapy for syphilis may be referred by the Division to the Department of Labor and Immigration for Deportation.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Amdts Adopted 20 Com. Reg. 15955 (June 15, 1998); Amdts Emergency and Proposed 20 Com. Reg. 15842 (Feb. 15, 1998) (effective for 120 days from Feb. 13, 1998); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b). The 1998 amendments amended subsection (b)(1).

With respect to the references to the Department of Labor and Immigration, see Executive Order 03-01 (effective May 9, 2003), the “Department of Labor and Immigration Reorganization Plan of 2003,” returning the immigration functions of the executive branch to the Office of the Attorney General and renaming the Department of Labor. See also NMIAC chapter 80-10.1.

§ 140-10.2-505 Procedure When Infection Is Suspected

When the Secretary has probable cause to suspect disease transmission by an alien employee, the Secretary may require a medical history, physical examination, and any necessary screening tests required to confirm that the suspected alien employee has a communicable disease. If the alien employee is confirmed to have a communicable disease, the Secretary may require any or all of the following measures:

- (a) Restriction of the alien employee’s services to an area of the establishment where there would be no danger of him or her transmitting the disease;
- (b) Adequate physical examinations and health screenings of other employees working in the same establishment as the alien employee pursuant to the Rules and Regulations Governing Communicable Diseases [NMIAC, title 140, subchapter 10.3];
- (c) The immediate exclusion of the alien employee from employment pursuant to the Rules and Regulations Governing Communicable Diseases [NMIAC, title 140, subchapter 10.3];
- (d) The immediate closing of the place of employment concerned until, in the opinion of the Secretary, no further danger of disease outbreak exists pursuant to the Rules and Regulations Governing Communicable Diseases [NMIAC, title 140, subchapter 10.3];
- (e) Confinement of the alien employee in the Commonwealth Health Center or his or her home pursuant to the Rules and Regulations Governing Communicable Diseases [NMIAC, title 140, subchapter 10.3];
- (f) Referral of the alien employee to the Department of Labor and Immigration for immediate deportation back to his or her country of origin.

Modified, 1 CMC § 3806(f).

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Commission Comment: With respect to the reference to the Department of Labor and Immigration, see Executive Order 03-01 (effective May 9, 2003), the “Department of Labor and Immigration Reorganization Plan of 2003,” returning the immigration functions of the executive branch to the Office of the Attorney General and renaming the Department of Labor. See also NMIAC chapter 80-10.1.

Part 600 - Screening Required for Dependents

§ 140-10.2-601 Physical Examinations and Screening Tests Required for Dependents

Within ten days after the dependents’ authorized entry into the CNMI, the accountable alien employee shall schedule appointments for physical examinations for the dependents as required by the Nonresident Worker Act, 3 CMC § 4438(b) and part 100 of this subchapter, and screening tests for communicable diseases as set forth in part 200 of this subchapter.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-605 Exceptions for Dependents Age Twelve or Younger

Notwithstanding § 140-10.2-601, dependents age twelve or younger shall only be required to obtain:

- (a) A physical examination;
- (b) A Mantoux tuberculin skin test using derivative (PPD), which if found positive (greater than or equal to 10 millimeters induration) when read within seventy-two hours after the test is performed, then tuberculosis screening as set forth in § 140-10.2-220(a) of this subchapter will be required; and
- (c) Those childhood vaccinations required by Department advisories for which the dependent does not have adequate documentation demonstrating that such vaccination was provided in his or her country of origin. The alien employee shall be responsible for submitting all vaccination documentation for his or her dependents age fifteen or younger to the Division for inspection.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Commission Comment: The 2001 amendments amended the opening sentence and subsection (b).

§ 140-10.2-610 Filing of Dependents’ Physical Examination Forms and Screening Test Results

The physician performing the physical examination shall provide the Division with copies of the completed physical examination forms and all screening test results for each of the alien employee's dependents in the CNMI in a sealed envelope marked "confidential" within forty-five days from the date of the dependents' initial physical examination, and then for physical examinations yearly thereafter.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-615 Issuance of Health Certificates to Dependents

Health certificates shall be issued by the Secretary to dependents as provided in §§ 140-10.2-301 and 140-10.2-305 of this subchapter. It shall be the responsibility of the alien employee to maintain the health certificates for his or her dependents.

