# TITLE 3 HUMAN RESOURCES

## LIST OF SECTIONS AFFECTED (WITH DATES)
## SEPT. 1, 2007 – DEC. 31, 2010

standard type: amended section; **bold** type: new or reenacted section;
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# DIVISION 1: EDUCATION

## CHAPTER 2. CHAMORRO-CAROLINIAN LANGUAGE POLICY COMMISSION.

§ 1201. Short Title.
§ 1202. Chamorro-Carolinian Language Policy Commission: Establishment.
§ 1203. Chamorro-Carolinian Language Policy Commission: Composition and Tenure.
§ 1204. Chamorro-Carolinian Language Policy Commission: Compensation.
§ 1205. Chamorro-Carolinian Language Policy Commission: Duties and Functions.
§ 1206. Committee on Certification of Chamorro and Carolinian Translators.
§ 1207. Director: Appointment and Duties.
§ 1208. Budget.

### § 1201. Short Title.

This chapter may be cited as the Chamorro-Carolinian Language Policy Commission Act.

**Source:** . . . repealed and reenacted by PL 15-96, § 2(1201).

**Commission Comment:** . . . Public Law 15-96 was enacted into law by override on October 4, 2007 and contained the following in addition to severability and savings clauses:

Section 1. Findings. The Legislature finds that Public Law 3-26, as set forth in 3 CMC § 1201 et seq., which established the Chamorro/Carolinian Language Policy Commission ( "Language Commission"), was enacted on October 13, 1982. More than 24 years have elapsed since the establishment of the Language Commission and many diverse social and economic forces in the Commonwealth of the Northern Mariana Islands have influenced changes within the Chamorro and Carolinian cultures and languages. Some of these changes threatened to alter the traditional family values of the indigenous people.

The Legislature further finds that the Language Commission conducted a survey that determined that many Chamorro and Carolinian children do not speak their native language. This is largely due to the lack of understanding, appreciation, practice, and encouragement by parents, schools, and community leaders which resulted in children losing interest in their native language. The Language Commission previously attempted to implement language programs but was either unsuccessful or delayed due to a lack of quorum of the twelve members of the Language Commission during meetings. Moreover, there has been a systematic lack of interest and commitment among appointed members of the Language Commission throughout the past decade or so.

The Legislature finds that certain official documents randomly translated in Chamorro or Carolinian by certain individuals were found to be inconsistent with the adopted Orthography and Dictionary of the Chamorro and Carolinian languages. This has created a division or difference of opinion among such translators. Therefore, there is a need to require Chamorro and Carolinian translators to become certified as competent and qualified translators using the adopted and official Orthography and Dictionary of the Chamorro and Carolinian languages. A Certification Committee on Chamorro and Carolinian Translators should be established to certify such translators who perform services for the public and private sectors in the Commonwealth.

The Legislature further finds that the annual budget of the Language Commission provides only for personnel and office supplies but does not fund any of the language programs. The Language Commission requires supplemental funding to implement its language programs. Moreover, there has been some ambiguity as to the status of the

Language Commission within the Department of Community and Cultural Affairs and who is the proper expenditure authority of the Language Commission. Accordingly, the purpose of this legislation is repeal and re-enact Chapter 2, Division 1, Title 3 of the Commonwealth Code in order to clarify some ambiguous provisions and to change and add other provisions to streamline and improve the Language Commission.

**§ 1202. Chamorro-Carolinian Language Policy Commission: Establishment.**

There is in the Department of Community and Cultural Affairs a Division of the Chamorro Carolinian Language Policy Commission having the authority and responsibility to perform the duties and functions set forth in this chapter. As used in this chapter, "Commission" shall mean the Chamorro and Carolinian Language Policy Commission and "Department" shall mean the Department of Community and Cultural Affairs.

**Source:** . . . repealed in entirety and reenacted by PL 15-96, § 2(1202), modified.

**Commission Comment:** The commission substituted "chapter" for "this Act" pursuant to the authority granted by 1 CMC § 3806(d).

**§ 1203. Chamorro and Carolinian Language Policy Commission: Composition and Tenure.**

(a) The commission shall be composed of eight members appointed by the Governor pursuant to joint nominations submitted by the Director of Chamorro/Carolinian Bilingual Program of the Public School System, the Executive Assistant for Carolinian Affairs, and the Executive Assistant for Indigenous Affairs as nominating agencies;

(b) The members of the commission shall be of Chamorro or Carolinian descent, proficient in either Chamorro or Carolinian, and residents of the Commonwealth of the Northern Mariana Islands; provided that three members shall be Chamorro, three members shall be Carolinian, one member shall be a resident of Tinian, and one member shall be a resident of Rota;

(c) The members shall serve a term of four years; provided, that of the members first appointed, two members are to serve for four years, two members are to serve for three years, two members are to serve for two years, and two members are to serve for one year;

(d) The commission shall elect officers and adopt rules and regulations necessary to ensure the proper performance of its duties and functions.

**Source:** . . . repealed and reenacted by PL 15-96, § 2(1203), modified.

**Commission Comment:** . . . The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e).

**§ 1204. Chamorro and Carolinian Language Policy Commission: Compensation.**

(a) Members of the commission shall serve without pay, but shall be reimbursed for reasonable and necessary expenses incurred in connection with performance of official duties and functions. The commission shall establish procedures for reimbursement of members who have incurred such expenses;

(b) Members traveling on approved official business shall receive travel and per diem compensation at the rates and guidelines established for executive branch employees.

**Source:** . . . repealed in entirety and reenacted by PL 15-96, § 2(1204).

**§ 1205. Chamorro and Carolinian Language Policy Commission: Duties and Functions.**

(a) Study antecedents, describe the grammar, and prescribe good usages for the Chamorro and Carolinian languages;

(b) Prepare a modern and up-to-date Chamorro-Carolinian-English dictionary;

(c) Represent the Commonwealth of the Northern Mariana Islands in meetings and conferences on matters dealing with the Chamorro and Carolinian languages;

(d) Make recommendations to the Board of Education on standard orthography to be used in the public school system;

(e) Research the Chamorro and Carolinian languages and the people, and provide such resources to the Joeten-Kiyu Public Library;

(f) Establish, formulate, and enforce policies for government and private sectors regarding Chamorro and Carolinian translations, and to certify all Chamorro and Carolinian translators;

(g) Promulgate rules and regulations for Chamorro and Carolinian languages used on all government or public documents and public places including public buildings, roads, places, street naming, and private business signs;

(h) Make recommendations to the Legislature on policies governing the usage of Chamorro and Carolinian language in the government sector; and

(i) Establish and support local initiatives to carry out policies in support of the Chamorro and Carolinian languages and cultures.

**Source:** . . . repealed and reenacted by PL 15-96, § 2(1205).

**§ 1206. Committee on Certification of Chamorro and Carolinian Translators.**

There is established within the Chamorro and Carolinian Language Policy Commission a Committee on Certification of Chamorro and Carolinian Translators comprised of four members of the commission; provided that two members shall be Chamorro and two members shall be Carolinian. The commission shall adopt rules and regulations regarding the criteria, qualifications, and certification process of Chamorro and Carolinian translators.

**Source:** . . . repealed and reenacted by PL 15-96, § 2(1206), modified.

**Commission Comment:** . . . The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e).

**§ 1207. Director: Appointment and Duties.**

(a) The chair of the commission shall, with commission approval, appoint a director academically qualified or by training and experience to perform the duties set forth in this chapter. The director shall be exempt from the civil service.

(b) The executive director may, with commission approval, hire such professional, clerical, and other staff as may be deemed necessary to assist the commission in performing its duties and functions.

**Source:** . . . repealed and reenacted by PL 15-96, § 2(1207), modified.

**Commission Comment:** The commission substituted "chapter" for “this Act” pursuant to the authority granted by 1 CMC § 3806(d).

**§ 1208. Budget.**

(a) The commission’s budget shall be considered part of the budget of the Department of

Community and Cultural Affairs, with expenditure authority vested in the Director of the commission.

(b) Any supplemental appropriation for the commission shall be placed in a separate account within the account of the Department solely for the use of the commission.

(c) The commission may solicit additional funds from other public and private sources, which shall be placed in a separate account within the account of the Department solely for the use of the commission.

**Source:** . . . repealed and reenacted by PL 15-96, § 2(1208).

~~**§ 1209. Authorization for Appropriation.**~~

~~There may be appropriated such sums as are necessary to carry out the purposes of this chapter. The commission may also solicit funds from other public and private sources.~~

**Source:** PL 3-26, § 8; repealed in entirety by PL 15-96, § 2.

**Commission Comment:** See the comment to 3 CMC § 1201.

## CHAPTER 3. POSTSECONDARY EDUCATION ACT (NORTHERN MARIANAS COLLEGE)

### Article 2. Board of Regents.

#### § 1316. Board of Regents: Duties of the Board.

**Case Annotations:** *N. Marianas Coll. v. Civ. Serv. Cmm'n II,* 2007 MP 8, 7 N.M.I. 429 (2007).

### Article 5. Postsecondary Education Scholarship Act.

. . .

§ 1344. Sunset.
§ 1345. Financial Assistance Forbearance.
§ 1346. Employment in the United States Armed Forces.
§ 1347. Regulations.

#### § 1342. Students Eligible for Scholarships: Amount of Scholarships.

**Case Annotations:** *NMI Scholarship Board v. Superior Ct.,* 2007 MP 10, 7 N.M.I. 434 (2007).

#### § 1344. Sunset.

The provisions of this article, as amended by Public Law 14-37, shall expire five years after the effective date of this act.

**Source:** PL 15-109, § 4, modified.

**Commission Comment:** The commission changed capitalization and deleted figures that repeated written words pursuant to 1 CMC § 3806(e) and (f). Public Law 15-109, effective November 9, 2007, contained the following in addition to other enactments and severability and savings provisions.

Section 1. Findings and Purpose. The Legislature finds that the Post Secondary Teacher Education Program Scholarship (PSTEPS) was enacted with the passage of Public Law 10-58, as amended by Public Law 11-34, on May 15, 1997. The scholarship program was established to encourage more CNMI students to become teachers and serve the CNMI's rapidly growing student population, thereby decreasing the costly practice of recruiting teachers from outside of the CNMI. The PSTEPS was instrumental in helping over 50 students to become teachers; however, the program expired on September 30, 2004.

The Legislature further finds that the Public School System (PSS) continues to lack certified teachers to fill its classrooms and that there continues to be a need to encourage CNMI students to become teachers. Approximately 80 teachers resigned from their posts in the last school year leaving PSS with the daunting task of replacing these teachers. Recently, teachers have been recruited from off-island, which means that PSS will incur additional costs of recruitment and repatriation. The Legislature finds that the Commonwealth must continue to build upon the capacity of local resident teachers in order to meet the demands of a growing student population. It would be more prudent to invest funds used for teacher recruitment and repatriation expenses in the education of CNMI students who wish to become teachers by providing scholarships.

The Legislature finds that the Commonwealth also lacks medical doctors to fill essential positions at the Department of Public Health (DPH). The DPH expends an exorbitant amount of money each year on recruitment, housing, and repatriation fees of medical doctors and their families, in addition to the hundred thousand plus salaries of all such doctors. Again, it would be more sensible to invest these funds in educating CNMI students in the field of medicine by providing scholarships. The CNMI needs more local resident doctors to fill the medical doctor positions at the DPH.

Therefore, the purpose of this Act is to (1) re-establish the Post Secondary Teacher Education Program Scholarship to help meet the continued demand for teachers in the Commonwealth, (2) establish the Medical School Professional Scholarship, (3) require the submission of an annual report of the administration of the scholarship programs to the Governor, the presiding officers of the Legislature, the Commissioner of Education, and the Secretary of the Department of Public Health, and (4) provide a sunset provision for the PSTEPS, the Medical School Professional Scholarship, and the CNMI Honor Scholarship Program.

**§ 1345. Financial Assistance Forbearance.**

(a) Notwithstanding any other provision of law, a recipient of post-secondary education financial assistance from the Commonwealth who returns to the Commonwealth, presents necessary credentials for private or public service but is not hired by a private or public employer in the Commonwealth due to unavailability of government FTEs, hiring freeze, budget constraints, reduction in force or because position is filled by a foreign national worker, shall be granted a forbearance on the collection of the recipient's financial assistance debt so long as the recipient is unemployed, actively seeking employment, and unable to repay the debt; provided that such forbearance shall also be granted to an off-island recipient during the first two years after graduation if such recipient is employed off-island in a position germane to the recipient's field of study. During the period of the forbearance, interest, if any, shall not accrue.

(b) The CNMI Scholarship Office shall coordinate with the Office of Personnel Management, the Department of Labor, government agencies authorized to hire foreign national workers and private agencies to assist returning students in finding employment within the Commonwealth government or the private sector. The Scholarship Office shall report annually in writing to the presiding officers of each

house on the employment status of the returning students.

**Source:** PL 16-15, § 2(1343), modified.

**Commission Comment:** The commission modified this section pursuant to 1 CMC § 3806(g) by removing the second occurrence of "during the period of forbearance" in the last sentence of subsection (a). PL 16-15 took effect on September 5, 2008. PL 16-15 included severability and savings clause provisions and the following:

Section 2. Findings and Purpose. The Legislature finds that many students who are recipients of financial assistance from the Commonwealth in the form of loans and scholarships are required under the terms of such assistance to return to the Commonwealth to work in the private or public sector for a set period of time in order to be absolved of financial liability for the amount of the total assistance. However, the Legislature is cognizant that in times of fiscal austerity, reduction in force or because of the government reliance on foreign national workers, employment in the private or public sector may be unattainable or unavailable to returning students. Therefore, it is the purpose of this Act to authorize for forbearance of the collection of the debt of financial assistance recipients in specific cases where a recipient returns to the Commonwealth, presents appropriate credentials necessary for private or public service but is not employed due to fiscal restraints on hiring or because a position is filled by a foreign national worker. Additionally, this Act provides that employment in the United States Armed Forces in lieu of employment in the Commonwealth private or public sector satisfies the financial assistance requirement that a recipient return to and work in the Commonwealth for a period equal to the period for which the recipient received financial assistance from Commonwealth. This Act is necessary and a proper use of the legislative power granted by Section 1 of Article II of the Commonwealth Constitution.

### § 1346. Employment in the United States Armed Forces.

(a) A recipient of post-secondary education financial assistance from the Commonwealth who is employed in the United States Armed Services after the completion of the recipient's educational program shall be deemed to have satisfied the requirement that such recipient return to and provide service to the Commonwealth by working for an employer in the public or private sector; provided that the recipient be employed in the Armed Forces for a period equal to the period for which the recipient received education financial assistance the Commonwealth.

(b) The CNMI Scholarship Office is authorized to give military employment service credit to post-secondary education financial assistance recipients who joined the United States Forces prior to the enactment of this section.

**Source:** PL 16-15, § 2(1344).

### § 1347. Regulations.

The CNMI Scholarship Office shall promulgate rules and regulations necessary to implement the provisions of 3 CMC §§ 1345-1346.

**Source:** PL 16-15, § 3, modified.

**Commission Comment:** The commission substituted "3 CMC §§ 1345-1346" for "this Act" pursuant to the authority granted by 1 CMC § 3806(d).

## CHAPTER 6. POST SECONDARY TEACHER EDUCATION PROGRAM AND

## MEDICAL SCHOOL PROFESSIONAL SCHOLARSHIP.
**[Chapter renamed]**

§ 1601. Post Secondary Teacher Education Program Scholarships.
§ 1602. Medical School Professional Scholarship.
§ 1603. Conditions of Scholarship Award.
§ 1604. Program Administration.
§ 1605. Reporting.
§ 1606. Sunset.

**§ 1601. Post Secondary Teacher Education Program Scholarship.**

(a) There is hereby established a Post Secondary Teacher Education Program for the purpose of awarding undergraduate college scholarships to not more than ten students a year who are pursuing a degree in education at an accredited college or university in the Commonwealth or the United States or its territories to pay for costs directly related to the student's educational needs, including but not limited to tuition, textbooks and school supplies, transportation, and housing.

(b) The amount allocated for each scholarship shall be up to $8,000 per annum for students attending the Northern Marianas College and up to $15,000 per annum for students attending a four-year college or university in the United States or its territories for a period of up to four years.

(c) *Criteria and Requirements*. To be eligible for this scholarship program an individual shall:

(1) Be a United States citizen.

(2) Be a CNMI resident for at least three consecutive years prior to enrollment in a college or university.

(3) Furnish a letter of acceptance from a U.S. accredited college or university.

(4) Agree to return to the CNMI after graduation from college and work as a teacher in the Public School System for a period of two years for each year of scholarship assistance, or if fails or refuses to complete this obligation, agree to remit all the scholarship funds received through this scholarship program back to the CNMI government.

(5) Agree to reimburse the CNMI of all moneys received if the student chooses to switch course of studies to a major other than teaching.

(6) Sign a fully executed Post Secondary Teacher Education Program Scholarship Agreement, or successor agreement.

(d) As a condition of continuing scholarship assistance, a scholarship recipient shall do the following:

(1) Maintain a cumulative grade point average of 3.0 on a 4.0 scale a semester.

(2) Enroll in no less than fifteen credit hours a semester and be a full time student in an accredited teacher education program at a college or university.

(3) Submit a certified copy of their grades for each semester to the CNMI Scholarship Office and a class schedule for the next semester.

**Source:** . . . repealed and reenacted by PL 15-109, § 2, modified.

**Commission Comment:** The commission deleted figures in this section that repeated written words pursuant to 1 CMC § 3806(e).

. . .

Public Law 15-109 was enacted on November 9, 2007. PL 15-109 contained the following in addition to

other enactments and severability and savings provisions.

Section 1. Findings and Purpose. The Legislature finds that the Post Secondary Teacher Education Program Scholarship (PSTEPS) was enacted with the passage of Public Law 10-58, as amended by Public Law 11-34, on May 15, 1997. The scholarship program was established to encourage more CNMI students to become teachers and serve the CNMI's rapidly growing student population, thereby decreasing the costly practice of recruiting teachers from outside of the CNMI. The PSTEPS was instrumental in helping over 50 students to become teachers; however, the program expired on September 30, 2004.

The Legislature further finds that the Public School System (PSS) continues to lack certified teachers to fill its classrooms and that there continues to be a need to encourage CNMI students to become teachers. Approximately 80 teachers resigned from their posts in the last school year leaving PSS with the daunting task of replacing these teachers. Recently, teachers have been recruited from off-island, which means that PSS will incur additional costs of recruitment and repatriation. The Legislature finds that the Commonwealth must continue to build upon the capacity of local resident teachers in order to meet the demands of a growing student population. It would be more prudent to invest funds used for teacher recruitment and repatriation expenses in the education of CNMI students who wish to become teachers by providing scholarships.

The Legislature finds that the Commonwealth also lacks medical doctors to fill essential positions at the Department of Public Health (DPH). The DPH expends an exorbitant amount of money each year on recruitment, housing, and repatriation fees of medical doctors and their families, in addition to the hundred thousand plus salaries of all such doctors. Again, it would be more sensible to invest these funds in educating CNMI students in the field of medicine by providing scholarships. The CNMI needs more local resident doctors to fill the medical doctor positions at the DPH.

Therefore, the purpose of this Act is to (1) re-establish the Post Secondary Teacher Education Program Scholarship to help meet the continued demand for teachers in the Commonwealth, (2) establish the Medical School Professional Scholarship, (3) require the submission of an annual report of the administration of the scholarship programs to the Governor, the presiding officers of the Legislature, the Commissioner of Education, and the Secretary of the Department of Public Health, and (4) provide a sunset provision for the PSTEPS, the Medical School Professional Scholarship, and the CNMI Honor Scholarship Program.

**§ 1602. Medical School Professional Scholarship.**

(a) There is hereby established a Medical School Professional Scholarship for the purpose of awarding scholarships to not more than five students a year who are pursuing a degree in medicine at a U.S. accredited medical school to pay for costs directly related to the student's educational needs, including but not limited to tuition, textbooks and school supplies, transportation, and housing.

(b) The amount allocated for each scholarship shall be up to $15,000 per year for students attending a U.S. accredited medical school for a period of up to five years.

(c) *Criteria and Requirements*. To be eligible for this scholarship program an individual shall:

(1) Be a United States citizen.

(2) Be a CNMI resident for at least three consecutive years prior to enrollment at a medical school.

(3) Possess a bachelor's degree.

(4) Furnish a letter of acceptance from a U.S. accredited medical school.

(5) Agree to return to the CNMI after graduation from medical school and work as a medical doctor at the Department of Public Health for a period of two years for each year of scholarship assistance, or if fails or refuses to complete this obligation, agree to remit the all the scholarship funds received through this scholarship program back to the CNMI government.

(6) Agree to reimburse the CNMI of all moneys received if the student chooses to

switch course of studies to a major other than medicine.

(7) Sign a fully executed Medical School Professional Scholarship Agreement, or successor agreement.

(d) As a condition of continuing assistance, a scholarship recipient shall do the following:

(1) Maintain every semester a cumulative grade point average of 3.0 on a 4.0 scale or the cumulative grade point average required of the institution attending whichever is higher.

(2) Enroll in no less than fifteen credit hours a semester and be a full time student at an accredited medical school.

(3) Submit a certified copy of their grades for each semester and a class schedule for the next semester to the CNMI Scholarship Office.

**Source:** . . .repealed and reenacted by PL 15-109, § 2, modified.

**Commission Comment:** PL 11-34 took effect September 4, 1998. For findings see commission comment to 3 CMC § 1601.

**§ 1603. Conditions of Scholarship Award.**

(a) The recipients of the scholarships under this chapter agree to reimburse the CNMI of all scholarship funds received if the student fails to return to the CNMI after graduation and work at the Public School System or work at the Commonwealth Health Center for a period of two years for each year of scholarship assistance.

(b) The recipients of the scholarships under this chapter are ineligible for any other financial assistance funded by the CNMI Government.

(c) The recipients of the scholarships under this chapter shall not enroll in an "on-line" program. An "on-line" program is a program that requires participation solely through the use of the Internet and does not require physical presence in a classroom or laboratory setting or other setting that provides practical experience.

(d) Graduate or postgraduate applicants or students are not qualified for the scholarship under 3 CMC § 1601 of this chapter.

**Source:** . . . repealed and reenacted by PL 15-109, § 2, modified.

**Commission Comment:** The commission changed all occurrences of "Act" to "chapter" pursuant to 1 CMC § 3806(d). PL 10-58 took effect May 15, 1997. PL 11-34 took effect on September 4, 1998. PL 15-109 took effect on November 9, 2007.

**§ 1604. Program Administration.**

The CNMI Scholarship Office shall administer the Post Secondary Teacher Education Program and the Medical School Professional scholarships. The CNMI Scholarship Office may promulgate rules and regulations to effectively implement this chapter.

**Source:** PL 15-109, § 2, modified.

**Commission Comment:** The commission changed "Act" to "chapter" pursuant to 1 CMC § 3806(d) and (e).

**§ 1605. Reporting.**

The CNMI Scholarship Office shall submit an annual report to the presiding officers of the Legislature, the Governor, the Commissioner of Education, and the Secretary of Public Health reporting, among other things, the number of students participating in the program, the number of students who

have successfully completed their teaching degree or medical degree at a college or university, the number of participated students who have returned to the Commonwealth to teach in the schools or work at the Department of Public Health.

**Source:** PL 15-109, § 2.

**§ 1606. Sunset.**
The provisions of this chapter shall expire five years after the effective date of this chapter.

**Source:** PL 15-109, § 2, modified.

**Commission Comment:** The commission changed "Act" to "chapter" and deleted figures that repeated written words pursuant to 1 CMC § 3806(d) and (e).

# DIVISION 2: HEALTH

## CHAPTER 1. PUBLIC HEALTH.

### Article 4. Diabetes Care, Control and Prevention.

. . .

§ 2156. Diabetes Health Maintenance Act.

**§ 2156. Diabetes Health Maintenance Act.**
(a) Definitions. For purposes of this section:
(1) "Basic health care benefits":
(i) Means benefits for medically necessary services consisting of preventive care, emergency care, inpatient and outpatient hospital and physician care, diagnostic laboratory and diagnostic and therapeutic radiological services; and
(ii) Does not include mental health services or services for alcohol or drug abuse, dental or vision services, or long-term rehabilitation treatment.
(2) "Managed health care plan" means a health benefits plan offered by a health care insurer that provides for the delivery of comprehensive basic health care services and medically necessary services to individuals enrolled in the plan through its own employed health care providers. A managed health care plan includes only those plans that provide comprehensive basic health care services to enrollees on a prepaid, capitate basis, including the following:
(i) health maintenance organizations;
(ii) preferred provider organizations;
(iii) individual practice associations;
(iv) competitive medical plans;
(v) exclusive provider organizations;
(vi) integrated delivery systems;
(vii) independent physician-provider organizations;
(viii) physician hospital-provider organizations; and

(ix) managed care services organizations.

(b) *Coverage*. Each individual and group health insurance policy, health care plan, certification of health insurance and managed health care plan delivered or issued for delivery in the Commonwealth of the Northern Mariana Islands shall provide coverage for individuals with insulin-using diabetes and with elevated blood glucose levels induced by pregnancy. This coverage shall be a basic health care benefit and shall entitle each individual to the medically accepted standard of medical care for diabetes and benefits for diabetes treatment as well as diabetes supplies, and this coverage shall not be reduced or eliminated.

(c) *Insurance Deductibles*. Coverage for individuals with diabetes may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same policy, plan or certificate, as long as the annual deductibles or coinsurance for benefits are no greater than the annual deductibles or coinsurance established for similar benefits within a given policy.

(d) *Equipment and Supplies*. When prescribed or diagnosed by a health care practitioner with prescribing authority, all individuals with diabetes as described in subsection (b) enrolled in health policies described in that section shall be entitled to the following equipment, supplies and appliances to treat diabetes:

(1) Blood glucose monitors, including those for the legally blind;
(2) Test strips for blood glucose monitors;
(3) Visual reading urine and ketone strips;
(4) Lancets and lancet devices;
(5) Insulin;
(6) Injection aides, including those adaptable to meet the needs of the legally blind;
(7) Syringes;
(8) Prescriptive oral agents for controlling blood sugar levels;
(9) Pediatric appliances for prevention of feet complications associated with diabetes, including therapeutic molded or depth-inlay shoes, functional orthotics, custom molded inserts, replacement inserts, preventive devices and shoe modifications for prevention and treatment; and
(10) Glycogen emergency kits.

(e) *Benefits*. When prescribed or diagnosed by an health care practitioner with prescribing authority, all individuals with diabetes as described in subsection (b) enrolled in health policies described in that subsection shall be entitled to the following basic health care benefits:

(1) Diabetes self-management training that shall be provided by a certified, registered or licensed health care professional with recent education in diabetes management, which shall be limited to:
(i) Medically necessary visits upon the diagnosis of diabetes;
(ii) Visits following a physician diagnosis that represent a significant change in the patient's symptoms or condition that warrants changes in the patient's self-management; and
(iii) Visits when re-education or refresher training is prescribed by a health care practitioner with prescribing authority; and
(2) Medical nutrition therapy related to diabetes management.

(f) *Upgraded Equipment and Supplies*. Where upgraded and latest equipment, appliances, prescription drugs for the treatment of diabetes, insulin or supplies for the treatment of diabetes become available and approved by proper authorities, all individual or group health insurance policies as described in this Section shall:

(1) Maintain an adequate formulary to provide these resources to individuals with diabetes; and
(2) Guarantee reimbursement or coverage for the equipment, appliances, prescription drug, insulin or supplies described in this subsection within the limits of the health care plan,

policy or certificate.

(g) *Enforcement*. The provisions of subsections (b) through (f) shall be enforced by the Commissioner of Insurance established by 4 CMC § 7104.

(h) *Limitations*. The provisions of this section shall not apply to short-term travel, accident-only, or limited or specified disease policies.

**Source:** PL 15-125, §§ 3-10, modified.

**Commission Comment:** The commission made the following conforming changes pursuant to 1 CMC § 3806: changed occurrences of "this act" to "this section;" changed the references in subsections (d) and (e) above from "Section 4" to "subsection (b)"; and changed the reference in subsection (g) above from "Sections 4 through 8" to "subsections (b) through (f)." PL 15-125, enacted on January 16, 2008, contained the following in addition to severability and savings clauses:

Section 1. Short Title. This Act may be cited as the "Diabetes Health Maintenance Act of 2006".

Section 2. Findings and Purpose. The legislature finds that a large number of individuals in the Commonwealth suffer diabetic disease. In fact, latest data from the Department of Public Health indicates that there were 243 diabetes-related deaths in the CNMI between 1996 and 2000. The legislature further finds that, by ensuring accessibility to necessary supplies and equipment, diabetes complications can be avoided and thereby reducing health care costs. Moreover, since 1995, the American Diabetes Association has led successful efforts in 30 states to pass legislation requiring state-regulated health insurance plans to provide coverage for diabetes supplies and self-management education as part of basic coverage (at no additional cost). The purpose of this legislation, therefore, is to require planning and to impose, upon insurance providers, insurance coverage to individuals who have been inflicted with the diabetes disease as well as coverage for supplies and education.

## CHAPTER 2. ~~MEDICAL PRACTICE ACT~~. [Chapter renamed]
## HEALTH CARE PROFESSIONS LICENSING BOARD.

The following were repealed by PL 15-105:

Articles ~~1. General. [§ 2201, §§ 2211-2214]~~
~~2. Licensing of Health Care Professionals. [§§ 2221-2231]~~
~~3. [Reserved.]~~
~~4. Physician's Assistants. [§§ 2241-2246]~~
~~5. Disciplinary Actions. [§§ 2251-2252]~~
~~6. Legal Liability of Health Care Professionals. [§ 2261-2262]~~
~~7. Enforcement. [§§ 2271-2272]~~

§ 2201. Purpose and Findings.
§ 2202. Definitions,
§ 2203. Exceptions to Jurisdiction.
§ 2204. Health Care Professions Licensing Board.
§ 2205. Meetings; Meetings by Electronic Means.
§ 2206. Health Care Professions Licensing Board: Powers, Duties, and Functions.
§ 2207. Health Care Professions Licensing Board: Jurisdiction.
§ 2208. Health Care Professions Licensing Board: Liability, Immunity, Indemnification.
§ 2209. Health Care Professions Licensing Board Restricted Fund.
§ 2210. Health Care Professions Licensing Board Staff and Counsel.
§ 2211. License to Practice Requirement.

§ 2212. Health Care Professionals Required to Be Licensed.
§ 2213. Physician-Medical Officer.
§ 2214. Limited Practice for Physicians Licensed to Practice in a Foreign Country.
§ 2215. Qualifications for Licensure.
§ 2216. Licensure by Endorsement.
§ 2217. Language.
§ 2218. Temporary or Limited Licenses.
§ 2219. Application for Licensure.
§ 2220. Term of License.
§ 2221. Renewal of License.
§ 2222. Business License to Conform to Board License.
§ 2223. Reporting Requirements.
§ 2224. Discipline, Reasons for.
§ 2225. Criminal and Other Penalties and Remedies.
§ 2226. Civil Penalties and Other Discipline.
§ 2227. Complaints to the Board and Procedures.
§ 2228. Confidentiality.
§ 2229. Appeals of Board Decisions.
§ 2230. Bond Not Required.
§ 2231. Suing the Board.
§ 2232. Construction of Board Action; Liberal Action.
§ 2233. Electronic Means for Filing and Doing Business.
§ 2234. National and Interstate Data Banks.
§ 2235. Transition.
§ 2236. Retired Senior Volunteer Program for Health Professionals.

**§ 2201. Purpose and Findings.**

(a) The protection of the health of the public is of paramount importance.

(b) The quality, availability and honesty of the practitioners of the health care professions substantially determines whether the public receives the health care protection required.

(c) The practice of a health profession is a privilege granted by the people acting through their elected representatives. It is not a natural right of individuals.

(d) In the interest of public health, safety and welfare, and to protect the public from the unprofessional, improper, incompetent, unlawful, fraudulent and/or deceptive practice of the health care professions, it is necessary to provide statutes and regulations to govern the granting and subsequent use of the privilege to practice the health care professions.

(e) The primary responsibility and obligation of the Health Care Professions Licensing Board is to protect the people of the Commonwealth.

(f) Every person who practices or attempts to practice any health care profession within the Commonwealth without complying with this chapter harms or can harm the health, safety, security, and welfare of the people of the Commonwealth.

(g) The Commonwealth's Health Professions Licensing Board, formerly Medical Profession Licensing Board, has a lengthy history protecting the people of the Commonwealth with respect to their health care. The Board should be strengthened in its efforts.

(h) National databases exist which permit member regulatory agencies to keep track of and monitor the competencies and conduct of health care professionals. In order for the Commonwealth to benefit from the databases the Board must also submit current data. The databases demand confidentiality on the part of the users.

(i) The Legislature has examined the existing Medical Practice Act and determined that it must be updated to address current and anticipated health care and to further protect the public health, safety and welfare of the people of the Commonwealth.

(j) Among other things, it is important for the Board to be able to act quickly and with adequate power to stop dangerous health care practice.

(k) The Commonwealth's traditional healing practices must be appropriately protected.

**Source:** . . . PL 15-105, § 3(2201).

**Commission Comment:** . . . Public Law 15-105, enacted on November 7, 2007, renamed the "Medical Practice Act" to "Health Care Professions Licensing Board" and contained the following in addition to severability and savings clauses:

Section 1. Short Title. This Act may be cited as the "Health Care Professions Licensing Act of 2007."

Section 2. Purpose. The Legislature finds that, as stated in the Act's section on Purpose and Findings, this Act is required to protect the health, safety and welfare of the people of the Commonwealth.

Section 3. Repealer and Re-enactment. 1 CMC §§ 2641-42 and 3 CMC §§ 2201-72 (Public Law 3-30, as amended, the "Medical Practice Act of 1982") are hereby repealed. The following sections 3 CMC §§ 2201 *et seq*. are enacted as follows: . . .

**§ 2202. Definitions.**

As used in this chapter:

(a) "Board" means the Health Care Professions Licensing Board established by this chapter.

(b) "Board fund" means the Health Care Professions Licensing Board Fund, established by this chapter.

(c) "Commonwealth" or "CNMI" means the Commonwealth of the Northern Mariana Islands.

(d) "Doctor," including "Dr.," "D.O.," "DDS" or "DDM" or "MD", and "OD," means a certain health care professional, like a physician or a dentist, but does not otherwise mean a person granted the highest degree of a university, typically a Doctor of Philosophy, or "Ph.D.," which is not intended to address the practice of a health care profession.

(e) "Electronic means" shall include telephone, video-conference, electronic telecommunications-mediated written, aural and/or video means, including mediated through the internet, a wireless service, and/or email; and shall further include the presentation, service, filing and storage of documents in their electronic form.

(f) "Health care profession" means any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury, or unhealthy or abnormal physical or mental condition for the practice of which long periods of specialized education and training and a degree of specialized knowledge of an intellectual as well as physical nature are required.

(g) "Health care professional" means a person who practices any one of the professions listed in 3 CMC § 2212 of this chapter.

(h) "License" means a certificate issued to a person licensed, certified or otherwise approved to practice a health care profession by the Board.

(i) "Licensee" means a person licensed, certified or otherwise approved to practice a health care profession by the Board.

(j) "Licensure" means the process or condition of being licensed to practice a health care profession by the Board.

(k) "Medical Profession Licensing Board" or "Medical Board" means the Board created pursuant to 1 CMC §§ 2641-42 by Public Law 3-30.

(l) "Person" means a person real or legal, including a human being, and an artificial person, including government entity, non-governmental organization, association, corporation, limited liability company, limited liability partnership, partnership, or sole proprietorship.

(m) "State" includes a United States of America state, territory, tribal land, commonwealth, the District of Columbia, and any other U.S. jurisdiction other than the U.S. Government itself.

(n) Rules of Construction:

(1) "Include," "includes" or "including" means "include/s/ing but not limited to."

(2) The male, female and neuter/neutral shall each be read to mean the other, unless the context expressly excludes such interpretation.

(3) The singular shall be read to mean the plural, and vice versa, except where the context specifically indicates otherwise.

