SPONSOR: Sen. Mantzavinos & Rep. K. Johnson & Sen. Pettyjohn & Rep. Briggs King & Rep. Dorsey Walker
Sens. Buckson, Hansen, Hoffner, Huxtable, Townsend, Walsh; Rep. Hilovsky

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

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 strikethrough and insertions as show by underline as follows:

§ 2501K. Definitions.

For the purposes of this chapter:

(a) "Agent" means an individual legally authorized to make health-care decisions on another's behalf, including by a power of attorney, an advance health care directive, or any court order.

(b) "Dementia Care Services" means specialized care for individuals with Alzheimer's disease or other dementias. Long-term care facilities providing this specialized care must have a clear mission and programming that is structured to meet the needs of these residents.

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

(d) "Division" means the Division of Health Care Quality.

(e) "Long-term Care Facility" means any facility as defined in § 1102(4) of Title 16.

(f) "Resident" means an individual, whether identified as a patient, guest, or other designation, residing and receiving services in a long-term care facility.

(g) "Service Agreement" means a written document developed with each resident which describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, and, if applicable, the expected outcome from the services.

(h) "Written Notice" means a standardized disclosure form prepared by the Department that is to be completed by all long-term care facilities offering dementia care services.

§ 2502K. Notice of Dementia Care.

(a) All long-term care facilities that advertise, market, or otherwise promote that the facility provides dementia care services must complete a written notice on a form prepared by the Department.

(b) The written notice must whether the facility is certified to provide dementia care services. It must also include all of the following information:

(1) The facility's overall philosophy and mission which reflects the needs of residents affected by Alzheimer's disease or other dementias, and how such philosophy and mission is reflected in the facility's recruitment of direct care staff.

(2) The facility's pre-admission process, including a sample service agreement, the process for establishing and updating service agreements, and the processes for resident assessment.

(3) The facility's processes and criteria for placement, admission, transfer, and discharge from the facility's dementia care services.

(4) Details on the resident population intended to be served.

(5) The facility's staffing plan and details of the facility's new staff orientation and regular in-service education for dementia care services.

(6) A description of the physical environment and design features of the facility in which dementia care services will be provided, including security systems that are appropriate to support the functioning of residents receiving dementia care services.

(7) The frequency and types of resident activities offered by the facility for residents receiving dementia care services.

(8) The facility's policies on family involvement and details of any available family support programs offered by the facility.

(9) 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) The frequency and types of nutrition and hydration services provided for residents receiving dementia care services.

(11) The facility's policy on the use of psychotropic medication.

(12) The facility's internal evaluation policies for its dementia care services program.

(13) The total cost of all care, including the cost of dementia care services, and any additional fees or fee schedules.

(d) All long-term care facilities offering dementia care services shall provide a copy of the written notice to:

(1) Each facility resident or their agent within 30 days of the Department making the form under subsection (a) of this section available and upon any significant change in policies included in the written notice.

(2) Each individual applying for dementia care services or their agent prior to their acceptance of a service agreement.

(e) The facility must obtain signed confirmation of receipt of the written notice by the resident, individual applying for dementia care services, or their agent.

(f) Long-term care facilities offering dementia care services must retain all signed confirmations as long as a resident remains at the facility and for a period of 3 years after the resident no longer resides at the facility.

(g) All long-term facilities offering dementia care services shall, within 30 days of the Department making the form under subsection (a) of this section available, publish the written notice defined in this section to the facility's website in a location that can be readily accessed from the website's homepage.

(h) All long-term care facilities offering dementia care services must submit a copy of written notice to the Department within 30 days of the Department making the form under subsection (a) of this section available and upon any significant change in policies included in the written notice.

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

§ 2503K. Remedy

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

(b) Any resident, individual applying for dementia care services, or their agent 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 their agent, nor must the resident, individual applying for dementia care services, or their agent 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 their agent, and a long-term care 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 their agent to resolve that dispute by obtaining any of the following:

(1) Injunctive, declaratory, or other equitable relief.

(2) Multiple or minimum damages as specified by statute.

(3) Attorney's fees and costs as specific by statute or as available at common law.

(4) 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 receipt of 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.

SYNOPSIS

This Act requires that all long-term care facilities that advertise, market, or otherwise promote that the facility provides dementia care services must complete a written notice on a form prepared by the Department of Health and Social Services. The Act identifies the required content that must be included in the written notice, establishes required dissemination procedures of the written notice for long-term care facilities, and authorizes DHSS to promulgate rules and regulations to carry out these provisions. Violations of this Act are Consumer Fraud violations.

Author: Senator Mantzavinos