

CHAPTER 208
FORMERLY
HOUSE BILL NO. 208

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE DIVISION OF LONG TERM CARE RESIDENTS PROTECTION.

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

Amend Subchapter VI, Chapter 79, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline and redesignating accordingly as follows:

Subchapter VI. Division of ~~Long Term Care Residents Protection~~ Health Care Quality.

§ 7970. Intent.

(a) It is the intent of the General Assembly that the primary purpose of ~~the Long Term Care Consumer Protection Act~~ shall be this subchapter, known as the Health Care Quality Act, is as follows:

(1) To ensure that individuals receiving ~~long term care services~~ health care services in long term, acute, or outpatient settings are safe and secure, receive quality ~~care~~ care, and are free from abuse, neglect, mistreatment and financial ~~exploitation; exploitation.~~

(2) To promote the quality of care and quality of life for individuals receiving ~~long term care services; and~~ long term, acute, and outpatient health care services.

(3) To ensure that training programs for certified nursing ~~assistants~~ assistants:

a. Comply with state and federal statutes and ~~regulations, that such programs are~~ regulations.

b. Are regularly monitored for ~~compliance, and that they are~~ compliance.

c. Are subject to sanctions for violations.

§ 7971. Division of ~~Long Term Care Residents Protection~~ Health Care Quality.

(a) There is hereby established the Division of ~~Long Term Care Residents Protection~~ Health Care Quality within the Department of Health and Social Services.

(b) Definitions. —

(1) "Adult Abuse Registry" is means a central registry of information established by § 8564 of Title 11 that relates to substantiated cases of adult abuse, neglect, mistreatment, or financial exploitation. ~~Health care facility~~ Long term care facility, home care agency, adult day care facility, and prescribed pediatric extended care center employers must check the Adult Abuse Registry before hiring employees who would have direct access to ~~patients/residents; residents and patients.~~

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

(2) (3) "Director" ~~shall mean the Director of the Division of Long Term Care Residents Protection~~ means the Director of the Division of Health Care Quality of the Department of Health and Social Services; Services.

(3) (4) "Division" ~~shall mean the Division of Long Term Care Residents Protection~~ means the Division of Health Care Quality of the Department of Health and Social Services; Services.

(4) "~~Long Term Care Facility~~" means any facility, foster home, ~~group living arrangement, adult care home or any other facility which is required to be licensed under Chapter 11 of Title 16 dealing with nursing homes, rest homes and related facilities.~~

(5) "Long term, acute, and outpatient health care services" means those services as defined in §122(3)m., §122(3)o., §122(3)p., §122(3)q., §122(3)s., §122(3)x., §122(3)y., §122(3)z., §122(3)aa. of Title 16; Chapter 10 of Title 16; or Chapter 11 of Title 16.

(c) The purpose of the Division of ~~Long Term Care Residents Protection~~ shall be Health Care Quality is to promote the quality of life of individuals receiving ~~long term~~ long term, acute, and outpatient health care services and to ensure that they are safe and secure, receive quality ~~care~~ care, and are free from abuse, neglect, ~~mistreatment~~ mistreatment, and financial exploitation.

(d) The Division ~~shall have~~ has all of the following duties and functions:

(1) Establish and implement policies and procedures, promulgate regulations, enforce state statutes and regulations regarding the quality of care and quality of life of individuals receiving ~~long term~~ long term, acute, and outpatient health care services and refer federal violations to the appropriate authorities with recommendations for ~~enforcement;~~ enforcement.

(2) License facilities and services on an annual basis and conduct a variety of surveys and inspections including ~~annual, complaint driven and surprise~~ regular, complaint, and unannounced or unexpected surveys and inspections to determine compliance with federal and state statutes and ~~regulations;~~ regulations.

