

CHAPTER 202
FORMERLY
HOUSE BILL NO. 38

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

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

Section 1. Amend Chapter 51, Title 16 of the Delaware Code by renumbering existing “§ 5162” as “§ 5163” and adding a new “§ 5162” to read as follows:

“§ 5162. Notification of critical incidents and deaths, report forms.

(a) As used in this Section:

(1) ‘Covered facility’ means a hospital or residential center as defined in § 5161 of this subchapter.

(2) ‘Critical incident’ means the occurrence, within a covered facility, of the following events:

- a. attempted suicide;
- b. seclusion exceeding fifteen (15) minutes;
- c. physical restraint exceeding five (5) minutes or involving injury;
- and
- d. victimization prompting solicitation of police intervention or investigation.

(3) ‘Death’ means the demise of a current patient or resident of a covered facility. ‘Death’ shall also include the demise of such a patient or resident within fourteen (14) calendar days of transfer to a medical or hospice facility.

(4) ‘Protection & 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 & 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)].

(b) Notwithstanding any other provision of law, each covered facility shall notify the Protection & Advocacy Agency in writing or electronically within seventy-two hours of all critical incidents and, upon request, facilitate Protection & Advocacy Agency contact with the patient, resident, or authorized representative of the patient or resident.

(c) Notwithstanding any other provision of law, each covered facility shall notify the Protection & Advocacy Agency within seventy-two hours of the date of any patient or resident death. Such notice shall include brief identifying information; contact information for the next of kin, administrator, or estate executor; the age of the patient or resident; the

condition of the patient's or resident's health prior to death; and apparent cause of death.

- (d) No person or covered facility shall be liable in any civil action by reason of provision of notice of a critical incident or death to the Protection & Advocacy Agency in conformity with this Section.
- (e) Each covered facility shall cooperate with any assessment or investigation of a critical incident or death by the Protection & Advocacy Agency. In furtherance of this duty, no covered facility shall discharge, discriminate, or retaliate against any person who provides the Protection & Advocacy Agency with information or assistance in connection with an assessment or investigation of a critical incident or death.”.

Approved August 24, 2009