

LAWS OF DELAWARE
VOLUME 84
CHAPTER 328
152nd GENERAL ASSEMBLY
FORMERLY
SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 151

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE RELATING TO MANDATORY DISCLOSURE OF INFORMATION IN LONG-TERM CARE FACILITIES OFFERING DEMENTIA CARE SERVICES.

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

Section 1. Amend Title 6 of the Delaware Code by adding a new Chapter 25K and by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2501K. Definitions.

For the purposes of this chapter:

(1) “Assisted Living Facility” means as defined in § 1102 of Title 16.

(2) “Authorized Representative” means an individual legally authorized to make decisions on another’s behalf.

(3) “Dementia Care Services” means ongoing specialized care for residents who have been diagnosed with Alzheimer’s disease or other dementias. Such care is designed to manage the behavioral and psychological symptoms of Alzheimer’s disease or other dementias. Such care includes planned group and individual programming and person-centered care practices to support activities of daily living for residents living with Alzheimer’s disease or other dementias. Dementia care services may be provided in a facility that is not or does not include a secured memory care unit. Dementia care services are a type of memory care services.

(4) “Department” means the Department of Health and Social Services.

(5) “Direct Care” means the provision of medical care services or personal care services to a resident, including:

a. Administering medications or medical treatments.

b. Conducting physical or psychosocial assessments.

c. Planning the treatment of, or care for, a resident.

d. Supporting activities of daily living, including bathing, dressing, transferring, toileting, and eating.

e. Coordinating resident-focused activities.

f. Supervising residents.

(6) “Memory Care Services” means ongoing specialized care for residents who demonstrate symptoms of memory-impacting conditions, including traumatic brain injuries, Alzheimer’s disease, or other dementias, to an extent that such symptoms interfere with activities of daily living. Such care is designed to manage the behavioral and psychological symptoms of memory-impacting conditions, including traumatic brain injuries, Alzheimer’s disease, or other dementias. Such care includes planned group and individual programming and person-centered care practices to support activities of daily living for residents living with memory-impacting conditions, including traumatic brain injuries, Alzheimer’s disease, or other dementias. Memory care services may be provided in a facility that is not or does not include a secured memory care unit. Memory care services includes dementia care services.

(7) “Resident” means as defined in § 1102 of Title 16.

(8) “Secured Memory Care Unit” means a designated area or setting designed for individuals who demonstrate symptoms of memory-impacting conditions, including traumatic brain injury, Alzheimer’s disease, or other dementias, that is secured for the purpose of preventing a resident from exiting, or for the purpose of limiting a resident’s ability to exit, the secured area or setting. A secured memory care unit is not solely an individual resident’s personal living area. A secured memory care unit does not include all facilities that provide memory care services.

(9) “Service Agreement” means a written document developed with each resident or their authorized representative that describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, and the expected outcome from the services.

§ 2502K. Mandatory Disclosure of Information Related to Dementia Care Services.

(a) An assisted living facility that advertises, markets, or otherwise represents that the facility provides dementia care services must, in the form prescribed by the Department, disclose the following information in plain and easily understandable language:

(1) A description of the facility's overall philosophy and mission which reflects the needs of residents affected by Alzheimer's disease or other dementias, how such philosophy and mission is reflected in the facility's recruitment of direct care staff, and a description of the facility's policy on the use of psychotropic medication.

(2) Whether the facility maintains an accreditation or certification related to memory care services that has been approved by the Department.

(3) If applicable, a list of accreditations or certifications related to memory care services, approved by the Department, that the facility maintains, including the date that the accreditation or certification was attained, the expiration date of the accreditation or certification, and the name of the independent accrediting organization providing the accreditation or certification.

(4) A description of the facility's pre-admission process and admission process, including the following:

a. A description of the facility's intended resident population, including the levels of care that the facility can provide, and the symptoms of Alzheimer's disease or other dementias that the facility is able to manage.

b. The criteria for placement in, admission to, transfer to, and discharge from the facility's dementia care services, and, if applicable, the facility's secured memory care unit.

c. The frequency and types of nutrition and hydration services provided for residents receiving dementia care services.

d. A sample service agreement.

e. A description of the facility's process for establishing and updating service agreements, including policies relating to resident assessment.

