

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

SUBCHAPTER 140-10.6 MAINTENANCE AND RELEASE OF PATIENT HEALTH CARE INFORMATION RULES AND REGULATIONS

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Subchapter Authority: 1 CMC §§ 2603 and 2605.

Subchapter History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

Commission Comment: PL 1-8, tit. 1, ch. 12, codified as amended at 1 CMC §§ 2601-2633, created the Department of Public Health and Environmental Services within the Commonwealth government. See 1 CMC § 2601. 1 CMC § 2603(f) grants the Department the power and duty to administer all government-owned health care facilities. 1 CMC § 2605 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

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

Section 105. Department of Public Health.

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

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

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

Part 001 - General Provisions

§ 140-10.6-001 Definitions

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- (a) “Audit” means an assessment, evaluation, determination, or investigation of the Department of Public Health by a person not employed by or affiliated with the Department of Public Health to determine compliance with:
- (1) Statutory, regulatory, fiscal, medical, or scientific standards;
 - (2) A private or public program of payments to the Department of Public Health; or
 - (3) Requirements for licensing, accreditation, or certification.
- (b) “Department of Public Health” includes the Commonwealth Health Center, the Tinian Health Center, the Rota Health Center, the Division of Public Health, and the Community Guidance Center.
- (c) “Directory information” means information disclosing the presence, and for the purpose of identification, the name, residence, sex, and the general health condition of a particular patient who is an in-patient or who is currently receiving emergency health care at the Commonwealth Health Center.
- (d) “General health condition” means the patient’s health status described in terms of “critical,” “poor,” “fair,” “good,” “excellent,” or terms denoting similar conditions.
- (e) “Health care” means any care, service, or procedure provided by the Department of Public Health:
- (1) To diagnose, treat, or maintain a patient’s physical, psychological or mental condition; or
 - (2) That affects the structure or any function of the human body.
- (f) “Health care information” means information whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of a patient and directly relates to the patient’s health care.
- (g) “Health care provider” means a person who is licensed, certified, or otherwise authorized by the laws of the CNMI to provide health care in the ordinary course of business or practice of a profession.
- (h) “Institutional review board” means a board, committee, or other group formally designated by an institution or authorized under federal or CNMI law to review, approve the initiation of, or conduct periodic review of research programs to ensure the protection of the rights and welfare of human research subjects.
- (i) “Legally authorized representative” means
- (1) A parent or legal guardian if the patient is a minor;
 - (2) A legal guardian if the patient has been adjudicated incompetent to manage the patient’s personal affairs;
 - (3) An agent of the patient authorized under a durable power of attorney for health care;
 - (4) A guardian ad litem appointed for the patient;
 - (5) An administrator for the estate of the patient or a personal representative designated by the patient if the patient is deceased.

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- (j) “Maintain” as related to health care information, means to hold, possess, preserve, retain, store, or control that information.
- (k) “Medical records” means all records pertaining to the history, diagnosis, treatment, or prognosis of a patient.
- (l) “Patient” means an individual who receives or has received health care. The term includes a deceased individual who has received health care.
- (m) “Person” means an individual, corporation, business, trust, estate, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.
- (n) “Third party payor” means an insurer authorized to transact business in the CNMI, including a health care service contractor or health maintenance organization, or employee welfare benefit plan, or a state or federal health benefit plan.

Modified, 1 CMC § 3806(f).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

Part 100 - Maintenance and Release of Patient Health Care Information; Requirements

§ 140-10.6-101 Disclosure by Department of Public Health; Restrictions on Disclosure of Medical Records for Mental Health Treatment, Alcohol and Substance Abuse Treatment, and HIV Testing

- (a) Except as authorized in § 140-10.6-115, “Discovery Request or Compulsory Process” or § 140-10.6-120, “Disclosure Without Patient’s Authorization” the Department of Public Health, or an agent or employee of the Department of Public Health, shall not disclose health care information about a patient to any other person without the patient’s written authorization. A disclosure made under a patient’s written authorization must conform to the specifics of that authorization. The Department of Public Health shall chart all disclosures of health care information, except to third party payors, and such chartings shall become part of the health care information.
- (b) Notwithstanding § 140-10.6-115, “Discovery Request or Compulsory Process” or § 140-10.6-120, “Disclosure Without Patient’s Authorization,” the Department of Public Health shall not disclose medical records for mental health treatment, alcohol and substance abuse treatment, and HIV testing to any person other than the patient without receiving proof that the requesting party has complied with the following procedures:
- (1) For records pertaining to any mental health treatment, care, or counseling, the person requesting the medical records shall:
 - (i) Obtain the patient’s written consent for release of the records; or
 - (ii) Obtain a court order for the release of the records, after the court has afforded the patient the opportunity to object to the release of such records as required by the Patient’s Rights Act at 3 CMC § 2561.

