

CHAPTER 87
FORMERLY
HOUSE BILL NO. 99

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO MEDICAL CERTIFICATION REQUIREMENTS AS PART OF THE COMMERCIAL DRIVER LICENSE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2603, Title 21 of the Delaware Code by adding the following definitions, enumerated and alphabetically inserted, into the existing section:

“() “CDL downgrade” means either:

- a. Except where otherwise provided in Title 21, the Division allows the driver to change his or her self-certification to interstate but operating exclusively in transportation or operation excepted from 49 CFR Part 391, as provided in Section 390.3(f), 391.2, 391.68, or 398.3;
- b. The Division allows the driver to change his or her self-certification to intrastate only if the driver is physically qualified for intrastate-only driving under 21 Del. C. § 4704(b);
- c. The Division allows the driver to change his or her certification to intrastate but operating exclusively in transportation or operations excepted under 21 Del. C. § 4704(c)(1)(2) driver physical qualification requirements; or
- d. The Division removes the CDL privilege from the driver license.

() “CDLIS driver record” means the electronic record of the individual CDL driver’s status and history stored by the state of record as part of the Commercial Driver’s License Information System (CDLIS) established under 49 U.S.C. 31309.

() “CDLIS motor vehicle record” means a report generated from the CDLIS driver record meeting the requirements for access to CDLIS information and provided by states to users authorized in 49 CFR Section 384.225(e)(3) and (4), subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721-2725, and 21 Del C. § 305.

() “FMCSA” means Federal Motor Carrier Safety Administration.

() “Medical examiner” for purposes of conducting U.S. Department of Transportation physical examination for CMV certification means a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

() “Medical variance” means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

- a. An exemption letter permitting operation of a commercial motor vehicle pursuant to 49 CFR Part 381, Subpart C, or Section 391.64;
- b. A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to 49 CFR 391.49.

() “Motor vehicle record” means the report of the driving status and history of a driver generated from the driver record, provided to users, such as drivers or employers, and subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721-2725 and 21 Del C. § 305.

() “Non-excepted interstate commerce” means a CDL applicant must certify that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR Part 391, and is required to obtain a federal medical examiner’s certification by 49 CFR §391.45.

() “Excepted interstate commerce” means a CDL applicant must certify that he or she operates or expects to operate in interstate commerce but engages exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68, or 398.3 from all or parts of the qualification requirements of 49 CFR Part 391 and is, therefore, not required to obtain a federal medical examiner’s certification by 49 CFR §391.45.

() “Non-excepted intrastate commerce” means a CDL applicant must certify that he or she operates only in intrastate commerce and, therefore, is subject to the Delaware driver medical qualification requirements in 21 Del. C. § 4704 (a), (b), and (c)(1).

() “Excepted intrastate commerce” means a CDL applicant must certify that he or she operates in intrastate commerce but engages exclusively in transportation or operations excepted from all or parts of the Delaware’s driver medical qualification requirements in 21 Del C. § 2621 and § 4704(c)(2).”

Section 2. Amend § 2611(b)(2), Title 21 of the Delaware Code by adding a new subparagraph to read as follows:

“i. “V” – FMCSA medical variance restriction.”.

Section 3. Amend Chapter 26, Title 21 of the Delaware Code by adding a new § 2626 to read as follows:

“Section 2626. CDL Medical Certification Requirements.

(a) CDL medical self-certification requirements:

(1) Beginning January 30, 2012, any person applying for an initial CDL must self-certify to the Division that he or she is operating commercial motor vehicles in a non-excepted interstate commerce, excepted interstate commerce, non-excepted intrastate commerce or excepted intrastate commerce status.

(2) Existing CDL holders must self-certify to the Division on or after January 30, 2012, but not later than January 30, 2014, that he or she operates commercial motor vehicles in a non-excepted interstate commerce, excepted interstate commerce, non-excepted intrastate commerce or excepted intrastate commerce status.

(3) It is the responsibility of the CDL holder to immediately notify the Division if/when his or her medical certification status changes.

(b) Medical certification documentation requirements for non-excepted interstate commerce drivers after January 30, 2012:

(1) Any person applying for an initial CDL who certifies that he or she will operate CMVs in non-excepted, interstate commerce must provide the Division with the current, original medical examiner’s certificate prepared by a medical examiner confirming the applicant meets the minimum physical qualifications for CMV operators in accordance with federal regulations.

(2) On or after January 30, 2012, but not later than January 30, 2014, existing CDL holders must provide the Division with the current original or copy of the medical examiner’s certificate prepared by a medical examiner confirming the CDL holder meets the minimum physical qualifications for CMV operators in accordance with federal regulations.

(3) In order to maintain a medical certification status of certified, the CDL holder who certifies that he or she will operate CMVs in non-excepted interstate commerce must provide the Division with a current original or copy of each subsequent medical examiner’s certificate prepared by a medical examiner confirming the CDL holder meets the minimum physical qualifications for CMV operators in accordance with federal regulations.