(3) Receive and investigate complaints of abuse, neglect, mistreatment, ~~financial exploitation~~ financial exploitation, and other concerns which may adversely affect the health, safety, ~~welfare~~ welfare, or rights of such individuals including alleged violations of federal and state statutes and regulations and in connection with such duties and functions ~~shall have~~ has the authority to obtain ~~an~~ all of the following:

a. An individual's hospital records in cases where the Division is engaged in an investigation or survey involving the care or treatment of the individual at a facility or agency licensed by the Division, and the individual has been admitted to a hospital from the facility or agency or discharged from a hospital to the facility, facility or agency.

b. An individual's emergency medical system and paramedic records in cases where the Division is engaged in an investigation or survey involving the care or treatment of the individual at a facility or agency licensed by the Division, and the individual has been transported to a hospital from a facility or agency or from a hospital to a facility or agency.

(4) Provide for systematic and timely notification, coordinated ~~investigation~~ investigation, and referral of abuse, neglect, ~~mistreatment~~ mistreatment, and financial exploitation complaints to the appropriate law-enforcement agencies and the Attorney General's ~~office;~~ office.

(5) ~~To protect~~ Protect the privacy of the individual receiving ~~long term~~ long term, acute, or outpatient health care services and that individual's family. ~~In furtherance of this, the~~

a. ~~The~~ Division shall establish guidelines ~~concerning~~ regarding the disclosure of information concerning ~~abuse and/or neglect~~ abuse, neglect, mistreatment, and financial exploitation involving ~~the long-term care resident or recipient of community-based long-term care services.~~ long term, acute and outpatient health care services.

b. The Division may require persons to make written requests for access to records maintained by the Division.

c. The Division may only release information to persons who have a legitimate public safety need for such information and such information shall be used only for the purpose for which the information is ~~released;~~ released.

(6) Maintain the Adult Abuse Registry as established by § 8564 of ~~Title 11;~~ Title 11.

(7) In conjunction with the Attorney General's Office, develop and conduct training for Department ~~of Health and Social Services~~ staff and providers of ~~long-term~~ long term, acute, or outpatient health care services on applicable statutes and regulations, as well as provide other educational workshops, including accident prevention and health promotion training, and other technical assistance as ~~needed;~~ needed.

(8) Promote and advocate for ~~consumers' rights;~~ consumer, resident, and patient rights.

(9) Meet regularly with individuals receiving long term care services and their ~~families;~~ families.

(10) Publish ~~an annual report-~~ a report, as determined by the Division, to the Governor, ~~Secretary~~ Secretary, and General Assembly on the Division's activities, including comprehensive data analysis and monitoring of trends in the quality of care and quality of life of individuals receiving long-term care services in ~~Delaware;~~ Delaware.

(11) Conduct quality assurance demonstration ~~projects;~~ projects.

(12) Provide updated consumer information materials on an ongoing and as needed ~~basis;~~ basis.

(13) Establish, ~~maintain~~ maintain, and publicize a 24-hour state-wide toll free telephone hotline operating at all times and capable of receiving reports of ~~abuse and neglect complaints;~~ abuse, neglect, mistreatment, and financial exploitation.

(14) Regulate the certification of nursing assistants, by doing all of the following:

a. Certifying nursing assistants pursuant to Chapter 30A of Title 16 and certifying nursing assistants from out of state who meet Delaware requirements.

b. Suspending or revoking the certificate of a certified nursing assistant for cause. Cause to suspend or revoke a certificate ~~shall include, but is not limited to:~~ includes the following:

1. Placement of a finding of abuse, ~~neglect or mistreatment~~ neglect, mistreatment, and financial exploitation against a certified nurse assistant on the Delaware Certified Nurse Assistant ~~Registry;~~ Registry.

