



SPONSOR: Sen. Pinkney & Rep. Chukwuocha

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 161

AN ACT TO AMEND TITLES 16 AND 29 OF THE DELAWARE CODE RELATING TO BEHAVIORAL HEALTH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

1 Section 1. Amend Chapter 56, Title 16 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Chapter 56. Behavioral Health

4 Subchapter I. General Provisions

5 § 5601. Definitions.

6 As used in this chapter:

7 (1) “Behavioral health condition” means a diagnosable disorder of sufficient duration to meet the
8 diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders
9 published by the American Psychiatric Association, resulting in functional impairment that substantially interferes
10 with or limits 1 or more major life activities.

11 (2) “Behavioral health treatment provider organization” or “provider organization” means an individual,
12 non-profit, firm, partnership, corporation, association, joint-stock company, limited partnership, limited liability
13 company, other legal entity, or successor seeking to or operating a program.

14 (3) “Behavioral health treatment program” or “program” means the treatment services a provider
15 organization delivers to treat a behavioral health condition.

16 (4) “Behavioral health treatment services” or “treatment services” means efforts to develop, maintain, or
17 restore the functioning of an individual with a behavioral health condition to the maximum extent practicable. The
18 term includes services provided to a client to diagnose, describe, predict, and explain the client's status and
19 individual treatment planning, case review, record-keeping required for treatment, and treatment supervision.

20 (5) “Client” means an individual with a behavioral health condition receiving treatment or other services
21 from a provider organization.

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

23 (7) “Director” means the Director of the Division of Substance Abuse and Mental Health.

- 24 (8) “Division” means the Division of Substance Abuse and Mental Health.
- 25 (9) “Executive” means an individual who can act alone or in concert with others to directly or indirectly
26 influence or direct a provider organization’s administration, management, expenditure of money, or policies.
- 27 (10) “Facility” means real property, including buildings, fixtures, or other improvements owned, leased,
28 operated, or used by a provider organization.
- 29 (11) “Hospital” means as defined in § 1001 of this title.
- 30 (12) “Licensed professional” means an individual who holds a valid license issued by a licensing board or
31 is otherwise authorized to practice in this State and practices solely within the permissible scope of the
32 professional’s license.
- 33 (13) “Licensed behavioral health practitioner” or “licensed practitioner” means an individual who is at
34 least one of the following:
- 35 a. A psychiatrist.
- 36 b. An advanced practice registered nurse as defined in § 1902 of Title 24 who is certified as a
37 psychiatric-mental health nurse practitioner by the American Nurses Credentialing Center.
- 38 c. A registered nurse, as defined in § 1902 of Title 24, certified as a psychiatric-mental health
39 registered nurse by the American Nurses Credentialing Center.
- 40 d. A licensed professional counselor or a licensed associate counselor of mental health as
41 defined in § 3031 of Title 24.
- 42 e. A baccalaureate social worker, licensed clinical social worker, or master’s social worker as
43 defined in § 3902 of Title 24.
- 44 f. A psychologist or psychological assistant licensed under Chapter 35 of Title 24.
- 45 g. A licensed chemical dependency professional defined in § 3041 of Title 24.
- 46 h. A licensed marriage and family therapist or a licensed associate marriage and family therapist
47 as defined in § 3051 of Title 24.
- 48 i. A licensed professional art therapist or licensed associate art therapist as defined in § 3060 of
49 Title 24.
- 50 (14) “Licensed professional in private practice” means a licensed professional who provides treatment
51 services within the permissible scope of the professional’s license.
- 52 (15) “Licensing board” includes all of the following:
- 53 a. The Board of Medical Licensure and Discipline.

54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83

- b. The Delaware Board of Nursing.
- c. The Board of Mental Health and Chemical Dependency Professionals.
- d. The Board of Examiners of Psychologists.
- e. The Board of Social Work Examiners.

(16) “Psychiatrist” means a physician who has completed an accredited residency training program in psychiatry with a valid license to practice in Delaware.

(17) “Physician” means as defined under § 1702 of Title 24, and includes an allopathic Doctor of Medicine and Surgery or a Doctor of Osteopathic Medicine and Surgery with a valid license to practice medicine working in a United States Department of Veterans Affairs medical center in the State.

(18) “Program administrator” or “administrator” means an individual employed by a provider organization to operate a program responsible for the program’s professional program of care and treatment, and managing the program’s affairs.

(19) “Protection and advocacy system” means the Community Legal Aid Society, Inc. or successor agency designated under any of the following:

- a. The Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801 et seq.
- b. The Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001 et seq.
- c. The Rehabilitation Act, 29 U.S.C. § 794e.