**Source:** PL 15-105, § 3(2202).

**§ 2203. Exceptions to Jurisdiction.**

Nothing in this chapter shall:

(a) Prohibit the exercise of the traditional Micronesian art of healing or a person's practicing a recognized religion or local faith that includes in its tenets the ministering to the sick or suffering, provided that:

(1) No such person shall be exempt from the public health laws of the Commonwealth; and

(2) No such person shall employ the title "doctor" or "Dr.";

(b) Prohibit a person from administering a lawful domestic or family remedy to a member of his or her own family;

(c) Prohibit the rendering of medical assistance in cases of emergency where no fee or other consideration is contemplated, charged or received;

(d) Apply to any commissioned medical officer in the United States military or public health service while engaged in the discharge of official duty;

(e) Prohibit the brief rendering of emergency medical treatment or critical medical service at the specific lawful direction of a medical institution or federal agency that has been approved by the Board for such purpose;

(f) Apply to any practitioner of a health care profession from a state or foreign country when in limited consultation, including in-person, mail, telephonic, tele-medicine, or other electronic consultation, with a Commonwealth-licensed health care professional, if the health care professional from the other jurisdiction is licensed to practice in another jurisdiction; or

(g) Apply to the practice of nursing as provided in the Nurse Practice Act, PL 14-62, as amended (codified at 3 CMC § 2301 et seq.).

**Source:** PL 15-105, § 3(2203).

**§ 2204. Health Care Professions Licensing Board.**

(a) There is in the Commonwealth Government a Health Care Professions Licensing Board, formerly called the Medical Profession Licensing Board, an independent regulatory agency, given the complete jurisdiction, power, authority and duty to license and regulate all health care professions, except the practice of nursing.

(b) The Board is and shall be composed of five members appointed by the Governor with the advice and consent of the Senate. One member shall be a dentist, two members shall be physicians, and two members shall be health care professionals other than a physician or dentist. Each member shall be

practicing in the Commonwealth. The provisions of 1 CMC § 2901(g) shall not apply to the composition of the Board. Each member shall have been a resident of the Commonwealth for at least two years. Each member shall have been engaged in the practice of the member's profession for at least five years preceding the date of the member's appointment to the Board.

(c) *Oath*. A member shall take and subscribe to an oath or affirmation of office to support the Constitution and laws of the Commonwealth, the applicable portions of the Constitution and laws of the United States, and to faithfully and honestly discharge the duties of the office.

(d) *Seal*. The Board shall adopt an official seal, of which the courts and agencies of government shall take judicial notice. Proceedings, orders, decrees and other legal writings may be authenticated thereby.

(e) *Terms*.

(1) The term of office for members of the Board shall be four years, and members shall serve staggered terms to ensure continuity.

(2) No member may serve more than two consecutive four-year terms. Upon the expiration of said terms successors shall be appointed with like qualifications and in like manner for terms of four years each, and until their successors are appointed and qualified.

(3) Vacancies shall be filled in the same manner as is provided for appointment in the first instance. Any person selected to fill a vacancy shall be appointed only for the remainder of the unexpired term.

(4) Notwithstanding any other provision of this section, any member whose term has expired may serve without further confirmation until such member's successor has taken office.

(f) The officers of the Board shall be elected every two years. The Board shall elect, by the majority vote of a quorum of its members, a chairperson, a vice-chairperson, and a secretary. In the event of a vacancy on the Board resulting in an unexpired term and the Governor has failed to appoint a successor within three months after the vacancy occurs, the Board may appoint a provisional member to serve in the interim until the Governor makes an appointment. Such provisional member shall have the complete power of a member appointed by the Governor.

(g) Members of the Board shall serve without pay; provided, they shall be paid reasonable and necessary expenses at established Commonwealth government rates for travel and other expenses incurred in the discharge of their duties.

(h) *Conflicts*.

(1) No Board member or member of his/her family, and no management level employee of the Board or member of that person's family, shall be directly or indirectly pecuniarily interested in a person subject to a direct decision of the Board;

(2) During his/her term no Board member shall serve as an officer or committee member of any political party organization or hold any Commonwealth office.

(3) *Disqualification and/or removal*. Proof of the existence of a conflict prohibited by this section shall disqualify the Board member from deliberation and decision-making on the conflicted matter. A knowing violation of this section shall constitute grounds for the Governor's pre-hearing removal of the member from office. Except that if the member did not know of the facts giving rise to the conflict, and if the member immediately eliminates the conflict upon learning of it, and immediately notifies the Governor, the matter shall be disclosed to the Board and said actions, if in good faith, shall be a complete defense to disqualification and/or removal.

(i) *Removal*. The Governor shall remove a member of the Board, after notice and an opportunity for a hearing, for gross neglect or dereliction of duty, violation of the conflicts prohibitions of this section, breach of fiduciary duty, misfeasance, malfeasance or nonfeasance in office, conviction of a felony, mental or physical incapacity, or failure to attend at least 50% of all duly convened regular meetings of the Board in a calendar year. Voting on a matter shall not, per se, constitute a ground for

removal.

**Source:** PL 15-105, § 3(2204); (b) amended by PL 16-25, § 2.

**Commission Comment:** . . . The commission deleted numbers that repeated words in this section pursuant to the authority granted in 1 CMC § 3806(e). Public Law 16-25 took effect on November 25, 2008. PL 16-25 contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that the Health Care Professions Licensing Board, formerly called the Medical Profession Licensing Board, regulates one of the most critical professions in the Commonwealth. The Legislature further finds the powers, duties, and functions of the Board carry great responsibility and importance to the health and welfare of the people of the CNMI. To ensure the integrity and dignity of the Health Care Professions Licensing Board, the Legislature finds that credentials of appointees to the Board should be thoroughly scrutinized. Therefore, it is the purpose of this Act to require the advice and consent of the Senate for new appointees to the Health Care Professions Licensing Board.

**§ 2205. Meetings; Meetings by Electronic Means.**

(a) In general:

(1) The Board shall act at its meetings, or as otherwise provided by law.

(2) The Board shall make provision for the attendance of members by electronic means, if a member so requests.

(3) Meetings shall be noticed as required by law.

(4) A copy of meeting materials distributed to the members shall be available to any person for review at the meeting site, except for materials subject to confidentiality or privilege as permitted or required by law.

(b) *Time*. The time for the regular meetings of the Board shall be established by action of the Board for each year, except as otherwise permitted or provided by law.

(c) *Location*.

(1) Regular meetings shall be held at such place as the Board may establish by regulation, and the location shall be properly noticed to the public.

(2) The Board may meet by electronic means, and any member may attend a meeting by electronic means.

(3) When the Board meets by electronic means, access to the meeting shall be freely given through the noticed site so that any person attending shall have the same access to the meeting as each attending member at the site. This may include use of a speaker phone or video conferencing equipment for a conference call meeting.

(4) Votes of members may be received by electronic means and announced at a meeting.

(d) *Quorum*. A majority of the members then in office shall constitute a quorum for the transaction of business at any Board meeting, or for approval of those matters needing approval of the Board. One or more vacancies in the Board shall not impair the right of the remaining members to constitute a quorum and exercise all the powers of the Board.

(e) *Open Meetings*. Board meetings and hearings shall be open to the public, as provided in the Open Government Act, 1 CMC §§ 9901-18, as amended.

(f) *Conduct of Meetings*. Unless the Board adopts regulations that provide for other procedures, the latest edition of Robert's Rules of Order shall govern the proceedings of the Board.

(g) *Regular Meetings*. Regular meetings shall be held as determined by the Board's regulations and as additionally determined by the Board.

(h) *Special Meetings*. Special meetings may be held from time to time, and shall be duly

noticed by the Board.

(i) *Executive Session*. Ordinarily the Board's meetings shall be open to the public. The Board may meet privately, in executive session, for the following purposes:

(1) To discuss personnel matters, including the hiring, firing and discipline of staff and/or contractors;

(2) To discuss pending or potential litigation or investigations;

(3) To discuss aspects of the Board's business affairs that are confidential and/or proprietary by law;

(4) To discuss a matter that may give rise to a conflict of interest, or an appearance of a conflict, with the discussion taking place in the absence of the member(s) related thereto; and

(5) To address other matters permitted by law.

(j) *Discussions by electronic means*.

(1) The Board may discuss a matter over time by electronic means, as well as in real time, provided that access to the discussion shall be publicly given so that a person seeking to review the discussion as it happens shall have substantially the same access to the discussion as each participating member.

(2) Typically such a discussion shall be by electronic bulletin board open to the view of the public.

(3) Such discussion shall be noticed according to the Board's regulations and shall comply with Commonwealth law regarding open meetings.

(4) The Board shall arrange for a person, upon request, the reasonable use of a publicly-available electronic means at the Board's offices with internet access in order to allow review of the discussion.

(k) *Accessibility*. The Board shall comply with the accessibility requirements required by law and may, upon a person's request accommodate other special needs relating to sight, sound, language or location.

**Source:** PL 15-105, § 3(2205), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**§ 2206. Health Care Professions Licensing Board: Powers, Duties, and Functions.**

The Board shall have the following powers, duties, and authority to:

(a) Adopt and enforce the law consistent with this chapter;

(b) Promulgate, amend, and/or repeal rules and/or regulations to advance this chapter and its purposes, including define and describe the health care professions and their practice which this chapter makes subject to regulation;

(c) Issue or deny licenses, including temporary, provisional, conditional and limited licenses;

(d) Approve, deny or approve with conditions, applications for license renewal;

(e) Adopt and have an official seal;

(f) Secure, review and investigate reports received from law enforcement agencies, health care organizations, government agencies, and other entities having information pertinent to the professional performance and conduct of persons over whom the Board has jurisdiction;

(g) Provide data, reports, disciplinary and status documents, and other information to law enforcement agencies, health care organizations, government agencies, and other entities maintaining information pertinent to the professional performance and conduct of persons over whom the Board has jurisdiction;

(h) Conduct investigations and hearings;

(i) Issue subpoenas, compel the attendance and testimony of witnesses and the production of relevant records and documents, and things, and administer oaths;

(j) Require a licensee or applicant to submit to a mental or physical examination, a chemical dependency evaluation, or a professional review or audit;

(k) Discipline, including: refuse to issue or renew; fine; reprimand; suspend; summarily suspend; revoke; place on probation; require payment of fees, charges or expenses; levy fines; and place conditions on granting or renewal of a license;

(l) Settle disciplinary and other contested matters, consistent with the policy of this chapter;

(m) Delegate the power, authority and discretion to review, initiate, prosecute and negotiate settlement of cases to its chief operating officer;

(n) Act summarily in the face of the likelihood of harm to:

(1) The public health, safety or welfare; or

(2) To the patients of a health care professional who is regulated by this chapter;

(o) Affiliate with professional, governmental and other organizations for the purposes of reviewing applications, conducting investigations, and/or to secure other goods and services related to the Board's duties.

(p) Contract for the purchase or other acquisition of testing, credentialing, and/or other licensing-related goods and services;

(q) Join, and maintain memberships in, national organizations;

(r) Create and maintain a system which requires continuing education credits, including requiring licensees to comply with continuing education criteria in order to maintain and/or renew a license, and to administer continuing education programs for health care professions;

(s) Contract for goods and services;

(t) Obtain and provide data relating to the conduct and disciplinary history of health care professionals;

(u) Determine, charge and collect fees;

(v) Receive fees and appropriated funds, grants, contract payments and other funds;

(w) Establish and employ accounts, including restricted fund accounts;

(x) Sue and be sued, including apply for relief by injunction in the Superior Court;

(y) Employ staff and consultants as required to assist it in performing its duties;

(z) Make recommendations to the government regarding plans relative to the assessment of community health care needs and recommendations in areas of health care resources; licensed health care professionals; and other related health care services; and

(aa) Do all other things necessary to carry out the provisions of this chapter and the regulations promulgated pursuant hereto.

**Source:** PL 15-105, § 3(2206), modified.

**Commission Comment:** The commission replaced "act" with "chapter," changed capitalization and replaced the final comma in subsection (x) with a semi-colon pursuant to 1 CMC § 3806(d), (f) and (g).

### § 2207. Health Care Professions Licensing Board: Jurisdiction.

Notwithstanding any other provision of this chapter, the Board's power, jurisdiction and authority shall extend to persons engaging in the practice of any of the health care professions regulated by the Board, whether their practice is lawful or unlawful, licensed or unlicensed.

**Source:** PL 15-105, § 3(2207), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**§ 2208. Health Care Professions Licensing Board: Liability, Immunity, Indemnification.**

(a) With respect to the Board's affairs, the following definitions shall apply to PL 15-22, as amended, 7 CMC §§ 2201-10 ("CELRTCA"), and/or its successor,

(1) "Employee" in 7 CMC § 2201(4) includes current and former Board members, staff, consultants, witnesses and any other person serving or having served the Board within the scope of a Board investigation, hearing, disciplinary action, or other Board function; and

(2) "Employment" in 7 CMC § 2201(5) includes retention as a consultant and service as a witness.

(b) This section shall not be construed to eliminate or reduce a person's protection provided by the provisions of PL 15-22, as amended, 7 CMC §§ 2201-10 ("CELRTCA"), and/or its successor.

**Source:** PL 15-105, § 3(2208).

**§ 2209. Health Care Professions Licensing Board Restricted Fund.**

(a) A Health Care Professions Licensing Board Restricted Fund shall be established for the use of such funds as may be placed therein pursuant to the provisions of this chapter.

(b) The Department of Finance shall maintain all funds generated under this chapter in a segregated, restricted special account within the general fund, identified as "The Health Care Professions Licensing Board Fund."

(c) The Board's budget shall be appropriated by the legislature. The budget may exceed the amount of the funds projected to be generated under this chapter.

(d) The funds generated under this chapter shall be allotted, disbursed, expended, spent, obligated or otherwise encumbered as provided in this chapter, and notwithstanding any other provision of law, they shall not be reprogrammed for any other purpose.

(e) After the close of each fiscal year, the Board shall provide the presiding officers of the legislature with an accounting of the use of these and other budgeted funds. The Public Auditor shall perform an annual audit of the use of these and other budgeted funds and report the findings to the presiding officers of the legislature. These reports and any audits conducted shall be public information.

(f) The expenditure authority of all funds appropriated to the Board shall be the chairperson of the Board, and/or his/her designee.

**Source:** PL 15-105, § 3(2209), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**§ 2210. Health Care Professions Licensing Board Staff and Counsel.**

(a) The Board may designate its administrative functions to an executive director or other chief operating officer, subject to the oversight of the Board's chair. Such person may employ a staff.

(b) The Board's staff shall be subject to the civil service and its executive director or other chief operating officer shall receive an annual salary as determined by the Board pursuant to 1 CMC § 8246.

(c) The Board shall employ qualified legal counsel. The Attorney General shall offer acceptable counsel to the Board, including for the purposes of solicitor and for all legal proceedings initiated and defended. Except that:

(1) In the event of a non-consentable conflict, the Attorney General shall secure for the Board such independent counsel as necessary; or

(2) When the Board certifies with specificity that special experience or skills are

needed that cannot be provided by an Assistant Attorney General, the Attorney General shall not unreasonably deny the Board the selection of private counsel to provide the services.

(d) The Board may transfer to the account of the Attorney General those amounts reflecting the salaries, benefits, fees, and other expenses for legal counsel and for litigation.

(e) The Board shall establish and maintain a suitable office for its operations on the island of Saipan.

**Source:** PL 15-105, § 3(2210), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**§ 2211. License to Practice Requirement.**

Except as otherwise explicitly provided by law, no person whose profession is regulated by this chapter may do the following without having a valid license issued by the Board:

(a) Practice or offer to practice a health care profession regulated by the Board, either gratuitously or for pay; or

(b) Advertise or announce, either publicly or privately, that the person is prepared or qualified to practice, which implies that the person is a practitioner of a health care profession regulated by the Board.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2211), modified.

**Commission Comment:** The commission changed capitalization pursuant to 1 CMC § 3806(f).

**§ 2212. Health Care Professionals Required to Be Licensed.**

The following health care professionals, practicing the following professions, are required to be licensed, certified, registered, or otherwise regulated by the Board:

(a) Acupuncturist;
(b) Audiologist;
(c) Chiropractor;
(d) Clinical Social Worker;
(e) Clinical laboratory;
(f) Dental Assistant;
(g) Dental Hygienist;
(h) Dentist;
(i) Embalmer;
(j) Emergency Medical Technician (EMT);
(k) Medical or Clinical Laboratory Technologist/Technician;
(l) Midwife;
(m) Occupational Therapist;
(n) Optometrist;
(o) Paramedic;
(p) Pharmacist;
(q) Pharmacy;
(r) Pharmacy Intern;
(s) Pharmacy Tech;
(t) Physical Therapist;
(u) Physical Therapist Assistant;
(v) Physician's Assistant;

(w) Physician-Doctor of Osteopathy;
(x) Physician-Medical Doctor;
(y) Physician-Medical Officer;
(z) Podiatrist;
(aa) Professional Counselor;
(bb) Psychologist;
(cc) Radiologic Technologist;
(dd) Respiratory Therapist;
(ee) Speech and Language Pathologist;
(ff) A person providing one of the above-listed services under a different name; and
(gg) A student under the direct supervision of a licensee.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2212), modified.

**Commission Comment:** The commission renumbered subsection (hh) above to (gg) and added a semi-colon in subsection (k) to correct manifest errors pursuant to its authority by 1 CMC § 3806(g).

**§ 2213. Physician-Medical Officer.**

No person shall practice as a Physician-Medical Officer who is not: in possession of a valid Commonwealth license on the effective date of this chapter.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2213), modified.

**Commission Comment:** The commission replaced "Act" with "chapter" pursuant to 1 CMC § 3806(d).

**§ 2214. Limited Practice for Physicians Licensed to Practice in a Foreign Country.**

(a) Notwithstanding any other provision of this chapter, a physician licensed to practice in a foreign country other than Canada may be granted a license to practice subject to the requirements and conditions provided in regulations of the Board which have been approved as to form and substance by the Attorney General.

(b) The Board shall provide by regulation for the practice of a regulated physician in the Commonwealth by a professional licensed to practice in a foreign country with acceptable education, training, examination results and experience comparable to that of a person who is otherwise qualified for licensure under this chapter. Such regulations shall address with specificity:

(1) Professional degree requirements;
(2) Postgraduate training and continuing medical education requirements;
(3) Required examinations and certifications;
(4) Requirements for active and valid licenses;
(5) Disciplinary history;
(6) Required professional relationship with a Commonwealth-licensed physician;
(7) Scope of limited practice in the Commonwealth;
(8) Limitations on the ability to prescribe controlled substances;
(9) Insurance and/or other financial requirements;
(10) Requirements for character and personal conduct;
(11) Language requirements specific to the practice and population served; and
(12) Such other requirements the Board considers necessary, appropriate or useful for the effective implementation of this chapter and/or necessary for the protection of those who utilize the professional medical services of those granted a limited license pursuant to this section.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2214).

**§ 2215. Qualifications for Licensure.**

(a) No artificial person shall practice a health care profession regulated by the Board independently of a licensed natural person.

(b) No natural person shall practice a health care profession regulated by the Board without a valid, duly issued license from the Board, unless otherwise specifically stated in this chapter.

(c) The Board shall provide by rules and/or regulations the qualifications and requirements for licensure of each type of health care professional regulated pursuant to this chapter.

(d) In order to be licensed by the Board a natural person must meet the following requirements:

(1) Be at least 21 years of age;

(2) Be a U.S. citizen, or a foreign national and lawfully entitled to remain and work in the Commonwealth;

(3) Has met all the education, continuing education, examination, certification, diploma, experience, character, financial responsibility and other requirements of the Board's regulations;

(4) Have a reputation for honesty, trustworthiness, fairness, and financial integrity and responsibility;

(5) Be of good moral character; and shall not have been convicted in any jurisdiction of a crime of moral turpitude or a crime related to the person's profession;

(6) Fully and honestly provide the information to the Board required for the Board's decision; and

(7) Except that when a provision of this section conflicts with the Commonwealth Constitution, Schedule on Transitional Matters, the terms of the Schedule shall control.

(e) In addition to the foregoing requirements, the Board may add the following requirements, in its discretion, and for good cause:

(1) Require additional proof that the person is competent to practice professionally;

(2) Require further examination;

(3) Require additional proof that the person is of an acceptable moral character; and/or

(4) Require that the person not be impaired by reason of substance abuse or debilitating physical or mental/emotional condition.

(f) The Board shall provide by regulation for the continuing education for each licensed profession, including required hours, qualifying subject matter, certification, record-keeping, verification, and reporting.

**Source:** PL 15-105, § 3(2215).

**§ 2216. Licensure by Endorsement.**

(a) The Board may grant a license to a person to practice a health care profession without examination if:

(1) The person holds a valid, active license to practice that health care profession in another jurisdiction;

(2) The person substantially complies with the requirements for licensure in 3 CMC § 2215; and

(3) The requirements in the jurisdiction of licensure are at least as stringent as those under this chapter.

(b) The Board may deny a license by endorsement to a person to practice a health care

profession if the person has been the subject of an adverse action in which his/her license was suspended, revoked, placed on probation, conditioned or renewal denied.

**Source:** PL 15-105, § 3(2216).

**Commission Comment:** The commission replaced a public law section reference with the codified section pursuant to 1 CMC § 3806(c).

**§ 2217. Language.**

The Board shall provide by rule and/or regulation for appropriate English language proficiency of a licensee, giving due regard to the required training, education and experience, to the applicable language of commerce and regulation, to the licensee's continuing education, and to the language of the likely patient population.

**Source:** PL 15-105, § 3(2217).

**§ 2218. Temporary or Limited Licenses.**

(a) The Board shall provide by rule and/or regulation for a temporary or limited license, as appropriate, to address one or more of the following conditions:

(1) Emergencies, disasters or shortages of skilled professionals;
(2) The effective use of health care professionals in training;
(3) The use of visiting specialists;
(4) Special needs of the local population;
(5) Length and scope of the anticipated practice;
(6) Term of the license and periods for renewal; and/or
(7) The extent to which a paperwork or, administrative failure has impaired the Board's ability to issue a license, in the ordinary course of its affairs.

(b) The Board shall require by rule and/or regulation that, in order to address a request for a temporary or limited license the following criteria shall be considered:

(1) The person's qualifications;
(2) The person's regulatory and disciplinary history;
(3) Adverse legal, regulatory and/or professional actions;
(4) The person's experience, training and certifications; and
(5) The nature and scope of the position to be filled.

**Source:** PL 15-105, § 3(2218).

**§ 2219. Application for Licensure.**

(a) Application for licensure or renewal shall be made upon an application form to be furnished by the Board and shall be signed and sworn to under penalty of perjury by the applicant.

(b) There shall be paid to the Board a non-refundable application fee, in an amount which the Board shall fix by regulation, and thereafter annually by resolution or regulation.

(c) The applicant shall provide to the Board and attest to, the information which the Board requires in its regulations.

(d) The burden of proof shall be upon the applicant to provide and verify to the Board's satisfaction the required information. The applicant shall be responsible for the cost of obtaining such information from recognized information services and data services.

(e) *Legal effect of the application*:

(1) The submission of an application for licensure to the Board shall constitute, and

operate as, a waiver of the right to privacy, and an authorization and consent by the applicant to the Board to disclose and release:

(i) Information or documentation required by, set forth in, or submitted with, the applicant's application; and/or

(ii) Information or documentation obtained by the Board from other persons, including businesses, associations, educational institutions, and/or governmental entities.

(2) By submission of an application for licensure, or renewal, an applicant shall be deemed to have given his or her consent to submit to mental or physical examination and/or chemical dependency evaluation, including the taking of tissue or fluid samples, as the Board may direct, and to waive all objections as to the admissibility or disclosure of such information and related findings, reports, or recommendations in an administrative or judicial proceeding.

(3) The application form shall include statements substantially similar to those of the preceding subparagraph, section 2219(e)(2), and the applicant must sign in agreement therewith.

(4) Except that nothing in this subsection shall eliminate the Board's obligations under the Open Government Act of 1992, 1 CMC §§ 9917-18, with respect to putatively confidential information submitted to the Board in order to obtain a benefit.

(f) The expense of any such mental, physical, laboratory or other application-related examination or evaluation shall be borne by the applicant.

(g) The Board shall require the submission of information and/or documentation necessary to the licensure determination, including:

(1) Criminal background;

(2) The person's experience, training and certifications;

(3) Relevant medical information;

(4) Work, licensing and/or disciplinary history; and

(5) Adverse legal, regulatory and/or professional actions.

**Source:** PL 15-105, § 3(2219).

**§ 2220. Term of License.**

(a) A license issued by the Board shall be valid for two years, except as otherwise specifically provided in this chapter.

(b) The validity of a license shall expire on the: document's termination date, except as otherwise specifically provided in this chapter.

(c) The license shall state on its face the beginning and end date of its term, the fact that it is temporary, limited or subject to conditions, and any other information that the Board, by regulation or order, deems appropriate.

**Source:** PL 15-105, § 3(2220).

**§ 2221. Renewal of License.**

(a) The burden shall be upon the licensee to timely submit an application for renewal.

(b) Each licensee shall be responsible for submitting a completed renewal application at least eight weeks, fifty-six calendar days, before the expiration date of the current license.

(c) The Board shall notify every licensee at least twelve weeks, eighty-four days, before license expiration, stating the date of expiration and the fee and any additional requirements for the renewal thereof. Notification shall be by methods calculated to most reasonably reach the licensee in a timely, cost-effective 38 manner.

(d) The Board shall make all reasonable effort to process a timely renewal application in order

to issue a renewed license at least a month before the expiration date of the current license.

(e) The Board shall provide by regulation a significant additional fee for the untimely application to renew an expired license. An expired license may be reinstated within one year of the expiration date upon payment of the renewal and any other penalty fees for each calendar month. A license which is more than one year expired shall not be renewed, and the licensee must file a new application and be treated as a new applicant.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2221), modified.

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). The reference in subsection (c) above to "cost-effective 38 manner" is as stated in the original text of PL 15-105, § 3(2221(c)).

**§ 2222. Business License to Conform to Board License.**

(a) As a general rule, no Commonwealth agency may issue a business license for a person using the terms describing a health care professional which are used in this chapter and in the regulations promulgated pursuant to the chapter, or variations thereof, unless the principal person associated with the entity seeking the business license has presented the agency with a valid license from the Board.

(b) As a limited exception to the general rule, in recognition of the substantial time that may be required to secure the information required under this chapter, in order to avoid a "Catch 22" or circular licensing stalemate, and in order to facilitate the licensing processes, a Commonwealth agency shall, upon request, issue a temporary business license to a health care professional for a limited period of time for the purpose of that person's obtaining licensure from the Board.

(c) A business license shall not be held to be:

(1) A substitute for a license from the Board; or

(2) An authorization to practice a regulated health care profession.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2222), modified.

**Commission Comment:** The commission replaced "act" with "chapter" pursuant to 1 CMC § 3806.

**§ 2223. Reporting Requirements.**

(a) Every health care facility shall inform the Board fully in writing within five weeks, thirty-five calendar days, of an adverse disciplinary action, including those actions described in this chapter, taken against any health care professional practicing in that facility who is regulated pursuant to this chapter, notwithstanding the pendency of an appeal.

(b) Every regulated health care professional shall inform the Board fully in writing within five weeks, thirty-five calendar days, of an adverse professional disciplinary action by any jurisdiction, including those actions described in this chapter, notwithstanding the pendency of an appeal.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2223), modified.

**Commission Comment:** The commission deleted figures in the above section that repeated written words pursuant to 1 CMC § 3806(e).

**§ 2224. Discipline, Reasons for.**

(a) *Scope*. The Board's complete power, authority, and jurisdiction shall extend to any person engaging in, or purporting to engage in, the practice of a health care profession regulated pursuant to this chapter, including persons offering their own services or the services of their employees or agents.

(b) *Reasons for discipline*. The Board may discipline a person for reasons which include the

following:

(1) Crimes:

(i) Conviction in any jurisdiction of:

(A) A crime involving moral turpitude;

(B) A crime related to a health care profession;

(C) A felony; and/or

( ii) A plea of nolo contendere or its equivalent accepted by an agency or court shall be considered a conviction for the purposes of this section.

(2) Committing a fraud, misrepresentation, or deception in applying for, renewing or otherwise securing a health care professional license, or in taking an examination required for such a license;

(3) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to mislead, deceive, defraud or harm the public with respect to a health care profession;

(4) Negligence, incompetence or misconduct in the practice of a health care profession;

(5) Intentionally violating a Commonwealth or federal statute or regulation governing a controlled substance;

(6) Habitually or excessively using or abusing drugs or alcohol to such extent as to render the person incapable of exercising the required degree of skill and judgment for the treatment of patients in the Commonwealth;

(7) Being physically or mentally incompetent to practice the person's health care profession to such an extent as to endanger the person or the public;

(8) Representing to a patient that a manifestly incurable condition or sickness, disease, or injury can be permanently cured, or representing that any disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if such is not the fact.

(9) Making a false, fraudulent, deceptive or misleading statement in:

(i) A document connected with the practice of a health care profession; and/or

(ii) Advertising;

(10) Advertising procedures and practices which are unlawful in the Commonwealth;

(11) Advertising, or otherwise offering to engage, or in fact engaging, in the practice of a health care profession without first complying with the requirements of this chapter.

(12) Giving fraudulent, deceptive, misleading or intentionally false testimony while serving as an expert witness;

(13) Practicing a health care profession as an individual under a false or assumed name, except for the use of an additional, duly registered business name;

(14) Commission of an act of sexual misconduct, which exploits the professional-patient relationship;

(15) Persistent, deliberate over-charging or over-treating of patients;

(16) Obtaining a fee by fraud, deceit or misrepresentation;

(17) Violating the confidentiality between the health care professional and patient, except as allowed, or required by law;

(18) Violating an order of a court of a U.S. jurisdiction;

(19) Misusing a license, including:

(i) Using or attempting to use: an expired, suspended or revoked license;

(ii) Misrepresenting to the public a conditional, limited or temporary license;

(iii) Practicing, or offering to practice, a health care profession without a valid license issued by the Board;

(iv) Allowing another person or firm to use the licensee's license to practice a health care profession, except for:

(A) The employment of a person;
(B) Under the licensee's direct supervision and control;
(C) In the ordinary course of the conduct of the profession; and
(D) Consistent with the Board's regulations.

(20) Aiding or abetting an unregulated person to practice a health care profession in violation of this chapter;

(21) Without having a valid license from the Board, using any of the health care profession titles listed in this chapter, or modifications, derivatives, or acronyms thereof, in the individual or firm name, or in any title, sign, card, ad, electronic communication, or other device to indicate that the person is practicing such profession;

(22) With respect to other jurisdictions:

(i) Being subject to a health profession disciplinary action from another jurisdiction based upon acts or conduct by the licensee similar to acts or conduct that would support disciplinary action under this chapter;

(ii) Failing to report to the Board an adverse action taken against the person by another jurisdiction's health care profession regulatory agency or court, by a professional peer body, by a health care institution, by a health care professional society or association, by a governmental agency, including a law enforcement agency or by a court for acts or conduct similar to acts or conduct that would support disciplinary action under this chapter;

(iii) Failing to report to the Board the surrender of a license to practice a health care profession in another jurisdiction, or the surrender of membership in any health care profession association or society while under the disciplinary investigation by an authority, organization, agency, court or other body;

(23) Failing to report to the Board an adverse judgment, settlement or award arising from a claim concerning the person's practice of a health care profession;

(24) Violating a provision of this chapter, or a regulation promulgated pursuant to it;

(25) Violating a provision of an order entered pursuant to this chapter, or a regulation promulgated pursuant thereto, by the Board or a court, including an adverse order, a consent order, a stipulation or an agreement;

(26) Aiding or assisting another person in violating a provision of this chapter, a rule or regulation promulgated pursuant thereto, or an order, stipulation or agreement of the Board or a court;

(27) Failing to timely furnish the Board, or its investigators, representatives, or other agents, with lawfully requested information;

(28) Failing to cooperate with a lawful investigation conducted by the Board, including lying to a Board investigator or withholding information; or

(29) Destroying, or attempting to destroy information apparently related to an investigation conducted by the Board.

(c) *Evidence*. In a proceeding brought in whole or in part under this chapter the following shall be treated as admissible evidence to establish the truth of the matters stated therein:

(1) A certified copy of the record of an action taken by the professional licensing Board or court of another jurisdiction; and

(2) An order, a plea, plea agreement or acceptance thereof, or judgment entered by the professional licensing Board or court of another jurisdiction.

(d) *Separate offenses*. Each act violating a provision of this chapter and/or regulations promulgated thereunder shall constitute a separate offense, subject to discipline, including a civil or criminal fine or penalty.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2224).

**§ 2225. Criminal and Other Penalties and Remedies.**

(a) *Misdemeanor*.

(1) Every person who intentionally practices or attempts to practice any health care profession within the Commonwealth in violation of this chapter and the regulations promulgated pursuant thereto shall be guilty of a misdemeanor.

(2) Upon conviction, such person shall be punished by a fine of not more than $1,000 for each offense, or by imprisonment for not more that one year for each offense, or by both.

(b) *Felony*.

(1) Every person who intentionally, and recklessly or maliciously, practices, or after prior conviction of an act prohibited hereunder, attempts to practice, any health care profession within the Commonwealth in violation of this chapter and the regulations promulgated pursuant thereto, shall be guilty of a felony.

(2) Upon conviction, such person shall be punished by a fine of not more than $10,000 for each offense, or by imprisonment: for not more that ten years for each offense, or by both.

(c) Injunctive relief shall not constitute the exclusive remedy to a violation, nor shall issuance of an injunctive order relieve those enjoined from criminal prosecution.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2225), modified.

**Commission Comment:** The commission deleted figures in subsection (b)(2) that repeated written words pursuant to 1 CMC § 3806(e).

**§ 2226. Civil Penalties and Other Discipline.**

(a) *Summary suspension*. Notwithstanding any other provision of law, upon a finding that immediate action is needed to reduce or eliminate the likelihood of harm to the public health, safety or welfare or to a patient of a health care professional, the Board and/or a court shall have the complete jurisdiction, power and authority to summarily suspend a licensee and order the cessation of a person's practice of a health care profession regulated by this chapter. Such an action shall be followed immediately by notice and an opportunity to be heard. No court shall lift, vacate or otherwise interfere with the Board's suspension under this chapter

(1) While the Board proceeds in a timely and deliberate manner and

(2) Unless the court shall have taken and considered evidence which is material and relevant to the suspension.

(b) *In general*. Upon finding a violation of this chapter, and after appropriate notice and opportunity to be heard, the Board may provide such relief as it determines appropriate.

(c) *Injunctive relief*. The Board may enjoin. The Board may also seek injunctive relief directly from the Superior Court. The Board may punish a violation of an injunctive order. No proof of actual damage to any person shall be required for issuance of an injunctive order by the Board or a court.

(d) *Types of discipline*. The Board may discipline a person, including in any of the following ways:

(1) The Board may discipline a licensee or applicant for licensure, including in one or more of the following ways:

(i) Refuse: to issue a license; to renew; or to restore;

(ii) Suspend or revoke;

(iii) Place on probation;

(iv) Condition a license;

(v) Limit a license by restricting the fields or sub-fields of practice, or the procedures, in which the licensee may engage;

(vi) Require further education or training or testing for competency;

(vii) Enjoin;

(viii) Receive a voluntary surrender, in which a licensee voluntarily surrenders a license in exchange for a decision by the Board to forego conducting, or cease, an investigation, a discipline, or similar proceeding, or in lieu of a disciplinary action;

(ix) Levy fees, charges, costs, expenses, fines or civil penalties; and/or

(x) Require an application for licensure.

(2) The Board may discipline a person other than a licensee or applicant for licensure in one or more of the following ways:

(i) Enjoin;

(ii) Levy fees, charges, costs, expenses, fines or civil penalties; and/or

(iii) Require an application for licensure.

(3) The Board may also, with respect to any person:

(i) Make a criminal complaint;

(ii) Deny relief;

(iii) Require the payment of costs, fees and/or expenses of litigation;

(iv) Dismiss one or more allegations or counts of a complaint;

(v) Order such other discipline as appropriate and permitted by law;

(vi) Seize all tools and other implements, medicines, and drugs used in the practice of a health care profession by a person found by a court to have practiced a health care profession in violation of this chapter; and/or

(vii) Apply other remedies authorized by law.

(4) In a proceeding before the Board for injunctive relief it shall not be necessary to allege or prove:

(i) That an adequate remedy at law does not exist; or

(ii) That substantial, immediate, or irreparable damage would result from the continued violation thereof.