2. The suspension or revocation of the certified nursing assistant's certificate by another ~~state;~~ and state.

3. Circumstances where the certificate was obtained using false ~~information;~~
information.

4. Failure to complete bi-annual educational requirements.

(15) Regulate nurse assistant training ~~programs, including to;~~ by doing the following:

- a. Approve curricula and develop criteria and standards for evaluating such training ~~programs;~~ programs.
- b. Provide for surveys of such programs at such times as it may deem ~~necessary;~~ necessary.
- c. Ensure that such programs meet the requirements of Chapter 30A of Title 16 and 42 C.F.R., Ch. IV, Subchapter G, ~~Part 483;~~ Part 483.
- d. Deny or withdraw approval from training programs for failure to meet approved curricula or other ~~criteria;~~ criteria.
- e. Establish requirements for mandatory continuing ~~education;~~ education.
- f. Provide public access through an online source to the pass rates of all approved training ~~programs;~~ programs.

(16) The Division may impose civil penalties against any nurse assistant training program, whether approved or not, for violations of the provisions of this ~~chapter~~ subchapter or of Chapter 30A of Title 16, or the regulations adopted ~~pursuant thereto.~~ under this subchapter or Chapter 30A of Title 16. The maximum civil penalty ~~shall be~~ is \$5,000 per violation.

a. In determining the amount of the penalty to be assessed, the Division shall consider all of the following:

1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the ~~violation;~~ violation.
2. The history of violations committed by the person or the person's affiliate, employee, or controlling ~~person;~~ person.
3. The efforts made to correct the ~~violation;~~ violation.
4. The culpability of the person or persons who committed the ~~violation;~~ violation.
5. Whether a misrepresentation was made to the Division or to another person regarding any of the following:
 - A. The quality of services ~~provided;~~ provided.
 - B. The academic performance of the ~~program;~~ or program.
 - C. The identity of an owner or controlling person of the program.
6. Whether the program refused to allow a representative of the Division to inspect without notice at any time any of the following:
 - A. Any portion of the premises of the ~~program;~~ or program.
 - B. Any documents, records, or files required to be maintained by the program.

7. Whether the program wilfully interfered with the work of a representative of the Division or with the enforcement of any statute or ~~regulation;~~ regulations.

8. Any other matter that affects the operating requirements of the program, or the educational experience of its students.

b. Each day of a continuing violation constitutes a separate violation.

c. All civil penalties collected under this ~~chapter shall~~ subchapter must be remitted to the State Civil Penalty Trust Fund.

d. The Division may add the amount of the civil penalty to the licensing fee for the program. If the licensee refuses to make the payment at the time of the application for renewal of its license, ~~its license shall not be renewed.~~ the Division may not renew the license.

e. The Division may also proceed for the collection of the civil money penalty in an action brought in the name of the Department in any court of competent jurisdiction.

f. Any entity upon which a penalty is imposed may request an administrative hearing ~~pursuant to Department of Health and Social Services~~ under Department regulations before such penalty becomes final.

1. The hearing officer for the administrative hearing ~~shall have the power to~~ may compel the attendance of witnesses and the production of evidence.

2. The finding by the hearing officer ~~shall constitute~~ constitutes the final decision of the ~~Department of Health and Social Services and shall be~~ and is appealable, on the record, by either party to Superior Court.

(17) Develop a format, known as the Interagency Transfer Form, for exchange of information between health care agencies and facilities regarding consumer, resident, or patient health conditions and care needs to ensure ongoing quality of care and consumer, resident, or patient centered care for the consumer, resident, or patient in any care setting.

(18) The Director, or the Director's designee, may issue subpoenas for named respondents or witnesses or documents, financial records, physical evidence, or any other source of evidence needed during the course of an investigation of a complaint or for a public hearing on a complaint. If a person subpoenaed fails to comply, the Division may compel compliance with the subpoena by filing a motion to compel in the Superior Court, which has jurisdiction to compel compliance.

§ 7972 Background Check Center.