(20) “Recovery house” means as defined in 2201A of this chapter.

(21) “Representative” means any of the following:

- a. An individual named in a client’s advanced healthcare directive.
- b. An individual granted durable medical power of attorney for a client’s healthcare decisions.
- c. A client’s guardian as defined in § 2501 of this title.
- d. A client’s surrogate as defined in § 2501 of this title.
- e. A client’s personal representative as defined under § 101 of Title 12.

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

(23) “Staff member” or “staff” means an employee, practitioner, contractor, intern, subcontractor, or volunteer of a provider organization.

(24) “Treating practitioner” means a licensed practitioner who consults or treats a client for a behavioral health condition and uses the results of a diagnostic test to treat the client’s condition.

84 § 5602. License required; exceptions.

85 (a) All of the following are exempt from the requirements of this section:

86 (1) A licensed practitioner in private practice.

87 (2) A provider organization or program exclusively serving children.

88 (3) A licensed professional providing treatment services incidental to the professional's regular practice.

89 (b) Except as otherwise provided under this chapter or with a valid license, a person may not do any of the
90 following:

91 (1) Provide treatment services.

92 (2) Operate a program.

93 (3) Advertise, hold out to the public, imply, or represent that the person is authorized, licensed, or
94 permitted to provide treatment services in this State.

95 (4) Advertise, hold out to the public, imply, or represent that the person is authorized, licensed, or
96 permitted to operate a program in this State.

97 (c) The Director may exempt any of the following from the requirements of this section if the Director reasonably
98 believes that the exemption does not endanger clients' health, safety, or welfare:

99 (1) A provider organization or program otherwise licensed by the State.

100 (2) Programs operated by or for the State.

101 (3) A program operating an embedded integrated care model designated by the Division of Medicaid and
102 Medical Assistance.

103 (4) A program offering support services, including recovery houses, mutual aid groups, self-help groups,
104 peer support, and other similar organizations that do not provide clinical services.

105 (5) A program offering prevention or education services.

106 (6) Other provider organizations, programs, or treatment services designated by the Director.

107 § 5603. Criminal penalties.

108 (a) It is unlawful to recklessly cause physical injury to another person by providing treatment services in violation
109 of § 5602 of this title. Violation of this subsection is a class F felony.

110 (b) It is unlawful to recklessly create a substantial risk of physical injury to another person by providing treatment
111 services in violation of § 5602 of this title. Violation of this subsection is a class G felony.

112 (c) It is unlawful to intentionally provide treatment services in violation of § 5602 of this title. Violation of this
113 subsection is a class A misdemeanor.

114 (d) It is unlawful to intentionally operate or attempt to operate a program in violation of § 5602 of this title.

115 Violation of this subsection is a class A misdemeanor.

116 (e) It is unlawful to intentionally advertise, hold out to the public, imply, or represent that a person is authorized,

117 licensed, or permitted to provide treatment services in this State in violation of § 5602 of this title. Violation of this

118 subsection is a class A misdemeanor.

119 (f) It is unlawful to intentionally advertise, hold out to the public, imply, or represent that a person is authorized,

120 licensed, or permitted to operate a program in this State in violation of § 5602 of this title. Violation of this subsection is a

121 class A misdemeanor.

122 § 5604. Prohibited practices.

123 (a) A provider organization or the organization's executive, administrator, or staff may not do any of the

124 following:

125 (1) Violate federal, State, or local laws or regulations.

126 (2) Violate the terms of a corrective action plan.

127 (3) Act to endanger a client's health, safety, or welfare.

128 (4) Make a false statement of material fact during an audit, investigation, or monitoring.

129 (5) Tamper or aid and abet in tampering with evidence related to an investigation.

130 (6) Act in a manner that may decrease the public's confidence in Delaware's behavioral health treatment

131 system.

132 (7) Advertise or solicit in a manner that is deceptive, false, misleading, or likely to intimidate or pressure

133 an individual into accepting services.

134 (8) Advertise or solicit within 500 feet of another provider organization's facility.

135 § 5605. Audits.

136 (a) The Division may audit a provider organization.

137 (b) Upon the Division's request and without notice, a provider organization shall grant the Division access to the

138 organization's administrators, clients, executives, facilities, records, and staff.

139 (c) No more than 15 days after receiving written notice from the Division, a provider organization shall submit

140 financial statements to the Division.

141 (d) No more than 60 days after receiving written notice from the Division, a provider organization shall submit an

142 audited financial report to the Division.

143 (e) Records maintained under this section are not public records as defined in Chapter 100 of Title 29.