(e) *Suit*.

(1) The Board may sue to enforce its orders, including its subpoenas, and partial, final and temporary orders. The Board may sue to secure an order from a court.

(2) In a court proceeding for injunctive relief under this chapter, or the regulations promulgated pursuant thereto, it shall not be necessary to allege or prove:

(i) That an adequate remedy at law does not exist; or

(ii) That substantial, immediate, or irreparable damage would result from the continued conduct sought to be enjoined or violation thereof.

(f) *Forfeiture*. A court may declare forfeit to the Commonwealth, and order the seizure of, all tools and other implements, medicines, and drugs used in the practice of a health care profession by a person found to have practiced a health care profession in violation of this chapter.

(g) The remedies and penalties prescribed in this chapter shall be concurrent and cumulative, and the exercise of one shall not preclude the exercise of the others, and these remedies and penalties are in addition to any other remedy or penalty afforded by any other law or regulation.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2226).

**§ 2227. Complaints to the Board and Procedures.**

(a) The Board shall develop procedures for the prompt and efficient receipt, investigation and

resolution of complaints and hearings, including rules of practice and procedure. Such procedures shall include notification of a licensee of an outstanding complaint, with due regard given to maintaining the confidentiality of the complainant during the investigation. Such procedures shall give due regard to the confidentiality of the target of the complaint, particularly when the complaint is anonymous.

(b) Any person, including a Board member or the Board's staff, may complain to the Board in writing against any person. The complaint may seek relief, but need not specify the relief sought. The complaint shall be as specific as possible as to the time, place, and nature of the violation. The Board's determination of a complaint shall be accorded notice and an opportunity to be heard, except as provided otherwise specifically in this chapter.

(c) The Board or its designee shall promptly and fully investigate all non-trivial allegations filed with the Board for the purposes of determining whether to proceed with or dismiss the complaint. Ordinarily, such investigation shall conclude within five weeks, thirty-five calendar days, of receipt of the complaint.

(d) The Board may dismiss without hearing a complaint as unfounded, or trivial, or failing to state a ground for which relief may be granted, with a written order explaining its decision. Notwithstanding any other provision of law the dismissal of a complaint shall be subject only to a retrospective notice and opportunity to be heard. The Board may dismiss an anonymous complaint without investigation.

(e) The Board shall hear and determine complaints and other contested matters pursuant to the Commonwealth Administrative Procedure Act, 1 CMC §§ 9108.

(f) The Board may refer a criminal prosecution to the Attorney General. The Attorney General shall review such a referral on an expedited basis to determine whether criminal activity presents an immediate danger to the health, welfare or security of the Commonwealth or persons likely to receive care.

(g) The Board or its hearing officer may issue subpoenas as in the Superior Court. The Board shall provide by regulation for subpoena procedures, including how a person shall request a subpoena, who shall serve the subpoena, how service may be made, what the witness shall bring, the penalties to be exacted upon failure or refusal to obey a subpoena, and payment of required fees, if any, for travel and appearance. The Board may apply to the Superior Court for an order causing the arrest of a nonappearing witness and directing that the witness be brought before the Court and the Board. A disobedient witness shall be liable in damages for nonattendance to the hearing or other proceeding. The Board shall be provided those services available to the Attorney General for service of subpoenas.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2227), modified.

**Commission Comment:** The commission deleted figures in subsection (c) that repeated written words pursuant to 1 CMC § 3806(e).

**§ 2228. Confidentiality.**

(a) The Open Government Act of 1992, 1 CMC §§ 9917-18, shall determine the extent to which the Board's records, files and other information shall be privileged and confidential and may be protected from disclosure. Such protection shall apply to the work product of an attorney retained by or for the Board, whether or not an assistant attorney general.

(b) Notwithstanding any other provision of law, information secured pursuant to an investigation by the Board, or with respect to a referral by the Board for prosecution, including the name of a complainant or witness, shall be confidential and exempt from disclosure, until such investigation or referral has been completed and the matter dismissed or a pleading filed.

(c) Further protection from disclosure may be provided by the Board, an administrative hearing

officer or judge, pursuant to notice and an opportunity to be heard.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2228).

**§ 2229. Appeals of Board Decisions.**

(a) Appeals of the Board's action or inaction shall be conducted pursuant to the Commonwealth Administrative Procedure Act, 1 CMC §§ 9108- 15.

(b) An appeal of the Board's action or inaction shall be treated for discovery purposes as an appeal, and not as an original action, and matters therein shall not be subject to discovery, except for those limited matters which the reviewing court has by written order set for a trial de novo.

(c) Application to the Board for rehearing or reconsideration shall not constitute a condition of judicial review.

(d) An appeal shall not per se stay the effective date of the order, decree, regulation or other final decision appealed.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2229).

**§ 2230. Bond Not Required.**

Bond or other security shall not be required of the Board, including:

(a) To enforce the provisions of this chapter and its regulations;

(b) To restrain any violation thereof; or

(c) On appeal.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2230).

**§ 2231. Suing the Board.**

(a) Unless otherwise stated by regulation, service personally or by mail upon the Board's chief operating officer or the administrative official serving as secretary shall constitute service upon the Board.

(b) Except that service upon the Board shall not be perfected until a copy has been served upon the Attorney General.

**Source:** . . . repealed and reenacted by PL 15-105, § 3(2231).

**§ 2232. Construction of Board Action; Liberal Construction.**

(a) The Board's substantial compliance with the requirements of the laws which the Board administers is sufficient to give effect to all of the Board's orders, acts, rules and regulations, and the Board's orders, acts, rules and regulations shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(b) The provisions of the laws which the Board administers shall be liberally construed in order to promote and protect the public interest.

**Source:** PL 15-105, § 3(2232).

**§ 2233. Electronic Means for Filing and Doing Business.**

The Board may provide for the filing, payment, recording of its actions, data storage, submission and storage of materials, and conducting of the Board's business, by electronic means. Electronic means shall be favored.

**Source:** PL 15-105, § 3(2233).

**§ 2234. National and Interstate Data Banks.**

(a) *Reporting to the Board.*

(1) Each licensee and each person in the Commonwealth employing a licensee, including the Commonwealth Health Center and its successors and assigns, shall report to the Board:

(i) Information which it receives relating to the professional competence and conduct of a health care professional regulated pursuant to this chapter. In particular it shall report negative information;

(ii) A professional review action that adversely affects the clinical privileges of a health care professional for a period of more than 30 days; and

(iii) Acceptance of the surrender of clinical privileges, or any restriction of such privileges, of a health care professional.

(2) The Board shall provide a form for such reports.

(3) The report shall be made within thirty-five days of receipt of the information by the person or by a management-level individual.

(b) *Reporting to national and interstate data banks.*

(1) The Board shall report adverse health care professional information to the National Practitioner Data Bank ("NPDB"), the Federation of State Medical Boards ("FSMB"), to the appropriate government health agency having jurisdiction over a foreign-licensed or otherwise regulated health care professional, and such other interstate or national health professional data bank as it shall by regulation determine, within thirty-five days following its receipt of the information. The Board shall maintain its membership in such organizations in order to retain the benefits of access to the data.

(2) The information to be reported shall include:

(i) Discipline of a regulated health care professional described by, or undertaken pursuant to, this chapter, and without regard to whether the action of the disciplining entity has been stayed by a reviewing court;

(ii) A professional review action that adversely affects the clinical privileges of a health care professional for a period of more than 30 days; and

(iii) Acceptance of the surrender of clinical privileges or any restriction of such privileges of a health care professional.

(c) *Securing information.*

(1) The Board shall secure for each person subject to regulation reportable information at the following times:

(i) When a health care professional applies for a license;

(ii) Every two years, typically in advance of license renewal; and

(iii) Whenever the Board determines such information would be reasonably required.

(2) The Board shall provide by regulation for each professional's payment of the costs and fees for such reports.

(3) The Board may provide such information to a requesting person on such terms as it shall set by regulation. Such regulation must comply with the terms and conditions for confidentiality of the NPDB, FSMB or other such entity.

(4) The Board shall otherwise conduct itself with due regard for confidentiality.

**Source:** PL 15-105, § 3(2234), modified.

**Commission Comment:** The commission deleted figures in the above section that repeated written

words pursuant to 1 CMC § 3806(e).

**§ 2235. Transition.**

(a) The Board is and shall be the successor to the Commonwealth Medical Profession Licensing Board in respect to all of the duties, powers and authority previously vested in the Medical Board and now vested in or imposed upon the Board.

(b) All actions and publications, including orders, decisions, rules, regulations, certificates, licenses, or other permissions, contracts, guidelines, practices and procedures of the Medical Board shall continue in full force and effect. The Board shall make such administrative changes as are necessary to conform these to the Board's practices and procedures.

(c) Any unexpended balance of moneys of, and any fees or other moneys now owing to, the Medical Board shall be, and the same are hereby, transferred and assigned over to the Board hereby created, to be used and disposed of, as provided by law.

(d) The Medical Board members holding office at the time this chapter becomes law shall be members of the Board. They shall continue in office under this chapter for the remainder of the term for which they were appointed. The Board shall immediately meet and designate the chair and the other officers.

(e) Except as otherwise provided herein, the regulations, guidelines, standards, and procedures related to the regulation of the functions and operation of a regulated health care professional and/or profession that are in force when this chapter becomes effective, shall continue to apply until amended or repealed by the Board.

**Source:** PL 15-105, § 3(2235), modified.

**Commission Comment:** The commission replaced “act” with chapter” pursuant to 1 CMC § 3806.

**§ 2236. Retired Senior Volunteer Program for Health Professionals.**

(a) The Board may issue a license to a person meeting the requirements for participation in the Retired Senior Volunteer Program for Health Professionals.

(b) The Board is authorized to create a Retired Senior Volunteer Program for Health Professionals for the purpose of permitting physicians and other health care professionals who are fully retired from the active practice to obtain a limited license without cost which would permit the provision of outpatient health care services at established free clinics and programs operated in the Commonwealth.

(c) Health care professionals regulated pursuant to this section should perform no fewer than 100 hours of voluntary service annually and must limit their practice to the program.

(d) Any person regulated pursuant to this section shall be subject to complete regulation under this , except as specifically provided in this section.

(e) The program and the Board's regulations shall provide that:

(1) The applicant currently has or has had a full and unrestricted license to practice in a state or other jurisdiction which the Board approves, which license is or was at the time of expiration unrestricted and in good standing with no pending disciplinary actions or investigations at the time of expiration.

(2) The applicant shall be fully retired from active practice.

(3) The applicant shall be in good health and not currently undergoing treatment for a physical or mental condition which would impair the individual's ability to practice with reasonable skill and safety for patients.

(4) The applicant certifies, on a form prescribed by the Board, that she intends to limit his or her practice to the program.

(5) The licensee shall be subject to such continuing education requirements as the Board shall provide.

(6) The applicant has been requested to provide services that qualify for the program.

(7) A license, and renewals thereof, shall be issued at no cost.

(f) The Board shall promulgate regulations for this program and licensure thereunder. Such regulations may provide for the certification of clinics programs and facilities for which the program's licensure may be granted.

**Source:** PL 15-105, § 3(2236).

## CHAPTER 3. NURSE PRACTICE ACT.

### Article 1. General

**§ 2301. Short Title.**

This chapter may be cited as the "Nurse Practice Act of 2003."

**Source:** PL 3-29, § 1; repealed by PL 14-62, § 1; PL 14-62, § 2 (2301).

**Commission Comment:** PL 3-29 took effect November 26, 1982. PL 3-29, § 28 repealed 63 TTC §§ 152, 154 and 156 as they applied to the practice of professional nursing and practical nursing in the Commonwealth. These sections were later repealed by the Medical Practice Act of 1982; see PL 3-30, § 30.

PL 14-62, which took effect ninety days after being signed into law on March 31, 2005, repealed the "Nurse Practice Act of 1982" (sections 2301-2372) that was created by PL 3-29, and created the current sections 2301-2319. PL 14-62 also contained savings and severability provisions.

~~3 CMC § 2306 under the current "Nurse Practice Act of 2003" gives the Board of Nurse Examiners the power to make and adopt rules but does not give the Board specific power to make or promulgate regulations, as did the former 3 CMC § 2315(a) under the "Nurse Practice Act of 1982." However, the Administrative Procedure Act at 1 CMC § 9101(k) defines a regulation as ". . . a rule which prescribes or has the force of law." "See NMIAC § 140-60 for the rules and regulations promulgated by the Commonwealth Board of Nurse Examiners under the former 3 CMC § 2315(a) of the "Nurse Practice Act of 1982."~~

**§ 2304. Definitions and Scope.**

In this chapter, unless otherwise provided or the context requires a different construction or application, the following definitions shall apply:

(a) "Advanced Practice Registered Nurse" means a nurse in the practice of Advanced Practice Registered Nursing by Certified Nurse Practitioners, Certified Registered Nurse Anesthetists, Certified Nurse Midwives, and Clinical Nurse Specialists, which shall be based on knowledge and skills acquired in basic nursing education, licensure as a Registered Nurse and a certification training and/or a graduate degree with a major in nursing or graduate degree with a concentration in the Advanced Nursing Practice category, which includes both didactic and clinical components, advanced knowledge in nursing theory, physical and psycho-social assessment, appropriate interventions, and management of health care. The Advanced Practice Registered Nurse shall only provide health care services within the scope of practice for which he/she is educationally prepared and for which competency has been established and maintained as defined by the Board as defined in this section. The term "Advanced Practice Registered Nursing" shall include, but not limited to:

(1) Assessing clients, synthesizing and analyzing data, and understanding and applying

nursing principles at an advanced level;

(2) Providing expert guidance and teaching;

(3) Working effectively with clients, families, and other members of the health care team;

(4) Managing clients' physical and psycho-social health-illness statute;

(5) Utilizing research skills;

(6) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem, and selecting appropriate treatment;

(7) Making independent and/or collaborative decisions in solving client care problems within their Advanced Practice Category.

(8) Performing acts of diagnosing and prescribing within scope of practice and as defined by the Board, administering and dispensing therapeutic measures appropriate to the Advanced Practice Registered Nurse's area of specialty as defined by the Board; and

(9) Recognizing limits of knowledge and experience, planning for situations beyond expertise, and consulting with or referring clients to other health care providers as appropriate.

(b)- (j) [unchanged]

(k) "Prescriptive/Dispensing Authority" means an Advanced Practice Registered Nurse authorized to prescribe and dispense drugs and therapeutic measures defined by the Board. The authorization to prescribe and dispense drugs and therapeutic measures is for administration to and use by other persons (patients or clients) within the scope of practice of the Advanced Practice Registered Nurse.

(l)- (m) [unchanged]

**Source:** PL 14-62, § 2 (2304), modified; (a) and (k) amended by 16-34 §§ 2 and 3, respectively.

**Commission Comment:** Subsection (c) was modified by deleting figures that were a repetition of words pursuant to the authority granted by 1 CMC § 3806(e). Public Law 16-34, enacted on March 23, 2009, contained severability and savings clause provisions and the following:

Section 1. Findings and Purposes. The Commonwealth Legislature hereby finds that due to the difficulty of recruiting physicians to serve in the Commonwealth hospital and clinics, patients' access to health care is greatly diminished. Because of the extensive training that nurse practitioners must undergo in order to be licensed in the United States and the Commonwealth, the increasing use of nurse practitioners as alternative health care providers in many rural areas on the United States, and the availability of professionally trained and educated local nurse practitioners who can provide quality healthcare services, increasing nurse practitioners' autonomy will improve access to quality health care in the Commonwealth. The Legislature finds and declares that this Act is necessary and a proper use of the legislative power granted by Article II of the Commonwealth Constitution.

### § 2305. Membership; Appointment; Term of Office; Removal; Vacancies; Qualifications; Immunity.

(a) [unchanged]

(b) The Governor shall appoint members to serve on the Board. Any appointment to fill a position shall be made prior to expiration of the term of the current member. A person appointed shall become a member of the Board on the first day following the appointment expiration date. Appointees to unexpired portions of full terms shall become members of the Board on the day following such appointment. Each term of office shall expire at midnight on the last day of the term of the appointment or at midnight on the date on which any vacancy occurs. Members may be removed pursuant to section 21 of article 3 of the N.M.I. Constitution. In the event that a member's term has expired and no replacement appointment has been made, that member shall continue to serve as a Board member until a replacement has been appointed and the position is filled, or the current member has been reappointed.

(c)- (k) [unchanged]

**Source:** PL 14-62, § 2 (2305), modified; (b) amended by 16-34 § 4.

**Commission Comment:** Subsection (d) was modified pursuant to 1 CMC § 3806(e); subsection (g) was modified pursuant to 1 CMC § 3806(g) to remove an extra section symbol.

**§ 2306. Commonwealth Board of Nurse Examiners: Power and Duties.**

The Board shall:

(a) Be responsible for enforcing the provisions of this chapter. The Board shall have all of the duties, powers and authority specifically granted by and necessary to the enforcement of this chapter, including subpoena power, the ability to promulgate rules and regulations necessary to implement the intent of the Nurse Practice Act, as well as such other duties, powers and authority as it may be granted by law;

(b)- (d) [unchanged]

(e) Further be authorized to do the following without limiting the foregoing:

(1)- (12) [unchanged]

(13) Maintain membership in national organizations to include but not limited to the National Council of State Boards of Nursing that develop and regulate the national nursing licensure examinations and exclusively promote the improvement of the legal standards of the practice of nursing for the protection of the public health, safety and welfare, and follow nationally recognized guidelines for oversight of nurses and advance practice registered nurses.

(14)- (16) [unchanged]

This chapter shall not be construed to require the Board to report violations of the provisions of the chapter whenever, in the Board's opinion, the public interest would be served adequately by a suitable written notice of warning.

**Source:** PL 14-62, § 2 (2306); (a) and (e)(13) amended by 16-34 §§ 5 and 6, respectively.

~~**Commission Comment:** The above section does not specifically authorize the Board to promulgate regulations, as did the former 3 CMC § 2315(a) (Board of Nurse Examiners. Powers) under the "Nurse Practice Act of 1982." However, the Administrative Procedure Act at 1 CMC § 9101(k) defines a regulation as ". . . a rule which prescribes or has the force of law." See the commission comment to 3 CMC § 2301.~~

## CHAPTER 4. HEALTH CARE FACILITIES.

### Article 1. Health Care Services.

**§ 2411. Commonwealth Health Center.**

The Commonwealth Hospital located on Saipan shall be known as the "Commonwealth Health Center."

**Source:** . . . repealed and reenacted by PL 16-51 § 4 (January 15, 2010).

**§ 2412. Payment of Fees for Services. [Repealed by PL 16-51 § 8.]**

**Source:** . . . repealed by PL 16-51 § 8 (January 15, 2010).

**Commission Comment:** For more information regarding PL 16-51 see comment to 3 CMC § 2821.

## CHAPTER 5. MENTAL ILLNESS.

### Article 2. Patient's Rights.

#### § 2551. Short Title.

**Case Annotations:** *Commonwealth v. Sibetang,* 2002 MP 9, 6 N.M.I. 414 (2002); . . .

## CHAPTER 8. UTILITY ASSISTANCE. [New chapter]

§ 2801. Utility Assistance Account.
§ 2802. Appropriation.
§ 2803. Expenditure Authority.
§ 2804. Regulations.
§ 2805. Rules of Construction.

#### § 2801. Utility Assistance Account.

There is established an account to be known as the "Utility Assistance Account (UAA)," which shall be separate from the General Fund. Funds appropriated to this account shall be expended by the Department of Community and Cultural Affairs (DCCA) to supplement payments made to the Commonwealth Utilities Corporation (CUC) through the federal Low Income Home Energy Assistance Program (LIHEAP).

**Source:** PL 15-110, § 2.

**Commission Comment:** Public Law 15-110 was enacted on November 9, 2007 and contained the following findings and purpose in addition to severability and savings provisions:

> Section 1. Findings and Purpose. The Commonwealth Legislature finds that nearly 450 residents of the Commonwealth are recipients of financial assistance under the federal Low Income Home Energy Assistance Program (LIHEAP). This number was reduced from almost 700 a year ago due to utility disconnections. The Legislature further finds that LIHEAP currently provides assistance to low income consumers for electricity, but this assistance does not cover the full amount of most Commonwealth Utilities Corporation (CUC) billings. The Legislature finds that utility bills have become a burden on low income families, many of whom often have their power supply disconnected for nonpayment. The Legislature finds that the creation of a LIHEAP supplemental account from Tobacco Control Fund revenues will assist low income families in paying CUC bills in excess of the LIHEAP subsidy. This will ensure that vital power and water services remain connected, and that the health of low income families is not jeopardized by the rise in power rates in the Commonwealth.

#### § 2802. Appropriation.

Notwithstanding the limitations in 3 CMC §§ 2177(a) through (d), there is hereby appropriated

annually the sum of up to three-hundred-thousand dollars from revenues collected pursuant to 3 CMC § 2177 to the Utility Assistance Account as created by 3 CMC § 2801 of this chapter. Funds shall be continuously appropriated without further action of the Legislature. The first appropriation shall be pro-rated and shall occur on the effective date of this chapter, with subsequent annual appropriations occurring on October 1 of each fiscal year. Funds remaining in the UAA at the close of each fiscal year shall become part of the account. Interest earned on the UAA shall become part of the account.

**Source:** PL 15-110, § 2, modified.

**Commission Comment:** The commission inserted proper code section references, replaced "Act" with "chapter" and deleted figures in the above section that repeated written words pursuant to 1 CMC § 3806(c), (d) and (e).

**§ 2803. Expenditure Authority.**

The expenditure authority for the Utility Assistance Account shall be the Secretary of the Department of Community and Cultural Affairs (DCCA).

**Source:** PL 15-110, § 2.

**§ 2804. Regulations.**

The Secretary of the Department of Community and Cultural Affairs (DCCA) shall promulgate regulations for the implementation of this chapter.

**Source:** PL 15-110, § 2.

**§ 2805. Rules of Construction.**

The following rules of statutory construction shall, where applicable, govern the interpretation of this chapter:

(a) "Include," "includes" or "including" means "including but not limited to;"

(b) The male, female and neuter/neutral shall each be read to mean the other, unless the context expressly excludes such interpretation; and

(c) Except where the context specifically indicates otherwise, the singular shall be read to mean the plural, and vice versa.

**Source:** PL 15-110, § 2.

## CHAPTER 9. COMMONWEALTH HEALTH CARE CORPORATION. [New chapter]

§ 2821. Short Title.
§ 2822. Definitions.
§ 2823. Establishment of Commonwealth Healthcare Corporation.
§ 2824. Corporate Powers.
§ 2825. Chief Executive Officer and Board of Trustees Established.
§ 2826. Chief Executive Officer: Powers and Duties.
§ 2827. Corporate Officers.
§ 2828. Fiscal Authority: Accounting and Expenditures.

§ 2829. Employment Policy.
§ 2830. Immunity From or Indemnification for Civil Liability; Defense of Chief Executive Officer, Board of Trustees, Officers, Employees, and Contractors.
§ 2831. Exemption from Taxation.
§ 2832. Orderly Transition.
§ 2833. Transfer of Property and Personnel to Corporation.
§ 2834. Assumption of Rights, Obligations and Duties of the Government.
§ 2835. Personnel Rules Applicable During Transition.

**§ 2821. Short Title.**
This chapter shall be known as the "Commonwealth Healthcare Corporation Act of 2008."

**Source:** PL 16-51 § 3(2801) (January 15, 2010).

**Commission Comment:** Public Law 16-51 (enacted on January 15, 2010) included severability and savings clause provisions and the following:

Section 2. Findings and Purpose. The Legislature finds that the healthcare service under the Department of Public Health is not operating as effectively as demanded by the consumers of its healthcare. Several factors are responsible, including a changing environment for public healthcare financing, stagnant public funding, and difficulties in procurement, recruiting and staffing. The establishment of the Commonwealth Healthcare Corporation will allow management more flexibility and authority to independently meet the acute and long-term healthcare needs of the Commonwealth. The establishment of an advisory body representative of the community will ensure that healthcare management receives the advice it needs to guide the Corporation toward increased financial self-sufficiency.

It is the intent of the Legislature that the Commonwealth Healthcare Corporation develop and regulate, as necessary, a high quality, efficient, and market oriented public healthcare delivery system in the CNMI. To the extent it determines prudent, this Act authorizes the Corporation to enter into performance management contracts and other types of contracts with the nonprofit and private sector for management functions and delivery of healthcare services.

The purpose of this Act is to establish the Commonwealth Healthcare Corporation, a public corporation, to coordinate the delivery of quality healthcare to all Commonwealth residents in a financially responsible manner. The Commonwealth Healthcare Corporation is intended to be a professionally managed, nationally accredited, independent public healthcare institution that is as financially self-sufficient and independent of the Commonwealth Government as is possible.

**§ 2822. Definitions.**
As used in this chapter:

(a) "Board" means the Board of Trustees of the Commonwealth Healthcare Corporation.

(b) "Chief Executive Officer" means the chief executive officer and principal manager of the Commonwealth Healthcare Corporation.

(c) "Clinics" include the Tinian Health Center, Rota Health Center, the Women's Clinic and the Children's Clinic.

(d) "Corporation" means the Commonwealth Healthcare Corporation and shall include the Commonwealth Health Center and Rota and Tinian Health Centers.

(e) "Health care professionals" means those persons licensed or certified to practice by the Health Professions Licensing Board, as provided by Public Law 15-105 and other applicable law.

(f) "Hospital" means the Commonwealth Health Center and such ancillary public health facilities as may from time to time be established.

**Source:** PL 16-51 § 3(2802) (January 15, 2010).

**§ 2823. Establishment of Commonwealth Healthcare Corporation.**

(a) There is hereby established in the Commonwealth government a Commonwealth Healthcare Corporation, a public corporation, which is hereby allocated to the executive branch for purposes of organization and coordination.

(b) The Corporation shall assume the functions and duties of the

(1) Commonwealth Health Center;

(2) the Clinics including the Rota Health Center, Tinian Health Center, the Women's Clinic, and the Children's Clinic;

(3) the Community Guidance Center;

(4) inter-island medical referral services; and

(5) other clinics, operations and function of the Department of Public Health as may be transferred to the Corporation by the Secretary of Public Health.

(c) The Corporation shall be headed by a chief executive officer (CEO) appointed by the Governor to a four year term in office, following receipt of a Board nominee under 3 CMC § 2825(j) of this chapter.

(d) The Corporation shall have a seven member Board of Trustees that the CEO may call upon from time to time for advice and assistance.

(e) The Corporation shall operate a healthcare system in the Commonwealth, that includes the operation and oversight of the Commonwealth Health Center, Tinian Health Center, Rota Health Center, the Women's Clinic, the Children's Clinic, and the Community Guidance Center. In doing so, the Corporation shall provide quality healthcare to the people of the Commonwealth, purchase appropriate medical equipment, and expand the level of medical and other public healthcare services available in the Commonwealth.

(f) Within 365 days following the effective date of this chapter, the Corporation shall further assume the functions and duties of the Department of Public Health under Title 3, Division 2 of the Commonwealth Code (3 CMC §§ 2101 - 2798), and under Title 1, Division 2, Chapter 12 of the Commonwealth Code (1 CMC §§ 2601 - 2650), and other public law; provided, that the Secretary of the Department Public Health may reserve to the Department those functions and duties that the Secretary specifies as appropriate in a writing communicated to the Governor and presiding officers of the legislature.

(g) Within 365 days following the effective date of this chapter and upon recommendation of the Secretary, the Governor may transfer to the Department of Public Health the functions and duties of the Division of Environmental Quality.

**Source:** PL 16-51 § 3(2803) (January 15, 2010).

**Commission Comment:** The commission inserted proper code section references and replaced "this Act" with "this chapter" pursuant to 1 CMC § 3806(c) and (d).

**§ 2824. Corporate Powers.**

The Corporation shall have and exercise each and all of the following powers:

(a) Full authority to discharge the functions and duties provided by law to the Department of Public Health and transferred under this chapter to the Corporation, excepting those functions and duties reserved under 3 CMC § 2823(f) and (g) of this chapter;

(b) Maintain and operate healthcare facilities and provide acute and chronic healthcare services within the Commonwealth and, to the extent consistent with the certificate of need program, privatize the management and delivery of healthcare and health related services in the Commonwealth through

performance management contracts and other types of agreements with the nonprofit and private sector;

(c) Establish a schedule of market oriented fees to be charged for care and service at its facilities and implement and administer low income means testing prior to the expenditure of public funds for medical referral and other healthcare services;

(d) Develop, recommend, and implement a multi-year strategic plan to make the Corporation as financially independent of the Commonwealth Government as is possible, by proposing, among other things,

(1) legislative adoption of a system of universal mandatory minimum healthcare coverage for all inhabitants of the Commonwealth and

(2) regulatory adoption of fees and charges that are sufficient to recover the Corporation's full costs and fund adequate financial reserves;

(e) Acquire real property from the Department of Public Lands and other persons, subject to the laws of the CNMI, by grant, purchase, gift, devise, or lease, and hold and use any such real property necessary or convenient for the fulfillment of its duties, functions, and powers under this chapter;

(f) Establish its internal organization and management;

(g) Rely upon Commonwealth procurement and supply regulations or adopt, pursuant to Commonwealth law, procurement and supply regulations to purchase and lease supplies, goods, materials, and commodities, to contract for services, and to furnish and supply services as relating to the operation of its services and facilities;

(h) Adopt an official seal;

(i) Sue or be sued in its own corporate name;

(j) Employ, retain or contract for the services of qualified managers, professionals, and other specialists, as individuals or as organizations, who shall be exempt from the application of the Civil Service Act, as amended (1 CMC § 8101 et seq.), to manage and assist the Corporation and its employees.

(k) Develop and adopt a personnel system, including a comprehensive compensation plan, whose wage and salary scales shall be independent of the civil service system but, to the extent practicable, commensurate with those paid by the Commonwealth for positions requiring comparable education, training, or experience. The personnel system shall be as described in 3 CMC § 2829 of this chapter;

(1) Adopt such rules and regulations as may be necessary for the exercise of the Corporation's powers, performance of its duties, and administration of its operations;

(m) Adopt and maintain a uniform system of accounting in accordance with generally accepted accounting principals applicable to healthcare organizations and issue public monthly financial statements in accord with such a system;

(n) Adopt and maintain financial controls and policies consistent with those of well managed nonprofit and public healthcare corporations doing business in the United States.
These controls shall include prudent collections of accounts receivable using, as appropriate, the services of the private sector, and implementation of a travel authorization policy that is consistent with Commonwealth law;

(o) Acquire or construct and use any real or personal property necessary or convenient for the fulfillment of its duties, functions, and powers under this chapter, including meeting projected future CNMI healthcare needs;

(p) Develop, maintain and operate itself in a manner that encourages the creation, full funding, and public offering of affordable, comprehensive, and universal health insurance to the people of the Commonwealth;

(q) Prepare a detailed statement of its proposed balanced budget for each ensuing fiscal year. Unless the CEO determines in a written communication to the Governor and presiding officers of the Legislature that there is an emergency need relating to the public health that must be met by such an expenditure, no expenditures shall be made for a purpose not included in the adopted budget;

(r) Prescribe, adopt, amend and repeal bylaws;

(s) Receive, hold and expend appropriations, moneys collected for services rendered, grants, donations, or any other funds designated for the use and benefit of the Corporation and to establish one or more charitable foundations, independent of the Corporation, but for the exclusive benefit of the Corporation;

(t) Borrow money from any private or public source, either within the Commonwealth or the United States, and to give security in connection with such borrowing;

(u) Establish by regulation and administer a subsidy program to enable the Corporation to provide healthcare to low income individuals;

(v) Adopt regulations determining when off-island care is necessary and appropriate. Off-island care shall not be a liability of the Corporation. Off-island care shall be funded separately from the Corporation's funding, whether by a separate legislative appropriation or from an independent source of funding, such as universal coverage insurance or some combination thereof;

(w) Do any and all other things necessary to the full and convenient exercise of the above powers.

**Source:** PL 16-51 § 3(2804) (January 15, 2010).

**Commission Comment:** The commission inserted proper code section references and replaced "this Act" with "this chapter" pursuant to 1 CMC § 3806(c) and (d). To correct manifest errors, the commission changed periods at the end of subsections (a), (j) and (v) to semi-colons.

**§ 2825. Chief Executive Officer and Board of Trustees Established.**

(a) All powers vested in the Corporation shall be vested in the Chief Executive Officer (CEO) as provided in 3 CMC §§ 2826 and 2827 of this chapter.

(b) There shall be a Board of Trustees whose role shall be advisory to the CEO, except as provided in this section. The Board shall be composed of seven members. Three members of the Board shall be ex officio voting members: One such member shall be the CEO. The second member shall be the director of medical affairs, and the third member shall be a United States citizen or permanent resident who is a representative selected by the Corporation's non-physician healthcare professionals, as defined in 3 CMC § 2212. Four members shall be appointed by the Governor with the advice and consent of the Senate. Each such member shall have at least a bachelor's degree from an accredited United States post-secondary institution and five years of management and supervisory experience in the private sector including nonprofit corporations. The senatorial districts of Rota and Tinian shall each have one representative on the Board. The members of the Board shall be independent, and the Governor may remove the non ex officio board members only on grounds of gross neglect or dereliction of duty including conflicts of interest and failure to attend three consecutive meetings of the Board, breach of fiduciary duty, conviction of a felony, or mental or physical incapacity.

(c) The CFO shall serve as nonvoting ex officio member of the Board.

(d) The non ex officio members of the Board shall serve staggered terms for four years subject to re-appointment. The initial members shall choose their staggered terms by lot if they cannot reach a consensus among themselves within 30 days of their appointment.

(e) The provisions of 1 CMC § 2901(f ) and (g) shall not apply to the Board. The Board shall elect a chairman and any other officers from among its members every two years.

(f) Four members shall constitute a quorum of the Board for the transaction of business. The concurrence of four members present shall constitute official action of the Board. The Board shall adopt rules and regulations governing the conduct of its affairs.

(g) Members shall be compensated for attendance at meetings of the Board pursuant to 1 CMC § 8247. Pursuant to applicable Commonwealth laws, members may be reimbursed for actual travel,

subsistence, and out-of-pocket expenses incurred in the discharge of their responsibilities. The Board shall hold its meetings in the Commonwealth in compliance with the Open Government Meetings and Records Act, 1 CMC § 9901 *et seq.* The Board shall restrict travel to essential needs only within the Mariana Islands, including Guam, unless paid for by federal or other special non-CNMI, public and nonprofit funding sources.

(h) No member shall be liable for any decision made in the good faith non-malicious fulfillment of his advisory duties.

(i) The Board shall act as a fiduciary in the execution of its duties.

(j) The focus of the Board shall be upon strategic planning, the recruitment and retention of a qualified CEO, credentialing medical staff, and ensuring the highest possible quality of healthcare. The Board shall recommend to the Governor the name of a qualified CEO, the compensation to be paid, and the other terms of employment. In determining the compensation to be paid to the CEO, the Board shall reference compensation paid to CEOs in similar positions in the nonprofit and public sector and prevailing Commonwealth Government compensation practices for chief executive officers of public corporations. The Governor may accept or reject the Board's recommendations. If the Governor rejects the Board's recommendations, the Board shall attempt to resolve the differences. If a nominee is rejected by the Governor, the Board shall identify another qualified candidate for consideration.

(k) The Board shall evaluate annually the performance of the CEO. It may recommend the removal of a CEO pursuant to the terms of the CEO's employment contract. The Governor shall accept the Board's recommendations regarding removal of the CEO and effectuate the removal of the CEO.

(l) The Board, as it deems necessary, may periodically make nonbinding advisory recommendations to the CEO. The Board's role with respect to the Corporation's finances and management shall be advisory.

**Source:** PL 16-51 § 3(2805) (January 15, 2010).

**Commission Comment:** The commission inserted proper code section references, replaced "this Act" with "this chapter" and changed capitalization pursuant to 1 CMC § 3806(c), (d) and (f).