(5) A description of the facility's staffing plan, and a description of the facility's training for dementia care services.

(6) A description of the facility's processes for determining types and frequency of direct care for residents receiving dementia care services, including how the facility assesses different levels of care.

(7) A description of the facility's procedures for securing and monitoring residents in its secured memory care unit, a description of the physical environment and design features of the facility in which dementia care services will be provided, and a description of the facility's procedures for responding to an unauthorized exit of a resident receiving dementia care services.

(8) The frequency of and a description of the types of resident activities offered by the facility for residents receiving dementia care services, including the qualifications of the individual providing these services.

(9) A description of the facility's policies for addressing the mental health, behavior management, and social functioning needs of residents receiving dementia care services, including changes in a resident's condition.

(10) A description of the facility's procedures for responding to complaints.

(11) A complete fee schedule for all services offered by the facility, including the cost of dementia care services, and any additional fees or fee schedules.

(b) An assisted living facility that advertises, markets, or otherwise represents that the facility provides dementia care services shall provide a copy of the disclosure described in this section and a plain-language description of the rights provided under this chapter to all of the following:

(1) Each resident or their authorized representative within 90 days of implementation of this Act and within 7 days of any change to the facility's policies that would necessitate a change to the information required to be disclosed in this section.

(2) Each individual applying for dementia care services or their authorized representative prior to admission to the assisted living facility.

(c) An assisted living facility that advertises, markets, or otherwise represents that the facility provides dementia care services must obtain signed confirmation by the resident, individual applying for dementia care services, or the individual's

authorized representative that the resident, individual applying for dementia care services, or the individual's authorized representative has received a copy of the disclosure described in this section.

(d) An assisted living facility that advertises, markets, or otherwise represents that the facility provides dementia care services must retain a record of all signed confirmations as long as the resident remains at the facility and for a period of 3 years after the resident no longer resides at the facility.

(e) An assisted living facility that advertises, markets, or otherwise represents that the facility provides dementia care services must submit a copy of the disclosure described in this section to the Department within 90 days of the implementation of this Act and within 7 days of any change to the facility's policies that would necessitate a change to the information required to be disclosed in this section.

(f) The Department shall promulgate rules and regulations to carry out the provisions of this section.

(g) The Department may conduct investigations to ensure compliance with this section and the regulations adopted pursuant to it, in the manner allowed by § 1107(c) of Title 16.

(h) If such investigation reveals material noncompliance or a pattern of noncompliance with this section, the Department shall provide findings and supporting evidence from a completed investigation to the Department of Justice for enforcement under Subchapter II of Chapter 25 of this title.

§ 2503K. Remedy.

(a) A violation of this chapter is an unlawful practice under § 2513 of this title and a violation of subchapter II of Chapter 25 of this title.

(b) Any resident, individual applying for dementia care services, or their authorized representative may sue for injunctive or other appropriate equitable relief to enforce this chapter.

(c) The remedies provided in this section are not intended to be the exclusive remedies available to a resident, individual applying for dementia care services, or the individual's authorized representative, nor must the resident, individual applying for dementia care services, or the individual's authorized representative exhaust any administrative remedies provided under this chapter or any other applicable law.

(d) No agreement between the resident, individual applying for dementia care services, or the individual's authorized representative, and an assisted living facility may contain a provision that, prior to a dispute arising, waives or inhibits, or has the practical effect of waiving or inhibiting any rights under this chapter or the rights of a resident, individual applying for dementia care services, or the individual's authorized representative to resolve that dispute. This includes any of the following:

(1) Limiting the ability to obtain injunctive, declaratory, or other equitable relief.

(2) Limiting damages.

(3) Limiting attorney's fees and costs as otherwise specified by statute or as available at common law.

(4) Preventing or limiting a hearing at which that party can present evidence.

(5) Requiring any form of alternative dispute resolution, including arbitration.

(e) Any provision in a written agreement violating subsection (d) or any other provision of this chapter is void and unenforceable. A court may refuse to enforce any written agreement as equity may require.

Section 2. This Act is effective immediately and is to be implemented upon notice by the Secretary of Health and Social Services published in the Register of Regulations that final regulations to implement this Act have been promulgated.

Approved August 1, 2024