144 § 5606. Penalties.

145 (a) The Division may impose a civil money penalty of no more than \$10,000 per violation in addition to costs on a
146 provider organization that refuses, fails, or neglects to comply with this chapter.

147 (b) The Division may impose and collect civil money penalties.

148 (c) A civil money penalty collected under this section is appropriated to the Division for this chapter's purposes.

149 (d) If a provider organization fails to pay a civil money penalty imposed by the Division, the Division may add the
150 penalty amount to a required license fee.

151 (e) Whenever a provider organization exhausts the organization's appeals under this chapter and fails to pay a civil
152 money penalty, the Division may bring a civil action in the Superior Court of the State to collect the penalty, interest on the
153 penalty, attorney fees, and costs. The Court may not review the penalty's validity, amount, or appropriateness as part of an
154 action brought under this subsection.

155 (f) The Division may impose any of the following penalties on a provider organization that refuses, fails, or
156 neglects to comply with this chapter:

157 (1) Monitoring of a provider organization or the organization's program at the organization's expense.
158 Whenever the Division requires monitoring under this paragraph, the Division shall determine the monitoring
159 terms, conditions, and timeframe.

160 (2) Suspend the admission of clients to a provider organization's program.

161 (3) Suspend or revoke a provider organization's license or refuse the organization's licensure application.

162 (4) Suspend or revoke a provider organization's program license or refuse the organization's program
163 licensure application.

164 (g) Whenever the Department reasonably believes that a provider organization is acting in a manner that creates an
165 imminent risk of substantial harm to the organization's clients, the Secretary may issue an emergency order temporarily
166 transferring the management of the provider organization's program to another qualified entity. Whenever the Secretary
167 issues an order under this subsection, the Department shall determine the monitoring terms, conditions, and timeframe.

168 § 5607. Required notifications.

169 (a) Except in a bonafide emergency, a provider organization shall notify the Division 90 days before an
170 interruption in services or closure of a program. In a bona fide emergency, the organization shall notify the Division as soon
171 as practicable.

172 (b) Whenever a provider organization or the organization's executive, administrator, or staff is aware or
173 reasonably believes that the organization is insolvent or at imminent risk of becoming insolvent, the organization or the
174 organization's executive, administrator, or staff shall notify the Division.

175 § 5608. Fees.

176 (a) The Division may establish licensing and inspection fees through regulation.

177 (1) Issuing or renewing a license under § 5613 of this title.

178 (2) Inspecting a program's facility under § 5614 of this title.

179 (3) Monitoring a licensed program under § 5614 of this title.

180 (b) The fee amount established under subsection (a) of this section must approximate and reasonably reflect the
181 costs necessary to defray the Division's expenses.

182 (c) The Division may collect fees established under subsection (a) of this section.

183 (d) A fee collected under this chapter is appropriated to the Division to carry out this chapter's purposes.

184 § 5609. Regulations.

185 (a) The Division may adopt regulations to implement this chapter.

186 Section 2. Amend Chapter 56, Title 16 of the Delaware Code by making deletions as shown by strike through and
187 insertions as shown by underline as follows:

188 Subchapter II. Licensing

189 § 5611. Definitions.

190 As used in this subchapter:

191 (1) "Application" means a provider organization's initial licensure or renewal application.

192 (2) "License" means a license or certification issued by the Division, including a provider organization
193 license, a program license, and a facility certification.

194 § 5612. License applications.

195 (a) A provider organization may apply to the Division for a license.

196 (b) An application must be made under oath using the Division's form.

197 (c) An application must include documentation required by the Division.

198 (d) An application must include the applicable license fee.

199 § 5613. Licensing determinations.

200 (a) Except as otherwise provided in subsection (b) of this section, the Division shall approve an application made
201 according to the requirements of this chapter and issue a license to a provider organization.

202 (b) The Division may reject an application and refuse to issue a license to a provider organization whenever any of
203 the following occur:

204 (1) The organization fails to meet the requirements established under this chapter.

205 (2) The organization fails to meet the requirements established by the Division through regulation.

206 (3) The organization has a history of noncompliance with federal, State, or local law or regulation.

207 (4) The Division previously revoked the organization's license.

208 (5) The organization or its executives have a history of acting in a manner that may decrease the public's
209 confidence in Delaware's behavioral health treatment system.

210 (6) The organization knowingly makes a false statement of material fact in an application.

211 § 5614. License terms; expiration; transfer.

212 (a) Subject to this chapter, the Division shall set the license term.

213 (b) If a provider organization applies to renew the organization's license before it expires, the license is valid until
214 the Division decides on the application.