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(iii) These restrictions on the release of mental health records shall not apply to the patient's attorney.

(2) For records pertaining to any alcohol and substance abuse treatment, care, or counseling, the person requesting the medical records must comply with the requirements established under the federal requirements for confidentiality of patient records, codified at 42 U.S.C. § 290ee-3 and § 290dd-3, and regulations promulgated thereunder at 42 CFR § 2.1 - § 2.67.

(3) For records pertaining to HIV testing and diagnosis of AIDS, disclosure shall not be made without either the patient's written consent or a court order, except with respect to disclosures to Department of Public Health employees on an as needed basis.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

Commission Comment: The final paragraph of subsection (b)(1) was not designated. The Commission designated it subsection (b)(1)(iii).

§ 140-10.6-105 Patient Authorization of Disclosure

(a) A patient, or a patient's legally authorized representative, may authorize the Department of Public Health to disclose the patient's health care information. The Department of Public Health shall honor an authorization and, if requested, provide a copy of the recorded health information unless the Department of Public Health denies the patient access to health information under § 140-10.6-130 "Patient Request - Denial of Examination and Copying."

(b) The Department of Public Health may charge a reasonable fee for providing the health care information and shall not be required to honor an authorization until the fee is paid.

(c) To be valid, a disclosure authorization to the Department of Public Health shall:

(1) Be in writing, dated, and signed by the patient, or the patient's legally authorized representative;

(2) Identify the nature of the information to be disclosed;

(3) Identify the name, address, and institutional affiliation of the person to whom the information is to be disclosed;

(4) Identify the patient.

(d) The Department of Public Health shall retain each authorization in conjunction with any health care information from which disclosures are made. This requirement shall not apply to disclosures to third party payors.

(e) Except for authorizations given pursuant to an agreement with a treatment or monitoring program or to provide information to third party payors, an authorization may not permit the release of health care information relating to future health care that the patient receives more than six months after the authorization was signed. Patients shall be advised of the period of validity of their authorization on the disclosure authorization form.

Modified, 1 CMC § 3806(c), (f).

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History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-110 Patient's Revocation of Authorization for Disclosure

A patient, or patient's legally authorized representative, may revoke in writing a disclosure authorization to the Department of Public Health at any time unless disclosure is required to effectuate payments for health care that has been provided, or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the Department of Public Health for disclosures made in good-faith reliance on an authorization if the Department of Public Health had no actual notice of the revocation of the authorization. A revocation is valid only if it is in writing, dated with a date that is later than the date on the original authorization, and signed by the patient or the patient's legally authorized representative. The Department of Public Health shall retain each revocation in the patient's medical record.

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-115 Discovery Request or Compulsory Process

(a) Before service of a discovery request or compulsory process demand on the Department of Public Health for health care information, an attorney shall provide advance written notice to the patient or the patient's attorney through service of process indicating what health care information is sought, and stating that the patient may obtain a protective order to prevent the Department of Public Health from complying. Thereafter the discovery request or compulsory process demand may be served on the Department of Public Health with a copy of the written notice provided to the patient or patient's attorney attached. The date by which the Department of Public Health must comply with the discovery request or compulsory process demand must allow the patient adequate time to seek a protective order, but in no event be less than fourteen days from the date of service or delivery to the Department of Public Health.

(b) Without the written consent of the patient, the Department of Public Health shall not disclose the health care information sought under subsection (a) of this section if the requestor has not complied with the requirements of such subsection, except upon the order of a court with competent jurisdiction. If the requirements of subsection (a) have been satisfied, and in the absence of a protective order issued by a court of competent jurisdiction forbidding compliance, the Department of Public Health shall disclose the information in accordance with the regulations in this subchapter. The discovery request or compulsory process demand, and any protective order or other related court documents shall be made a part of the patient medical record.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-120 Disclosure Without Patient's Authorization

(a) The Department of Public Health may disclose health care information about a patient

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without the patient's authorization to the extent that a recipient needs to know the information, if the disclosure is:

- (1) To a person who the Department of Public Health reasonably believes is providing health care to the patient at the time the request for disclosure is made;
- (2) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial or actuarial services to the Department of Public Health, or for assisting the Department of Public Health in the delivery of health care and the Department of Public Health reasonably believes that the person:
 - (i) Will not use or disclose the health care information for any other purpose; and
 - (ii) Will take appropriate steps to protect the health care information;
- (3) To any other health care provider reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the Department of Public Health in writing not to make the disclosure;
- (4) To any medical or law enforcement personnel if the Department of Public Health reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this section on the part of the Department of Public Health or its agents or employees to so disclose;
- (5) Oral, and made by the patient's treating physician, nurse, or other health care provider to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the Department of Public Health in writing not to make the disclosure;
- (6) To a hospital or treatment facility that is the successor in interest to the Department of Public Health for the purpose of maintaining the health care information;
- (7) For use in a research project that an institutional review board has determined:
 - (i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;
 - (ii) Is impracticable without the use or disclosures of the health care information in individually identifiable form;
 - (iii) Contains reasonable safeguards to protect the information from re-disclosure;
 - (iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and
 - (v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;
- (8) To a person who obtains information for purposes of an audit, if that person agrees in writing to:
 - (i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and
 - (ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;
- (9) To the Division of Youth Services, Department of Community and Cultural Affairs, pursuant to the terms of the Multi-disciplinary Response Team memorandum of understanding

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signed by the Department of Public Health to assist in addressing issues regarding sexual abuse and assault;

(10) To provide directory information, unless the patient has instructed the Commonwealth Health Center not to make the disclosure;

(11) In cases reported by fire, police, or other public authorities, a report may be provided to them as to the name, residence, sex, age, occupation and general health condition and whether the patient was conscious when admitted;

(12) To the administrator or designated personal representative of the patient if the patient is deceased;

(13) To other professionals and personnel under a health care provider's direction who participate in the diagnosis, evaluation, or treatment of the patient.

(b) The Department of Public Health may disclose health care information about a patient without a patient's authorization in a judicial or administrative proceeding:

(1) When the proceedings are brought by the patient against a Department of Public Health health care provider, including but not limited to malpractice proceedings, and in any criminal or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a Department of Public Health health care provider;

(2) When the purpose of the proceedings is to substantiate and collect on a claim for health care services rendered to the patient after a reasonable attempt has been made to collect from the patient;

(3) In any civil litigation or administrative proceeding against the CNMI government brought by the patient or someone on his behalf if the patient is attempting to recover monetary damages for any physical or mental condition including death of the patient, if the medical records are relevant;

(4) In any disciplinary investigation or proceeding of a health care provider conducted under or pursuant to the Medical Practice Act, provided that the Medical Profession Licensing Board shall protect the identity of any patient whose medical records are examined, except for those patients covered under any of the subsections in this section or those patients who have submitted written consent to the release of their medical records;

(5) In any criminal investigation of a health care provider in which the Medical Profession Licensing Board is participating or assisting in the investigation or proceeding by providing certain medical records obtained from the health care provider, provided that the Medical Profession Licensing Board shall protect the identity of any patient whose medical records are provided in the investigation or proceeding except for those patients covered under any of the subsections in this section or those patients who have submitted written consent to the release of their medical records. This subsection does not authorize the release of any confidential information for the purpose of instigating or substantiating criminal charges against a patient;

(6) In an involuntary civil commitment proceeding, proceeding for court-ordered treatment, or probable cause hearing under the Involuntary Civil Commitment Act of 1994, 3 CMC §§ 2501-2522 or the Patients Rights Act, 3 CMC §§ 2551-2564.

(c) The Department of Public Health shall disclose health care information about a patient without a patient's authorization if the disclosure is:

(1) To federal or CNMI public health authorities, when needed to determine compliance with

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CNMI or federal licensure, certification, or registration rules or laws, or when needed to protect the public health;

- (2) To CNMI law enforcement authorities when necessary to assess whether a patient's death was the result of a criminal act and whether an autopsy is required;
- (3) Pursuant to compulsory process in accordance with § 140-10.6-115.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-125 Patient's Examination and Copying; Requirements

(a) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, the Department of Public Health, as promptly as required under the circumstances, but no later than fifteen working days after receiving the request shall:

- (1) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;
- (2) Inform the patient if the information does not exist or cannot be found;
- (3) Inform the patient and provide the name and address, if known, of the health care provider who maintains the record, if the Department of Public Health does not maintain a record of the information;
- (4) If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than twenty-one working days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or
- (5) Deny the request, in whole or in part, under § 140-10.6-130 and inform the patient.