**§ 2826. Chief Executive Officer: Powers and Duties.**

The CEO shall have the following powers and duties:

(a) To govern the operation of the Corporation in a manner that furthers its purposes;

(b) To initiate action necessary to exercise the powers of the Corporation conferred by this chapter;

(c) To implement and adhere to operating policies that will assure the Corporation's delivery of quality healthcare, financial viability, and best promote its purposes;

(d) To adopt, implement, and update from time to time the Corporation's budget and strategic plan for meeting the healthcare needs of the Commonwealth, following review and input from the Board of Trustees. The strategic plan shall project for the succeeding five years the annual appropriations that the Corporation requires to balance its finances;

(e) To develop and issue public monthly financial statements, a quarterly report on the quality of the delivery of healthcare, and an annual operating budget for submission to the Legislature;

(f) To submit an annual report to the Legislature and Governor that includes a current strategic plan for meeting the healthcare needs of the Commonwealth;

(g) To develop and adopt a process to annually evaluate the performance of the Corporation's private sector contractors and top managers;

(h) To review and adopt policies pertaining to the management, staffing, and financing of the Corporation; and,

(i) To appoint committees and task groups to assist the Chief Executive Officer in exercising the

powers granted by this chapter.

**Source:** PL 16-51 § 3(2806) (January 15, 2010).

**Commission Comment:** The commission replaced "this Act" with "this chapter" pursuant to 1 CMC § 3806(c).

**§ 2827. Corporate Officers.**

(a) The principal officer of the Corporation shall be the Chief Executive Officer (CEO). The CEO shall appoint a Chief Financial Officer (CFO), a Director of Medical Affairs, a Director of Nursing, a Director of the Community Guidance Center, a Resident Director to head the Tinian Health Center and a Resident Director to head the Rota Health Center upon consultation with the respective mayors, and other officers as the CEO may determine necessary for the operation of the Corporation. The officers of the Corporation shall serve at the pleasure of the CEO.

(b) As provided in § 2825(j), the Board shall recruit and retain a qualified, full-time CEO. The CEO shall hold no other public or private position, unless otherwise authorized in the contract of employment. The CEO shall comply with the Government Ethics Code (1 CMC § 8501 et seq). The CEO shall appoint the other officers of the Corporation.

(c) The CEO shall have at least a master's degree in healthcare administration, business management, or other relevant field of study from an accredited university or college. The CEO also shall have at least seven years of experience in healthcare management, including total healthcare management responsibilities for at least 50 employees. The CEO shall be the chief executive officer of the Corporation with full charge and control of the Corporation, including the operation and maintenance of the Corporation's services, facilities and employees.

(d) In exercising the powers granted under 3 CMC § 2826 of this chapter, the CEO shall:

(1) Enforce the rules and regulations of the Corporation;

(2) Convene from time to time as the CEO determines necessary and appropriate meetings of the Board and submit to the Board such reports on the affairs of the Corporation as may be appropriate;

(3) Inform the Board of the needs of the Corporation and its budget;

(4) Prepare or cause to be prepared all plans and specifications for the construction and repair of works and facilities operated by the Corporation;

(5) Devote the CEO's full time to the business of the Corporation; to plan, organize, direct, coordinate and control the services of such employees in the exercise of the powers of the Corporation; and, in lieu of hiring employees of the Corporation to perform any of the tasks, works or other services required by the Corporation, to contract with private sector businesses and independent contractors to provide such services;

(6) Cause to be published monthly financial statements and, within a reasonable time from the end of each fiscal year, an annual report showing the results of operations for the preceding fiscal year and the financial status of the Corporation on the last day thereof. The publication shall be online and in a form acceptable to the Governor;

(7) Implement and monitor the progress of the Corporation's multi-year strategic plan, including its progress toward accreditation by a national agency that certifies hospitals, which shall be included in the annual report pursuant to paragraph (6) of this subsection; and

(8) Perform other related duties as this chapter may require.

(e) The Chief Financial Officer (CFO) shall have at least a masters in business administration degree and five years of experience in healthcare finances. The CFO shall have custody of all moneys of the Corporation and shall pay out such money only in accordance with this chapter, the direction of the

CEO, and any applicable law governing the expenditure of public funds.

(f) The Chief Medical Officer (CMO) shall be a licensed physician with at least five years clinical experience and three years of healthcare management experience. The CMO shall be under the direct supervision of the CEO and shall be responsible for monitoring the delivery of quality healthcare, liaison with the medical staff and administration, and such other responsibilities as the CEO may assign.

(g) The Director of Nursing shall have a master's degree in nursing science and at least seven years of nursing management experience. The Director of Nursing shall be under the direct supervision of the CEO and shall be responsible for the daily functions of the nursing employees and the nursing unit.

(h) The Director of the Community Guidance Center shall have a master's degree in public health administration and at least five years of mental health management experience. The Director of the Community Guidance Center shall be under the direct supervision of the CEO and shall be responsible for the daily functions of the Community Guidance Center and its employees.

(i) With respect to the legal services of the Corporation, the CEO shall rely upon the services of attorneys designated by the Attorney General. Upon the prior approval of the Attorney General, the CEO may engage an in-house counsel whose employment contract and compensation shall be reviewed and approved by the Attorney General; provided that the compensation of the in-house counsel shall be limited to compensation applicable to attorneys within the Attorney General's Office. All other official documents, contracts, financial obligations, and other written instruments shall be approved as to form and legality by an attorney for the Corporation. Approval as to form and legal sufficiency may be conclusively evidenced by the signature of the attorney following a statement to that effect.

(j) The resident directors for the Tinian Health Center and the Rota Health Center shall have at least a bachelor's degree plus five years of management experience. A resident director shall be under the direct supervision of the CEO and shall be responsible for the daily operations of the health center on the island.

**Source:** PL 16-51 § 3(2807) (January 15, 2010).

**Commission Comment:** The commission inserted proper code section references, replaced "Act" with "chapter" and deleted figures in the above section that repeated written words pursuant to 1 CMC § 3806(c), (d) and (e).

**§ 2828. Fiscal Authority: Accounting and Expenditures.**

(a) There is hereby established a revolving fund to be known as the "Healthcare Operations Fund" which shall be maintained separate and apart from the general fund and other funds of the Commonwealth Government. The Fund shall maintain independent records and accounts.

(b) All moneys received by the Corporation regardless of the source shall be deposited into the Fund in accounts and banks qualified to hold government funds as provided by law.

(c) All appropriations by the Commonwealth Legislature shall be transferred to the Fund as provided by law. All revenues earmarked for the support of the Corporation shall be similarly transferred to the Fund.

(d) All expenditures including payments into sinking or other special accounts and debts liabilities, obligations and operational expenses of the Corporation shall be paid from the Fund.

(e) The Public Auditor, directly or indirectly through independent certified public accountants, shall examine and report to the public, at least annually, upon the status of the financial records and accounts maintained by the Corporation. Copies of any such reports shall be furnished to the Governor, and the presiding officers of the Legislature, and the Board.

(f) The CEO shall cause to be prepared public monthly financial reports of the status of funds maintained by the Corporation. Additionally, the Corporation shall present an annual report within 60

days after the end of each fiscal year and, if requested by the Governor or the Legislature, shall present special reports within 30 days after the end of each intervening quarter. The financial information presented in the reports shall be in accordance with the uniform system of accounting adopted by the CEO following the approval of the Secretary of the Department of Finance and consideration of any comments submitted by the Public Auditor.

(g) The fiscal year of the Corporation shall correspond to that of the Commonwealth.

(h) The expenditure authority of all funds collected by the Corporation or appropriated to the Corporation shall be the CEO or his or her designee.

**Source:** PL 16-51 § 3(2808) (January 15, 2010).

**§ 2829. Employment Policy.**

(a) The staff and employees of the Corporation shall be exempt from the application of the Commonwealth Civil Service Act, as amended (1 CMC § 8101 et seq.), by no later than two years commencing upon the effective date of this chapter. Provisions for the transition period shall be set forth in a Memorandum prepared by the Corporation following input from the Office of Personnel Management. The Memorandum shall ensure that the Corporation shall develop, adopt, and administer a merit-based personnel system that rewards productivity and service, provides management flexibility, and includes provisions for employees to appeal serious disciplinary action. The Corporation shall adopt a personnel policy manual that sets forth the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the Corporation.

(b) (1) No recommendation of any person who applies for examination or appointment to any office or position within the Corporation which may be given by an elected official of the Commonwealth, except as to the ability or character of the applicant, shall be considered by any person in the giving of any examination or in the making of any appointment under the personnel system of the Corporation.

(2) No person shall make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under the personnel system of the Corporation, nor commit or attempt to commit any fraud preventing the impartial execution of any provision of the personnel system of the Corporation.

(3) No person shall, directly or indirectly, give, pay, offer, solicit, or accept any money, service, or other thing of value to obtain any appointment, proposed appointment, promotion or proposed promotion to, or obtain any advantage in, a position within the Corporation.

(c) Employees of the Corporation shall be eligible to participate in any Commonwealth health and life insurance plan and shall accumulate leave time in accordance with applicable Commonwealth law. The Commonwealth Workers' Compensation Law shall apply to employees of the Corporation, and compensation payments pursuant thereto unless otherwise secured shall be made from the Government Self-Insurance Fund, 4 CMC § 9354, from appropriations by the legislature for that purpose, or from funds otherwise available. Employees of the Corporation shall participate in the Retirement Fund in the same manner as do employees of other public corporations.

**Source:** PL 16-51 § 3(2809) (January 15, 2010).

**§ 2830. Immunity From or Indemnification for Civil Liability; Defense of Chief Executive Officer, Board of Trustees, Officers, Employees, and Contractors.**

The Public Employee Legal Defense and Indemnification Act, 1 CMC § 2301 et seq., (Public Law 15-22 and any amendments thereto), shall apply to the Commonwealth Healthcare Corporation, its Board of Trustees, CEO, officers, agents, employees, and, to the extent the Corporation chooses to provide by contract in exchange for reasonable consideration, its contractors. Additionally, 7 CMC § 2201 et seq.,

including its liability limitations, shall apply to such persons.

**Source:** PL 16-51 § 3(2810) (January 15, 2010).

**§ 2831. Exemption from Taxation.**

As an instrumentality of the Commonwealth, the Corporation and all property acquired by the Corporation, and all revenues and income therefrom are exempt from taxation and business regulations by the Commonwealth or by any political subdivision or public corporation thereof. This exemption on behalf of the Corporation includes, but is not limited to, its franchise, capital, obligations including interest thereon, reserves, surplus, loans, income assets, and other property of any kind, provided that this exemption does not apply to persons entering into independent contracts with the Corporation.

**Source:** PL 16-51 § 3(2811) (January 15, 2010).

**§ 2832. Orderly Transition.**

There shall be an orderly transition of the operations of the Corporation situated in the Commonwealth from the Department of Public Health to the Corporation. Within 365 days after the enactment of this chapter, the Corporation and the Department of Public Health shall execute a memorandum of understanding to effectuate the orderly transfer of personnel and property by specifying, among other things, the personnel, property, and funds to be transferred and a time-table to complete the mandate of this chapter. The transition period may be extended for a period not to exceed 180 days by the Secretary of the Department of Public Health upon written notice to the presiding officers of the legislature.

**Source:** PL 16-51 § 3(2812) (January 15, 2010).

**Commission Comment:** The commission replaced "this Act" with "this chapter" pursuant to 1 CMC § 3806(d).

**§ 2833. Transfer of Property and Personnel to Corporation.**

Within 365 days after the enactment of this chapter, the appropriate government authority, including the Governor, the Department of Public Lands, and the Department of Public Health, as the case may be, shall transfer to the Corporation:

(a) All real property owned by the Department of Public Health and all other real and personal property used exclusively for functions and duties which are to be assumed by the Corporation, and all materials and supplies used exclusively in connection therewith; and,

(b) All working capital, cash, accounts payable and receivable, deposits, advances payable and receivable, all books, records and documents, and all other rights, obligations, assets, liabilities, agreements, contracts, leases, concessions and all other rights, obligations, and privileges pertaining to the operation of the Corporation within the Commonwealth, and other matters and concerns of the Governor or the Department of Public Health which are to be assumed by the Corporation, including the assets, personal and real property, held by the government healthcare facilities within the Commonwealth.

(c) All personnel used in the administration and operations of Commonwealth Health Center and the health centers in Rota and Tinian shall be transferred to the Corporation.

(d) The unexpended balances of appropriations, allocations, allotments, or other funds available for the use by the Commonwealth Health Center and the health centers in Rota and Tinian under the Department of Public Health shall be transferred to the Corporation.

(e) Appropriations for functions and duties transferred to the Corporation from the Department of Public Health shall become assets of the Corporation and be deposited into the Healthcare Revolving

Fund.

(f) Accounts receivable from the Government Health and Life Insurance Trust due to the three island health centers and the Department of Public Health shall not be transferred to the Corporation, but shall remain within the General Fund.

**Source:** PL 16-51 § 3(2813) (January 15, 2010).

**Commission Comment:** The commission replaced "this Act" with "this chapter" pursuant to 1 CMC § 3806(d).

**§ 2834. Assumption of Rights, Obligations and Duties of the Government.**

(a) To the extent feasible, the Corporation shall assume all rights, obligations and duties of the Government or the Department of Public Health under any agreements to which they are parties that relate to the financing, operation or delivery of healthcare services in the Commonwealth;

(b) All lawful obligations of the government or the Department of Public Health existing during the effective date of this chapter, and all fines, taxes, penalties, forfeitures, obligations and rights, due, owing or accruing to the government or the Department of Public Health, and all writs, prosecutions, actions and proceedings by or against the government or the Department of Public Health shall remain unaffected by adoption of this chapter; and,

(c) This chapter shall not be deemed to affect petitions, hearings and other proceedings pending before the Department of Public Health and legal proceedings and investigations to which the Department of Public Health is a party. The Corporation shall assume and succeed the Department, without further action, in all matters and orders relating to the functions and duties assumed by the Corporation as of the effective date of this chapter.

**Source:** PL 16-51 § 3(2814) (January 15, 2010).

**Commission Comment:** The commission replaced "this Act" with "this chapter" pursuant to 1 CMC § 3806(d).

**§ 2835. Personnel Rules Applicable During Transition.**

As further provided in 3 CMC § 2829(a) of this chapter, the personnel laws and rules and regulations applicable to the employees working for the Corporation on the effective date of this chapter shall continue to apply to the Corporation until such time the Corporation's merit based personnel rules and regulations take effect.

**Source:** PL 16-51 § 3(2815) (January 15, 2010).

**Commission Comment:** The commission inserted proper code section references and replaced "this Act" with "this chapter" pursuant to 1 CMC § 3806(c) and (d).

## CHAPTER 10. CANCER REGISTRY ACT. [New chapter]

§ 2850. Short Title.
§ 2851. Establishment of a Cancer Registry.
§ 2852. Cancer Data and Confidentiality.

§ 2853. Promulgation of Rules.
§ 2854. Injunctions.

**§ 2850. Short Title.**
This chapter shall be known as the "Cancer Registry Act of 2010."

**Source:** PL 17-19 § 2(2840).

**Commission Comment:** Public Law 17-19 (enacted on September 30, 2010) included severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Legislature finds that a 2004 study, funded by the National Cancer Institute (NCI), suggests that cancer is the second-leading cause of death in the Commonwealth of the Northern Mariana Islands and that the most prevalent cancers can be prevented with early detection and treatment. The Legislature finds that developing a population-based cancer registry in the CNMI will provide important data to enable public health professionals to understand and treat cancer more effectively.

A cancer registry is a special database that contains information about cancer patients in a particular population or in a particular hospital. A registry contains many special reports called abstracts. An abstract is a summary of a cancer patient's medical record, but the information is collected in a standardized way, and is collected in the same way across the United States and U.S. Associated Pacific Islands (USAPI). All the information collected for the cancer registry is confidential.

The University of Hawaii was awarded a cooperative agreement from the US Centers for Disease Control (CDC) to develop a Regional Cancer Registry on behalf of the six USAPI jurisdictions including Guam and the CNMI. Upon the enactment of a CNMI Cancer Registry Act, the University of Hawaii and the Department of Public Health (DPH) will execute a memorandum of understanding whereby DPH will set up a Cancer Registry Office with basic office equipment and supplies. The University of Hawaii will provide one non-government FTE funded by the University of Hawaii to hire a cancer registrar/registry data specialist up to June 2012. The University of Hawaii will also provide the training necessary to develop and maintain a cancer registry. Therefore, the purpose of this act is to establish a population-based cancer registry in the Commonwealth.

**§ 2851. Establishment of a Cancer Registry.**
There is hereby established within the Department of Public Health, a CNMI Cancer Registry, to collect information on all cases of cancer occurring within the CNMI, to analyze and compare such data in appropriate ways and to annually prepare and distribute a report on their findings.

**Source:** PL 17-19 § 2(2841) (September 30, 2010).

**§ 2852. Cancer Data and Confidentiality.**
Any person providing diagnostic or treatment services for cancer patients in the CNMI shall report each new case of cancer to the Department of Public Health. The report shall contain data concerning:
(a) Demographic information about each case of cancer;
(b) Information on the industrial or occupational history of the individuals with the cancers, to the extent such information is available from the same record;
(c) Administrative information, including date of diagnosis and source of information;
(d) Pathological data characterizing the cancer, including the cancer site, stage of disease, incidence, and type treatment; and
(e) Other elements determined by the Department of Public Health.
All data collected under this section shall be considered confidential as to the names of persons or physicians concerned, except that researchers may use the names of such persons when requesting

additional information for research studies when such studies have been approved by the Secretary of Public Health.

**Source:** PL 17-19 § 2(2842) (September 30, 2010), modified.

**Commission Comment:** The commission changed subsection designations from numbers to letters and changed capitalization for conformity pursuant to 1 CMC § 3806(a) and (f), respectively.

**§ 2853. Promulgation of Rules.**

The Department of Public Health shall develop rules necessary to:

(a) Ensure complete reporting by hospitals, laboratories, physicians and other health care practitioners diagnosing, or providing treatment for cancer patients;

(b) Ensure access to all records that would identify cases of cancer or establish characteristics of the cancer, treatment of the cancer, or medical status of the individual patient;

(c) Protect the confidentiality of all cancer data reported to the registry;

(d) Establish the format, quality requirements, completeness, and timeliness of required data; and

(e) Protect individuals complying with the law including provisions specifying that no person shall be held liable in any civil action with respect to a cancer case report provided to the cancer registry.

**Source:** PL 17-19 § 2(2843) (September 30, 2010), modified.

**Commission Comment:** The commission changed subsection designations from numbers to letters and changed capitalization for conformity pursuant to 1 CMC § 3806(a) and (f), respectively.

**§ 2854. Injunctions.**

(a) In case of noncompliance with the provisions of this chapter or with the rules and regulations of the program, the Secretary of Health shall notify the respective licensing board and may also notify the Attorney General of the such noncompliance. The licensing board shall notify the healthcare professional and may institute suspension of license for repeated noncompliance reported by the Secretary of Health.

(b) The Attorney General, upon receipt of such notification, may institute an appropriate action or proceeding at law or in equity to restrain or correct such noncompliance. For all cases of noncompliance referred to the Attorney General by the Secretary of Health, quarterly reports shall be prepared by the Attorney General and submitted to the Secretary summarizing the status of such actions taken to correct and comply.

**Source:** PL 17-19 § 2(2844) (September 30, 2010), modified.

**Commission Comment:** The commission designated subsections (a) and (b), which were not designated in the original public law, and replaced "this Act" with "this chapter" pursuant to 1 CMC § 3806(a) and (d), respectively.

# DIVISION 3: SOCIAL SECURITY ACT

## PART 2 MANAGEMENT.

## CHAPTER 3. COVERAGE, BENEFITS; PAYMENTS.

**§ 3301. Who is Covered.**

(a) After December 31, 1975. All services for wages received by a person after December 31, 1975, and, effective for taxable years beginning after 1980, all self-employment income derived by an individual, shall be covered by this division unless such wages or self-employment income are derived from employment or self-employment which:

(1) - (3) [unchanged]

(4) Is performed on or after October 1, 1980, in the Commonwealth by a resident of the Republic of the Philippines or of the Republic of Korea while in the Commonwealth on a temporary basis as a ~~nonresident~~ foreign national worker admitted to the Commonwealth under conditions substantially similar to Section 101(a)(15)(H)(ii) [8 U.S.C. § 1101(a)(15)(H)(ii)] of the United States Immigration and Nationality Act: provided, that this paragraph shall remain in effect only so long as the United States Social Security System continues to exclude from coverage Filipino and Korean workers admitted to Guam under such section of such act.

**Source:** . . . (a)(4) amended by global amendment PL 15-108, § 5.

# DIVISION 4: ~~IMMIGRATION~~ EMPLOYMENT AND REGISTRATION

**Commission Comment:** Title VII of US Public Law 110-229, the Consolidated Natural Resources Act of 2008 (CRNA), enacted on May 8, 2008, extends the Immigration and Nationality Act (INA) and other provisions of United States immigration law to the Commonwealth of the Northern Mariana Islands. The CNRA provides for a transition period before full application of the INA to the Commonwealth, which had been responsible for its own immigration policies prior to the CNRA. The transition period is scheduled to start November 28, 2009 and end December 31, 2014. Beginning November 28, 2009, the Commonwealth no longer retained jurisdiction over immigration matters in the Commonwealth of the Northern Mariana Islands.

On March 22, 2010, Commonwealth Public Law 17-1, entitled the Immigration Conformity Act of 2010, became law "to repeal certain sections of the Commonwealth Code dealing with immigration functions; and for other purposes." PL 17-1 renamed Division 4 of Title 3 from "Immigration" to "Employment and Registration" and contained the following section regarding the effective date of the law:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

## PART 1: RESERVED

***[Chapters 1 through 3 were repealed by PL 17-1 § 5, which was enacted on March 22, 2010. Accordingly the following sections were repealed:***
***3 CMC §§ 4111, 4121-4132, 4201-4203, 4301-4303, 4311-4312, 4321-4323, 4331-4338, 4340-4348, 4351, 4361-4379, 4381-4382]***

**Commission Comment:** The last paragraph of the findings and purpose section of PL 17-1 provides:

> It is the intent of the Legislature [that] the Commonwealth Law Revision Commission shall have discretion to adjust the numbering of code divisions, parts, articles, or sections affected by this Act as necessary to effectuate a reasonable codification of Sections 5 and 6 of this Act.

Although PL 17-1 § 5 provides for renaming of Part 3 (Employment) of Division 4 to Part 1, the commission elected to reserve Part 1 pursuant to the above and its authority under 1 CMC § 3806. For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

## CHAPTER 1. INTERIM CITIZENSHIP STATUS. [Repealed by PL 17-1 § 5(A)]

### Article 1. Interim Citizenship. [Repealed by PL 17-1 § 5(A)]

§ 4111. Interim Citizenship: Defined. [Repealed by PL 17-1 § 5(A)]

### Article 2. Certificate of Identity Act. [Repealed by PL 17-1 § 5(A)]

§ 4121. Certificate of Identity: Purpose. [Repealed by PL 17-1 § 5(A)]
§ 4122. Certificate of Identity: Eligibility. [Repealed by PL 17-1 § 5(A)]
§ 4123. Certificate of Identity: Rules and Regulations. [Repealed by PL 17-1 § 5(A)]
§ 4124. Certificate of Identity: Application. [Repealed by PL 17-1 § 5(A)]
§ 4125. Application Procedure: Examination Upon Application. [Repealed by PL 17-1 § 5(A)]
§ 4126. Application Procedure: Examining Officers. [Repealed by PL 17-1 § 5(A)]
§ 4127. Application Procedure: Assistance of Counsel. [Repealed by PL 17-1 § 5(A)]
§ 4128. Application Procedure: Content of Hearing. [Repealed by PL 17-1 § 5(A)]
§ 4129. Application Procedure: Depositions. [Repealed by PL 17-1 § 5(A)]
§ 4130. Application Procedure: Report of Examining Officer. [Repealed by PL 17-1 § 5(A)]
§ 4131. Application Procedure: Action by Chief of Immigration. [Repealed by PL 17-1 § 5(A)]
§ 4132. Penalty Provisions: Certificates of Identity.[Repealed by PL 17-1 § 5(A)]

#### § 4121. Certificate of Identity: Purpose. [Repealed by PL 17-1 § 5(A)]

**Commission Comment:** . . . Executive Order No. 07-09, "Reorganization Plan No. 1 of 2007" signed August 1, 2007 transferred the Labor and Immigration Identification System Office within the Office of the Governor to the Office of Attorney General, Division of Immigration. 29 Com. Reg. 26698 (Aug. 17, 2007).

## CHAPTER 2. PERMANENT RESIDENCY STATUS. [Repealed by PL 17-1 § 5(B)]

§ 4201. Permanent Residency: Repeal of Authorizing Act. [Repealed by PL 17-1 § 5(B)]
§ 4202. Permanent Residency: Reservation of Right and Status. [Repealed by PL 17-1 § 5(B)]

§ 4203. Relationship to Other Law. [Repealed by PL 17-1 § 5(B)]

## CHAPTER 3. COMMONWEALTH ENTRY AND DEPORTATION ACT. [REPEALED by PL 17-1 § 5(C)-(J)]

Article 1. General. [Repealed by PL 17-1 § 5(C)]
Article 2. Organization. [Repealed by PL 17-1 § 5(D)]
Article 3. Persons Entering the Commonwealth. [Repealed by PL 17-1 § 5(E)]
Article 4. Entry Requirements and Procedures. [Repealed by PL 17-1 § 5(F)]
Article 5. Deportation and Departure. [Repealed by PL 17-1 § 5(G)]
Article 6. Registration of Aliens. [Repealed by PL 17-1 § 5(H)]
Article 7. Criminal Penalties and Miscellaneous Provisions. [Repealed by PL 17-1 § 5(I)]
Article 8. Detection and Apprehension of Illegal Aliens. [Repealed by PL 17-1 § 5(J)]

### Article 1. General. [Repealed by PL 17-1 § 5(C)]

§ 4301. Short Title. [Repealed by PL 17-1 § 5(C)]
§ 4302. Legislative Intent and Policy. [Repealed by PL 17-1 § 5(C)]
§ 4303. Definitions. [Repealed by PL 17-1 § 5(C)]

**§ 4303. Definitions. [Repealed by PL 17-1 § 5(C)]**

~~(a) "Alien" means any person who is not a citizen or national of the United States, or not a permanent resident of the Commonwealth of the Northern Mariana Islands pursuant to 3 CMC §§ 4202.~~

~~(b) - (p) [unchanged]~~

~~(q) "Nonimmigrant" means every alien who falls within one of the following classes:~~

~~(1)-(7) [unchanged]~~

~~(8) An alien having a residence in a foreign country which he has no intention of abandoning:~~

~~(A) [unchanged]~~

~~(B) Who is coming temporarily to the Commonwealth of the Northern Mariana Islands to perform temporary service or labor, and has been certified as an eligible nonresident foreign national worker by the Department of Commerce and Labor;~~

~~(9)- (10) [unchanged]~~

~~(r) - (w) [unchanged]~~

**Source:** . . . (q)(8)(B) amended by global amendment PL 15-108, § 5; subsection (a) repealed and reenacted by PL 16-5 § 2; repealed by PL 17-1 § 5(C).

**Commission Comment:** . . .

PL 16-5 took effect on June 5, 2008. PL 16-5 contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that the definition of "alien" has not been updated to consider the dissolution of the Trust Territory of the Pacific. The Legislature further finds that the current definition of the term is ambiguous because of references to the Trust Territory, and has resulted in time-consuming litigation. *See*, *e.g.*, *Office of the Attorney General v. Phillip*, 2008 MP 1. The Legislature further finds that the statutory definition of the term "alien" in both the Commonwealth Entry and Deportation Act (CEDA) and in Title 4, Division 5, Chapter 9, Regulation of Foreign Investment, should be brought in line with the law of the United States, Article III of the Covenant, and the current state of political affairs.

**Article 2. Organization. [Repealed by PL 17-1 § 5(D)]**

§ 4311. The Immigration Officer. [Repealed by PL 17-1 § 5(D)]
§ 4312. Powers and Duties of the Attorney General. [Repealed by PL 17-1 § 5(D)]

**Article 3. Persons Entering the Commonwealth. [Repealed by PL 17-1 § 5(E)]**

§ 4321. Entry Into the Commonwealth. [Repealed by PL 17-1 § 5(E)]
§ 4322. Excludable Aliens. [Repealed by PL 17-1 § 5(E)]
§ 4323. Members of the Armed Forces. [Repealed by PL 17-1 § 5(E)]

**§ 4321. Entry Into the Commonwealth. [Repealed by PL 17-1 § 5(E)]**

~~(a)-(c) [ unchanged]~~

~~(d) Immediate Relatives. Immediate relatives of nonresident workers may be permitted entry into the Commonwealth only under one of the following conditions:~~

~~(1) The nonresident foreign national worker is annually certified by the Chief of Labor to be a professional, managerial or technical employee. The nonresident foreign national worker shall be deemed employed in a professional, managerial or technical capacity provided his or her job description is so defined in the Dictionary of Occupational Titles published by the U.S. Department of Labor and he or she is paid an annual salary in excess of $20,000. Annual certification shall be predicated upon a showing of substantial progress toward the goal of replacing the nonresident foreign national worker with a citizen or permanent resident employee in the same capacity.~~

~~(2) The nonresident foreign national worker is employed by the Commonwealth of the Northern Mariana Islands, or any of its agencies or public corporations, in a professional, managerial or technical capacity.~~

~~Except, that any immediate relative of a nonresident foreign national worker may, if such immediate relative is permitted to be in the Commonwealth on the effective date of this chapter, remain in the Commonwealth until such nonresident foreign national worker's nonresident foreign national worker certificate is no longer renewable.~~

~~In order to qualify for entry under this section, the immediate relative's status must have existed prior to the entry of the nonresident foreign national worker into the Commonwealth. The immediate relative may remain in the Commonwealth so long as the nonresident foreign national worker is legally employed and lawfully remains in the Commonwealth.~~

~~(e) [ unchanged]~~

**Source:** . . . (d) amended by global amendment PL 15-108, § 5; repealed by PL 17-1 § 5(E).

**Article 4. Entry Requirements and Procedures. [Repealed by PL 17-1 § 5(F)]**

§ 4331. Entry Permits: Application and Issue. [Repealed by PL 17-1 § 5(F)]
§ 4332. Denial, Duration, Extension, and Modification of Entry Permit. [Repealed by PL 17-1 § 5(F)]
§ 4333. Entry Inspections. [Repealed by PL 17-1 § 5(F)]
§ 4334. Investigations. [Repealed by PL 17-1 § 5(F)]
§ 4335. Review of Arrest. [Repealed by PL 17-1 § 5(F)]
§ 4336. Examinations, Exclusions and Procedures. [Repealed by PL 17-1 § 5(F)]

§ 4337. Temporary Admission Pending Examination. [Repealed by PL 17-1 § 5(F)]
§ 4338. Appeal of Exclusion to Attorney General. [Repealed by PL 17-1 § 5(F)]

**§ 4331. Entry Permits: Application and Issue. [Repealed by PL 17-1 § 5(F)]**

~~(a) - (d) [unchanged]~~

~~(e) No entry permit for non-immigrants applying for nonresident foreign national worker or foreign investor classifications shall be issued until such classification has been certified by the Department of Commerce pursuant to law. No entry permit shall be issued or renewed which would allow the applicant to operate a business within the Commonwealth unless the applicant possesses a valid CNMI business license. No entry permit shall be issued for any foreign investor classification which allows a non-immigrant alien to engage in commercial farming or commercial fishing in the Commonwealth, other than the carrying on, conducting, or managing of aquaculture, mariculture, or hydroponic agriculture activities in which the non-immigrant alien has $2,000,000 or more in investment capital or assets in the commonwealth.~~

~~For purposes of this section:~~

~~(1) - (2) [unchanged]~~

~~(f) - (l) [unchanged]~~

**Source:** . . . (e) amended by global amendment PL 15-108, § 5; repealed by PL 17-1 § 5(F).

**§ 4332. Denial, Duration, Extension, and Modification of Entry Permit. [Repealed by PL 17-1 § 5(F)]**

~~(a) [unchanged]~~

~~(b) *Duration of Stay: Extension and Modification of Permit.*~~

~~(1) - (3) [unchanged]~~

~~(4) No entry permit shall be modified, nor shall a nonresident foreign national worker certificate be issued, which would permit a person who has entered in the Commonwealth as a visitor, medical patient or tourist to be employed in the Commonwealth.~~

~~(5) [unchanged]~~

**Source:** . . . (b)(4) amended by global amendment PL 15-108, § 5; repealed by PL 17-1 § 5(F).

**Article 5. Deportation and Departure. [Repealed by PL 17-1 § 5(G)]**

§ 4340. Deportable Aliens. [Repealed by PL 17-1 § 5(G)]
§ 4341. Deportation. [Repealed by PL 17-1 § 5(G)]
§ 4342. Appeal of Deportation Order. [Repealed by PL 17-1 § 5(G)]
§ 4343. Voluntary Departure. [Repealed by PL 17-1 § 5(G)]
§ 4344. Excluded and Deported Persons: Country of Return Supervision. [Repealed by PL 17-1 § 5(G)]
§ 4345. Carrier Responsibility: Excluded Aliens. [Repealed by PL 17-1 § 5(G)]
§ 4346. Health Requirements; Examinations. [Repealed by PL 17-1 § 5(G)]
§ 4347. Deportation Fund. [Repealed by PL 17-1 § 5(G)]
§ 4348. Annual Report. [Repealed by PL 17-1 § 5(G)]

**§ 4340. Deportable Aliens. [Repealed by PL 17-1 § 5(G)]**

**Source:** . . . repealed by PL 17-1 § 5(G).

**Case Annotations:** *Commonwealth v. Chen,* 2006 MP 14, 7 N.M.I. 318 (2006)*; Office of the Attorney Gen. v. Estel,* 2004 MP 20, 7 N.M.I. 89 (2004).

## § 4341. Deportation. [Repealed by PL 17-1 § 5(G)]

**Source:** . . . repealed by PL 17-1 § 5(G).

**Case Annotations:** *Commonwealth v. Chen,* 2006 MP 14, 7 N.M.I. 318 (2006).

**IMMIGRATION AND DEPORTATION**

**Deportation**
The role of the Superior Court is to determine deportability based upon clear and convincing evidence that the facts alleged as grounds for deportation are true. If the trial court makes a determination of deportability, an order of deportation shall be entered and the respondent shall forthwith be deported. 3 CMC § 4341(e) and (f). *Office of the Attorney Gen. v. Sagun*, 1999 MP 19 ¶ 9, 6 N.M.I. 36, 39 (1999).

The trial judge possesses discretion in whether deportability is found. If the trial court makes a finding of deportability, it must assess whether, factually, the alien is deportable. 3 CMC § 4341(e). *Office of the Attorney Gen. v. Sagun*, 1999 MP 19 ¶ 13, 6 N.M.I. 36, 39 (1999).

– **Jurisdiction**
The trial court's jurisdiction over deportation hearings is granted in Title 3 of the Commonwealth Code, sections 4341 *et seq.* Deportation proceedings commence in the trial court with the Attorney General's Office filing a Petition to Show Cause. 3 CMC § 4341. *Office of the Attorney Gen. v. Estel*, 2004 MP 20 ¶ 7, 7 N.M.I. 89, 93 (2004).

## § 4342. Appeal of Deportation Order. [Repealed by PL 17-1 § 5(G)]

**Source:** . . . repealed by PL 17-1 § 5(G).

**Case Annotations:** *Office of the Attorney Gen. v. Estel,* 2004 MP 20, 7 N.M.I. 89 (2004).

**IMMIGRATION AND DEPORTATION**

**Deportation**
Orders of deportation are final and appealable. 3 CMC § 4342. *Office of the Attorney Gen. v. Sagun,* 1999 MP 19 ¶ 2, 6 N.M.I. 36, 37 (1999).

## § 4343. Voluntary Departure. [Repealed by PL 17-1 § 5(G)]

**Source:** . . . repealed by PL 17-1 § 5(G).

**Case Annotations:**
**IMMIGRATION AND DEPORTATION**

**Voluntary Departure**
At the discretion of the Attorney General, an individual may be permitted to voluntarily depart the Commonwealth any time prior to actual commencement of a deportation hearing. 3 CMC § 4343. *Office of the Attorney Gen. v. Sagun*, 1999 MP 19 ¶ 9, 6 N.M.I. 36, 39 (1999).