215 (c) A license is not transferable.

216 § 5615. Records.

217 (a) The Division shall establish, operate, and maintain an electronic system for submitting, maintaining, and
218 storing information under this subchapter.

219 Section 3. Amend Chapter 56, Title 16 of the Delaware Code by making deletions as shown by strike through and
220 insertions as shown by underline as follows:

221 Subchapter III. Disciplinary Actions, Appeals, Hearings, and Judicial Review

222 § 5621. Definitions.

223 As used in this subchapter:

224 (1) "Disciplinary action" means the Division's imposition of a penalty under § 5606 of this title or refusal
225 to issue a license under § 5613(b) of this title.

226 § 5622. Disciplinary action effective date.

227 (a) Except as otherwise provided in subsection (c) of this section, a disciplinary action is effective immediately
228 after any of the following occurs:

229 (1) The provider organization does not request a hearing under § 5623 of this title.

230 (2) A hearing officer upholds the disciplinary action under § 5625 of this title.

231 (b) Whenever the Director reasonably believes that the public health, safety, or welfare requires emergency action,
232 a disciplinary action is effective immediately.

233 § 5623. Notice; request for an appeal hearing; hearing notice.

234 (a) Except in a bonafide emergency, the Division shall notify a provider organization in writing at least 10 days
235 before taking disciplinary action. The notice must be in writing and list the violations identified by the Division.

236 (b) A provider organization may appeal a disciplinary action by requesting a Departmental hearing. A request
237 under this subsection must be in writing and submitted to the Department no more than 10 days after the organization
238 receives notice under subsection (c) of this section.

239 (c) Whenever the Department receives a request under subsection (d) of this section, the Department shall hold a
240 hearing under § 5624 of this title. The Department shall determine the time and place of the hearing and notify the
241 organization and the Division at least 20 days before the hearing.

242 § 5624. Hearing officer; burden of proof; records.

243 (a) The Secretary shall appoint a hearing officer to conduct the hearing.

244 (b) A hearing officer may do any of the following:

245 (1) Issue subpoenas for witnesses and other sources of evidence.

246 (2) Administer oaths to witnesses.

247 (3) Exclude irrelevant, immaterial, insubstantial, cumulative, and privileged evidence.

248 (4) Limit unduly repetitive proof, rebuttal, and cross-examination.

249 (5) Hold prehearing conferences to do any of the following:

250 a. Settle or simplify issues by consent.

251 b. Dispose of procedural requests or disputes.

252 c. Regulate and expedite the course of the hearing.

253 (c) A provider organization has the burden of proof.

254 (d) The Department shall record the hearing to allow for verbatim transcription. Upon a provider organization's
255 request and at the organization's expense, the Department shall provide a transcription of a recording made under this
256 subsection.

257 (e) The Department shall maintain a record related to the hearing that includes copies of at least the following:

258 (1) Notices.

259 (2) Correspondence.

260 (3) Exhibits, documents, and testimony the hearing officer admitted into evidence.

- 261 (4) Hearing decisions.
- 262 (5) Corrective action plans.
- 263 (6) Orders concerning disciplinary action.
- 264 (7) The recording of the hearing.

265 § 5625. Decision; draft order; final order.

266 (a) After the hearing, a hearing officer shall decide based on the record. The hearing officer's decision takes
267 immediate effect.

268 (b) The hearing officer shall issue a written order no more than 30 days after the hearing. The order must be signed
269 and dated by the hearing officer and include at least the following:

- 270 (1) A concise statement of the Division's disciplinary action.
- 271 (2) A summary of the evidence.
- 272 (3) Findings of fact based on the evidence.
- 273 (4) Conclusions of law.
- 274 (5) The decision of the hearing officer.

275 § 5626. Judicial review.

276 (a) A provider organization may appeal a final order under § 5634 of this title to the Superior Court by filing a
277 petition for judicial review with the Court no more than 30 days after the date of the final order.

278 (b) An appeal under this section must be on the record without a trial de novo. If the Court determines that the
279 record is insufficient for review, the Court shall remand the case to the Department for further proceedings on the record.

280 (c) If factual determinations are at issue, the Court shall consider the Division's experience and specialized
281 competence and the purposes of the fundamental law or regulation under which the Division took disciplinary action.

282 (d) Except for fraud, the Court's review is limited to determining whether the substantial evidence on the record
283 supports the Division's disciplinary action.

284 (e) Except as otherwise provided in subsection (f) of this section, the Court may not stay a final order issued under
285 § 5634 of this title.