(b) Upon request, the Department of Public Health shall provide an explanation of any code or abbreviation used in the health care information. However, if a record of the particular health care information requested is not maintained by the Department of Public Health in the requested form, the Department of Public Health is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. The Department of Public Health may charge a reasonable fee for providing the health care information and is not required to permit examination or copying until the fee is paid.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-130 Patient's Request; Denial of Examination and Copying

(a) The Department of Public Health may deny access to health care information by a patient if the Department of Public Health reasonably concludes that:

- (1) Knowledge of the health care information would be injurious to the health of the patient;
- (2) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under

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circumstances in which confidentiality was appropriate;

- (3) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;
- (4) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;
- (5) Access to the health care information is otherwise prohibited by law.

(b) If the Department of Public Health denies a request for examination and copying under this section, it shall, to the extent possible, segregate health care information for which access has been denied under subsection (a) of this section from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(c) If the Department of Public Health denies a patient's request for examination and copying, in whole or in part, under subsection (a)(1) or (a)(3) of this section, it shall permit examination and copying of the medical record by a health care provider not employed by the Department of Public Health, selected by the patient, who is licensed, certified, registered, or otherwise authorized under the laws of the CNMI to treat the patient for the same condition that was treated by the Department of Public Health staff. At the time the patient's request for health care information is denied, the Department of Public Health shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

Commission Comment: In subsection (a)(2), the Commission changed the final period to a semi-colon.

§ 140-10.6-135 Correction or Amendment of Medical Record

(a) For purposes of accuracy or completeness, a patient may request in writing that the Department of Public Health correct or amend its medical record of the patient's health care information to which a patient has access under § 140-10.6-125.

(b) As promptly as required under the circumstances, but no later than ten days after receiving a request from a patient to correct or amend its medical record of the patient's health care information, the Department of Public Health shall:

- (1) Make the requested correction or amendment and inform the patient of the action;
- (2) Inform the patient if the medical record no longer exists or cannot be found;
- (3) Inform the patient and provide the patient with the name and address if known, of the person who maintains the medical record, if the Department of Public Health does not maintain the medical record;
- (4) If the medical record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than twenty-one days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or
- (5) Inform the patient in writing of the health care provider's refusal to correct or amend the

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medical record as requested and the patient's right to add a statement of disagreement.

- (c) In making a correction or amendment, the Department of Public Health shall:
- (1) Add the amending information as a part of the medical record; and
 - (2) Mark the challenged entries as corrected or amended entries and indicate the place in the medical record where the corrected or amended information is located, in a manner practicable under the circumstances.
- (d) If the health care provider refuses to make the patient's proposed correction or amendment, the Department of Public Health shall:
- (1) Permit the patient to file as a part of the medical record of the patient's health care information a concise statement of the correction or amendment requested and the reasons therefore; and
 - (2) Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the medical record where the statement of disagreement is located, in a manner practicable under the circumstances.

Modified, 1 CMC § 3806(c), (e).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-140 Consent by Others; Health Care Representatives

- (a) A person authorized to consent to health care for another may exercise the rights of that person under the regulations in this subchapter to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under federal or CNMI law, only the minor may exercise the rights of a patient under these regulations as to information pertaining to health care to which the minor lawfully consented. In cases where parental consent is required, the Department of Public Health may rely on the representation of a parent that he or she is authorized to consent to health care for the minor patient regardless of whether:
- (1) The parents are married, unmarried, or separated at the time of the representation;
 - (2) The consenting parent is, or is not, a custodial parent of the minor;
 - (3) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered in a child custody dispute.
- (b) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-145 Personal Representative of Deceased Patient

A designated personal representative of a deceased patient may exercise all of the deceased patient's rights under the regulations in this subchapter. If there is no designated personal

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representative, or upon discharge of the designated personal representative, a deceased patient's rights under these regulations may be exercised by the next of kin of the deceased patient in the following order: spouse, children over age 18, parents, siblings.

Modified, 1 CMC § 3806(d).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-150 Safeguards for Security of Health Care Information

The Department of Public Health shall adopt and implement reasonable safeguards for the security of all health care information it maintains.

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-155 Retention of Medical Records

The Department of Public Health shall retain medical records for a minimum of seven years after the date of the last entry on the record. In the case of minor children, the Department of Public Health shall retain the medical records for a minimum of seven years after the date the child reaches 18 years of age unless there are entries on the medical records after the child reaches 18 years of age. X-ray films shall be retained for a minimum of five years.

Modified, 1 CMC § 3806(e).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

§ 140-10.6-160 Severability

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

Modified, 1 CMC § 3806(d), (f).

History: Adopted 22 Com. Reg. 17546 (Oct. 20, 2000); Proposed 22 Com. Reg. 17211 (May 19, 2000).

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