(a) Purpose. —

(1) It is the purpose of this section to establish an electronic system (Background Check Center) for the consolidation of various data streams necessary to provide a prospective employer or a current employer with information related to the suitability for employment of a person who provides care or services as follows:

a. In any capacity, including as an employee, an agent, or an independent contractor working in a ~~nursing facility or similar~~ long term care facility licensed pursuant to under Chapter 11 of Title 16.

b. As an employee of a hospice agency, a home health agency, or a personal assistance services agency (home care agency) licensed ~~pursuant to § 122(3)(m), (3)(o) and (3)(x) under § 122(3)m., § 122(3)o., and § 122(3)x.~~ of Title 16 working in a private residence.

c. As an employee of a prescribed pediatric extended care center licensed under § 122(3)q. of Title 16.

(2) It is the further purpose that the Background Check Center be self-supporting after the initial construction and initial operational phase.

(3) Utilization of the Background Check Center by an employer is mandatory to ensure that all ~~persons~~ individuals working in a ~~nursing facility or similar facility or for long term care facility,~~ a home care ~~agency~~ agency, or a prescribed pediatric extended care center are subject to comprehensive screening and updating of their criminal record.

(4) The Background Check Center must be a reliable source of information which enables prompt decision making.

(5) Each person screened through the Background Check Center ~~shall have~~ has a right of appeal.

(b) Definitions. —As used in this chapter:

(1) "Background Check ~~Center (BCC)~~ Center" ("BCC") means the electronic system which combines the data streams from various sources within and outside the State in order to assist an employer in determining the suitability of a person for employment in a ~~nursing facility or similar facility, or home care agency, long term care facility, home care agency, or prescribed pediatric extended care center.~~

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

(3) "Employer" ~~is~~ means a person or other legal entity ~~which employs people to work in a nursing facility or similar facility licensed pursuant to § 1103 of Title 16, or for a home care agency, as defined below.~~ that employs individuals to work in long term care facility, home care agency, or for a prescribed pediatric extended care center.

(4) "Home care agency" ~~includes~~ means all programs or agencies licensed ~~pursuant to § 122(3)(m), or (3)(o), or (3)(x) under § 122(3)m., § 122(3)o., and § 122(3)x.~~ of Title 16.

(5) "~~Nursing facility or similar facility~~" means any nursing facility or similar facility licensed pursuant to Chapter 11 of Title 16, including but not limited to nursing facilities (commonly referred to as nursing homes), assisted living facilities, intermediate care facilities for persons with intellectual disability, neighborhood group homes, family care homes, rest residential facilities, and intensive behavioral support and education residences. "Long term care facility" means any facility licensed under Chapter 11 of Title 16.

() "Prescribed pediatric extended care center" means any facility licensed under § 122(3)q. of Title 16.

(6) "Private residence" means the domicile of the individual in need of care, either personally owned by that individual or considered the place of residence of that individual. ~~A private residence does not include those healthcare facilities licensed by the Department of Health and Social Services under Chapter 11 of Title 16.~~

(c) ~~Mandatory participation.~~— All employers who are required to secure criminal background checks ~~pursuant to § 1141 or § 1145~~ under § 1141, § 1145, or § 1190 of Title 16 must process all applicants for employment through the BCC.

(d) ~~Assessment of cost.~~— The Department's Division of Management Services, with the approval of the ~~Secretary of Health and Social Services,~~ Department Secretary, shall establish the appropriate fee to collect from BCC users.

(1) The fee shall approximate and reasonably reflect all costs necessary to defray the maintenance, operation, and development of the BCC after September 30, 2012. ~~BCC.~~

(2) At the beginning of each calendar year the Division of Management Services, or any other state agency acting in its behalf, shall compute the appropriate fee and determine the effective date of any fee modification.

(3) All revenue generated pursuant to under this section shall must be deposited in a special BCC fund account in the Division of Management Services.

(e) ~~Appeal.~~— Due process protections of notice and opportunity to be heard ~~shall must~~ be provided to an applicant for employment who wishes to appeal BCC errors, or to appeal the imposition of sanctions under § 1141 or § 1145 of Title 16. The hearing process shall be consistent with the Administrative Procedures Act, Chapter 101 of this title.

Approved February 14, 2018