286 (f) If, after a preliminary review, the Court finds that the issues and facts presented are substantial and a stay is
287 required to prevent irreparable harm, the Court may stay enforcement of a final order issued under § 5634 of this title.

288 Section 4. Amend Chapter 56, Title 16 of the Delaware Code by making deletions as shown by strike through and
289 insertions as shown by underline as follows:

290 Subchapter IV. Client Rights and Provider Duties

291 § 5631. Definitions.

292 As used in this subchapter:

293 (1) “Abuse” means any of the following:

294 a. Willful use of offensive, abusive, or demeaning language causing mental anguish.

295 b. Knowing, reckless, or intentional acts or failures to act causing injury or death.

296 c. Rape or sexual assault.

297 d. Sexual contact, intercourse, or penetration as defined in § 761 of Title 11, regardless of
298 consent.

299 e. Corporal punishment or striking.

300 f. Use of restrictive intervention in violation of federal or State law or regulation.

301 g. Isolation.

302 (2) “Chemical restraints” means using a chemical or pharmaceutical through topical application, oral
303 administration, injection, or other means to control a client’s activity. The term does not include using a chemical
304 or pharmaceutical in standard treatment for the client’s medical or psychiatric condition.

305 (3) “Exploitation” means using a client to entertain others under circumstances that cause degradation,
306 humiliation, or mental anguish to the client. The term includes sexual and financial exploitation.

307 (4) “Financial exploitation” means taking or misusing a client’s property or resources through undue
308 influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or
309 improper means. The term includes using a client’s services without compensation.

310 (5) “Isolation” means a forced separation or failure to include a client in the program or community's
311 social surroundings.

312 (6) “Mechanical restraint” means using a device that restricts the free movement of a client’s body. The
313 term does not mean using restraints to support functional body position or proper balance.

314 (7) “Neglect” means any of the following:

315 a. A failure to provide food, shelter, clothing, health care, or services necessary to maintain a
316 client’s health.

317 b. A failure to meet a statutory obligation, judicial order, administrative rule or regulation,
318 policy, procedure, or minimally accepted standard of care.

319 c. A negligent act or omission that causes injury or death to a client or places the client at risk of
320 injury or death.

321 d. A failure to establish or carry out a client’s treatment plan.

322 e. A failure to provide adequate staffing levels or appropriately trained staff.

323 (8) “Personal restraint” means an action that restricts the free movement of an individual’s body,

324 including applying pressure. The term does not include physical guidance or prompting for a brief duration.

325 (9) “Psychiatric hospital” means as defined in § 1001 of this title.

326 (10) “Residential client” means a client who receives treatment from a residential program.

327 (11) “Residential program” means a licensed program that regularly admits clients with the expectation of

328 a stay that crosses at least two midnights.

329 (12) “Restraint” includes chemical, mechanical, and personal restraints. The term does not include

330 general confinement in a treatment facility.

331 (13) “Restrictive intervention” includes restraint and seclusion.

332 (14) “Seclusion” means involuntarily confining a client in an area and physically preventing the client

333 from leaving.

334 (15) “Serious injury” means a bodily injury that involves or has a substantial risk of causing at least 1 of

335 the following:

336 a. Death.

337 b. Unconsciousness.

338 c. Extreme physical pain.

339 d. Protracted and obvious disfigurement.

340 e. Protracted loss or impairment of the function of a bodily member or organ, or mental faculty.

341 (16) “Sexual exploitation” means using a client for the sexual gratification of others.

342 § 5632. General provisions.

343 (a) The rights enumerated in this chapter are in addition to and not a derogation of other constitutional, statutory,

344 or regulatory rights.

345 (b) A client is entitled to assert their rights through a complaint made to a provider organization, the Division, the

346 Department, the protection and advocacy system, or the Attorney General.

347 (c) Whenever a client cannot exercise a right under this subchapter, the right devolves to the client’s

348 representative.

349 (d) A provider organization may not require a client to waive the client’s rights as a condition of admission or

350 treatment.

351 (e) A client's rights are subject to limitation under any of the following circumstances:

352 (1) Whenever the client's treating practitioner determines the limitation is necessary to protect the client's

353 or another person's health, well-being, or safety.

354 (2) During an emergency.

355 (3) Whenever the exercise of the client's right contradicts medical, safety, or programmatic requirements

356 or infringes on another client's right.

357 (4) Whenever a judicial order imposes the limitation.

358 (5) Whenever a client is in the custody of a peace officer and the officer determines the limitation is

359 necessary to protect the client's or another person's health, well-being, or safety.

360 (f) Whenever a provider organization limits a client's rights under subsection (f) of this section, the treating

361 practitioner shall document the limitation in the client's clinical record. The documentation must include the specific

362 rationale for the limitation.