**Article 6. Registration of Aliens. [Repealed by PL 17-1 § 5(H)]**
§ 4351. Registration of Aliens. [Repealed by PL 17-1 § 5(H)]

**Article 7. Criminal Penalties and Miscellaneous Provisions. [Repealed by PL 17-1 § 5(I)]**
§ 4361. Additional Definitions. [Repealed by PL 17-1 § 5(I)]
§ 4362. Illegal Entry into the Commonwealth by an Alien. [Repealed by PL 17-1 § 5(I)]
§ 4363. Improper Entry into the United States by an Alien.[Repealed by PL 17-1 § 5(I)]
§ 4364. Smuggling Persons. [Repealed by PL 17-1 § 5(I)]
§ 4365. Document Fraud. [Repealed by PL 17-1 § 5(I)]
§ 4366. Marriage Fraud. [Repealed by PL 17-1 § 5(I)]
§ 4367. Aliens: Unlawful Employment. [Repealed by PL 17-1 § 5(I)]
§ 4368. Bribery for Immigration Gain, Exploitation of a Position of Authority. [Repealed by PL 17-1 § 5(I)]
§ 4369. Inducement by Fraudulent Misrepresentation. [Repealed by PL 17-1 § 5(I)]
§ 4370. Immigration and Labor Entrepreneurship Fraud. [Repealed by PL 17-1 § 5(I)]
§ 4371. Conspiracy, Attempt, Solicitation. [Repealed by PL 17-1 § 5(I)]
§ 4372. Authority to Revoke or Deny Entry Permits. [Repealed by PL 17-1 § 5(I)]
§ 4373. Effect of Conviction. [Repealed by PL 17-1 § 5(I)]
§ 4374. Enforcement. [Repealed by PL 17-1 § 5(I)]
§ 4375. Admissibility of Testimony. [Repealed by PL 17-1 § 5(I)]
§ 4376. Forfeiture. [Reserved.] [Repealed by PL 17-1 § 5(I)]
§ 4377. Dismissal Upon Conviction. [Repealed by PL 17-1 § 5(I)]
§ 4378. Designated Ports of Entry. [Repealed by PL 17-1 § 5(I)]
§ 4379. Jurisdiction of the Commonwealth Superior Court. [Repealed by PL 17-1 § 5(I)]

### § 4361. Additional Definitions. [Repealed by PL 17-1 § 5(I)]

**Source:** . . . repealed by PL 17-1 § 5(I).

**Case Annotations:** *Commonwealth v. Lucas,* 2003 MP 9, 6 N.M.I. 564 (2003).

### § 4363. Improper Entry into the United States by an Alien.[Repealed by PL 17-1 § 5(I)]

**Source:** . . . repealed by PL 17-1 § 5(I).

**Case Annotations:** *Commonwealth v. Caja,* 2001 MP 6, 6 N.M.I. 255 (2001).

**Article 8. Detection and Apprehension of Illegal Aliens. [Repealed by PL 17-1 § 5(J)]**
§ 4381. Detection of Illegal Aliens. [Repealed by PL 17-1 § 5(I)]
§ 4382. Apprehension of Illegal Aliens. [Repealed by PL 17-1 § 5(I)]

***[The following sections were repealed by PL 15-108, § 4, and reenacted as the "Commonwealth Employment Act" (3 CMC §§ 4401-4973), which took effect on January 1, 2008:***
***3 CMC §§ 4411-4414, 4421-4425, 4431-4440, 4441-4447, 4451-4452, 4501-4507, 4601-4607, 4701-4704, 4801-4803, 4911, 4921-4927, 4931-4940, 4941-4949, 4951-4957, 4961-4973.]***

***[Public Law 17-1, which was enacted on March 22, 2010, repealed, enacted and amended certain provisions of PL 15-108. Newly enacted provisions include §§ 4404, 4950, 4981. Repealed provisions include: §§ 4601-4607, 4801-4803, 4921, 4927, 4953, 4955, 4965***

# PART ~~3~~ 2: EMPLOYMENT [New restructured part]

**CHAPTER 1. DEPARTMENT OF LABOR. [§§ 4401-4404]**
**CHAPTER 2. EMPLOYMENT PREFERENCE FOR CITIZENS AND PERMANENT RESIDENTS. [§§ 4511; 4521-4530; 4531-4536]**
**CHAPTER 3. RESERVED.**
**CHAPTER 4. EMPLOYMENT OF FOREIGN NATIONALS. [§§ 4911; 4921-4927; 4931-4940; 4941-4949; 4951-4957;4961-4973]**

**Commission Comment:** The last paragraph of the findings and purpose section of PL 17-1 provides:

> It is the intent of the Legislature [that] the Commonwealth Law Revision Commission shall have discretion to adjust the numbering of code divisions, parts, articles, or sections affected by this Act as necessary to effectuate a reasonable codification of Sections 5 and 6 of this Act.

Although PL 17-1 § 5 provides for renaming of Part 3 (Employment) of Division 4 to Part 1, the commission elected to reserve Part 1 and number this Part 2 pursuant to the above and its authority under 1 CMC § 3806. For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

## CHAPTER 1. DEPARTMENT OF LABOR.

§ 4401. Reserved. [Formerly entitled Director of Labor: Functions and Duties.]
§ 4402. Reserved. [Formerly entitled Director of Employment Services: Functions and Duties.]
§ 4403. Conflicts of Interest.
§ 4404. Appointment of Directors and Managers. [new section]

### § 4401. Reserved. [Formerly entitled Director of Labor: Functions and Duties.] [Deleted by PL 17-1 § 5(L)(1)]

~~For the purposes of this chapter, and without limitation on the scope or extent of powers, duties, and responsibilities vested by any other provision of law, the Director of Labor and in the case of the First and Second Senatorial Districts the Resident Director shall, under the supervision of the Secretary, have the following functions and duties:~~

~~(a) Enforce, pursuant to chapter 2 of this part, the employment preferences for citizens and permanent residents and the provisions of Commonwealth law related thereto;~~

~~(b) Enforce, pursuant to chapter 3 of this part, the moratorium on the hiring of foreign~~

~~national workers;~~

~~(c) Enforce, pursuant to chapter 5 of this part, the certification pre-clearance requirements; and~~

~~(d) Enforce, pursuant to chapter 6 of this part, the approved employment contracts of foreign national workers and the provisions of Commonwealth law related thereto; and oversee, monitor, and review the use of foreign national workers, all matters related to wages, work hours and conditions, and specific contractual provisions for the services or labor of such workers.~~

~~Nothing in this part shall restrict the Secretary from delegating any of the duties and responsibilities of the Director of Labor to another division within the Department of Labor.~~

**Source:** PL 15-108, § 4(4401); deleted by PL 17-1 § 5(L)(1) (March 22, 2010).*

**Commission Comment:** Public Law 15-108 was enacted on November 11, 2007 and became effective on January 1, 2008. PL 15-108 revamped the Nonresident Workers Act in its entirety and renamed the restructured statutory portions as "Part 3. Employment." In addition to severability and savings provisions, the following were included in PL 15-108.

Section 1. Short title. This Act may be referred to as the "Commonwealth Employment Act of 2007."

Section 2. Findings and purpose. The Commonwealth Legislature finds the following with respect to fair and adequate employment within the Commonwealth of the Northern Mariana Islands: Economic development and prosperity in the Commonwealth require that citizens and permanent residents be given maximum opportunity for employment in the public and private sectors of the economy.

The employment preference for citizens and permanent residents is implemented by clarifying and improving provisions of the current law, such as limiting public sector jobs to citizens and permanent residents to the maximum extent practicable, requiring that employers in the Commonwealth provide jobs to citizens and permanent residents that amount to at least thirty percent (30%) of the employer's work force, and restructuring the moratorium on new hiring of foreign nationals, among other measures.

This employment preference is promoted by effective training to qualify citizen and permanent resident employees, particularly indigenous Carolinian and Chamorro people, for jobs that require special skills, effective advertising of available jobs with full equivalent wages or benefits compared to any wages or benefits that would be offered to a person who is not a citizen or permanent resident, and effective job referral services provided to citizens and permanent residents.

The Covenant envisioned the employment of foreign nationals in the Commonwealth in order to create an economic base that would provide the citizens of the Commonwealth the economic opportunities and standard of living that their counterparts on the mainland are able to enjoy because of the vast area and large population from which communities on the mainland may draw employees. In order for the economy to sustain and foster the development that will produce an increasing number of such jobs, foreign national workers must be available to fill the unskilled and lower skilled jobs that make larger business enterprises economically viable in the Commonwealth.

The Commonwealth's very substantial investment in secondary and post-secondary education over the past 30 years has strived to produce a local work force well qualified for managerial, supervisory, technical, professional, visitor industry, and other jobs that are of vital importance to the growth and development of the Commonwealth's economy. The Commonwealth's goal is to establish a regulatory environment so that jobs are available for its qualified high school, college, and graduate school graduates. To accomplish that goal, the Commonwealth requires a two-pronged approach. First, with respect to all jobs, citizens and permanent residents must be given preference over foreign workers imported to fill specific jobs. Second, with respect to jobs for which the Commonwealth's investment in its citizens and permanent residents has already produced a sufficient supply of qualified persons, employers must be required to hire only those citizens and permanent residents. As to the second prong, a minimum wage rate may not

be sufficient to attract citizens and permanent residents to take a job for which they are qualified. If the job is reserved for citizens and permanent residents, then the competitive economy will cause the wage rate to rise to a level that citizens and permanent residents find acceptable. As to jobs for which qualified citizens and permanent residents are available, the Legislature finds that it benefits the Commonwealth very substantially to have the wage rate rise to the level required. Wage rates will not rise so long as cheap foreign labor is available. The incentives to foreign workers to remain in the Commonwealth are very large because the working conditions in the Commonwealth are so far superior to the working conditions in their home countries. For that reason, foreign workers will always accept lower wages than citizens and permanent residents. It was never the purpose of the legislative enactments with respect to the use of foreign labor in the Commonwealth to perpetuate jobs at the minimum wage rate. If that happens, much of the Commonwealth's investment in secondary and post-secondary education for its citizens will be lost as those citizens migrate outside the Commonwealth to find good-paying jobs.

In 2006, the Office of the Public Auditor launched a year-long study to identify jobs in the current Commonwealth economy for which citizens and permanent residents are currently available or will be available in the near future. The Public Auditor reported: "The survey was prompted by complaints from residents who were unable to find employment despite statutory provisions requiring preferential hiring of residents, as well as the added concern of increased resident unemployment due to the workforce reductions in the private sector and possible downsizing within the Government." The Public Auditor reported that the study's "conclusions and recommendations are critical foundations in establishing a sustainable resident workforce." The study identified specific positions that "can be easily filled by the existing resident pool." The Public Auditor's study examined carefully all of the jobs currently reserved for citizens and permanent residents and expanded the list of job classifications that should be reserved for residents. The Public Auditor's study was assisted by an organized committee comprised of private sector employers from various industries, government officials, and other interested parties. The study consulted with the Department of Labor, the Division of Immigration, the Northern Marianas College, the Workforce Investment Agency, and the Department of Commerce. Prior to the release of the jobs study report, more than a dozen presentations on the preliminary study were made to various public and private sector groups to "ensure that input and feedback from the community was considered before final release of the report."

The Fourteenth Amendment to the United States Constitution does not deny to States the power to treat different classes of persons in different ways." *Reed v. Reed*, 404 U.S. 71, 75 (1971). Under the rational basis test, "[a] classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). The statistics provided to the Legislature by the Department of Labor with respect to the history of employment in the Commonwealth since 1983 when the initial foreign worker legislation was enacted; the underlying goals with respect to the structure of and progress within the economy in the Commonwealth; and the Jobs Study Report and ongoing work of the Public Auditor form a rational basis on which to treat foreign workers, present in the Commonwealth for temporary work, differently from citizens and permanent residents. The Legislature finds these factors form a rational basis for the government's interest in preventing all nonresident workers from working in specific job classifications and a rational basis for the government's an interest in singling out specific job classifications from all other jobs in the Commonwealth and finds that the regulatory power delegated to the Secretary of Labor may be exercised in these respects to implement this statute.

The current economic situation in the Commonwealth requires the continued availability of foreign nationals to augment the work force in the Commonwealth but also demands that the system for regulating the employment of foreign nationals be more efficient and less costly to operate.

The Commonwealth has the responsibility to provide fair employment conditions for foreign nationals, to use their labor for the purposes of economic growth and stability for

which it was intended, and to regulate labor practices in order to protect against potential abuses.

Experience over the past 30 years has provided certain benchmarks with respect to fair employment conditions for foreign nationals: The system should have clear rules, be easy to understand, provide for lack of facility with the English language, protect basic rights, and assist employers with compliance. The overall guiding policy with respect to foreign national workers is to provide for a stable work force and protect due process rights without creating entitlements.

The early-intervention mediation that is an integral part of the current system achieves good results in promoting fair employment relationships between foreign national employees and employers in the Commonwealth. Early intervention can be expanded to prevent and resolve disputes more efficiently to the benefit of both employees and employers.

Economic stability and growth in the Commonwealth require support for the visitor industry and other investments, both local and foreign, that generate new employment opportunities. The overall employment system must achieve a balanced approach to opportunities, benefits, and costs to the Commonwealth and, in the Legislature's judgment, that objective is achieved by this Act.

It is the intent of the Legislature that this Act shall not apply to persons admitted to the Commonwealth as tourists, or to persons employed illegally, i.e. without the approval of the Department of Labor, or to those persons employing others illegally in the Commonwealth unless specific provision has been made herein. It is the intent of the Legislature that persons illegally employing others or illegally employed be prohibited from using the terms of this Act to receive or avail themselves of a legal right or benefit. This Act shall not bar any other remedy provided by law.

The Legislature finds that requiring a foreign national worker to submit proof of earnings in excess of the federal poverty guidelines before bringing family members into the Commonwealth for the first time serves the important government interest of maintaining the public welfare and not overburdening public institutions and services in the Commonwealth.

The Legislature finds that a statutory, rather than regulation-based, entry permit for religious activities is necessary due to the need to respect religious requirements and at the same time avoid abuse. The Legislature supports the free expression of religious belief by persons or groups present in the Commonwealth and recognizes the need for their employment of religious professionals for that purpose. The Legislature finds that there is no impairment of the pursuit of religious beliefs or undue burden in the requirement that foreign nationals entering for religious employment be employed by identifiable religious organizations and subject to the same contract requirements as other foreign national workers.

It is the intent of the Legislature that this Act shall not conflict with treaty obligations of the United States. In the event of conflict, U.S. treaty provisions shall pre-empt the provisions of this Act.

It is the intent of the Legislature that this Act shall not conflict with Chapter 5 of Part 1 of Division 1 of Title 6 of the Commonwealth Code (Human Trafficking and Related Offenses). This Act shall in no way limit the authority of the Commonwealth to bring an action pursuant to that Chapter.

It is the intent of the Legislature to repeal current Chapters 5 and 7 of Division 4 of Title 3 of the Commonwealth Code.

It is the intent of the Legislature that this Act shall supersede any conflicting portions of Public Law 15-5, effective April 10, 2006. It is the intent of the Legislature that this Act shall supersede Public Law 15-45, effective January 29, 2007, but shall preserve its purpose and intent.

It is with these stated objectives that the 15th Commonwealth Legislature enacts these labor reforms in order to meet the economic needs of citizens, permanent residents, businesses, and foreign national workers in the Commonwealth.

Section 3. Re-codification. Division 4 of Title 3 of the Commonwealth Code is recodified as follows:

(a) Chapters 1 and 2 shall be codified as Part 1, Chapters 1 and 2 of Division 4.

Part 1 shall be entitled "Citizenship."

(b) Chapter 3 shall be codified as Part 2, Chapter 1 of Division 4. Part 2 shall be entitled "Entry and Deportation."

(c) Chapters 4-8 shall be repealed and reenacted pursuant to Section 4 of this Act and codified as Part 3, Chapters 1-6 of Division 4. Part 3 shall be entitled "Employment."

(d) The Commonwealth Law Revision Commission shall have the discretion to adjust the numbering of code divisions, parts, articles, or sections affected by this Act as necessary to effectuate a reasonable codification of Sections 3 and 4 of this Act.

Section 4. Repealer and reenactment. The Nonresident Workers Act of the Commonwealth of the Northern Mariana Islands, codified in Title 3, Division 4, Chapters 4-8 of the Commonwealth Code, is repealed and re-enacted as Part 3, Chapters 1-6 of Division 4 of Title 3 as follows . . .

Section 5. Global amendment. All references to the term "non-resident worker" in the Commonwealth Code shall be replaced by the term "foreign national worker" as defined in Sections 4911 and 4965 of this Act. The term "resident worker" in 4 CMC § 9502(b) shall be replaced by the term "citizen or permanent resident" worker as defined in Section 4511 of this Act.

*PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4402. Reserved. [Formerly entitled Director of Employment Services: Functions and Duties.] [Deleted by PL 17-1 § 5(L)(2)]

~~For the purposes of this chapter, and without limitation on the scope or extent of the powers, duties, and responsibilities vested by any other provision of law, the Director of Employment Services shall, under the supervision of the Secretary, have the following responsibilities and duties:~~

~~(a) Establish and maintain a system of registration, referral, and other employment services to assist citizens and permanent residents in obtaining employment and assist employers in locating citizen and permanent resident employees;~~

~~(b) Establish or recommend methods for alleviating shortages of qualified citizen and permanent resident applicants for employment and reducing the need for foreign national workers through such means as providing job training, advising graduates from the Northern Marianas College or other training institutions of job opportunities, and making job referrals and job placements into the private sector; provided that for purposes of this subsection, the term "graduate" includes those citizens and permanent residents who have been awarded a degree or certificate in a business, visitor services, technical or professional program established or sponsored by the Northern Marianas College or other institutions; and~~

~~(c) Establish occupational categories and minimum standards of qualification for job positions, monitor the proportional employment trends in all sectors of the population to ensure that indigenous Carolinian and Chamorro citizens and permanent residents are not disproportionately impacted in employment, and report annually to the Legislature of this matter with recommendations.~~

~~Nothing in this part shall restrict the Secretary from delegating any of the duties and responsibilities of the Director of Employment Services to another division within the Department of Labor.~~

**Source:** PL 15-108, § 4(4402); deleted by PL 17-1 § 5(L)(2) (March 22, 2010).

**Commission Comment**: PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4403. Conflicts of Interest.**

No employee or official of the Department of Labor ~~or the Commonwealth immigration authority~~, or his or her immediate relative as defined in 3 CMC § 4303(m),* shall own or have an equity interest in an employment agency or other business engaged in recruiting or processing employment-related documents. No employee of the Department of Labor ~~or the Commonwealth immigration authority~~ shall accept a gratuity or other benefit from an employer or employee whose activities are regulated by this part 2 unless otherwise permitted by law or regulation. Any person who violates this section shall be guilty of a felony, and may be punished by a fine of five-thousand dollars. In addition to any fine, any person who violates this section may be punished by imprisonment for not more than five years. A person convicted under this section shall be terminated from his or her government employment and shall not be re-employed by the Commonwealth government, in any capacity, for a period of ten years from the date of conviction.

**Source:** PL 15-108, § 4(4403); PL 17-1 § 5(L)(3) (March 22, 2010), modified.

**Commission Comment**: The commission replaced "this Act" with "this part 2" and deleted figures that repeated written words above pursuant to 1 CMC § 3806(d) and (e). * 3 CMC § 4303 was repealed by PL 17-1 § 5(B).

PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4404. Appointment of Directors and Managers. [new section]**

The Secretary may appoint and by regulation define duties and responsibilities for directors and managers in order that the Department's functions may be adjusted flexibly to meet citizen employment needs under changing conditions.

**Source:** PL 17-1 § 5(L)(4)(March 22, 2010).

**Commission Comment**: PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**Article 1. General. [Repealed by PL 15-108 § 4]**

§ 4411. Nonresident Workers: Policy. [Repealed by PL 15-108 § 4]
§ 4412. Nonresident Workers: Definitions.[Repealed by PL 15-108 § 4]
§ 4413. Nonresident Workers: Preference for Resident Workers.[Repealed by PL 15-108 § 4]
§ 4414. Conflict of Interest. [Repealed by PL 15-108 § 4]

### § 4411. Nonresident Workers: Policy. [Repealed by PL 15-108 § 4]

**Source:** . . . repealed by PL 15-108 § 4.

**Case Annotations:** *Office of the Attorney Gen. v. Estel,* 2004 MP 20, 7 N.M.I. 89 (2004); *Ramos v. Magusa, Inc.,* 2002 MP 25, 6 N.M.I. 520 (2002); . . .

**LABOR**

**Nonresident Workers, Generally**

– **Attorney General Representing**
While the Attorney General's Offices interest in the interpretation of the Nonresident Workers Act, 3 CMC § 4411, et seq., is reasonable, it is unnecessary for the Attorney General to represent private parties in order to express its views about the statute. The more appropriate course would be for the Attorney General to move to intervene on behalf of the Commonwealth Government. 3 CMC § 4411, *et seq. Pacific Saipan Tech. Contractors v. Rahman*, 2000 MP 14 ¶ 9, 6 N.M.I. 146, 149 (2000).

– **Time for Appeal of Final Action**
The issuance of a decision cannot be construed to mean receipt of such decision. A plain reading of the Nonresident Workers Act, 3 CMC § 4411, et seq., as a whole, leads to the conclusion that an appeal to the Superior Court must be initiated within 15 days after the date of issuance of the Secretary's decision, not 15 days after receipt of the decision. 3 CMC § 4411, *et seq. Pacific Saipan Tech. Contractors v. Rahman*, 2000 MP 14 ¶ 21, 6 N.M.I. 146, 151-2 (2000).

**Case Annotations:** *Office of the Attorney Gen. v. Estel,* 2004 MP 20, 7 N.M.I. 89 (2004).

### § 4412. Nonresident Workers: Definitions.[Repealed by PL 15-108 § 4]

**Source:** . . . repealed by PL 15-108 § 4.

**Case Annotations:** *In re Pangelinan,* 2007 MP 14, 7 N.M.I. 461 (2007).

## Article 2. Administrative Provisions. [Repealed by PL 15-108 § 4]

§ 4421. Chief of Labor: Functions and Duties. [Repealed by PL 15-108 § 4]
§ 4422. Statistical Data. [Repealed by PL 15-108 § 4]
§ 4423. Federal Grants and Programs. [Repealed by PL 15-108 § 4]
§ 4424. Rules and Regulations. [Repealed by PL 15-108 § 4]
§ 4425. Annual Report. [Repealed by PL 15-108 § 4]

## Article 3. Procedural Requirements. [Repealed by PL 15-108 § 4]

§ 4431. Procedure and Requirements: Employer Notifies Chief. [Repealed by PL 15-108 § 4]
§ 4432. Procedure and Requirements: 15-Day Advertising. [Repealed by PL 15-108 § 4]
§ 4433. Procedure and Requirements: Nonresident Employment Agreement. [Repealed by PL 15-108 § 4]
§ 4434. Procedure and Requirements: Approval of Contract by Director. [Repealed by PL 15-108 § 4]
§ 4435. Procedure and Requirements: After Contract Approved. [Repealed by PL 15-108 § 4]
§ 4436. Preconditions for Employment of Nonresident Workers. [Repealed by PL 15-108 § 4]
§ 4437. Restrictions and Obligations.[Repealed by PL 15-108 § 4]
§ 4438. Health Certification.[Repealed by PL 15-108 § 4]

§ 4439. Required Records.[Repealed by PL 15-108 § 4]
§ 4440. Exemptions.[Repealed by PL 15-108 § 4]

### § 4437. Restrictions and Obligations. [Repealed by PL 15-108 § 4]

**Source:** . . . repealed by PL 15-108 § 4.

**Case Annotations:** *Ramos v. Magusa, Inc.,* 2002 MP 25, 6 N.M.I. 520 (2002).

## Article 4. Enforcement Provisions. [Repealed by PL 15-108 § 4]

§ 4441. Enforcement: Investigations. [Repealed by PL 15-108 § 4]
§ 4442. Enforcement: Authority to Enter. [Repealed by PL 15-108 § 4]
§ 4443. Enforcement: Personnel Support. [Repealed by PL 15-108 § 4]
§ 4444. Enforcement: Administrative Hearing. [Repealed by PL 15-108 § 4]
§ 4445. Enforcement: Administrative Review. [Repealed by PL 15-108 § 4]
§ 4446. Enforcement: Judicial Review. [Repealed by PL 15-108 § 4]
§ 4447. Remedies and Penalties. [Repealed by PL 15-108 § 4]

### § 4444. Enforcement: Administrative Hearing. [Repealed by PL 15-108 § 4]

**Source:** . . . repealed by PL 15-108 § 4.

**Case Annotations:** *Office of the Attorney Gen. v. Estel,* 2004 MP 20, 7 N.M.I. 89 (2004); *Angello v. Louis Vuitton Saipan, Inc.,* 2000 MP 17, 6 N.M.I. 165 (2000)*; Pacific Saipan Tech. Contractors v. Rahman,* 2000 MP 14, 6 N.M.I. 146 (2000); . . .

### § 4445. Enforcement: Administrative Review. [Repealed by PL 15-108 § 4]

**Source:** . . . repealed by PL 15-108 § 4.

**Case Annotations:** *Office of the Attorney Gen. v. Estel,* 2004 MP 20, 7 N.M.I. 89 (2004); *Angello v. Louis Vuitton Saipan, Inc.,* 2000 MP 17, 6 N.M.I. 165 (2000); *Pacific Saipan Tech. Contractors v. Rahman,* 2000 MP 14, 6 N.M.I. 146 (2000); . . .

### § 4446. Enforcement: Judicial Review. [Repealed by PL 15-108 § 4]

**Source:** . . . repealed by PL 15-108 § 4.

**Case Annotations:** *Angello v. Louis Vuitton Saipan, Inc.,* 2000 MP 17, 6 N.M.I. 165 (2000); . . .

**LABOR**

**Nonresident Workers, Generally**

– **Judicial Review of Final Actions**
When reviewed in the context of the entirety of the Nonresident Workers Act, 3 CMC § 4411, et seq., the most logical construction of 3 CMC § 4446 is that a decision issued in writing by the Secretary of Labor is the final action for purposes of judicial review. 3 CMC § 4446; 3 CMC § 4411, *et seq.* *Pacific Saipan Tech. Contractors v. Rahman*, 2000 MP 14 ¶ 16, 6 N.M.I. 146, 150 (2000).

– **Time for Appeal of Final Action**
The interpretation of 3 CMC § 4446 most consistent with the language of the entire statute is that the 15 days allowed for

appeal begins to run from the date the Secretary issues his decision, i.e., the date the decision is entered or filed by the Department of Labor and Immigration. 3 CMC § 4446. *Pacific Saipan Tech. Contractors v. Rahman*, 2000 MP 14 ¶ 18, 6 N.M.I. 146, 151 (2000).

The fifteen-day limitation period, provided by 3 CMC § 4446, for filing an appeal of a final action of the Department of Labor and Immigration begins to run from the date of the issuance of the Secretary's decision on the appeal of the agency action. 3 CMC § 4446. *Pacific Saipan Tech. Contractors v. Rahman*, 2000 MP 14 ¶ 19, 6 N.M.I. 146, 151 (2000).

### § 4447. Remedies and Penalties. [Repealed by PL 15-108 § 4]

**Source:** . . . repealed by PL 15-108 § 4.

**Case Annotations:** *Office of the Attorney Gen. v. Estel,* 2004 MP 24, 7 N.M.I. 111 (2004).

**LABOR**

**Nonresident Workers, Generally**
The Commonwealth Code requires that the Department of Labor and Immigration provide notice of non-compliance with a transfer order to a prospective employer. It does not require notice to the transferring non-resident worker, who is arguably more affected by failure to comply with the transfer order. 3 CMC § 4447(c). *Office of the Attorney Gen. v. Estel*, 2004 MP 20 ¶ 14, 7 N.M.I. 89, 94 (2004).

– **Attorney General Representing**
While 3 CMC § 4447(a) appears to allow the Attorney General's Office to bring a lawsuit on behalf of a nonresident worker if the purpose would be to enforce a provision of the Nonresident Workers Act, 3 CMC § 4411, et seq., that is not the situation where the Attorney General has stepped in to act as counsel for private parties already involved in a pending action. 3 CMC § 4447(a); 3 CMC § 4411, *et seq. Pacific Saipan Tech. Contractors v. Rahman*, 2000 MP 14 ¶ 8, 6 N.M.I. 146, 149 (2000).

## Article 5. Other Provisions.

§ 4451. Transition. [Repealed by PL 15-108 § 4]
§ 4452. Authorization of Appropriations. [Repealed by PL 15-108 § 4]

## FORMER CHAPTER 5. Limited Immunity for Illegal Aliens. [Repealed by PL 15-108 § 4]

§ 4501. Definitions. [Repealed by PL 15-108 § 4]
§ 4502. Grant of Limited Immunity. [Repealed by PL 15-108 § 4]
§ 4503. Assistance to Persons Granted Limited Immunity. [Repealed by PL 15-108 § 4]
§ 4504. Prohibition of Employer Retaliatory Action. [Repealed by PL 15-108 § 4]
§ 4505. Hiring of Persons Granted Limited Immunity: Relationship to Moratorium. [Repealed by PL 15-108 § 4]
§ 4506. Employer Limited Immunity. [Repealed by PL 15-108 § 4]
§ 4507. Promulgation of Rules and Regulations. [Repealed by PL 15-108 § 4]

# CHAPTER 2. EMPLOYMENT PREFERENCE FOR CITIZENS AND PERMANENT RESIDENTS.

Article 1. General.
Article 2. Private Sector Employment Preference.
Article 3. Government Employment Preference.

**Article 1. General.**

§ 4511. Definitions.

**§ 4511. Definitions.**

As used in this chapter, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(a) "Administrative Hearing Office" means the hearing office of the Department of Labor; and for purposes of 1 CMC §§ 9109 and 9110 as those provisions may apply to this chapter;

(b) "Citizen" means a person who is a citizen or national of the United States;

(c) "CNMI permanent resident" means a person who was granted the status of CNMI permanent resident by the CNMI government prior to April 23, 1981.

(d) "Department" means the Department of Labor;

(e) "Domestic helper" means a person who assists an employer with the domestic duties of a household, including but not limited to cooking, cleaning, and care for children, elders, and handicapped persons in the home; and does not include farmers;

(f) "Employer" means a person, corporation, partnership, or other legal entity that has a current business license issued by the Commonwealth, is doing business in the Commonwealth, and has one or more approved employment contracts with foreign national workers, or is acting directly or indirectly in the interest of a person, corporation, partnership or other legal entity in relation to an employee; or a person employing a farmer or domestic helper; and does not include the government of the United States;

~~(f) "Employment Services" means the Division of Employment Services of the Department of Labor;~~

(g) "FAS citizen" means a citizen of the Freely Associated States, which are the Federated States of Micronesia, The Republic of the Marshall Islands, and the Republic of Palau, who is legally residing in the Commonwealth.

(h) "Hearing officer" means a hearing officer appointed by the Secretary who serves in the Administrative Hearing Office and who conducts mediations, hearings, and other proceedings as necessary; and for purposes of 1 CMC §§ 9109 and §§ 9110 as those provisions may apply to this chapter;

(i) "Indigenous" means a person generally recognized in the community as a person of Northern Marianas Descent, who is also a citizen or permanent resident of the Commonwealth and speaks the Carolinian or Chamorro language to a degree of fluency such that the person may accomplish the basic daily tasks of life without resorting to a language other than the Carolinian or Chamorro language;

(j) "Job classification" means job classifications described by regulations;

(k) "Permanent resident" or "permanent residents" includes U.S. permanent residents, CNMI permanent residents, and FAS citizens in the Commonwealth;

~~(k) "Regulation" means a regulation or regulations promulgated by the Secretary of Labor, the Secretary of Public Health, or the Commonwealth immigration authority pursuant to this part.~~

(l) "Secretary" means the Secretary of Labor.

(m) "U.S. permanent resident" means a person who has been granted permanent resident status by the United States.

**Source:** PL 15-108, § 4(4511); (c),(g) and (m) added, former subsections (f) (Employment

Services) and (k) (Regulation) deleted, and subsections (j) and (k) amended by PL 17-1 § 5(M)(1) (March 22, 2010).*

**Commission Comment:** See the comment to 3 CMC § 4401 regarding PL 15-108. On March 22, 2010, Public Law 17-1 was enacted into law. In addition to amending provisions of the code, PL 17-1 contained severability and savings provisions and the following:

Section 1. Short title. This Act may be referred to as the "Immigration Conformity Act of 2010."

Section 2. Findings and purpose. The Commonwealth Legislature finds the following with respect to the immigration functions previously controlled by the Commonwealth of the Northern Mariana Islands and now controlled by the U.S. Department of Homeland Security:

Section 503 of the Covenant provided that the immigration and naturalization laws of the United States, except as provided in Section 502(b), would not apply to the Northern Mariana Islands "except in the manner and to the extent made applicable to them by Congress by law after termination of the Trusteeship Agreement."

Under the Covenant and the Commonwealth Constitution, the Commonwealth of the Northern Mariana Islands since 1978 has enacted immigration laws governing the admission and regulation of aliens entering the Commonwealth. It established a Division of Immigration to administer and enforce these laws.

The Trusteeship Agreement was terminated with respect to the Northern Mariana Islands in 1986. Twenty-two years later, in 2008, the United States Congress enacted Public Law 110-229, Title VII, which applied the federal immigration laws to the Commonwealth of the Northern Mariana Islands. This law was signed by the President on May 8, 2008, and became effective on November 28, 2009. Public Law 110-229, Title VII, expressly provided that the Commonwealth's immigration laws would be preempted by the new application of the federal immigration laws to the Commonwealth. The authority of the federal government to apply the federal immigration laws to the Commonwealth as provided by Public Law 110- 229 was upheld by the decision of the U.S. District Court for the District of Columbia on November 25, 2009, in *Commonwealth of the Northern Mariana Islands v. United States of America, et al.*

Public Law 110-229 does not *ipso jure* preempt the Commonwealth's labor laws. In the United States federal system, there are areas in which the States share responsibilities with the federal government. Labor (including the terms and conditions under which workers are employed) is such an area. The federal government can regulate labor through its control of interstate commerce and immigration. But the States remain free to regulate labor under the power to control intrastate commerce and under the general police power. The Commonwealth has all of the powers of a State in this area, as well as the powers of local self-government under the Covenant. Employers and workers in the Commonwealth must comply with both federal and CNMI law. It is the intent of the Legislature that this Act shall amend the Commonwealth Code to reflect the assumption of immigration responsibilities by the federal government.

It is the intent of the Legislature that this Act shall exercise the authority of the Commonwealth to regulate labor conditions and practices within the Commonwealth to the full extent that this area could be regulated by a State and can be regulated under the Covenant. It is further the intent of the Legislature to regulate the terms and conditions under which permits previously issued by the Commonwealth were granted so long as those permits remain in force and protect the status of foreign national workers as lawfully present in the Commonwealth.

It is the intent of the Legislature that the umbrella permits issued by the Department of Labor in 2009 continue to be governed under the Department's normal processes. All umbrella permits and the bases on which they were granted are ratified and approved, *nunc pro tunc*, any other provision of current or former law or regulation notwithstanding.

It is the intent of the Legislature that this Act shall replace the decisions in *Smith & Williams v. Royal Crown Ins. Co.*, NMI Super. Ct. Small Claims Nos. 06-0676 et al. (February 5, 2007) and *Zhou v. Oceania Ins. Corp.*, NMI Super. Ct. Small Claims Nos. 08-0452 et al. (February 5, 2009) so that plaintiffs holding unpaid awards under orders issued by the Administrative Hearing Office of the Department of Labor may proceed with collection actions in the Commonwealth courts without first exhausting collection remedies at the Department of Labor.

It is the intent of the Legislature to provide to the maximum extent permitted by law an employment priority for United States citizens, United States permanent residents, and CNMI permanent residents (as that status was defined by Commonwealth law prior to April 23, 1981) in the workforce of the Commonwealth in order to develop the human resources of the people of the Commonwealth as reflected in the provisions and stated intent of PL 110- 229. It is the intent of the Legislature that the employment

priority for United States citizens, United States permanent residents, and CNMI permanent residents established by Commonwealth law provide legitimate grounds under the Immigration Reform and Control Act (IRCA), P.L. 99-603 (1986) for hiring decisions based on citizenship in both the government and private sectors in the Commonwealth.

