

CHAPTER 386  
FORMERLY  
HOUSE BILL NO. 37  
AS AMENDED BY  
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE  
MENTAL HEALTH PATIENTS' BILL OF RIGHTS.

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

Section 1. Amend § 5161(a), Chapter 51, Title 16, Delaware Code by adding a new paragraph to read as follows:

“(3) ‘Protection and Advocacy Agency’ means the Community Legal Aid Society, Inc. or successor agency designated the State protection and advocacy system pursuant to the following:

- a. Protection and Advocacy for Individuals with Mental Illness Act [42 U.S.C. 10801 et seq.];
- b. Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 15001 et seq.]; or
- c. Protection and Advocacy for Individual Rights [29 U.S.C. 794(e)].”.

Section 2. Amend § 5161(b), Chapter 51, Title 16, Delaware Code by striking the third sentence thereof and substituting in lieu thereof the following:

“Each patient shall have the rights listed below, which shall be liberally construed to fulfill their beneficial purposes. Furthermore, in defining the scope or extent of any duty imposed by this Section, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments as well as certification standards of accrediting agencies may be considered.”.

Section 3. Amend § 5161(b)(6)c, Chapter 51, Title 16, Delaware Code by inserting the punctuation and word “, licensed” between “authorized” and “mental”.

Section 4. Further Amend § 5161(b)(6)c, Chapter 51, Title 16, Delaware Code by inserting the following after the word and punctuation “others.”:

“Administration of restraint under this subsection shall include the following safeguards:

1. Authorizing orders shall specify the form, duration, and conditions of restraint based on a deliberative determination that the restraint is the least restrictive alternative intervention to prevent physical harm to the patient or others;

2. The patient shall receive a medical examination within an hour of initiation of restraint by a physician, or, if a physician is not available, a nurse;

3. During the course of restraint the patient shall be closely monitored to assess well-being and facilitate prompt discontinuation of restraint when no longer necessary to prevent physical harm to the patient or others;

4. Subsequent to administration of restraint, an interactive clinical assessment shall be undertaken, which includes the patient, and, at the request of the patient, a representative of the Protection and Advocacy Agency, to review catalysts resulting in the necessity of the restraint and appropriateness of revision to the individualized treatment plan.”.

Section 5. Amend § 5161(b)(7), Chapter 51, Title 16, Delaware Code by adding after the word “title” and before the period “.” the following: “and the Protection and Advocacy Agency”.

Section 6. Amend § 5161(b)(13)d, Chapter 51, Title 16, Delaware Code by striking the phrase “designated programs under the federal Protection and Advocacy for Mentally Ill Individuals Act [42 U.S.C. §10801 et seq.] and Developmental Disabilities Assistance and Bill of Rights Programs for Individuals with Developmental Disabilities Act [42 U.S.C. §15001 et seq.], as amended” and inserting in lieu thereof the term “the Protection and Advocacy Agency”.

Section 7. Amend § 5161(b)(15), Chapter 51, Title 16, Delaware Code, by inserting the following sentence at the end of this subsection after the word and punctuation “grievances.”:

“The Department shall establish the grievance system for the Delaware Psychiatric Center, through regulation, which shall include the following features:

- a. availability of patient assistance in preparation and submission of grievance;
- b. right to present grievance in person or with the assistance of a representative, including the Protection and Advocacy Agency, to an individual or group impartial decision-maker;
- c. right to decision on routine grievance within reasonable time not to exceed fifteen (15) calendar days;
- d. availability of expedited processing for urgent or time-sensitive grievance; and
- e. availability of patient appeal to impartial review officer selected by the Department from an approved list compiled by the State Council for Persons with Disabilities and submitted to the Department.”.

Approved July 15, 2010