363 § 5633. Client rights.

364 (a) A client is entitled to be free from abuse, exploitation, neglect, and serious injury.

365 (b) A client is entitled to evidence-based treatment suited to the client's needs that is provided in a skillful, safe,

366 and humane manner with respect for the client's dignity and personal integrity.

367 (c) A client is entitled to refuse treatment, withdraw consent for treatment, and request a modification to treatment.

368 (d) A client may refuse to participate in research or an examination whose primary purpose is educational or

369 informational.

370 (e) A client is entitled to complete and current information provided by the client's treating behavioral health

371 practitioner concerning all of the following:

372 (1) The client's current condition and diagnosis.

373 (2) The purpose, objectives, risks, side effects, appropriateness, and likely outcome of a recommended

374 course of treatment.

375 (3) Other appropriate and available treatment alternatives.

376 (f) A client is entitled to an individualized and outcome-oriented written treatment plan that includes a discharge

377 plan, measures of the client's progress, and a method for determining the plan's success.

378 (g) A client is entitled to treatment based on the client's treatment plan, periodic review and reassessment, and

379 appropriate revision.

- 380 (h) A client is entitled to ongoing participation in planning, implementing, and revising the client's treatment plan
381 to the maximum extent of the client's abilities.
- 382 (i) A client is entitled to receive treatment in a setting and under conditions that restrict the client's liberty only to
383 the extent required by the client's treatment needs, applicable laws, and judicial orders.
- 384 (j) A client is entitled to be free from restrictive intervention.
- 385 (k) A client is entitled to privacy during the client's treatment and care.
- 386 (l) A client is entitled to know the name and position of an individual participating in the client's treatment.
- 387 (m) A client is entitled to communication in the client's preferred language and in a manner the client can be
388 reasonably expected to understand.
- 389 (n) A client is entitled to assert a grievance concerning infringement of a right enumerated under this chapter or
390 present a complaint, petition, or recommendation for a change in policies without fear of reprisal, restraint, interference,
391 coercion, or discrimination and have the grievance, complaint, petition, or recommendation considered in a fair, timely, and
392 impartial manner.
- 393 (o) A client is entitled to assistance in understanding, exercising, and protecting the rights enumerated in this
394 subchapter.
- 395 (p) A residential client is entitled to appropriate behavioral and physical health examinations and evaluations.
- 396 (q) A residential client is entitled to communicate freely and privately.
- 397 (r) Subject to the program's general rules, a residential client is entitled to make phone calls and receive visitors at
398 reasonable hours.
- 399 (s) A residential client is entitled to retain reasonable personal belongings.
- 400 (t) A residential client is entitled to manage their personal financial affairs.
- 401 (u) A residential client is entitled to participate in available educational activities, vocational rehabilitation,
402 community care, and other activities appropriate to the client's capabilities and consistent with the client's treatment plan.
- 403 (v) A residential client is entitled to communicate with the client's counsel, personal licensed practitioners, and
404 spiritual advisor at reasonable times.
- 405 (w) A residential client is entitled to continue practicing their religion.
- 406 (x) If eligible, a residential client is entitled to vote in elections.
- 407 § 5634. Provider duties.
- 408 (a) A provider organization shall treat a client courteously and respect the client's individuality.
- 409 (b) Whenever a provider organization gives information to a client, the organization shall do all of the following:

410 (1) Provide the information using plain language.

411 (2) Provide the information in the client's preferred language.

412 (3) Make reasonable accommodations for a client with a communication impairment or who primarily
413 speaks a language other than English.

414 (c) At the time of a client's admission or upon request of the client or the client's representative, a provider
415 organization shall give a written statement to the client or the client's representative. The statement must include at least all
416 of the following:

417 (1) A statement of the client's rights under this chapter approved by the Division.

418 (2) Fees for services applicable to the client.

419 (3) The licensed program's rules governing client conduct.

420 (4) The procedure for asserting grievances concerning infringement of the rights enumerated under this
421 chapter and presenting complaints, petitions, and recommendations for changes in the organization's policies.

422 (5) The organization's privacy practices.

423 (d) Except with a client's consent, under applicable law, or per a judicial order, a provider organization shall
424 ensure that case discussion, consultation, examination, and treatment are confidential and discreet and exclude individuals
425 not directly involved or participating in the client's care.

426 (e) A provider organization shall provide a client with an individualized, outcome-oriented written treatment plan
427 and treatment based on the plan. The plan must include measures of the client's progress, methods for determining its
428 success, and a description of treatment and other support services the client may require upon discharge. The organization
429 shall ensure the client's plan is periodically reviewed or revised per treatment progress.