It is the intent of the Legislature the Commonwealth Law Revision Commission shall have discretion to adjust the numbering of code divisions, parts, articles, or sections affected by this Act as necessary to effectuate a reasonable codification of Sections 5 and 6 of this Act.

. . .

*Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## Article 2. Private Sector Employment Preference.

§ 4521. Job Preference.
§ 4522. Job Vacancy Announcement.
§ 4523. Job Referral and Advertising.
§ 4524. Compliance With the "Resident Workers Fair Compensation Act."
§ 4525. Work Force Participation By Citizens and CNMI Permanent Residents and U.S. Permanent Residents.
§ 4526. Exemptions.
§ 4527. Investigations.
§ 4528. Adjudication of Claims.
§ 4529. Statistical Data.
§ 4530. Regulations.

### § 4521. Job Preference.

Citizens and CNMI permanent residents and U.S. permanent residents shall be given preference for employment in the Commonwealth. Capability in the official languages of the Commonwealth is an important skill with respect to working effectively within the Commonwealth.

**Source:** PL 15-108, § 4(4521); amended by PL 17-1 § 5(M)(2)(a) (March 22, 2010),* modified.

**Commission Comment:** The commission changed "resident" to its plural form in this section pursuant to 1 CMC § 3806(g). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4522. Job Vacancy Announcement.

Any employer may utilize the Department to fill a job vacancy by filing a job vacancy announcement which includes information as required by the Secretary by regulation. Any employer seeking permission to employ workers other than citizens or CNMI permanent residents and U.S. permanent residents shall utilize the Department as provided in this chapter.

**Source:** PL 15-108, § 4(4522); amended by PL 17-1 § 5(M)(2)(a) and (b) (March 22, 2010),* modified.

**Commission Comment:** The commission changed "resident" to its plural form in this section pursuant to 1 CMC § 3806(g). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor

or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4523. Job Referral and Advertising.**

Upon receiving a job vacancy announcement, the Department shall assess the good faith efforts by the employer to fill the job vacancy with a qualified citizen or CNMI permanent resident and US permanent resident and then shall endeavor to fill the job vacancy by referral of qualified citizens and CNMI permanent residents and U.S. permanent residents registered with the Department. If sufficient qualified citizens and CNMI permanent residents and US permanent residents are not supplied by such good faith efforts or referral, the Department shall cause the existence of the vacancy and other applicable information regarding the job to be published as prescribed by regulation. ~~The vacancy shall be advertised by publication in a newspaper of general circulation in the Commonwealth or equivalent. The Secretary shall prescribe by regulation the equivalent foreign language media, radio, television, or online advertising, if any.~~ The job vacancy announcement shall state the wages and all benefits offered, together with the net cash equivalent of employer-supplied medical insurance, housing, food, transportation, and other benefits, if any, and shall be published for no less than two consecutive days in each of two weeks or equivalent. This requirement may not be waived.

**Source:** PL 15-108, § 4(4523); PL 17-1 § 5(M)(2)(a)-(c) (March 22, 2010),* modified.

**Commission Comment:** The commission changed "resident" to its plural form as appropriate in this section pursuant to 1 CMC § 3806(g).*PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4524. Compliance With the "Resident Workers Fair Compensation Act."**

All notices issued under this article shall comply with 4 CMC §§ 9501 et seq., the "Resident Workers Fair Compensation Act."

**Source:** PL 15-108, § 4(4524).

**§ 4525. Work Force Participation By Citizens and CNMI Permanent Residents and U.S. Permanent Residents.**

In the full-time workforce of any employer, the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives employed shall equal or exceed the percentage of citizens, U.S. permanent residents, and CNMI permanent residents and their immediate relatives in the available private sector workforce unless attainment of this goal is not feasible within the current calendar year after all reasonable efforts have been made by the employer.

**Source:** PL 15-108, § 4(4525), modified; PL 17-1 § 5(M)(2)(d) (March 22, 2010).*

**Commission Comment:** The commission deleted figures that repeated written words and changed "resident" to its plural form in this section pursuant to 1 CMC § 3806(e) and (g). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4526. Exemptions.**

(a) The provisions of 3 CMC § 4525 shall not apply to employers of fewer than five employees, provided however, the Secretary may, by regulation, require each business to have at least one employee who is a citizen or CNMI permanent resident and U.S. permanent resident, or remove the exemption available to employers against whom two or more judgments are entered in Department proceedings in any two year period.

(b) The Secretary, or an authorized designee, may grant an exemption from this chapter for a particular construction project of limited duration. ~~Persons who are not citizens or permanent residents and who enter the Commonwealth for work on an exempted project shall not transfer to another project or employer and shall exit the Commonwealth within seven days of the completion of their work on the exempted project. No immediate family member may enter the Commonwealth in connection with such worker's employment on an exempted project.~~

~~(c) An incentive exemption shall be available if citizen and permanent resident employees in the full-time work force of an employer in professional, managerial, human resources, office or administrative assistant, secretary, cashier, retail clerk, front desk receptionist, tour guide, boat captain, and sports and recreation positions and other positions that may be specified by regulation substantially exceed thirty percent of the employer's total full-time work force in these positions. The Secretary shall provide the incentive benchmarks by regulation.~~

~~(d) The Secretary may continue waivers granted prior to January 1, 2007, for light manufacturing, at the Secretary's discretion.~~

**Source:** PL 15-108, § 4(4526); amended and subsections (c) and (d) deleted by PL 17-1 § 5(M)(2)(a) and (e) (March 22, 2010),* modified.

**Commission Comment:** The commission changed "section 4525" to "3 CMC § 4525" and deleted figures that repeated written words to pursuant to 1 CMC § 3806(c) and (e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4527. Investigations.**

The Department or a designee shall conduct investigations as the Department may deem appropriate and necessary to enforce the provisions of this chapter and regulations promulgated thereunder, and to ensure lawful working terms and conditions. ~~employer-supplied benefits, and the health and safety of citizens, permanent residents, and foreign national workers.~~

**Source:** PL 15-108, § 4(4527); PL 17-1 § 5(M)(2)(b) and (f) (March 22, 2010).*

**Commission Comment:** *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4528. Adjudication of Claims.**

(a) A citizen or CNMI permanent resident or U.S. permanent resident who is qualified for a

job may make a claim for damages if an employer has not met the requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause, and the employer employs a person who is not a citizen or CNMI permanent resident or U.S. permanent resident for the job.

(b) The Administrative Hearing Office has original jurisdiction to resolve all claims filed pursuant to this section.

(c) A hearing officer shall have general power to issue subpoenas, summon witnesses, require production of books, papers, documents and records, administer oaths, and such other powers as may be necessary to implement this chapter effectively. A hearing officer may refer a matter to the Department for investigation if the hearing officer deems investigation warranted and justified under the circumstances.

(d) A hearing shall be commenced as soon as practicable after filing of a complaint and any mediation that may be held in the matter. Notwithstanding any other provision of law, hearings shall be open to the public. Adequate notice and opportunity to present relevant evidence shall be given to all parties.

(e) The hearing officer shall, upon concluding the hearing, issue any necessary findings, decisions, and orders as soon as practicable. Issuance of findings, decisions, and orders shall be pursuant to 1 CMC § 9110, but shall not be judicially reviewable until final.

(f) The hearing officer is authorized to:

(1) Award actual and liquidated damages in an amount up to six months' wages for the job for which a citizen or CNMI permanent resident or U.S. permanent resident applied; and

(2) Levy a fine not to exceed two-thousand dollars for each violation of any provision of this chapter.

(g) Within fifteen days of issuance, any person or party affected by findings, decisions, or orders made pursuant to subsection (f) of this section may appeal to the Secretary. Upon appeal, the Secretary may, in the Secretary's discretion, restrict review to the existing records, supplement the record with new evidence, hear oral argument, or hear the matter de novo pursuant to 1 CMC §§ 9109 and 9110. The Secretary shall have the same powers as a hearing officer in addition to other powers pursuant to this section. Upon completion of review, the Secretary shall affirm or modify the finding, decision, or order in writing. Any modification shall include supplemental findings. The Secretary's decision shall constitute final action for purposes of judicial review.

(h) Judicial review of a final action of the Secretary is authorized after exhaustion of all administrative remedies and shall be initiated within thirty days of the final action. Judicial review shall be pursuant to 1 CMC § 9112. Appeals from a final action by the Secretary shall be made directly to the Commonwealth Superior Court.

**Source:** PL 15-108, § 4(4528); amended by PL 17-1 § 5(M)(2)(a) and (b) (March 22, 2010),* modified.

**Commission Comment:** The commission replaced references with codified section numbers, deleted figures that repeated written words and changed all occurrences of "CNMI permanent resident and U.S. permanent resident" to "CNMI permanent resident or U.S. permanent resident" pursuant to 1 CMC § 3806(c), (e) and (g). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4529. Statistical Data.**

The Secretary shall maintain statistical data with respect to the number of citizens and CNMI

permanent residents and U.S. permanent residents employed in each of the relevant NAICS categories.

~~(1) Professional, technical, and managerial;~~
~~(2) Clerical, sales, and service;~~
~~(3) Agriculture, fisheries, forestry, and grounds-keeping;~~
~~(4) Light manufacturing;~~
~~(5) Construction and structural work; and~~
~~(6) Housework, gardening, and related private residence work.~~

The Secretary shall describe any special definitions used in these regards to account for all employment of citizens and CNMI permanent residents and U.S. permanent residents within the enumerated categories.

**Source:** PL 15-108, § 4(4529); PL 17-1 § 5(M)(2)(a) and (g) (March 22, 2010),* modified.

**Commission Comment:** The commission changed "resident" to its plural form and changed the semi-colon at the end of the first sentence of this section to a period pursuant to 1 CMC § 3806(g). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4530. Regulations.**

The Secretary shall promulgate regulations to implement the intent of this chapter pursuant to the Administrative Procedures Act including any delegation of the Secretary's duties as imposed herein to any employee of the Department.

**Source:** PL 15-108, § 4(4530).

**Article 3. Government Employment Preference.**

§ 4531. Restrictions on Government Employment.
§ 4532. Exemptions.
§ 4533. Manpower Training Programs.
§ 4534. Reserved.
§ 4535. Contract Personnel.
§ 4536. Payment of Medical and Related Expenses.

**§ 4531. Restrictions on Government Employment.**

Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.

**Source:** PL 15-108, § 4(4531).

**§ 4532. Exemptions.**

Persons other than citizens and CNMI permanent resident and US permanent residents may be exempted from the employment restriction in 3 CMC § 4531 and employed within the following government entities and positions, on a case by case basis:

(a) *Department of Public Health*. Physicians and dentists licensed to practice in the Commonwealth who have attained at least United States or Canadian board-eligible status. In addition, any physician or dentist not a citizen or CNMI permanent resident and US permanent resident who was

first licensed to practice in the Commonwealth prior to January 1, 2008, may be employed by the Commonwealth government.

(b) *Department of Commerce*. Temporary or part-time employees as needed for censuses and statistical surveys.

(c) *Government translators*. Approved foreign national translators for: the Department of Labor, the Office of the Attorney General, the Office of the Public Defender, the Department of Public Safety, the Commonwealth Superior Court, the Commonwealth Supreme Court, and the Marianas Visitors Authority. The Attorney General shall establish guidelines for the approval of foreign national translators for the Executive Branch. The Supreme Court may establish guidelines for the approval of foreign national translators for the Judiciary.

**Source:** PL 15-108, § 4(4532); amended by PL 16-26, § 2.

**Commission Comment:** . . . PL 16-26 took effect on December 24, 2008. PL 16-26 contained severability and savings clause provisions and the following:

> Section 1. Findings and Purpose. The Legislature finds certain licensed health care professional employees who are foreign national workers serve critical and essential functions within the government of the Commonwealth of the Northern Mariana Islands. These professionals include, but are not necessarily limited to, medical doctors, dentists, nurses and other health care professionals. The Legislature finds that the hiring and retention of full-time licensed health care professional employees who are foreign national workers committed to serving the needs of the Commonwealth are necessary to maintain adequate staff of licensed health care professionals in the Department of Public Health. The Legislature, therefore, also finds that in order to attract and retain sufficient numbers of competent and dedicated health care professionals to serve the needs of the Commonwealth, an exception to the moratorium on government hiring of foreign national workers for the Department of Public Health is necessary.
>
> The Legislature further finds that special education professionals, pre-primary education and foreign language instructors who are foreign national workers serve critical and essential functions for the Public School System of the Commonwealth of the Northern Mariana Islands. Therefore, an exception to the moratorium on government hiring of foreign national workers for the Public School System is likewise necessary.

In 2010, Governor Fitial issued several executive orders purporting to suspend provisions of this statute based on emergency powers conferred by Article III, § 10 of the NMI Constitution and 3 CMC § 5121(f). See Exec. Order No. 2010-18, 32 Com. Reg. 31198 (Dec. 2010); Exec. Order No. 2010-17, 32 Com. Reg. 31022 (Nov. 2010); Exec. Order No. 2010-16, 32 Com. Reg. 30856 (Oct. 2010); Exec. Order No. 2010-09; 32 Com. Reg. 31046 (Nov. 2010); Exec. Order No. 2010-08, 32 Com. Reg. 30595 (Aug. 2010).

### § 4533. Manpower Training Programs.

In coordination with the Office of Personnel Management, the Northern Marianas College, the Public School System, and the Workforce Investment Agency, each Commonwealth government entity, except the judiciary, authorized pursuant to this chapter to employ workers other than citizens and CNMI permanent resident and US permanent residents shall develop, maintain, and implement a comprehensive manpower training and education plan covering each position held by a foreign national worker. Failure of the government hiring authority to comply with this provision shall, after thirty days, automatically suspend the privilege of hiring workers other than citizens and CNMI permanent resident and US permanent residents by the non-complying entity, and this provision shall be strictly enforced. The Office of Personnel Management shall monitor automatic suspensions and shall not approve any contract for the employment of a foreign national worker at a government agency that has been suspended for non-compliance pursuant to this section.

**Source:** PL 15-108, § 4(4533).

**§ 4534. Reserved.**

**Source:** PL 15-108, § 4(4534).

**§ 4535. Contract Personnel.**

A government entity authorized to employ persons other than citizens and CNMI permanent resident and US permanent residents under this chapter may employ such persons through a direct employment contract or by a contract for such services with a licensed manpower agency.

**Source:** PL 15-108, § 4(4535).

**§ 4536. Payment of Medical and Related Expenses.**

All employment contracts in which any branch, agency or instrumentality of the Commonwealth government is the employer shall provide for payment of the costs of health insurance for a foreign national worker, as defined in 3 CMC § 4911, on the same terms as for citizen and CNMI permanent resident and US permanent resident employees and other workers, and shall provide for the payment of the costs of repatriation, as defined in 3 CMC § 4911.

**Source:** PL 15-108, § 4(4536).

## CHAPTER 3. RESERVED.

## FORMER CHAPTER 3. MORATORIUM ON THE HIRING OF FOREIGN NATIONAL WORKERS. [REPEALED BY PL 17-1 § 5(N)]

§ 4601. Moratorium. [Repealed by PL 17-1 § 5(N)]
§ 4602. Exemptions. [Repealed by PL 17-1 § 5(N)]
§ 4603. Expiration. [Repealed by PL 17-1 § 5(N)]
§ 4604. Employment Requirements. [Repealed by PL 17-1 § 5(N)]
§ 4605. Reserved. [Repealed by PL 17-1 § 5(N)]
§ 4606. Enforcement.[Repealed by PL 17-1 § 5(N)]
§ 4607. Penalties.[Repealed by PL 17-1 § 5(N)]

**§ 4601. Moratorium. [Repealed by PL 17-1 § 5(N)]**

~~There is hereby enacted a moratorium on the hiring of foreign national workers, as defined in 3 CMC § 4911. This moratorium shall be read in conjunction with 3 CMC § 4532 of this part, and said moratorium shall be strictly construed and adhered to by all agencies and instrumentalities of the Commonwealth government.~~

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4601); repealed by PL 17-1 § 5(N) (March 22, 2010).*

**Commission Comment:** . . . See the comment to 3 CMC § 4401 regarding PL 15-108. The commission replaced section and chapter references with proper code sections pursuant to 1 CMC § 3806(c).

*PL 17-1 (enacted on March 22, 2010) contained the following effective date provision: Section 12. Effective date. This Act shall take effect upon its approval by the Governor

or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

In 2010, Governor Fitial issued several executive orders purporting to suspend this repealed statute based on emergency powers conferred by Article III, § 10 of the NMI Constitution and 3 CMC § 5121(f). See Exec. Order No. 2010-18, 32 Com. Reg. 31198 (Dec. 2010); Exec. Order No. 2010-17, 32 Com. Reg. 31022 (Nov. 2010); Exec. Order No. 2010-16, 32 Com. Reg. 30857 (Oct. 2010); Exec. Order No. 2010-09; 32 Com. Reg. 31047 (Nov. 2010); Exec. Order No. 2010-08, 32 Com. Reg. 30596 (Aug. 2010).

**§ 4602. Exemptions. [Repealed by PL 17-1 § 5(N)]**

~~(a) *Renewals*. The renewal of an employment contract with a foreign national worker for the same position shall not be affected by the moratorium. A foreign national worker who exits the Commonwealth pursuant to 3 CMC § 4953 of this part, shall, at the conclusion of the required six months absence, be considered a renewal for the purposes of this moratorium.~~

~~(b) *Replacements*. In the case of the expiration or termination without renewal of an employment contract with a foreign national worker, the foreign national worker may be replaced only with a citizen or permanent resident, except for the following job categories which shall not be subject to this moratorium: healthcare professionals, educators, scientists, engineers, utility technicians, accountants, positions which are required for the delivery of critical services, construction workers, domestic helpers, farmers, and foreign language translators provided they are approved in the same manner as required under 3 CMC § 4532(c) of this part.~~

~~(c) *Incentive hiring*. An incentive exemption shall be available if citizen and permanent resident employees in the full-time work force of an employer in professional, managerial, human resources, office or administrative assistant, secretary, cashier, retail clerk, front desk receptionist, tour guide, boat captain, sports and recreation positions, and other positions that may be specified by regulation substantially exceed thirty percent of the employer's total full-time work force in these positions. The Secretary shall provide the incentive benchmarks by regulation.~~

~~(d) *Visitor industry*. An exemption shall be available for employment within the visitor industry and supporting services if the twenty percent citizen and permanent resident employment requirement has been met or will be met within one year and a viable plan exists to maintain the required citizen and permanent resident employment indefinitely.~~

~~(e) *Major new development*. The Secretary shall have the authority to grant exemptions from the moratorium imposed by this chapter and allow the hiring of foreign national workers for newly created positions upon making findings that:~~

~~(1) The new development, expansion or hiring by existing enterprises is in the best interest of the Commonwealth; and~~

~~(2) The employment will be on the premises of a new development or expansion of an existing development in which the prospective employer has invested at least one-million dollars in the Third Senatorial District or two-hundred-fifty-thousand dollars in the First or Second Senatorial Districts.~~

~~Projects that receive an exemption under 3 CMC § 4526 of this part from the required percentage employment of citizens and permanent residents requirement may also receive an exemption under this subsection. Prior to granting an exemption, the Secretary shall inform the Governor and the presiding officers of the Legislature of the intention to grant such exemption and the reasons for the exemption.~~

~~(f) *Legislated hiring*. All hiring in light manufacturing shall be subject to the provisions of chapter 7 of division 5 of Title 4 of the Commonwealth Code.~~

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4602), modified; repealed by PL 17-1 § 5(N) (March 22, 2010).*

**Commission Comment:** The commission replaced section and chapter references with proper code sections and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e). *PL *17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4603. Expiration. [Repealed by PL 17-1 § 5(N)]

~~The moratorium shall expire on January 1, 2011, and shall be phased out by that date as provided by regulation.~~

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4603); repealed by PL 17-1 § 5(N) (March 22, 2010).

**Commission Comment:** PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4604. Employment Requirements. [Repealed by PL 17-1 § 5(N)]

~~The employment of persons other than citizens and permanent residents pursuant to any provision of this chapter shall be governed by the provisions of chapter 6 and regulations promulgated thereunder.~~

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4604); repealed by PL 17-1 § 5(N) (March 22, 2010).

**Commission Comment:** PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4605. Reserved. [Repealed by PL 17-1 § 5(N)]

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4605); repealed by PL 17-1 § 5(N) (March 22, 2010).

**Commission Comment:** PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4606. Enforcement. [Repealed by PL 17-1 § 5(N)]

~~The Department of Labor shall not issue any work permit to any foreign national worker in derogation of the moratorium. The Secretary of the Department of Labor, and, where appropriate, the Commonwealth immigration authority, shall enforce the provisions of this chapter and shall promulgate such regulations as are necessary to implement the provisions of this chapter.~~

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4606); repealed by PL 17-1 § 5(N) (March 22, 2010).

**Commission Comment:** PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4607. Penalties. [Repealed by PL 17-1 § 5(N)]**

~~Any person, including an employee of the Commonwealth government, who knowingly or willfully issues or causes to be issued any official document which would facilitate either the entry of an foreign national into the Commonwealth or the employment of a foreign national in the Commonwealth in violation of the provisions of this Chapter or the provisions of any regulation promulgated thereunder is guilty of a felony, and may be punished by a fine of two-thousand dollars. In addition to any fine, any person who violates this section may be punished by imprisonment for not more than five years. A person convicted under this section shall be terminated from his or her government employment and shall not be re-employed by the Commonwealth government, in any capacity, for a period of ten years from the date of conviction.~~

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4607), modified; repealed by PL 17-1 § 5(N) (March 22, 2010).*

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**FORMER CHAPTER 7. Nonresident Worker Relief Act. [Repealed by PL 15-108 § 4]**

§ 4701. Authorization. [Repealed by PL 15-108 § 4]
§ 4702. Rules and Regulations.[Repealed by PL 15-108 § 4]
§ 4703. Qualifications. [Repealed by PL 15-108 § 4]

**FORMER CHAPTER 8. CERTIFICATION PRE-CLEARANCE. [REPEALED by PL 17-1 § 5(P)]**

§ 4801. Required Clearances; Acceptance Limited. [Repealed by PL 17-1 § 5(P)]
§ 4802. Approved List. [Repealed by PL 17-1 § 5(P)]
§ 4803. Limited Applicability of Administrative Procedure Act. [Repealed by PL 17-1 § 5(P)]

**§ 4801. Required Clearances; Acceptance Limited. [Repealed by PL 17-1 § 5(P)]**

~~The Department of Labor shall not accept any health clearance or certification, insurance certification, police clearance, or criminal background check obtained outside the Commonwealth from any person, agency, or entity other than one on an approved list maintained as provided by section 4802 of this chapter.~~

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4801); repealed by PL 17-1 § 5(P) (March 22, 2010).*

**Commission Comment:** . . . See the comment to 3 CMC § 4401 regarding PL 15-108. *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4802. Approved List. [Repealed by PL 17-1 § 5(P)]

~~The Secretary of the Department of Labor shall establish and maintain a list of persons, agencies, and entities in foreign countries from which the Department will accept clearances or certifications in satisfaction of Commonwealth requirements for such certifications or clearances, as provided by section 4801 of this chapter. The list shall include all persons, agencies, and entities approved by the United States Department of State, the United States Citizenship and Immigration Service, or the United States Department of Justice for comparable purposes and may include such other persons, agencies, or entities as the Secretary may determine with the concurrence of the Secretary of Public Health with regard to health clearances or certifications and the Commissioner of Public Safety with regard to police clearances or criminal background checks.~~

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4802); repealed by PL 17-1 § 5(P) (March 22, 2010).*

**Commission Comment:** See the comment to 3 CMC § 4401 regarding PL 15-108. *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4803. Limited Applicability of Administrative Procedure Act. [Repealed by PL 17-1 § 5(P)]

~~The approved list established and maintained pursuant to section 4802 of this chapter, and any amendments thereto, shall be published in the Commonwealth Register, but no comment period shall be required and such list and amendments thereto shall go into effect upon publication.~~

**Source:** . . . repealed and reenacted by PL 15-108, § 4(4803); repealed by PL 17-1 § 5(P). (March 22, 2010).*

**Commission Comment:** See the comment to 3 CMC § 4401 regarding PL 15-108. *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

## FORMER CHAPTER 4. RESERVED. [REPEALED by PL 17-1 § 5(O)]

## CHAPTER ~~6~~ 4. EMPLOYMENT OF FOREIGN NATIONALS. [renumbered chapter]

Article 1. General.
Article 2. Entry into the Commonwealth.
Article 3. Standards for Employment.
Article 4. Adjudication of Disputes.
Article 5. Exit From the Commonwealth.
Article 6. Other Provisions.

**Commission Comment:** The last paragraph of the findings and purpose section of PL 17-1 provides:

> It is the intent of the Legislature [that] the Commonwealth Law Revision Commission shall have discretion to adjust the numbering of code divisions, parts, articles, or sections affected by this Act as necessary to effectuate a reasonable codification of Sections 5 and 6 of this Act.

Although PL 17-1 § 5(Q) provides for renumbering this chapter to chapter 3, the commission elected to reserve chapter 3 pursuant to the above and its authority under 1 CMC § 3806. For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

## Article 1. General.

§ 4911. Foreign National Workers: Definitions.

### § 4911. Foreign National Workers: Definitions.

The definitions in 3 CMC § 4511 are hereby incorporated by reference and, in addition, as used in this chapter, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(a) "Approved employment contract" means a written contract between a foreign national worker and an employer, which has been approved by the Secretary, specifying the terms and conditions for work to be performed by the foreign national worker within the Commonwealth;

(b) "Approved health insurance contract" means a written contract executed by an employer, providing coverage for health care costs of one or more foreign national workers, in a form that has been approved by the Secretary of Public Health;

(c) "Approved security contract" means a written contract executed by an employer providing full security for all employer obligations with respect to the employment of foreign national workers as required by this chapter, in a form that has been approved by the Secretary;

(d) "*Bona fide* non-profit religious undertaking" means a religious organization legally established or incorporated in the Commonwealth that is exempt from Commonwealth taxation, or U.S. taxation as an organization described in 26 U.S.C. § 501(c)(3);

(e) "Debarment" means, pursuant to an administrative order, the temporary or permanent prohibition on employment by an employer of foreign national workers;

(f) "Foreign national worker" means a person who is not a United States citizen, a United States permanent resident, a CNMI permanent resident, or an immediate relative of a United States citizen or a United States permanent resident, or an immediate relative of a CNMI permanent resident and who entered the CNMI as a nonimmigrant for the declared purpose of being employed in the Commonwealth;

(g) "Identification card" means an identification card issued by the Department using the Labor Information Data System (LIDS) or comparable system to assign a unique identification number to a particular person;

(h) "Immediate relative" means a parent, spouse, or child, whether natural or adopted, if adopted before his or her eighteenth birthday, up to twenty-one years of age including step children. A

disabled child of any age qualifies as an immediate relative if in the continuous custody and care of the parent;

(i) "Mediation" means an informal, non-public, confidential meeting attended by the parties to a labor dispute or potential labor dispute together with a mediator at the Administrative Hearing Office in order to seek a voluntary resolution of the dispute satisfactory to all parties and reflected in a written agreement;

(j) "Repatriation" means the exit from the Commonwealth and travel to the point of hire for a foreign national worker or member of the immediate family of a foreign national worker ~~whether~~ by voluntary action of the foreign national worker ~~or by deportation~~; and in the case of the death of a foreign national worker while in the Commonwealth, the embalming and shipment of the body to the point of hire;

(k) "Termination" means, with respect to an approved employment contract, the expiration of the contract according to its terms, termination by a party for cause or as otherwise permitted by this chapter during the term of the contract, or termination by the Secretary for cause during the term of the contract; and

(l) "Transfer" means any process by which a foreign national worker who is a party ~~enters the Commonwealth pursuant~~ to an approved employment contract with one employer becomes employed by a different employer without first exiting the Commonwealth.

(m) "Umbrella permit" means a two-year permit issued prior to November 28, 2009 by the Department of Labor, the Department of Commerce, or under the authority of the Attorney General, to expire on November 27, 2011, that protects the status of the holder to remain in the Commonwealth until revoked or expired.

**Source:** PL 15-108, § 4(4911); (m) added and (f)-(h), (j) and (l) amended by PL 17-1 § 5(Q)(1) (March 22, 2010),* modified

**Commission Comment:** See the comment to 3 CMC § 4401 regarding PL 15-108. The commission replaced section and chapter references with proper code citations, changed capitalization and changed periods to semi-colons in subsections (f) and (h) pursuant to 1 CMC § 3806(c), (f) and (g), respectively.

*PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**Article 2. ~~Entry into the Commonwealth~~. Identification and Documentation.**

§ 4921. Entry by Foreign National Workers. [Deleted by PL 17-1 § 5(Q)(2)(b)]
§ 4922. Approved Employment Contract.
§ 4923. Health Certifications.
§ 4924. Approved Security Contract.
§ 4925. Entry Permit.
§ 4926. Entry By Immediate Family Members of Foreign National Workers.
§ 4927. Entry by Foreign National Workers in Religious Occupations. [Deleted by PL 17-1 § 5(Q)(2)(h)]

**§ 4921. Entry by Foreign National Workers. [Deleted by PL 17-1 § 5(Q)(2)(b)]**

~~A foreign national worker who is twenty-one years of age or older may enter the Commonwealth only pursuant to an approved employment contract, an approved health certification, an~~

~~approved health insurance contract, and an approved security contract. Compliance with entry requirements is reflected by the issuance of the entry permit.~~

**Source:** PL 15-108, § 4(4921), modified; deleted by PL 17-1 § 5(Q)(2)(b) (March 22, 2010).*

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4922. Approved Employment Contract.**

(a) Each foreign national worker in the Commonwealth shall be a party to a currently effective approved employment contract.

(b) An employer may apply to the Department for an approved employment contract pursuant to which a specifically identified foreign national worker will be employed for a one year or a two year term, at the employer's option, provided however that the Secretary may, by regulation, provide for approved employment contracts of shorter terms for specialty jobs and provide for part-time casual and other employment.

(c) The application for an approved employment contract shall be accompanied by a nonrefundable application fee to be established by the Department and supported by the following documentation:

(1) A proposed employment contract signed by the foreign national worker in full compliance with all applicable Commonwealth laws;

(2) A copy of the Notice to Foreign National Workers, required by 4938(a), that has been delivered to the foreign national worker in his or her native language;

(3) An approved health insurance contract signed by the employer;

(4) Such other documentation as required by the Secretary; and

(5) All applicable fees.

(d) The Department shall, in writing, either approve the application ~~and forward it for immigration clearance~~ or deny the application and state the reasons for denial; provided however, the Department may defer action on any application if the employer is a party to any pending case either in the Department or in any court arising from an alleged violation of Commonwealth labor or wage laws.

(e) The Department shall approve only one employment contract for any foreign national worker; provided however, that a foreign national worker in addition to one full time contract employment, or an eligible member of the immediate family of a foreign national worker, may be employed by the Central Statistics Division of the Department of Commerce on a temporary or part-time basis as an enumerator or translator to assist with the census and surveys to be conducted by the Central Statistics Division.

**Source:** PL 15-108, § 4(4922); PL 17-1 § 5(Q) and § 5(Q)(2)(c) (March 22, 2010),* modified.

**Commission Comment:** The commission deleted figures that repeated written words in the above section pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective da

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4923. Health Certifications.**

~~(a) A foreign national worker entering the Commonwealth, or a person entering the Commonwealth as a member of the immediate family of a foreign national worker, shall have in his or her possession a certificate of freedom from communicable disease. This certificate shall have been executed not more than thirty days prior to the date of entry into the Commonwealth in a jurisdiction and by an authority on the approved list established pursuant to 3 CMC §§ 4802.~~

(a) The Secretary may require a foreign national worker admitted to the Commonwealth, or a person admitted to the Commonwealth as a member of the immediate family of a foreign national worker, to undergo a physical examination in the Commonwealth performed by any medical physician licensed to practice general medicine in the Commonwealth by the Commonwealth Medical Professional Licensing Board within ten business days after entry into the Commonwealth. The cost of a physical examination of a foreign national worker shall be paid by the employer of the foreign national worker. The cost of an examination of a member of the immediate family of the foreign national worker shall be paid by the foreign national worker.

(b) ~~A person subject to physical examination pursuant to subsection (b) of this section shall surrender his or her certificate of freedom from communicable disease to the examining physician or other designated person at the time of the examination.~~ Within ten business days after the examination, the examining physician shall transmit the certificate to the Secretary of Public Health for transmission to the Secretary of Labor together with a finding as to whether there is any medical reason that the person should not be permitted to remain in the Commonwealth. This finding shall be based on the medical probability that any disease, whether or not communicable, or any disability or any other medical condition would result in significant danger to the health of the inhabitants of the Commonwealth or the need for prolonged medical care or treatment while in the Commonwealth.

(c) Upon receiving notice that there is a medical reason any foreign national worker or immediate relative should not be permitted to remain in the Commonwealth for health reasons designated as a threat to the public health in the Commonwealth by the Secretary of Public Health, the Secretary shall notify the foreign national worker and offer repatriation at the earliest date on which it is medically safe to travel. If repatriation is not accomplished, the Secretary shall forward the relevant documentation to the federal immigration authorities for deportation.

**Source:** PL 15-108, § 4(4923); PL 17-1 § 5(Q)(2)(d) (March 22, 2010),* modified.

**Commission Comment:** The commission deleted figures that repeated written words in the above section pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4924. Approved Security Contract.**

(a) Prior to ~~issuance of an entry permit for~~ commencement of work by a foreign national worker, an employer shall submit to the Secretary an approved security contract providing financial assurance, in an amount acceptable to the Secretary, for the faithful performance of the obligations of the employer under the approved employment contract and Commonwealth law with respect to the employment of foreign national workers.

(b) After the commencement of operation of the LTARF as provided in subsection (e) of this section, the approved security contract must be in one of three forms:

(1) Bonding by contract with a bonding company carrying a national rating in the United States and approved by the Secretary;

(2) Bonding by contract with a bonding company approved by the Secretary and within an allotment established by the Secretary for that company for a specified number of foreign workers based on the financial assets of the company, the estimated total repatriation costs plus an estimated amount to meet other obligations of the employers to be covered by the company's financial assets, and other relevant factors as provided by regulation; or

(3) Trust account coverage by direct contract with the Department for payment for each foreign national worker into an account maintained by the Department, provided however that only employers with no outstanding unpaid amounts due the trust account or judgments arising out of Department proceedings more than sixty days in arrears, except those pending appeal, are eligible for trust account coverage. The total amount paid into the trust account by an employer must cover the estimated total repatriation cost for the foreign worker plus an estimated amount to cover other obligations of the employer. If a foreign national worker is repatriated by the employer and the Department determines that there are no outstanding obligations of the employer with respect to that worker, the amount paid into the trust account with respect to that worker shall be repaid by the Department to the employer less an amount, as determined by the Secretary, to reimburse the Department for its actual administrative costs; such costs shall not exceed 4% of the amount deposited by the employer.

(c) Each approved security contract shall include the term "Department of Labor surety." An instrument including the term "Department of Labor surety" is payable up to the full amount, without regard to any limiting terms, notice, attendance at hearing, or any other procedural requirement, immediately upon issuance of a final order or judgment by a hearing officer, the Secretary, or a court of competent jurisdiction arising out of any Department proceeding.

(d) Any default on an approved security contract shall require the Department to publish an appropriate notice that the defaulting person or corporate entity is no longer acceptable to the Department. An employer that is a party to any approved security contract with such defaulting person or entity must provide the Department with a substitute approved security contract within sixty days of receipt of notice or forfeit the privilege of employing foreign national workers.

(e) There is hereby created the Labor Trust Account Revolving Fund (LTARF) which shall be accounted for separately from the General Fund.

(1) All monies received as payments under contracts provided for in subsection (b)(3) above shall be deposited into the LTARF.

(2) Expenditure authority over the LTARF is vested in the Secretary. Monies in the revolving fund shall be available without appropriation by the Legislature and shall be used to pay judgments for repatriation, unpaid wages, and other damages against employers arising out of Department proceedings with respect to foreign national workers, which remain unpaid by employers or their bonding companies after sixty days or as provided by regulation. The Department shall have a right to proceed against any such employer or bonding company in the place of the foreign national worker to whom or on whose behalf payments were made from the revolving fund. Any balance remaining from funds collected under subsection (b)(3) shall be refunded to the employer in accordance with that subsection.

