

CHAPTER 201
FORMERLY
HOUSE BILL NO. 36

AN ACT TO AMEND TITLES 16 AND 29 OF THE DELAWARE CODE
RELATING TO NURSING FACILITIES AND SIMILAR FACILITIES.

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

Section 1. Amend § 1102, Chapter 11, Title 16 of the Delaware Code by adding a new paragraph “(7)” to read as follows:

“(7) ‘Protection & Advocacy Agency’ shall mean the Community Legal Aid Society, Inc. or successor agency designated the State protection and advocacy system pursuant to 42 U.S.C. § 10801 et seq; 42 U.S.C. § 15001 et seq; or 29 U.S.C. § 794(e).”.

Section 2. Amend § 1105(a)(5), Chapter 11, Title 16, Delaware Code by adding the phrase “or Protection and Advocacy Agency” after the word “State” and before the word “or”.

Section 3. Amend § 1117(a), Chapter 11, Title 16, Delaware Code by adding the phrase “or facilitating a Protection and Advocacy Agency investigation” after the word “inspection” and before the period “.”.

Section 4. Amend § 1117(b), Chapter 11, Title 16, Delaware Code by adding the phrase “or Protection and Advocacy Agency” after the word “Department” and before the word “or”.

Section 5. Amend § 1119C, Chapter 11, Title 16, Delaware Code by designating the current Section as subsection “(a)” and adding a new subsection “(b)” to read as follows:

“(b) The Department shall include in its regulations for all facilities licensed under this Chapter a requirement of full cooperation with the Protection and Advocacy Agency in fulfilling functions authorized by this Chapter. Without limiting the Protection and Advocacy’s Agency’s pursuit of other legal remedies, the Department shall enforce violations of such regulations consistent with § § 1109 and 1113 of this Chapter.”.

Section 6. Amend § 1121(15), Chapter 11, Title 16, Delaware Code by adding the punctuation and phrase “, the Protection and Advocacy Agency” after the word “Disabilities” and before the word “or”.

Section 7. Amend § 1121(23), Chapter 11, Title 16, Delaware Code by adding the phrase “the Protection and Advocacy Agency and” after the word “from” and before the word “agencies”.

Section 8. Amend § 1125, Chapter 11, Title 16, Delaware Code by adding the following sentence at the end of the Section:

“If a grievance involves a Protection and Advocacy Agency client, the findings shall be shared with the Protection and Advocacy Agency.”.

Section 9. Amend § 1131, Chapter 11, Title 16, Delaware Code, by adding a new paragraph “(11)” to read as follows:

“(11) ‘Protection & Advocacy Agency’ shall mean 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 10. Amend § 1132(e), Chapter 11, Title 16, Delaware Code by adding the punctuation and phrase “, the Protection and Advocacy Agency” after the word “Office” or “office” wherever it appears in this Section.

Section 11. Amend § 1134(d)(2), Chapter 11, Title 16, Delaware Code by adding the following sentence after the word and punctuation “report.”:

“The acknowledgement shall identify other relevant remedial agencies, including the Protection and Advocacy Agency, Office of the Long-Term Care Ombudsman, and victim rights resource organizations.”.

Section 12. Amend § 1134, Chapter 11, Title 16, Delaware Code by adding a new subsection “(e)” to read as follows:

“(e) The Protection and Advocacy Agency is authorized to complement the Department’s complaint resolution system through monitoring, investigation and advocacy on behalf of facility patients or residents. In furtherance of this authority, Protection and Advocacy Agency representatives may engage in the following functions:

(1) solicit and receive oral and written reports and complaints of abuse, neglect, mistreatment or financial exploitation of facility patients or residents; and

(2) access a facility; interview patients, residents, facility staff and agents; and inspect and copy records pertaining to the patient or resident with valid consent or as otherwise authorized by Federal law.”.

Section 13. Amend § 1134, Chapter 11, Title 16, Delaware Code by adding a new subsection “(f)” to read as follows:

“(f) The Department may develop protocols with the Protection and Advocacy Agency to facilitate coordination whenever both agencies have initiated an overlapping investigation.”.

Section 14. Amend § 1134, Chapter 11, Title 16, Delaware Code by adding a new subsection “(g)” to read as follows:

“(g) The immunities and protections compiled in § 1135 of this subchapter shall apply to persons offering reports or testimony to initiate or support Protection and Advocacy Agency investigation or advocacy.”.

Section 15. Amend § 1135, Chapter 11, Title 16, Delaware Code by adding the phrase and punctuation “financial exploitation,” after the word “abuse” wherever it appears in this Section.

Section 16. Amend § 1135(c), Chapter 11, Title 16, Delaware Code by striking the word “required” and substituting in lieu thereof the word “authorized”.

Section 17. Amend § 7907(a)(3), Chapter 79, Title 29, Delaware Code by striking the phrase “developmental disabilities community protection and advocacy system

established by Title 20 of the United States Code” and substituting in lieu thereof the phrase
“Protection and Advocacy Agency as defined in Title 16 Del.C. § 1102”.

Approved August 24, 2009