430 (f) A provider organization shall establish policies and procedures enabling a client to assert grievances concerning
431 infringement of the rights enumerated under this chapter and present complaints, petitions, and recommendations for
432 changes in the organization's policies.

433 (g) A provider organization shall consider a client's grievances, recommendations, complaints, or petitions in a
434 fair, timely, and impartial manner and respond courteously, promptly, and reasonably.

435 (h) A provider organization shall ensure that a residential client receives appropriate examinations and evaluations.

436 (i) A provider organization shall establish policies and procedures that ensure a residential client's right to
437 communicate.

438 (j) Whenever a provider organization temporarily retains custody of a residential client's personal property, the
439 organization shall provide the client with a written, itemized receipt and return the property to the client upon discharge.

440 (k) A provider organization shall provide assistance to enable a residential client to exercise their voting rights,
441 including assistance accessing voter registration forms and applications for absentee ballots.

442 § 5635. Clinical records.

443 (a) A provider organization shall maintain a clinical record for a client.

444 (b) The Division shall adopt minimum regulations for the content and maintenance of clinical records.

445 (c) Except as otherwise provided under subsection (d) of this section, a provider organization may not release a
446 client's clinical record.

447 (d) Subject to § 5656 of this title, upon request, a provider organization shall release a client's clinical record to the
448 client or the client's representative.

449 § 5636. Denial of access to clinical records.

450 (a) Except as provided under subsection (b) of this section, if a client's treating practitioner clinically determines
451 that releasing a client's clinical record to the client or the client's representative would be detrimental to the client's health
452 or treatment progress the organization may not release the record to the client or the client's representative.

453 (b) Whenever a client or the client's representative requests the client's clinical records and is denied under
454 subsection (a) of this section, the client or the client's representative may request that the records be released to another
455 licensed practitioner of the client or the client's representative choosing. The practitioner chosen by the client or the client's
456 representative must have an equivalent scope of practice to the practitioner making the clinical determination under
457 subsection (a) of this section.

458 (c) After receiving a valid request under subsection (b) of this section, the organization shall release the client's
459 clinical records to the licensed practitioner.

460 (d) If, after receiving and reviewing a client's clinical records under subsection (c) of this section, a licensed
461 practitioner's reasonable medical opinion is that releasing the records to the client or the client's representative would not
462 be detrimental to the client's health or treatment progress the practitioner may provide or otherwise disclose all or part of
463 the client's clinical record to the client or the client's representative.

464 § 5637. Enforcement of rights; jurisdiction.

465 (a) The Attorney General or the protection and advocacy system may enforce the rights established under this
466 subchapter.

467 (b) Notwithstanding § 342 of Title 10, the Court of Chancery has jurisdiction over actions, including those
468 requesting declaratory relief, to enforce or resolve disputes concerning the rights arising from this subchapter.

469 Section 5. Amend Chapter 56, Title 16 of the Delaware Code by making deletions as shown by strike through and
470 insertions as shown by underline as follows:

471 Subchapter V. Incidents; Reports; Investigations

472 § 5641. Definitions.

473 As used in this subchapter:

474 (1) “Abuse” means as defined in § 5631 of this title.

475 (2) “Critical incident” means an actual or alleged event resulting in the abuse, death, exploitation, neglect,
476 restrictive intervention, or serious injury of a client.

477 (3) “Exploitation” means as defined in § 5631 of this title.

478 (4) “Incident” means an actual or alleged event that causes or has the potential to cause harm to a client.

479 The term includes critical incidents and any of the following events:

480 a. A health emergency in which a client receives emergency care not routinely provided by the
481 client’s primary care practitioner, treating practitioners, provider organization, or a hospital admits the
482 client.

483 b. The client is involved in a crime or contacted by a law enforcement agency.

484 c. The client experiences an emergency at a facility where the client resides, including fire,
485 flooding, severe property damage, unsafe conditions, or interruption of utilities lasting more than 8 hours.

486 (5) “Neglect” means as defined in § 5631 of this title.

487 (6) “Restrictive intervention” means as defined in § 5631 of this title.

488 (7) “Serious injury” means as defined in § 5631 of this title.

489 (8) “Report” means a report required under this subchapter.

490 § 5642. Duty to report; reporting.

491 (a) Whenever a staff member witnesses an incident or reasonably believes an incident has occurred, the staff
492 member shall report the incident to the Division.

493 (b) A staff member shall ensure a client’s health, safety, and well-being before reporting an incident.