(3) Any interest earned on the LTARF shall become part of the fund.

(4) With respect to the management of the LTARF and the expenditures made from it, the Department is exempt from Title 1, Division 7, Part 1, Chapters 1 through 7, 1 CMC §§ 7101 et seq.

**Source:** PL 15-108, § 4(4924); PL 17-1 § 5(Q)(2)(e) (March 22, 2010),* modified.

**Commission Comment:** The commission deleted figures that repeated written words in the above section pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the

following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4925. ~~Entry Permit~~. Foreign National Worker Status.**

(a) ~~After receipt of an approved employment contract and an approved security contract together with any other documentation required by the Secretary, the Commonwealth immigration authority shall authorize for entry or deny entry to the foreign national worker named in the approved employment contract.~~ The Secretary shall cause to be issued an identification card which shall include the foreign national worker's name, LIDS number, such identifying information as the Secretary shall find necessary, and the expiration date of the card.

(1) If the foreign national worker is admitted for entry, the Commonwealth immigration authority shall cause to be issued an identification card which shall include the foreign national worker's name, employer, job classification, citizenship, expiration date of the identification card, and identification card number. The foreign national worker shall take receipt of the identification card as provided in 3 CMC § 4934. No penalty shall be imposed upon a foreign national worker for failure to comply with 3 CMC § 4931(b) or any other provision of law regarding possession of identification cards until after receipt of the identification card by the foreign national worker.

(2) If the foreign national worker is denied entry, the Commonwealth immigration authority shall state in writing and transmit to the Department and the employer the reasons for denying entry.

(b) Each identification card may be renewed annually until the foreign national worker leaves the Commonwealth. ~~Calculation of the date for the annual renewal of an entry permit shall begin on the date the foreign national worker arrives in the Commonwealth. Except as provided in this chapter, a foreign national worker shall not be required to exit the Commonwealth in order to renew an entry permit.~~

(c) The Secretary, by regulation, may establish streamlined procedures for renewals, including letter renewal, if there are no changes in the information contained on the initial application.

(d) All fees for the initial application for and annual renewals of identification cards for a foreign national worker shall be the responsibility of and shall be paid, without offset or charge back to the foreign national worker, by the employer or the employer's registered agent.

(e) Umbrella permits issued by the Department continue in full force and effect until revoked. Each holder of an umbrella permit must also hold a current identification card.

**Source:** PL 15-108, § 4(4925); (e) added and (a)-(d) and the title of this section amended by PL 17-1 § 5(Q)(2)(f) (March 22, 2010).*

**Commission Comment:** *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4926. Immediate Relative of a Foreign National Worker Status.**

~~(a) Immediate family member of a foreign national worker may enter the Commonwealth during the term of an approved employment contract under which the foreign national worker is employed, provided however that no immediate family member may enter the Commonwealth until~~

~~ninety days after the entry of the foreign national worker.~~

(a) ~~Every member of the immediate family of a foreign national worker who enters the Commonwealth shall have an entry permit which shall expire upon the expiration or termination of that foreign national worker entry permit by which he or she entered.~~ Each immediate relative of a foreign national worker shall be issued an identification card which shall include the sponsoring foreign national worker's name, and the relative's name, LIDS number, such identifying information as the Secretary finds necessary, and the expiration date of the card. The expiration date of the card shall be the same expiration date as the identification card held by the sponsoring foreign national worker.

~~(c) Prior to issuance of an entry permit for a member of the immediate family of a foreign national worker, the foreign national worker shall provide to the Secretary proof that the foreign national worker earns an annual wage equal to or greater than one-hundred-fifty percent of the United States Department of Health and Human Services Poverty Guidelines for the State of Hawaii, that the foreign national worker has, as a condition of entry of each immediate family member, obtained medical insurance coverage for each immediate family member, and that the foreign national worker has made education arrangements for each minor child.~~

(b) Each identification card for an immediate family member shall be renewed annually. ~~Calculation of the date for the annual renewal of an entry permit shall begin on the date the foreign national worker arrives in the Commonwealth. An immediate family member is not required to exit the Commonwealth in order to renew an entry permit .~~

(c) ~~All fees for the initial application for and annual renewals of entry permits for immediate family members shall be the responsibility of the foreign national worker.~~ Umbrella permits issued by the Department to immediate relatives continue in full force and effect until revoked. Each holder of an umbrella permit must also hold a current identification card.

~~This section shall have only prospective application.~~

**Source:** PL 15-108, § 4(4926); PL 17-1 § 5(Q)(2)(g) (March 22, 2010),* modified.

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4927. Entry by Foreign National Workers in Religious Occupations. [Deleted by PL 17-1 § 5(Q)(2)(h)]

~~(a) A specifically identified foreign national who for the two years immediately preceding the time of application for entry has been a minister or its equivalent of a religious denomination outside the Commonwealth and seeks entry to be employed, at a bonafide non-profit religious undertaking in the Commonwealth for the purposes of carrying on the vocation of minister or its equivalent, may enter the Commonwealth under an approved employment contract for a period not to exceed three consecutive years.~~

~~(b) Except for 3 CMC § 4922(b) of this chapter, foreign national workers who enter under this section shall be subject to the requirements of this chapter. Approved employment contracts issued under this section shall be for a period not to exceed three years.~~

~~(c) Entry of immediate family members of foreign national workers admitted under this section shall be subject to 3 CMC § 4926 of this chapter.~~

~~(d) The Commonwealth immigration authority shall not issue an entry permit to any person~~

~~who is not a citizen or permanent resident and who intends to enter the Commonwealth for the activities described in subsection (a) of this section unless the provisions of this section have been fully satisfied. This section shall have only prospective application.~~

**Source:** PL 15-108, § 4(4927), modified; deleted by PL 17-1 § 5(Q)(2)(h) (March 22, 2010).*

**Commission Comment:** The commission replaced section references with proper code citations and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**Article 3. Standards for Employment.**

§ 4931. Standard Conditions of Employment.
§ 4932. Medical Insurance.
§ 4933. Benefits.
§ 4934. Orientation.
§ 4935. Contract Renewal.
§ 4936. Transfer By Administrative Order.
§ 4937. Reductions in Force.
§ 4938. Avoidance and Early Resolution of Potential Labor Disputes.
§ 4939. Inspection of Worksites.
§ 4940. Investigations.

**§ 4931. Standard Conditions of Employment.**

(a) *Single employer*. A foreign national worker may be employed by only one employer pursuant to a single approved employment contract except as provided by regulation.

(b) *Identification*. Upon being issued an identification card, a foreign national worker shall maintain the identification card in his or her personal possession at all times during working hours, including at all times during travel by airplane or boat during working hours. Loss or destruction of the identification card shall be reported to the Department within two business days. Seizure of an identification card by an employer shall be a violation of this section.

(c) *Wage rates*. No foreign national worker employed pursuant to this chapter shall be paid less than the minimum wage provided by law. An approved employment contract shall provide that any future increase in the applicable minimum wage prior to the termination of the contract shall apply to work performed under the contract on or after the effective date of the increase.

(d) *Location of work site*. The location of the work site shall be specified in the approved employment contract.

(e) *Hours of work*. The hours of work shall be specified in the approved employment contract. Overtime work may be offered by the employer but not required. Any period of time during which the foreign national worker is required to be present at any location within the Commonwealth designated by his or her employer shall be considered working hours for purposes of determining wages and overtime pay.

(f) *Payment of wages*. Unless otherwise provided by law, a foreign national worker shall be paid bi-weekly in an amount specified in the approved employment contract. Nothing in this Section requires an employer to pay wages for which the employee did not work. Payment of wages shall be in full compliance with Commonwealth law and applicable federal law.

(g) *Deductions from wages*. Each expense of the employer to be deducted from the wages of a foreign national worker shall be specified in the approved employment contract and shall be itemized on the wage documentation provided to the foreign national worker by the employer. Allowable deductions shall be defined in regulations, and no other deductions may be made from the wages of a foreign national worker.

(h) *Documents*. The employer shall provide to each foreign national worker promptly after arrival in the Commonwealth a copy of the approved employment contract. No employer may withhold from any foreign national worker any passport, identification card, or other document related to the status of the foreign national worker.

(i) *Subcontracting*. Any subcontract by an employer to another employer for the services of a foreign national worker shall be implemented or performed only with the prior approval of the Secretary. The exception for census workers in 3 CMC § 4922(e) shall apply to this subsection.

(j) *Contract changes*. Any change to an existing approved employment contract shall be implemented or performed only with the prior approval of the Secretary.

(k) *Manpower plan*. Prior to the approval of an employment contract for a foreign national worker, an employer with ten or more employees shall submit to the Department a comprehensive manpower training and education plan for increasing the percentage of citizens and permanent residents in the workforce of the employer; provided however, the Secretary may, by regulation, remove the exemption available to employers against whom two or more judgments are entered in Department proceedings in any two year period. An employer that has submitted adequate documentation with respect to compliance for the immediately preceding two years with 3 CMC § 4525 ~~the twenty percent requirement~~ under chapter 2 of this part may be exempted at the discretion of the Secretary.

**Source:** PL 15-108, § 4(4931); subsections (a) and (k) amended by PL 17-1 § 5(Q)(3)(a) and subsections (b) and (h) amended by PL 17-1 § 5(Q) (March 22, 2010),* modified.

**Commission Comment:** The commission replaced section references with proper code citations and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4932. Medical Insurance.**

(a) Employers shall pay all expenses of necessary medical care for foreign national workers except as provided by regulation. After commencement of operation of the LHIRF as provided in subsection (d) of this section, employers of foreign national workers shall be required to have an approved health insurance contract providing coverage for each foreign national worker employed. This contract shall be effective upon entry of the foreign national worker to the Commonwealth and may be cancelled upon the expiration of the employer's obligation as provided in subsection (b) of this section.

(b) The employer's obligation to carry medical insurance for each foreign national worker employed shall continue for the duration of an approved employment contract and until the earliest of the following:

(1) Exit of the foreign national worker from the Commonwealth; or

(2) Sixty days after the lawful termination of an approved employment contract with the foreign national worker, except that the employer's obligation to pay medical expenses shall continue during the pendency of a renewal application filed with the Department.

(c) The approved health insurance contract must cover all needed nonelective care for foreign national workers, include a co-pay element approved by the Secretary of Health, and must be in one of three forms:

(1) Self insurance by direct contract with one or more medical providers licensed in the Commonwealth or elsewhere, provided however that only employers with more than $1 million in assets and no outstanding unpaid bills more than sixty days in arrears to CHC are eligible to self-insure;

(2) Insurance by contract with an insurance company carrying a national rating in the United States and approved by the Secretary of Public Health; or

(3) Pool insurance by direct contract with the Commonwealth Health Center for a monthly premium for each foreign national worker, provided however that only employers with no outstanding unpaid premiums more than sixty days in arrears to CHC are eligible for pool insurance and the total annual premium payments for pool insurance must be calculated to cover the total annual cost of the care provided to workers in the pool. The Secretary of Public Health shall promulgate regulations for the implementation of this Section.

(d) There is hereby created the Labor Health Insurance Revolving Fund (LHIRF) which shall be accounted for separately from the General Fund.

(1) All monies received as payments under contracts provided for in subsection (c)(3) above shall be deposited into the LHIRF.

(2) Expenditure authority over the LHIRF is vested in the Secretary of Public Health. Monies in the revolving fund shall be available without appropriation by the Legislature and be used to pay for the health care obligations of participating employers with respect to foreign national workers and the health care obligations of participating foreign national workers with respect to their immediate family members and associated or supporting expenses of the Commonwealth Health Center.

(3) Any interest earned on the LHIRF shall become part of the Fund.

(4) With respect to the management of the revolving fund and the expenditures made from it, the Department of Public Health is exempt from Title 1, Division 7, Part 1, Chapters 1 through 7, 1 CMC §§ 7101 et seq.

**Source:** PL 15-108, § 4(4932), (a) amended by PL 17-1 § 5(Q)(3)(b) (March 22, 2010),* modified;

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4933. Benefits.**

Except as otherwise provided by a memorandum or other agreement between the Commonwealth and the foreign country that issued a passport to the foreign national worker, employers may but are not required to provide housing, food, transportation, and other benefits beyond the medical insurance required under 3 CMC § 4932; and foreign national workers may not be required by an employer to utilize housing, food, transportation, or other benefits beyond the medical insurance required under 3 CMC § 4932.

**Source:** PL 15-108, § 4(4933).

**Commission Comment:** The commission replaced section references with proper code citations and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e).

**§ 4934. Orientation.**

(a) Within one week of arrival in the Commonwealth each foreign national worker shall attend an orientation at the Department or other location as designated by the Secretary. The orientation shall cover the rights and obligations of employers, agents of employers, and foreign national workers and such other information as the Secretary deems useful in avoiding potential labor disputes. Orientations shall be conducted on normal business days by employees of the Department.

(b) Identification cards issued pursuant to 3 CMC § 4925 shall be delivered to the foreign national worker at the orientation session. The foreign national worker shall acknowledge receipt of the identification card and attendance at the orientation.

(c) Any employer of a foreign national worker or a representative may attend an orientation session at any time.

(d) The Secretary may cancel an orientation session due to lack of demand.

**Source:** PL 15-108, § 4(4934); PL 17-1 § 5(Q) (March 22, 2010),* modified.

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4935. Contract Renewal.**

(a) An approved employment contract with a foreign national worker may be renewed. The criteria for approval of renewals shall be provided by regulation.
~~An approved employment contract with a foreign national worker may be renewed for work within the same job classification under which the foreign national worker first entered the Commonwealth or under which the foreign national worker was employed immediately prior to the effective date of this chapter. No right to renew is conferred by this or any other section in this chapter. The number of permitted renewals of approved employment contracts and the conditions or criteria fix approval of renewals shall be provided by regulation.~~

(b) A request for renewal shall be made by submitting to the Secretary a renewal form signed by the employer and foreign national worker; a new approved employment contract if necessary; an approved health insurance contract as provided in 3 CMC § 4932, an approved security contract as provided in 3 CMC § 4924; a nonrefundable and nontransferable renewal application fee; and such additional documentation the Secretary may require by regulation.

(c) A request for renewal shall be submitted no earlier than forty-five days prior to the: termination date and no later than thirty days prior to the termination date of an approved employment contract.

**Source:** PL 15-108, § 4(4935); (a) amended by PL 17-1 § 5(Q)(3)(c) (March 22, 2010),* modified.

**Commission Comment:** The commission replaced section references with proper code citations and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor

or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4936. Transfer By Administrative Order.**

A foreign national worker shall not transfer from one employer to another at any time prior to or after contract expiration. A transfer or extension of time to transfer may be granted as a remedy only pursuant to an administrative order issued by a hearing officer. This section shall not limit any right or remedy provided under Commonwealth law.

**Source:** PL 15-108, § 4(4936); PL 17-1 § 5(Q)(3)(d) (March 22, 2010).

**Commission Comment:** PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4937. Reductions in Force.**

An employer who employs foreign national workers may reduce the number of current employees based on economic necessity. The employer shall provide notice to the Department at least sixty days prior to the reduction in force.

**Source:** PL 15-108, § 4(4937), modified.

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e).

**§ 4938. Avoidance and Early Resolution of Potential Labor Disputes.**

(a) *Notice to Foreign National Workers*. ~~The Secretary shall approve a form of written notice to be delivered by the employer to each prospective foreign national worker prior to arrival in the Commonwealth and to be delivered to each prospective foreign national worker upon arrival at immigration in the Commonwealth.~~ The Secretary shall approve a form of written notice and each employer shall deliver the notice to each foreign national worker upon commencement of employment within the Commonwealth. The notice shall be in the principal language of the foreign national worker and shall explain clearly, in separate sentences, each of the basic legal employment rights of foreign national workers in the Commonwealth as provided by law; and such other information as the Secretary deems useful in avoiding potential labor disputes.

(b) *Reporting of potential disputes*.

(1) In the event that an employer fails to make full and complete payment of biweekly wages less allowable deductions on two successive occasions, or if a conflict arises between the foreign national worker and the employer about working conditions or the implementation of the terms of the approved employment contract, the foreign national worker shall report the potential dispute to the Department promptly in order to facilitate early resolution of the potential dispute and to maintain the employment relationship.

(2) In the event that a foreign national worker fails to report for work for two successive weeks without notice to the employer of medical or other reasons for absence, or if a conflict arises between the employer and the foreign national worker about working conditions or the implementation of the terms of the approved employment contract, the employer shall report the potential dispute to the Department promptly in order to facilitate early resolution of the

potential dispute and to maintain the employment relationship.

(c) *Accountability*. Each employer is accountable for every foreign national worker for whom the employer has had an approved employment contract in effect at any time during the preceding calendar year and shall ensure that such persons are currently employed by the employer, have transferred to another employer by administrative order, have exited the Commonwealth, are otherwise accounted for as remaining in the Commonwealth lawfully, or are deceased. In the event that an employer becomes unable to account for a foreign national worker, the employer shall report to the Department within fifteen business days. This provision shall have only prospective application.

(d) *Mediation of labor disputes*. The Administrative Hearing Office shall, as it finds necessary and useful, conduct early intervention in potential and actual labor disputes in order to seek a mediated resolution.

(1) Upon the filing of a labor complaint, or upon the receipt of a report from an employer or a foreign national worker pursuant to subsection (c) of this section that reasonably appears likely to be resolved through mediation, the Administrative Hearing Office may set the matter for prompt mediation and notify the parties to appear.

(2) In the event that a matter is set for mediation, the parties shall attend the mediation and make a good faith attempt to settle the dispute before proceeding with the claim. If the Department is the complainant, it may waive the mediation requirement.

(3) Failure of a complainant to appear at the mediation without providing the Administrative Hearing Office with advance written notice at least five days prior to the scheduled appearance may result in the dismissal of a complaint without prejudice.

(4) At a mediation session, a hearing officer may issue a notice of hearing with respect to the complaint, dismiss a complaint as untimely under Section 4962(b), and take other administrative actions to assist in the prompt resolution of the complaint.

**Source:** PL 15-108, § 4(4938); (a) amended by PL 17-1 § 5(Q)(3)(e) (March 22, 2010),* modified.

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511. å

**§ 4939. Inspection of Worksites.**

(a) *Administrative inspections of worksites*. In order to enforce the labor laws of the Commonwealth, the Secretary or a designee may inspect any worksite where foreign national workers are employed.

(1) No warrant is required for inspection of a worksite, and the Department need not present any evidence of a violation of labor laws or regulations as a basis for such an inspection. As a condition of enjoying the privilege of employing foreign national workers in the Commonwealth, every employer who executes an approved employment contract with a foreign national worker shall be deemed to have consented, expressly and in writing, to administrative inspections of the employer's worksites in accordance with the provisions of this chapter.

(2) No notice of the date and time of the inspection need be given to the employer in advance of the actual inspection.

(3) The Department shall furnish, at a reasonable cost, to every employer of foreign national workers whose worksite is subject to inspection a list of revised statutes and regulations

describing the employer's obligations and defining the inspector's authority.

(b) *Frequency of inspections*. The rules governing the frequency of administrative inspections shall be prescribed by regulation and published in an administrative schedule.

(c) *Scope of inspections*. The inspector may inspect:

(1) All public areas of the worksite and premises to which the general public might reasonably be expected to have access to during normal business hours;

(2) All areas of the worksite and premises in which workers are observed, or might reasonably be expected to have access to during the normal operation of the employer's business;

(3) The employer's payroll records, approved foreign national worker contracts, or any other documents or business records the employer is required to collect, maintain or produce for inspection pursuant to this chapter, regulations, and the Minimum Wage and Hour Act;

(4) All equipment, machines, tools, or devices any worker might reasonably be expected to use, operate or maintain, in the normal course of the employer's business;

(5) All safety devices, safeguards (such as machine guarding, electrical protection, scaffolding, safe walking-working surfaces, means of egress in case of emergencies or fire, ventilation, noise exposure protection, personal protective equipment for eyes, face, head and feet, fire protection and sanitation), drinking water supply and toilet facilities;

(6) All waste disposal equipment, trash and refuse containers; and

(7) Employer-provided housing and common areas, including, but not limited to: fire protection devices or improvements; sanitation equipment; ventilation, whether natural or mechanical; drinking water supply; toilet facilities; cooking facilities, equipment and appliances; food and food storage equipment and facilities; lighting; windows and screens; bedding; laundry facilities, equipment and supplies.

(d) *Authority of inspectors*.

(1) If a violation of any labor law or regulation is found, the inspector may issue a citation, notice of violation, or other process intended to correct the violation or enjoin the employer from certain practices or commence an enforcement action against the employer.

(2) The inspector may contact all persons on the worksite to ascertain whether they are foreign national workers and whether they are in possession of valid identification cards, as required by law.

(3) The inspector shall not detain or arrest any person, but may refer any person to another enforcement agency for further action consistent with the laws of the Commonwealth or of the United States.

(e) *Show cause hearing*. The Administrative Hearing Office shall disqualify an employer who has refused inspection from employing foreign national workers for a period of at least six months, unless the employer can prove by clear and convincing evidence, that the inspection:

(1) Was not requested during normal business hours;

(2) Exceeded the frequency of inspections allowed;

(3) Exceeded the scope of inspections allowed or was outside the regulatory authority of the Department;

(4) Was motivated by spite, harassment, or some improper motive unrelated to the enforcement of this chapter;

(5) Was contrary to specific, valid privacy concerns to the employer that are not accommodated by provisions (1) through(4) of this subsection.

(f) *Personnel for inspections*. For purposes of carrying out responsibilities pursuant to this section, the Secretary may, by agreement with other agencies of the Commonwealth government, utilize with or without reimbursement, the services, personnel, or facilities of the other agencies

including without limitation the Commonwealth immigration authority.

(g) *Inspections of Worksites Pursuant to Warrant*.

(1) In those instances where the Secretary or a designee intends to inspect any location or worksite in furtherance of obtaining evidence related to a specific criminal investigation, a search warrant from the Commonwealth Superior Court, requiring a showing of probable cause, shall be required.

(2) In the event that an employer refuses consent for an inspection or if the Department's inspection will exceed the scope or frequency of the inspections authorized under subsections (a) through (e) of this section, the Secretary or a designee may seek an administrative warrant from the Department's Administrative Hearing Office.

(3) An administrative warrant shall be granted if the Department demonstrates to the satisfaction of a hearing officer that one of the following standards has been met:

(i) The worksite has been chosen for an inspection on the basis of a general administrative plan derived from neutral criteria for the enforcement of Commonwealth labor laws and regulations;

(ii) The Department has presented evidence establishing reasonable suspicion of a recent, ongoing or imminent violation of this chapter, regulations, the Minimum Wage and Hour Act, or any other Commonwealth law protecting the health and safety of employees, at the worksite for which the administrative warrant is sought; or

(iii) The Department has presented evidence that the employer has been cited for a violation of Commonwealth labor laws or regulations within the past twelve months at the worksite in question, and the past violation is one that is easily repeated, easily concealed, and poses a risk to the health and safety of one or more employees .

**Source:** PL 15-108, § 4(4939); (a) through (d) amended by PL 17-1 § 5(Q) (March 22, 2010),* modified.

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4940. Investigations.

The Department or a designee shall conduct investigations as the Department may deem appropriate and necessary to enforce the provisions of this chapter and regulations, and to ensure lawful working conditions, employer-supplied benefits, and the health and safety of foreign national workers.

**Source:** PL 15-108, § 4(4940); PL 17-1 § 5(Q) (March 22, 2010).*

**Commission Comment:** *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

## Article 4. Adjudication of Employment Disputes.

§ 4941. Complaints and Actions in Labor Matters.
§ 4942. Jurisdiction of the Administrative Hearing Office.
§ 4943. Reserved.
§ 4944. Powers of the Hearing Officer.
§ 4945. Service of Process.
§ 4946. Conduct of Hearings.
§ 4947. Orders and Relief.
§ 4948. Appeal to the Secretary.
§ 4949. Judicial Review.
§ 4950. Preservation of Private Rights of Action. [new section]

**§ 4941. Complaints and Actions in Labor Matters.**

(a) *Individual complaints*. Any foreign national worker who is aggrieved by the failure or refusal of his or her employer to comply with an approved employment contract may make a complaint to the Department. Any employer of a foreign national worker who is aggrieved by the failure or refusal of his or her employee to comply with an approved employment contract may make a complaint to the Department.

(b) *Department actions*. The Department may commence an action against an employer or a foreign national worker for an alleged violation of the labor or wage laws of the Commonwealth.

(c) *Court actions*. The Attorney General, at the request of the Secretary, may institute an action in any court of competent jurisdiction for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of this chapter.

**Source:** PL 15-108, § 4(4941).

**§ 4942. Jurisdiction of the Administrative Hearing Office.**

(a) *Jurisdiction*. The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of the labor and wage laws of the Commonwealth, including but not limited to any violation of this chapter and regulations promulgated thereunder. The Commonwealth Superior Court shall have concurrent jurisdiction to resolve all labor and wage violations that are criminal in nature.

(b) *Single action required*. The Administrative Hearing Office shall hear all claims of the foreign national worker or the employer in a single action. The failure of a party to assert all claims before the Administrative Hearing Office arising out of an employment relationship shall result in a waiver by the party of unasserted claims and bar assertion in a subsequent proceeding to the fullest extent permitted by Commonwealth law.

(c) *Limitation on stays of proceedings*. The Administrative Hearing Office shall not stay any proceeding to allow the parties to proceed with their claims in a different forum except upon order of a court of competent jurisdiction.

**Source:** PL 15-108, § 4(4942).

**§ 4943. Reserved.**

**Source:** PL 15-108, § 4(4943).

**§ 4944. Powers of the Hearing Officer.**

A hearing officer shall have general power to issue subpoenas, summon witnesses, require production of books, papers, documents and records, administer oaths, and such other powers as may

be necessary to implement this chapter effectively. A hearing officer may refer a matter to the Department for investigation if the hearing officer deems investigation warranted and justified under the circumstances.

**Source:** PL 15-108, § 4(4944); PL 17-1 § 5(Q) (March 22, 2010).*

**Commission Comment:** *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4945. Service of Process.**

Service of process for any notice of any kind required for any proceeding conducted by the Administrative Hearing Office may be by personal service, by first class mail, postage prepaid, to the foreign national worker at the address supplied with the complaint or any written update provided to the Department, and to the employer at the address supplied with the application for the approved employment contract or any written update provided to the Department, or by publication in any English-language newspaper of general circulation in the Commonwealth, at the discretion of the Administrative Hearing Office.

**Source:** PL 15-108, § 4(4945).

**§ 4946. Conduct of Hearings.**

A hearing shall be commenced as soon as practicable after filing of a complaint and any mediation that may be held in the matter. Adequate notice and opportunity to present relevant evidence shall be given to all parties. Notwithstanding any other provision of law, a hearing may be closed at the discretion of the Administrative Hearing Office upon a showing that it is in the best interests of a party. A decision to close or not to close a hearing shall be reviewable by the Secretary.

**Source:** PL 15-108, § 4(4946).

**§ 4947. Orders and Relief.**

(a) The hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit. Dismissal shall be reviewable pursuant to the Administrative Procedure Act (1 CMC § 9101 et seq.).

(b) The hearing officer shall, upon concluding a hearing, issue any necessary findings, decisions, and orders as soon as practicable.

(c) Issuance of findings, decisions, and orders shall be pursuant to 1 CMC § 9110, but shall not be judicially reviewable until final.

(d) The hearing officer is authorized to:

(1) Award unpaid wages or overtime compensation, amounts unlawfully deducted from wages or unlawfully required by an employer to be paid by a foreign national worker, damages for unlawful termination of an approved employment contract, or damages, when appropriate, for conduct of the employer that is in violation of Commonwealth or federal law;

(2) Assess liquidated damages in twice the amount of unpaid wages or overtime compensation in any case in which a foreign national worker prevails on unpaid wages or overtime compensation claims unless the hearing officer finds extenuating circumstances; and assess liquidated damages in an amount to be determined at the hearing in cases in which the

employer's conduct in failing to pay wages or overtime is found to have been willful or retaliatory;

(3) Cancel or modify an identification card or an approved employment contract;

(4) Order temporary or permanent debarment of an employer;

(5) Disqualify a foreign national worker, temporarily or permanently, from employment in the Commonwealth;

(6) Levy a fine not to exceed two-thousand dollars for each violation of any provision of this chapter;

(7) Issue declaratory or injunctive relief as appropriate; and

(8) Award attorneys fees when appropriate in addition to any other enumerated remedy; provided however that attorneys fees shall not be recoverable against the Commonwealth.

(9) Modify an umbrella permit. An umbrella permit may be continued in effect on any of the bases upon which it could have been granted.

(10) Revoke umbrella permits for violation of, or condition the continuation in effect of umbrella permits as appropriate to secure compliance with, Commonwealth law, regulations, orders of a hearing officer, or terms of the permit.

(11) Impose such other sanction, order or relief as may reasonably give effect to Division 4, Title 3.

(e) If other remedies are insufficient to provide a foreign national worker the benefit of the bargain made when entering the approved employment contract, the hearing officer may grant a transfer so that a foreign national worker may become employed under a new approved employment contract without first exiting the Commonwealth, provided that:

(1) The grounds for granting transfer relief are limited to an unlawful termination of an approved employment contract by an employer; the voiding of an approved employment contract or debarment of an employer for a violation under this chapter; a reduction in force pursuant to 3 CMC § 4937; the abandonment of the worker during the term of an approved employment contract, but prior to ninety days before the termination date of the contract, by an employer who failed to pay bi-weekly wages on two successive occasions, closed a business, declared bankruptcy, or exited the Commonwealth evidencing an intent not to return; or, upon a finding by the hearing officer that the foreign national worker has prevailed under an equivalent theory of law or equity and that transfer relief is appropriate.

(2) A transfer may be granted only to a foreign national worker who has complied with the provisions of the approved employment contract to the extent practicable under the circumstances, and for whom transfer relief is required in order to assure receipt of the benefit of the bargain under the contract that is the subject of the action.

(3) A transfer shall be completed within thirty days of the order and in compliance with 3 CMC §§ 4922, 4924, and 4925 of this chapter.

(f) The hearing officer may authorize a foreign national worker to be employed in the Commonwealth on a temporary basis pending a hearing with respect to a labor complaint. A temporary work authorization shall end two business days after the hearing officer's order is issued.

(g) The hearing officer may assess costs for repatriation of a foreign national worker.

(h) The hearing officer may find an action to be frivolous if it is unfounded in fact or law or initiated primarily to obtain an undue pecuniary benefit or for distraction or delay. The filing of an action which is determined by a preponderance of the evidence to be frivolous shall be grounds for permanently disqualifying the foreign national worker who filed the action from employment in the Commonwealth or permanently barring an employer who filed the action from further employment of foreign national workers.

(i) The hearing officer shall notify the Commonwealth immigration authority promptly

upon cancellation or modification of an identification card.

**Source:** PL 15-108, § 4(4947); (d)(3) and (i) amended by PL 17-1 § 5(Q) and subsections (d)(9)-(11) added by § 5(Q)(4)(a)-(c)(March 22, 2010),* modified.

**Commission Comment:** The commission replaced section references with proper code sections and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4948. Appeal to the Secretary.**

(a) Within fifteen days of issuance, any person or party affected by findings, decisions, or orders made pursuant to 3 CMC § 4947 of this chapter may appeal to the Secretary by filing a written notice of appeal, in a form prescribed by regulations, stating the grounds for the appeal. If no appeal is made to the Secretary within fifteen days, the findings, decisions, or orders shall be unreviewable administratively or judicially.

(b) Upon appeal, the Secretary may, in the Secretary's discretion, restrict review to the existing records, supplement the record with new evidence, hear oral argument, or hear the matter *de novo* pursuant to 1 CMC §§ 9109 and 9110. The Secretary shall have the same powers as a hearing officer, including but not limited to the power to grant or extend a temporary work authorization, in addition to other powers pursuant to this chapter.

(c) Upon completion of review, the Secretary shall confirm or modify the finding, decision, or order in writing as soon as practicable. Any modification shall include supplemental findings. The Secretary's decision shall constitute final action for purposes of judicial review. Failure by the Secretary to confirm or modify a finding, decision, or order within thirty days shall constitute confirmation of each of the findings, decisions, or orders of the hearing officer as the final action of the Secretary for purposes of judicial review.

**Source:** PL 15-108, § 4(4948), modified.

**Commission Comment:** The commission replaced section references with proper code sections and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e).

**§ 4949. Judicial Review.**

(a) Judicial review of a final action of the Secretary is authorized after exhaustion of all administrative remedies and shall be initiated within thirty days of final action.

(b) Except as may be contrary to the provisions of this chapter, judicial review shall be pursuant to 1 CMC § 9112. Appeal from a final action by the Secretary shall be directly to the Commonwealth Superior Court.

(c) Notwithstanding any other provision of law:

(1) Notice of all actions and proceedings pursuant to this section shall be served upon the Attorney General;

(2) Judicial review shall be confined to the record; and

(3) Actions involving judicial review of final action by the Secretary shall be limited to the appeal; other causes of action may not be alleged in the action for judicial review.

**Source:** PL 15-108, § 4(4949), modified.

**Commission Comment:** The commission changed capitalization and deleted figures that repeated written words pursuant to 1 CMC § 3806(e) and (f).

**§ 4950. Preservation of Private Rights of Action.** **[new section]**

(a) A foreign national worker may bring a direct action in the Commonwealth courts against an employer, or against the issuer of any bond required by the Department of Labor to secure the performance of an employer, with respect to any obligation to pay wages, overtime, medical expenses, or other benefits secured by an employment contract.

(b) The Department of Labor may, but is not required to, enforce its administrative orders by bringing an action in the courts.

(c) Nothing in this part shall be construed as limiting the ability of a foreign national worker third-party beneficiary of a bond to bring suit directly against the surety to enforce the bond and collect from the surety to the limits of the bond any finally adjudicated unsatisfied liabilities of the employer to the worker.

(d) This section shall have retroactive effect. Claims shall be preserved that are pending or were dismissed or subject to dismissal for lack of authority to bring a direct action. Any statute of limitations for such claims shall be tolled from February 5, 2007, to the effective date of this Act [Public Law 17-1].

**Source:** PL 17-1 § 5(Q)(4)(d) (March 22, 2010),* modified.

**Commission Comment:** The commission changed "this act" to "this part" and inserted the bracketed information pursuant to 1 CMC § 3806(c).*PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

## Article 5. Exit from the Commonwealth.

§ 4951. Exit During the Contract Term.
§ 4952. Exit After the Contract Term.
§ 4953. Periodic Exit Required. [Deleted by PL 17-1 § 5(Q)(5)(a)]
§ 4954. Responsibility for Costs of Repatriation.
§ 4955. Re-entry of Foreign National Workers. [Deleted by PL 17-1 § 5(Q)(5)(b)]
§ 4956. Limited Stay and Re-entry for Litigation Purposes.
§ 4957. No Stay or Bar in Other Actions.

**§ 4951. Exit During the Contract Term.**

A foreign national worker who exits the Commonwealth during the term of an approved employment contract for any purpose other than employment shall inform the Department of the date of exit and date of return. No final administrative order shall be entered during the absence of a foreign national worker in compliance with this section prior to the date of return indicated.

**Source:** PL 15-108, § 4(4951).

**§ 4952. Exit After the Contract Term.**

A foreign national worker shall exit the Commonwealth within fifteen days after the date of termination of the approved employment contract or renewal, except as provided by 3 CMC § 4956 of this chapter.

**Source:** PL 15-108, § 4(4952), modified.

**Commission Comment:** The commission replaced section references with proper code sections and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e).