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-620 Cost of Dependents' Physical Examinations, Screening Tests, and Health Certificate

The cost of the physical examinations, screening tests, and health certificates for dependents shall be the responsibility of either the alien employee or the employer, as agreed to between them.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-625 Notice of Noncompliance

If a review of the Division's database indicates that a dependent of an alien employee has not been issued a health certificate within ninety days from the dependent's date of entry into the CNMI, Division staff shall send written notice to the dependent and alien employee of noncompliance with the rules and regulations in this subchapter. The Dependent shall have twenty days from the date of the notice to come into compliance with the requirements of these rules and regulations. Failure to respond to the Division's notice shall subject the dependent and the alien employee to penalties as set forth in § 140-10.2-705 of this subchapter. This section shall not apply to those dependents who have not been issued health certificates because they are undergoing treatment for a communicable disease, and who remain fully compliant with the Division's prescribed treatment regimen for the duration of treatment. A dependent undergoing treatment shall be issued a letter by the Division setting forth the date treatment is anticipated to

be completed and when a health certificate can be issued.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-630 Positive Test Results

Dependents with positive test results who fail to comply with the treatment recommendations of the Division or the Center for Tuberculosis and Lung Disease shall be subject to deportation as provided in § 140-10.2-501 of this subchapter. However, the costs associated with the dependent's deportation shall be the financial responsibility of the alien employee.

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Part 700 - Miscellaneous Provisions

§ 140-10.2-701 Application of These Rules and Regulations to Alien Employees and Their Dependents Currently Residing in the CNMI

Upon the effective date of the rules and regulations in this subchapter, all alien employees and their dependents currently residing in the CNMI shall have ninety days to obtain a health certificate in order to be in compliance with the requirements of these rules and regulations. Those alien employees and their dependents who have already had a physical examination or screening tests required by these rules and regulations in the CNMI for the year shall not be required to obtain new ones, but the alien employee shall be required to bring the results of the physical examination and/or screening test results to the Division for entry into the database and for issuance of the health certificate.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Amdts Adopted 21 Com. Reg. 16559 (Feb. 18, 1999); Amdts Proposed 20 Com. Reg. 16395 (Dec. 15, 1998); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

§ 140-10.2-705 Penalties for Violations of These Rules and Regulations

(a) Penalties for Alien Employees. Alien employees who are found to be in violation of the rules and regulations in this subchapter shall be reported to the Division of Immigration, Department of Labor and Immigration and recommended for deportation back to their country of origin. The costs associated with deportation shall be the financial responsibility of the employer.

(b) Penalties for Dependents. Dependents age eighteen or older who are found to be in violation of the rules and regulations in this subchapter shall be reported to the Division of

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Immigration, Department of Labor and Immigration and recommended for deportation back to their country of origin. Dependents under age eighteen who are found to be in violation of these rules and regulations shall be reported to the Division of Immigration, Department of Labor and Immigration and recommended for deportation back to their country of origin along with an adult dependent, or if there is no adult dependent legally responsible for the minor in the CNMI, then with the alien employee. The costs associated with deportation shall be the financial responsibility of the dependent or the alien employee.

(c) Penalties for Other Violations. Any person found by the Department to have obtained a health certificate by fraudulent means; forged or altered information on a physical examination form or screening test; refused or failed to comply with any order issued by the Secretary or duly authorized representative pursuant to these rules and regulations, or violated these rules and regulations in any other manner, shall be liable for a civil penalty of up to \$1,000.00 for each violation of the rules and regulations.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Amdts Adopted 21 Com. Reg. 16559 (Feb. 18, 1999); Amdts Proposed 20 Com. Reg. 16395 (Dec. 15, 1998); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).

Commission Comment: The 1999 amendments deleted former subsection (b) and re-designated the remaining subsections accordingly.

With respect to the references to the Department of Labor and Immigration and the Division of Immigration, see Executive Order 03-01 (effective May 9, 2003), the “Department of Labor and Immigration Reorganization Plan of 2003,” returning the immigration functions of the executive branch to the Office of the Attorney General and renaming the Department of Labor. See also NMIAC chapter 80-10.1.

§ 140-10.2-710 Severability

If any provision of the rules and regulations in this subchapter or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of these rules and regulations or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected hereby.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17706 (Feb. 23, 2001); Amdts Proposed 22 Com. Reg. 17591 (Dec. 20, 2000); Adopted 19 Com. Reg. 15167 (Feb. 15, 1997); Proposed 18 Com. Reg. 14183 (July 17, 1996).