(c) CDL issuance procedures for drivers who after January 30, 2012, self-certify as operating in non-excepted interstate commerce.

(1) The Division must verify the driver has self-certified as a non-excepted interstate commerce operator.

(2) The Division must verify the driver has a “certified” medical status on the medical examiner’s certificate and on the CDLIS driver record.

(3) In the event that the driver has not self-certified or the medical certification status of the individual is “not-certified,” the applicant will be denied a CDL issuance, renewal, upgrade or transfer, and the CDL will be downgraded.

(4) Approximately 60 days before a medical examiner’s certificate expires, the Division will attempt to notify the CDL holder requiring him or her to either submit a current medical certificate or self-certify that he or she now operates a CMV in excepted interstate commerce, non-excepted intrastate commerce or excepted intrastate commerce. The CDL will be downgraded no later than 60 days after the CDL holder’s current medical certification expires or when determined to be “not-certified” if:

(A) he or she does not change his or her self-certification to excepted interstate commerce, non-excepted intrastate commerce, or excepted intrastate commerce;

(B) he or she does not present to the Division a current medical certificate;

(C) his or her FMCSA medical variance expires; or

(D) the FMCSA notifies the Division that his or her medical variance was removed or rescinded.

(5) Upon notification from the FMCSA that a medical variance has been issued to a CDL driver, the Division shall file, electronically or otherwise, medical variance information, the CDLIS driver record will be updated, and the CDL document will show a restricted code “V” indicating there is information about a medical variance on the CDLIS driver

record. Within 10 calendar days of receiving information from the FMCSA regarding the issuance or renewal of a medical variance for a driver, the Division must update the CDLIS driver record to include the medical variance information provided by the FMCSA.

(d) CDL driver physical qualifications and recordkeeping requirements for non-excepted interstate commerce drivers.

(1) A CDL holder who is subject to the physical requirements contained in 49 CFR Section 391.41 must not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so, and, except as provided in subsection 2626(b)(2), when on duty, has on his or her person the original or a copy of a current medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle.

(2) Beginning January 30, 2012, a CDL holder who has submitted a current medical examiner's certificate to the Division in accordance with 49 CFR 383.71(h) substantiating he or she is medically "certified," no longer needs to carry on his or her person the medical examiner's certificate once the medical certification information is posted on the CDLIS driver record. The Division will post the medical information in CDLIS within 10 days after the driver submits a current medical certificate. If there is no medical certification information on that driver's CDLIS driver record, a current medical examiner's certificate issued prior to January 30, 2012, will be accepted until January 30, 2014.

(3) A CDL driver who obtained a medical variance from the FMCSA must continue to have in his or her possession the original or copy of that medical variance documentation at all times when driving a CMV.

(4) Canadian and Mexican CMV drivers are not required to have in their possession a medical examiner's certificate if the driver has been issued and possesses a valid commercial driver license issued by the United Mexican States or Canadian Province or Territory and whose license and medical status, including any waiver or exemption, can be electronically verified. Drivers from any of the countries who have received a medical authorization that deviates from the mutually accepted compatible medical standards of the resident country are not qualified to drive a CMV in the other countries. Canadian and Mexican drivers who do not meet the medical fitness provisions of their home country for motor carriers are not qualified to drive a CMV in the United States even if that driver has received a medical variance or waiver. In addition, U.S. drivers who receive a medical variance from the FMCSA are not qualified to drive a CMV in Canada or Mexico.

(e) CDL holders self-certifying that they operate or expect to operate CMVs in excepted interstate commerce must:

(1) meet the minimum physical qualifications for CMV operators as determined in 49 CFR 390.3(f), 391.2, 391.68, or 398.3; and

(2) self-certify to the Division that that operate or expect to operate CMVs in excepted interstate commerce upon each renewal of their CDLs.

(f) CDL holders self-certifying that they operate or expect to operate CMVs in non-excepted intrastate or excepted intrastate commerce must:

(1) meet the minimum physical qualifications for CMV operators as determined in 21 Del. C. § 4704;

(2) self-certify to the Division that they operate or expect to operate CMVs in non-excepted intrastate or excepted intrastate commerce upon each renewal of their CDLs;

(3) meet the minimum physical qualification requirements for CMV operators as determined in 21 Del. C. § 2626 (b) through (d) or § 2626 (e) before the CDL holders may have the "K" restriction removed from their CDLs.

(g) Release of medical certification information in the CDLIS driver record. Except where prohibited by 21 Del C. § 305 or Division policies, the following authorized agents may receive CDLIS driver record information:

(1) States – All information on all CDLIS driver records.

(2) Secretary of Transportation – All information on all CDLIS driver records.

(3) Driver – All information on that driver's CDLIS driver record obtained on the CDLIS motor vehicle record.

(4) Motor carrier or prospective motor carrier – After the employer or prospective employer notifies the driver, all information on that driver's or prospective driver's CDLIS driver record obtained on the CDLIS motor vehicle record.".

Section 4. This bill will become effective January 30, 2012.