**§ 4953. Periodic Exit Required. [Deleted by PL 17-1 § 5(Q)(5)(a)]**

~~(a) Except as provided herein, a foreign national worker shall exit and remain absent from the Commonwealth for at least six consecutive months during every forty-two-month period.~~

~~(b) The requirement in subsection (a) shall not apply to foreign national workers who are key employees and have skills essential to the success of the business of an employer of ten or more employees; provided that the employer is in compliance with 3 CMC § 4525 of this part and provided that no foreign national worker may remain in the Commonwealth for more than seven consecutive years without an exit as required under subsection (a). The designation of key employees is at the discretion of the employer. The number of employees who may be exempted from subsection (a) for each employer may not exceed ten percent of the employer's foreign national workers and shall be governed by the Secretary by regulation to assist in achieving the efficient implementation of the periodic exit requirement.~~

~~(c) For purposes of this subsection, foreign national workers lawfully in the Commonwealth on the effective date of this section shall be deemed to have entered the Commonwealth on the effective date of this section unless otherwise provided by regulation. Nothing in this subsection shall be construed as providing an exemption from the requirements of 3 CMC §§ 4521 or any other provision of this part.~~

**Source:** PL 15-108, § 4(4953), modified; deleted by PL 17-1 § 5(Q)(5)(a)(March 22, 2010).*

**Commission Comment:** The commission replaced section references with proper code sections, deleted figures that repeated written words and changed capitalization pursuant to 1 CMC § 3806(c), (e) and (f).*PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4954. Responsibility for Costs of Repatriation.**

(a) The last employer of record of a foreign national worker shall be responsible for the costs of repatriating that worker except that employment under a temporary work authorization shall not give rise to this obligation. For the purposes of this section, a person employing a foreign national worker without an approved employment contract or identification card or otherwise in violation of Commonwealth law may be held jointly or severally liable for repatriation costs whenever assessed.

(b) A foreign national worker shall be responsible for the repatriation costs for any member of the immediate family of that worker previously declared upon entry to the Commonwealth regardless of divorce or any other claim or controversy with respect to status as immediate family.

(c) The Department may assess repatriation costs by order to a last employer of record or other employer or, in the case of an immediate family member, to a foreign national worker. Within fifteen days of the issuance of an assessment of repatriation costs by the Department, any person or party affected by the assessment order may appeal the order in accordance with 3 CMC § 4948 and seek judicial review in accordance with 3 CMC § 4949.

**Source:** PL 15-108, § 4(4954); PL 17-1 § 5(Q)(March 22, 2010),* modified.

**Commission Comment:** The commission replaced section references with proper code sections,

deleted figures that repeated written words and changed capitalization pursuant to 1 CMC § 3806(c), (e) and (f). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4955. Reserved. [Deleted by PL 17-1 § 5(Q)(5)(b)].**

**Source:** PL 15-108, § 4(4955); deleted by PL 17-1 § 5(Q)(5)(b).

**§ 4956. Limited Stay and Re-entry for Litigation Purposes.**

(a) A foreign national worker who is required to exit the Commonwealth shall be permitted to remain in the Commonwealth for a period not to exceed thirty days in order to pursue a civil or criminal claims, or to pursue violations of any Commonwealth labor law. After the filing of an action, this period may be extended and departure stayed by a hearing officer or court of competent jurisdiction as necessary to ensure due process rights are protected.

(b) A foreign national worker who has exited the Commonwealth shall be permitted to re-enter the Commonwealth not more than five days prior to a scheduled trial or for any other proceeding for which his or her attendance is required, unless a court of competent jurisdiction orders otherwise.

(c) A foreign national worker remaining or re-entering under this section shall exit the Commonwealth within three days of the close of the proceeding, unless a court of competent jurisdiction orders otherwise.

(d) The Commonwealth immigration authority shall promulgate regulations for the implementation of this section.

**Source:** PL 15-108, § 4(4956), modified.

**Commission Comment:** The commission changed capitalization and deleted figures that repeated written words in the above section pursuant to 1 CMC § 3806(e) and (f).

**§ 4957. No Stay or Bar in Other Actions.**

No provision of this chapter shall make available or operate as a stay of any court order of deportation. No provision of this chapter shall bar any other civil or criminal action.

**Source:** PL 15-108, § 4(4957), modified.

**Commission Comment:** The commission changed capitalization and deleted figures that repeated written words in the above section pursuant to 1 CMC § 3806(e) and (f).

**Article 6. Other Provisions.**

§ 4961. Regulations and Legislative Oversight.
§ 4962. Limitations.
§ 4963. Prohibitions.
§ 4964. Sanctions and Penalties.
§ 4965. Exemptions. [Deleted by PL 17-1 § 5(Q)(6)(c)]
§ 4966. No Liability.
§ 4967. Required Records.
§ 4968. Fees.

§ 4969. Statistical Data.
§ 4970. Required Reports.
§ 4971. Electronic Filing.
§ 4972. Transition.
§ 4973. Authorization for Appropriations.

**§ 4961. Regulations and Legislative Oversight.**

(a) The Secretary, the Secretary of Public Health, the Commonwealth immigration authority, and any other government agency so authorized by this part shall promulgate regulations to implement the intent of this part pursuant to the Administrative Procedure Act (1 CMC § 9101 et seq.), including the delegation of any duties as imposed herein.

(b) Any changes to the regulations after the effective date of this part, before coming into effect, shall be put before the Legislature for thirty days and may be rejected in whole or in part by joint resolution.

**Source:** PL 15-108, § 4(4961), modified.

**Commission Comment:** The commission changed capitalization and deleted figures that repeated written words in the above section pursuant to 1 CMC § 3806(e) and (f).

**§ 4962. Limitations.**

(a) *Limitation on effect of foreign national worker status*. No employment contract, registration, certification, identification card, or the presence of a foreign national worker in the Commonwealth pursuant thereto, shall be grounds for naturalization, or citizenship, or permanent residence in the Commonwealth except as may otherwise be provided by law.

(b) *Limitation on time for filing labor complaints*. No labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event. In such instance no labor complaint may be filed more than six months after the date a complainant of reasonable diligence could have discovered the actionable conduct. In any event, no labor complaint may be filed more than thirty days after the termination of an approved employment contract.

**Source:** PL 15-108, § 4(4962); (a) amended by PL 17-1 § 5(Q) (March 22, 2010),* modified.

**Commission Comment:** The commission deleted figures that repeated written words pursuant to 1 CMC § 3806(e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4963. Prohibitions.**

(a) (1) No person who enters the Commonwealth ~~under the provisions of this chapter~~ as a nonimmigrant resident alien may obtain a financial interest in, operate, or engage in any business, or become an employer without first qualifying under Chapter 9 of Division 5 of Title 4, or under other applicable provisions of Commonwealth law; provided however that only U.S. citizens may qualify as a notary public.

(2) No person who enters the Commonwealth ~~under the provisions of this chapter~~ as a nonimmigrant resident alien may employ a foreign national worker.

(3) No person who has at any time entered the Commonwealth for employment may

maintain a financial interest in, operate, or engage in any business, or employ others without first qualifying under Chapter 9 of Division 5 of Title 4, or under other applicable provisions of Commonwealth law.

(b) No foreign national worker under the age of twenty-one shall be employed in the Commonwealth.

(c) A foreign national worker shall not perform any services or labor within the Commonwealth for any employer other than the employer with whom the foreign national worker has an approved employment contract except as provided by regulation.

(d) An employer or a foreign national worker shall not make a materially false statement or give materially misleading information, orally or in writing, to the Department or any employee or officer of the Executive Branch with respect to any requirement of this chapter.

(e) A foreign national worker shall not work in any capacity, including but not limited to employment or engagement for training, other pre-employment purposes, or any other arrangement that constitutes an employment relationship, prior to the issuance or after the expiration of an identification card ~~termination of an approved employment contract, including renewals~~.

(f) A foreign national worker, after filing a labor complaint, shall not perform services or labor for any employer other than under an approved employment agreement or under a temporary work authorization issued by the Department.

(g) An employer with a total full-time work force of ten or more employees shall not employ foreign national workers who hold temporary work authorizations in more than ten percent of all positions. An employer with a total full-time work force of fewer than ten employees shall not employ more than one foreign national worker who holds a temporary work authorization.

(h) An employer shall not pay a foreign national worker at a rate of pay lower than the minimum wage as provided by Commonwealth law or applicable federal law or at a rate of pay higher than the rate at which the job was advertised in compliance with 3 CMC § 4523.

(i) An employer shall not make any deduction from the wages of a foreign national worker in violation of Commonwealth law.

(j) An employer shall not employ a person who is not a citizen or permanent resident and who has entered the Commonwealth without authorization to work ~~an entry permit pursuant to 3 CMC § 4925~~; provided however, the Attorney General may authorize a witness or victim of human trafficking or a material witness or victim in another civil or criminal proceeding to work in the Commonwealth without regard to this provision.

(k) An employer shall not file an application for an approved employment contract with the Department ~~with the intent to obtain immigration status and entry to the Commonwealth for a foreign national worker but~~ without the intent or present capability to provide a viable wage-paying job for the foreign national worker within the Commonwealth.

(l) This section shall not stay or bar any civil or criminal action in any court.

**Source:** PL 15-108, § 4(4963);(a), (c), (e), (j) and (k) amended by PL 17-1 § 5(Q)(6)(a)(March 22, 2010),* modified.

**Commission Comment:** The commission replaced section references with proper code sections, deleted figures that repeated written words and changed capitalization pursuant to 1 CMC § 3806(c), (e) and (f). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4964. Sanctions and Penalties.

After hearing pursuant to the Administrative Procedure Act, 1 CMC § 9191 et seq.:

(a) Violation of any subsection of 3 CMC §§ 4923 and 4931 by an employer shall be grounds for debarment of the employer; provided however confiscation of travel documents for the purpose of controlling the movements of a trafficking victim pursuant to the Anti-Trafficking Statute, chapter 5 of division 1 of title 6, is not a violation of this chapter.

(b) Violation of any subsection of 3 CMC §§ 4923 and 4931 by a foreign national worker shall be grounds for repatriation pursuant to 3 CMC § 4340(e).

(c) An employer who knowingly requires or permits a foreign national worker to pay initial application or renewal fees shall be subject to debarment.

(d) In order to prevent the solicitation of sponsorships under circumstances when a foreign national worker is present in the Commonwealth and seeking to stay, a foreign national worker who, while in the Commonwealth pays for an application fee or a renewal fee shall be subject to repatriation under 3 CMC § 4340(e).

(e) Violation of 3 CMC § 4931(k) by making any unapproved change to an approved employment contract shall be, in the discretion of the Secretary and in addition to other available sanctions, grounds for a declaration that the contract is void and for revocation of an identification card of a foreign national worker, and for debarment of an employer.

(f) Failure by a foreign national worker to comply with 3 CMC § 4934(a) by failing to attend an orientation session shall be grounds for cancellation of the identification card and repatriation of the foreign national worker pursuant to 3 CMC § 4340(e).

(g) Violation of 3 CMC § 4937 by failing to provide notice of a reduction in force shall be grounds for imposition of a fine in the employer of up to two-thousand dollars for each foreign national worker terminated in the reduction in force and debarment of the employer.

(h) Violation of 3 CMC § 4952 by failing to exit the Commonwealth as required by law shall be grounds for repatriation pursuant to 3 CMC § 4340(e) and the imposition of a fine on the foreign national worker of up to two-thousand dollars.

(i) Violation of any subsection of 3 CMC § 4963 by an employer shall be grounds for the denial of an application for an approved employment contract, voiding of an existing approved employment contract, debarment of an employer, and a fine of up to two-thousand dollars for each unlawful action.

(j) Violation of any subsection of 3 CMC § 4963 by a foreign national worker shall be grounds for repatriation pursuant to 3 CMC § 4340(e) and forfeiture of all claims by a foreign national worker for money damages and other relief with respect to employment in the Commonwealth.

(k) Debarment of an employer shall apply to all business organizations for which that employer serves as an officer, board member, partner, or limited liability corporation member. Such business organizations shall be prohibited from hiring foreign national workers on the same terms as the employer against whom the debarment was issued. Debarment of an employer that is a business organization shall apply to all persons who serve that business organization as an officer, board member, partner, or limited liability corporation member.

(l) Failure after thirty days from assessment to pay repatriation expenses for a foreign national worker incurred by the Commonwealth shall be grounds for the Attorney General to order the Division of Revenue and Taxation to deduct the full amount of the repatriation or repatriation costs and the full amount of the award from the employer's NMTIT tax rebate. All such deductions for repatriation costs shall be returned to the Alien Repatriation Fund, 3 CMC § 4347.

(m) Failure by an employer to make prompt and reasonable efforts to repatriate a foreign national worker, thereby allowing the worker to become an illegal resident of the Commonwealth and subject to repatriation, shall be grounds for the Attorney General to order the Division of Revenue and Taxation to deduct the full amount of the anticipated repatriation ~~or deportation~~ costs from the

employer's NMTIT tax rebate. ~~All such deductions for deportation costs shall be returned to the Alien Deportation Fund, 3 CMC § 4347.~~

(n) Failure to comply with the payment terms of an administrative order, in addition to any penalties or damages imposed in the order, shall be subject to additional monetary sanctions of up to twenty-five dollars per day until the obligation is satisfied. Such additional penalties may be assessed as a sanction either by the Administrative Hearing Office, or by the Commonwealth Superior Court pursuant to a civil action filed by the Attorney General.

(o) Any fine pursuant to this section may be imposed by a hearing officer in an administrative order or by a court in an action filed by the Attorney General.

(p) This section shall not stay or bar any civil or criminal action or remedy in any court of competent jurisdiction.

**Source:** PL 15-108, § 4(4964); (e) and (f) amended by PL 17-1 § 5(Q) and (b), (d), (f), (h), (j), (l) and (m) amend by § 5(Q)(6)(b) (March 22, 2010),* modified.

**Commission Comment:** The commission replaced section references with proper code sections, deleted figures that repeated written words and changed capitalization pursuant to 1 CMC § 3806(c), (e) and (f). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

### § 4965. Exemptions. [Deleted by PL 17-1 § 5(Q)(6)(c)].

~~(a) *Consular operations*. This chapter shall not govern the entry conditions of any person who represents a foreign government in the Commonwealth in a diplomatic, consular, or similar official capacity, or assists in such representation, as certified by the Governor; provided that the person does not perform any ownership or commercial activity for which a business license or permit is required by law.~~

~~(b) *Foreign investment certificate holders*. This chapter shall not govern the entry conditions of any person who is the holder of a valid certificate of foreign investment issued pursuant to Chapter 9 of Division 5 of Title 4 of the Commonwealth Code or the immediate family of such certificate holder.~~

~~(c) *Treaty obligations*. This chapter shall not govern the entry conditions of persons whose right to enter the United States is governed by a treaty between the United States and another government. Such persons shall be permitted to enter the Commonwealth under the same conditions as they are permitted to enter the United States.~~

~~(d) *Employees on temporary assignment*. This chapter shall not govern the entry conditions for persons who are employed by a corporation incorporated and with a principal place of business outside the Commonwealth and whose principal place of employment is outside the Commonwealth.~~

~~(e) *Employment for less than 21 days*. This chapter shall not govern the entry conditions of persons who enter the Commonwealth for a period of less than twenty-one days for employment in artistic, cultural, educational, or scientific presentations, performances, or studies.~~

~~(f) *Tourist visas*. This chapter shall not govern the entry conditions of persons who enter the Commonwealth on a tourist visa, provided however that any person found engaged in employment while on a tourist visa or who is deported for a violation under this chapter is not eligible for another tourist visa for visits to the Commonwealth.~~

~~(g) *Refugee permits*. This chapter shall not apply to persons seeking employment following a grant of refugee protection pursuant to 3 CMC § 4344(d). The Commonwealth immigration authority shall promulgate regulations for the entry and employment status of persons granted refugee protection.~~

~~(h) *Student work/study*. This chapter shall not govern the employment conditions of persons who hold Foreign Student Entry Permits issued by the Commonwealth immigration authority, provided that such employment is in a school sanctioned work/study or internship program.~~

**Source:** PL 15-108, § 4(4965), modified; deleted by PL 17-1 § 5(Q)(6)(c) (March 22, 2010).*

**Commission Comment:** The commission deleted figures that repeated written words and changed capitalization pursuant to 1 CMC § 3806(e) and (f). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4966. No Liability.**

The review and approval of any employment contract for a foreign national worker shall not subject the Secretary, the Department, or the Commonwealth government to liability on the employment contract, even if the approved employment contract does not comply with the requirements of laws or regulations.

**Source:** PL 15-108, § 4(4966).

**§ 4967. Required Records.**

An employer of any foreign national worker shall keep, and present immediately upon demand by the Secretary or a designee, the following information:

(a) Personnel records for each foreign national worker including the name, current residence address, age, domicile, citizenship, point of hire, and approved employment contract termination date;

(b) Payroll records for each foreign national worker including the job classification; wage rate or salary, number of hours worked each week, gross compensation, itemized deductions, and net payments made biweekly;

(c) Documentation for each foreign national worker including police clearance, health certificate, and tax payment records; and

(d) Business license and any other information or documentation required by regulations.

**Source:** PL 15-108, § 4(4967).

**§ 4968. Fees.**

(a) The Secretary shall establish fees for the administrative actions to be taken by the Department under this part. The Commonwealth government shall be exempted from paying such fees. ~~The Secretary shall establish fees for processing requests and submissions under this part and for each annual renewal of entry permits for foreign national workers. The Commonwealth government shall be exempted from paying the fee for initial application for or renewal of entry permits.~~

(b) Fees imposed under subsection (a) for providing data not otherwise published by the Department shall reflect, to the extent practicable, the full allocated cost of collecting, storing, and delivering the data in usable form. ~~Fees imposed under subsection (a) of this section shall be in addition to the fee imposed pursuant to 3 CMC § 4347.~~

(c) ~~The "Commonwealth Non-Resident Worker Fee Fund" established pursuant to the former 3 CMC § 4424(c) shall hereafter be known as the "Foreign National Worker Fee Fund." All fees collected pursuant to subsection (a) of this section shall be deposited into the Foreign Worker Fee Fund. In addition, fees previously collected pursuant to the former 3 CMC § 4424 shall remain in the Foreign Worker Fee Fund.~~ All fees collected pursuant to subsection (a) of this section shall be

deposited into a fund to be known as the Foreign Worker Fee Fund. Funds provided for in this subsection shall not be subject to reprogramming, and shall be available without fiscal year limitation. The Secretary shall be the expenditure authority for this account. The Secretary of Finance shall collect the funds and direct
proceeds annually into four separate accounts as set forth below:

(1) Northern Marianas College Human Resources and Business Development Account. Except as provided in subsections (c)(2)-(4), all of the fees collected shall be placed into an account known as the Northern Marianas College Human Resources and Business Development Account. This account shall be available for legislative appropriation. An appropriation from this account shall be used only to fund business, professional, or visitor industry programs conducted or sponsored by the Northern Marianas College.

(2) Northern Marianas College U.S. Apprenticeship Program Account. Fifty percent or a maximum of one-million-five-hundred-thousand dollars of fees collected shall be reserved for the Northern Marianas College U.S. Apprenticeship Program Account. This program shall be administered and coordinated by the Northern Marianas College. Funds shall be expended only for the implementation and purposes of Public Law 15-5, and shall not be commingled with other funds of the college. The president of the college shall have expenditure authority for these funds.

(3) Tinian and Rota Account. Five percent or a maximum of seventy-five-thousand dollars of fees collected shall be reserved for Tinian and five percent or a maximum of seventy-five-thousand dollars of fees collected shall be reserved for Rota which shall be used for youth employment training programs on those islands. The mayors of Tinian and Rota shall have expenditure authority for these funds.

(4) Department of Labor Account. Twenty-five percent or a maximum of five-hundred-seventy-five-thousand dollars of fees collected shall be reserved for the Department for use in administering and enforcing the provisions of this part.

(d) All funds dedicated under 1 CMC § 2282(a)(1) and (a)(2) shall be deposited in the Technical Education Program unless otherwise provided by law.

**Source:** PL 15-108, § 4(4968); (a)-(c) amended by PL 17-1 § 5(Q)(6)(d) (March 22, 2010),* modified.

**Commission Comment:** The commission changed "this act" to this "part," deleted figures that repeated written words and changed capitalization pursuant to 1 CMC § 3806(c), (e) and (f). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4969. Statistical Data.**

(a) The Secretary shall maintain statistical data with respect to the number of foreign national workers employed in each of the relevant NAICS categories.

~~(1) Professional, technical, and managerial;~~
~~(2) Clerical, sales, and service;~~
~~(3) Agriculture, fisheries, forestry, and grounds-keeping;~~
~~(4) Light manufacturing;~~
~~(5) Construction and structural work;~~
~~(6) Housework, gardening, and related private residence work;~~

(b) The Secretary shall describe any special definitions used in these regards to account for

all employment of foreign national workers within the enumerated categories.

**Source:** PL 15-108, § 4(4969); (a) amended by PL 17-1 § 5(Q)(6)(e) (March 22, 2010),* modified.

**Commission Comment:** ~~The commission corrected a manifest typographical error by renumbering subsection (a)(7) in the original text of PL 15-108, § 4(4969) to (a)(6) pursuant to its authority by 1 CMC § 3806(g).~~ The commission changed the semi-colon at the end of subsection (a) to a period to correct a manifest error pursuant to 1 CMC § 3806(g). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

**§ 4970. Required Reports.**

(a) The Secretary shall prepare and submit to the Governor and the presiding officers of the Legislature the following written reports:

(1) Within one-hundred-twenty days of the end of the government fiscal year, the Secretary shall prepare an annual report including data regarding the number of foreign national workers employed in the Commonwealth during the year, the citizenship of the workers, the job classifications filled by the workers; data regarding the number of citizens and permanent residents employed in the Commonwealth during the year, the job classifications filled by these employees; and other information as appropriate.

(2) Pursuant to 3 CMC § 4526(c), the Secretary shall report any exemptions granted within thirty days after the close of each calendar quarter.

(3) Pursuant to 3 CMC § 4527, the Secretary shall investigate and report in writing to the Attorney General any death of a citizen or permanent resident employee as a result of employment, or any injury of a citizen or permanent resident employee as a result of employment which causes substantial physical or mental impairment.

(4) Pursuant to 3 CMC § 4924, the Secretary shall submit a yearly report on the status of approved security contracts not later than thirty days after the close of the fiscal year. The report shall contain the number of approved security contracts accepted in the fiscal year, the dollar limits of each approved security contract arrangement accepted, and a list of any signatories to approved security contracts in default.

(5) Pursuant to 3 CMC § 4940, the Secretary shall investigate and report in writing to the Attorney General any death of a foreign national worker as a result of employment, or any injury to a foreign national worker as a result of employment which causes substantial physical or mental impairment.

(b) Pursuant to 3 CMC § 4533, at least sixty days prior to the beginning of each fiscal year, any government entity employing foreign national workers shall prepare and submit to the Governor and the presiding officers of the Legislature a report on the progress of implementation of the manpower training and education plan together with a funding request necessary to implement the plan.

(c) Pursuant to 3 CMC § 4968(d), no later than ninety days after the end of the fiscal year:

(1) The Secretary of Finance shall prepare and submit to the Governor and the presiding officers of the Legislature a report on the status of the Foreign Worker Fee Fund;

(2) The president of the Northern Marianas College shall prepare and submit to the Governor and the presiding officers of the Legislature a report on the expenditure of such funds; and

(3) The mayors of Rota and Tinian shall prepare and submit to the Governor and the

presiding officers of the Legislature a report on the expenditure of such funds.

**Source:** PL 15-108, § 4(4970), modified.

**Commission Comment:** The commission replaced section references with proper code sections and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e).

**§ 4971. Electronic Filing and Access.**

(a) The Secretary shall establish by regulation a plan for switching from hard copy filing of documents to electronic filing of documents at the Department in order to reduce paperwork and the cost of administration of the requirements with respect to foreign national workers in the Commonwealth. Employers with one-hundred or more employees shall be converted to electronic filing by 2010. Employers with more than fifty but fewer than one-hundred employees shall be converted to electronic filing by 2012. Employers with fifty or fewer employees shall be converted to electronic filing as prescribed by regulations.

(b) The Secretary shall establish by regulation a plan for access via the Internet for employers and foreign national workers to revised statutes and regulations, announcements, notices, opinions and orders, and public data from the Department. The plan shall also include secure access to data pertaining to individual employers or foreign national workers for purposes of updating, correction, or supplementation of the Department's records.

**Source:** PL 15-108, § 4(4971), modified.

**Commission Comment:** The commission deleted figures that repeated written words in the above section pursuant to 1 CMC § 3806(e).

**§ 4972. Transition Provisions.**

(a) *Transition for employment contracts*: Any employer employing foreign national workers in the Commonwealth, and any foreign national worker within the Commonwealth, shall comply fully with all provisions of this chapter, and no contract, contract modification, renewal, or transfer shall be permitted except in full compliance with this chapter.

(b) Transition exemptions for government employment.

(1) Public School System. Related service providers, including but not limited to, speech pathologists, occupational therapists, physical therapists and audiologists, and teachers in special education and pre-primary education may be exempted. Related service providers shall have a U.S. license, U.S. registration, or U.S. certification, as appropriate to their respective field of specialization. Persons exempted under this subsection shall have a bachelor's or master's degree in the field of special education prior to being issued an identification card, and shall pass teacher certification tests as designated by the Board of Education. Foreign language instructors may be exempted if they are graduates of a college or university approved or accredited in accordance with the Public School System Regulations on Employment of Certified Personnel [NMIAC chapter 60-30.2]. This exemption shall expire on September 30, 2010, and no contract may provide to the contrary.

(2) Department of Public Health.

(i) Nurses may be exempted if they are graduates of recognized colleges or universities with a degree in nursing science and satisfy the professional licensing requirements in their country of origin as well as satisfying the licensing requirements established by the Commonwealth Board of Nurse Examiners for Licensed Practical Nurses (LPN) or Registered Nurses (RN). Nurses employed pursuant to this subsection shall meet all minimum requirements for employment as provided by law, except that any minimum experience

requirement shall not apply to a foreign national worker who completed the nursing education program at the Northern Marianas College or other approved vocational nursing school in the Commonwealth, passed the NCLEX exam, and is employed on or before December 31, 2010, in a nursing position at the Department of Public Health.

(ii) Biomedical engineering technicians and all other health care professionals who are required to be licensed, certified, registered, or otherwise regulated by the Health Care Professions Licensing Board as referenced in 3 CMC § 2212 may be exempted if they are graduates of recognized colleges and universities with a degree in their area of specialty in their country of origin and shall have satisfied all of their country's professional licensing and certification requirements in addition to satisfying, if applicable, the licensure requirements established by the Health Care Professions Licensing Board.

(iii) The exemptions provided in subsections (b)(2)(i) and (b)(2)(ii) of this section shall expire on September 30, 2017, for all positions covered thereunder, and no contract may provide to the contrary.

~~(3) Public Auditor. Positions in the office of the Public Auditor may be exempted if the employees meet minimal professional qualifications established by the Public Auditor. This exemption shall expire on September 30, 2008, and no contract may provide to the contrary.~~

(3) Northern Marianas College. Foreign language instructors and research scientists at the Northern Marianas College may be exempted if they are graduates of colleges or universities in the United States, or colleges or universities which are accredited by United States accrediting associations, or, alternatively, if they have earned degree(s) from colleges, universities, or institutions abroad that are recognized by the Board of Regents and meet all other professional requirements set by the Board of Regents. This exemption shall expire on September 30, 2010, and no contract may provide to the contrary.

~~(5) Commonwealth Utilities Corporation. Engineers and professional employees in technical or trade areas may be exempted, and CUC may contract with manpower services or directly hire power plant mechanics and utility technicians who may be exempted; provided that direct or manpower hire of foreign national workers shall not exceed nineteen employees. This exemption shall expire on September 30, 2010, and no contract may provide to the contrary.~~

~~(c) *Transition provisions for religious occupations*. Pursuant to 3 CMC § 4927, before October 1, 2008, a foreign national who seeks to enter the Commonwealth for the purposes of working for a bonafide non-profit religious undertaking at the request of the same in a professional capacity in a religious vocation or occupation at the undertaking in the Commonwealth may enter for a period not to exceed three years.~~

(c) *Transition for owners of businesses*. Persons who are not citizens or permanent residents and whose first entry into the Commonwealth for purposes of employment occurred on or before July 28, 1987, and who at the time of enactment of this chapter have a financial interest in, operate, or engage in any business or are employing others in the Commonwealth pursuant to a valid business license shall be granted a transition period by the Department to qualify for entry under Chapter 9 of Division 5 of Title 4, or under other applicable provisions of Commonwealth law. The Secretary, in consultation with the Department of Commerce, shall implement a reasonable transition process and time period not to exceed two years from the effective date of this chapter. This subsection shall expire and automatically repeal two years from the effective date of this chapter.

(d) *Transition for notaries public*. The Department of Commerce shall not renew the license as a notary public of any person who is not a citizen or permanent resident after January 1, 2009.

~~(f) *Transition for periodic exit requirement*. In order to provide for an orderly transition to the periodic exit requirement and to ease the burden on employers and employees, the exit requirement~~

~~may be spread across the three years after the effective date of this chapter at the convenience of employers and employees. To provide an incentive for this to happen voluntarily, employers who carry out the periodic exit requirement of at least twenty percent of the exit-eligible work force within the first twelve months after the effective date of this chapter shall be able to claim a key employee exemption for three percent of the full-time work force and employers who carry out the periodic exit requirement of at least twenty percent of the exit-eligible work force within the second twelve months after the effective date of this chapter shall be able to claim a key employee exemption for two percent of their exit-eligible work force, as provided by regulation. Key employees who are exempted from the periodic exit that occurs after the effective date of this chapter are not required to complete the periodic exit until five years after the effective date of this chapter.~~

(e) *Transition for regulations*. The Secretary of Labor may implement regulations pursuant to3 CMC § 4961(a) separately from the regulations of the Secretary of Public Health and the Commonwealth immigration authority. In the event that the Secretary of Public Health does not implement regulations with respect to 3 CMC § 4932 on medical insurance prior to the effective date of this statute, the provisions of prior law with respect to the responsibility of employers for the medical care of foreign national workers shall continue in full force and effect until the effective date of such final regulations.

**Source:** PL 15-108, § 4(4972); subsection (b)(5) amended by PL 16-14, § 2, modified; subsections (b)(1) and (b)(2) amended by PL 16-26, § 3; former subsections (b)(3), (b)(5), (c) and (f) deleted by PL 17-1 § 5(Q)(6)(f) (March 22, 2010)* and remaining subsections redesignated accordingly, modified.

**Commission Comment:** The commission replaced section references with proper code sections, deleted figures that repeated written words and changed capitalization pursuant to 1 CMC § 3806(c), (e) and (f).

Public Law 16-14 was enacted on August 27, 2008. PL 16-14 contained severability and savings provisions and the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that the Commonwealth Utilities Corporation (CUC) is currently unable to employ foreign national workers to fill certain essential positions pursuant to restrictions set forth in 3 CMC § 4972(b)(5) as established by Public Law 15-108. The Legislature further finds that CUC is unable to fill these essential positions with permanent resident or citizen employees at this time, and extension of the exemption for hiring foreign national workers within the Commonwealth government is necessary to ensure the delivery of uninterrupted power, water, and waste water services to the people of the Commonwealth. Accordingly, the purpose of this legislation is to allow CUC to hire up to nineteen foreign national workers to fill technical and professional positions at CUC and to extend such exemption to year 2010.

For information regarding PL 16-26, which took effect on December 24, 2008, see commission comment to 3 CMC § 4532.

*PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

Before and after the enactment of PL 17-1 on March 22, 2010, Governor Fitial issued several executive orders in 2009 and 2010 purporting to suspend subsection (b)(5) of this statute based on emergency powers conferred by Article III, § 10 of the NMI Constitution and 3 CMC § 5121(f). See Exec. Order No. 2010-06, 32 Com. Reg. 30525 (June 2010); Exec. Order No. 2010-05, 32 Com. Reg. 30504 (June 2010); Exec. Order No. 2010-04, 32 Com. Reg. 30414 (May 2010); Exec. Order No. 2010-03, 32 Com. Reg. 30396 (May 2010); Exec. Order No. 2010-02, 32 Com. Reg. 30379 (May 2010); Exec. Order No. 2010-01, 32 Com. Reg. 30363 (May 2010); Exec. Order No. 2009-13, 32 Com. Reg. 30488 (June 2010), 32 Com. Reg. 30916 (Oct. 2010); Exec. Order No. 2009-12, 32 Com. Reg. 30473 (June 2010), 32 Com. Reg. 30900 (Oct. 2010); Exec. Order No. 2009-11, 32 Com. Reg. 30459 (June 2010), 32 Com. Reg. 30885 (Oct. 2010); Exec.

Order No. 2009-09, 32 Com. Reg. 30446 (June 2010), 32 Com. Reg. 30871 (Oct. 2010); Exec. Order No. 2009-08, 32 Com. Reg. 29980 (Sept. 2009); Exec. Order No. 2009-07, 32 Com. Reg. 29869 (Aug. 2009).

**§ 4973. Authorization of Appropriations.**

There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

**Source:** PL 15-108, § 4(4973).

# PART 3: REGISTRATION [New part]

## CHAPTER 1. REGISTRATION OF ALIENS. [new chapter]

**§ 4981. Registration of Aliens.**

Every alien who remains in the Commonwealth longer than 90 days shall by regulation be required to be registered. Registration shall be renewed annually. The parents or legal guardians of aliens under the age of 18 are responsible for such child's registration.

(b) Registration shall be conducted by the Department for all classes of aliens. Registration information may be taken on oath or by declaration. Such registration information as the Secretary may require is confidential and may be made available only on request of law enforcement authorities in connection with criminal or juvenile delinquency investigations.

(c) Registered aliens will be issued an identification card, which will contain the name of the alien, the LIDS number, such identifying information as the Secretary may require, and the expiration date of the card.

(d) Registered aliens 18 years old or older shall keep their identification card in their personal possession or control at all times.

(e) Any alien who knowingly fails to comply with this section shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than 90 days, or fine of not more than $500 or both.

(f) An alien, for purposes of this section, is any person who is not a citizen, national, or permanent resident of the United States, or a CNMI permanent resident as provided by Commonwealth law prior to April 23, 1981.

**Source:** PL 17-1 § 5(R)(5001) (March 22, 2010).*

**Commission Comment:** *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

> Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.

# DIVISION 5: PUBLIC SAFETY

## CHAPTER 5. LIFEGUARDS ON BEACHFRONT AND AT POOLS.

### § 5501. Purpose.

**Case Annotations:** *Furoka v. Dai-Ichi Hotel (Saipan) Inc.,* 2002 MP 5, 6 N.M.I. 374 (2002).

## CHAPTER 6. DIVING SAFETY.

### § 5603. Definitions.

As used in this chapter:

(a) "Certified" means a person who has been licensed by a national or international dive organization approved by the Department of Finance by regulation in consultation with the Department of Public Safety.

(b) - (e) [unchanged]

**Source:** PL 7-47, § 5 (§ 5602); subsection (a) amended by PL 16-6, § 3(b).

**Commission Comment:** PL 16-6 was enacted on July 11, 2008 and contained a short title, purpose, severability, and savings provisions. PL 16-6 stated:

Section 1. Short Title. This Act may be cited as the "Divers Safety First Act of 2008."

Section 2. Purpose. The primary purpose of this Act is to strengthen the Safe Diving Act of 1990 by enlisting the enforcement and technical assistance of the Department of Public Safety. This Act authorizes DPS to issue citations to those who operate businesses for scuba instruction or scuba diving tours without meeting or maintaining the requirements established by law. DPS may also work in conjunction with the Department of Finance and the Department of Lands and Natural Resources to assess the level of difficulty of each dive site throughout the Commonwealth and set forth pertinent restrictions to ensure the safety of divers.

### § 5606. Scuba Instruction License.

(a)- (c) [unchanged]

(d) No person shall act as a scuba diving instructor until the business presents evidence of that person's compliance with subsection (b) of this section to the Department of Finance.

**Source:** . . . subsection (d) amended by PL 16-6 § 3(c)(1).

### § 5607. Scuba Diving Tour Operation License.

(a)-(c) [unchanged]

(d) No person shall act as a scuba diving tour leader until the business presents evidence of that person's compliance with subsection (b) of this section to the Department of Finance.

(e) [unchanged]

**Source:** . . . subsection (d) amended by PL 16-6 § 3(c)(1).

**Commission Comment:** Subsection (e) of this section was inadvertently omitted in the initial codification of this section.

**§ 5611. Conditions for Revocation or Suspension of License.**

The Secretary of Finance may suspend or revoke a scuba instruction or scuba diving tour operation license upon a finding, after two weeks prior notice and a hearing pursuant to 1 CMC §§ 9108-9113, that a licensee has violated either 3 CMC §§ 5606, 5607, 5608 or 5609.

**Source:** . . . amended by PL 16-6 § 3(c)(2).