494 (c) Whenever a staff member reasonably believes that an incident involves conduct that may constitute a crime,
495 the staff member shall contact a law-enforcement agency and report the criminal conduct as soon as possible.

496 (d) Except if the client refuses, whenever a staff member reasonably believes that a client was raped or sexually
497 assaulted, the staff member shall assist the client in obtaining an examination from a qualified sexual assault nurse
498 examiner.

499 (e) Records maintained under this section are not public records as defined in Chapter 100 of Title 29.
500 § 5643. Incident reporting
501 (a) Subject to this chapter, the Division may promulgate regulations related to making reports and the notification,
502 investigation, and resolution of incidents.
503 (b) The Division shall develop, operate, and maintain an online system for submitting, collecting, and retaining
504 reports.
505 § 5644. Violations; jurisdiction; immunity.
506 (a) It is unlawful for a staff member to intentionally fail to report a critical incident under § 5642 of this title.
507 Violation of this subsection is a class A misdemeanor.
508 (b) It is unlawful for a staff member to intentionally falsify a critical incident report under § 5642 of this title.
509 Violation of this subsection is a class A misdemeanor.
510 (c) A staff member who refuses, fails, or neglects to comply with § 5642 is subject to a civil penalty of not more
511 than \$1,000 per violation.
512 (d) It is unlawful to intentionally falsify a report under § 5642 of this title. Violation of this subsection is a class A
513 misdemeanor.
514 (e) It is unlawful for a provider organization, executive, or administrator to discharge, retaliate, or otherwise
515 discriminate against an employee for making a report under § 5642 of this title. Violation of this subsection is a civil
516 violation subject to a fine of up to \$25,000. Whenever a provider organization, executive, or administrator violates this
517 subsection, the organization, executive, or administrator is liable to the employee for treble damages, costs, and attorney
518 fees.
519 (f) The Attorney General shall enforce the provisions of this section.
520 (g) The Superior Court of this State has exclusive original jurisdiction over violations of this section.
521 (h) Except if the individual has engaged in the abuse, exploitation, neglect, or serious injury of a client or caused
522 injuries or death as a result of unreasonable care, willfully, wantonly, or by gross negligence, an individual making a report
523 under this chapter in good faith and with reasonable care is not subject to any of the following as a result of making the
524 report:
525 (1) Disciplinary or other adverse action under the professional licensing laws of this State.
526 (2) Criminal liability.
527 (3) Civil liability for damages for injuries or death.
528 § 5645. Investigations; determination.

529 (a) Except as otherwise provided in § 5646 of this title, after receiving a report, the Division shall determine,
530 employing standard operating procedures adopted by the Division, if an incident requires investigation.

531 (b) If the Division determines that an investigation is required, the Division shall conduct an investigation or
532 otherwise arrange for another State agency to conduct an investigation.

533 (c) After an investigation, the Division shall determine whether the report is substantiated. The Division shall
534 notify the organization in writing of the determination no more than 10 days after making the determination.

535 (d) If the Division determines that a report is substantiated, the Division may do any of the following:

536 (1) Take disciplinary action under § 5623 of this title.

537 (2) Enter into a corrective action plan under § 5624 of this title.

538 (3) Decline to take further action.

539 (e) Records maintained under this section are not public records as defined in Chapter 100 of Title 29.
540 § 5646. Notifications and investigations of reports involving alleged criminal conduct.

541 (a) Whenever the Division receives a credible report involving conduct that a reasonable person would suspect is a
542 crime, the Division shall immediately notify a law enforcement agency with the appropriate jurisdiction and the Attorney
543 General.

544 (b) After receiving a notification under subsection (a) of this section, a law enforcement agency shall do one of the
545 following:

546 (1) Investigate.

547 (2) Decline to investigate, notify the Division, and provide the reasons for the declination.

548 (3) Decline to investigate, refer the notification to the Delaware State Police, and notify the Division.

549 (c) After receiving a notification under subsection (a) or subsection (b) of this section, the Delaware State Police
550 shall do one of the following:

551 (1) Investigate.

552 (2) Decline to investigate, notify the Division, and provide the reasons for the declination.

553 (d) After concluding an investigation under this section, the law enforcement agency or State Police shall provide
554 the Division and the Attorney General with a written report summarizing the investigation.

555 (e) If the Attorney General initiates a criminal prosecution based on a report made under this subchapter or as a
556 result of an investigation under this section, the Attorney General shall keep the Division informed of the major decisions
557 related to the prosecution and the status of the case.

558 (f) The Division may defer deciding under § 5645 of this title until after the Division receives appropriate
559 guidance from the Attorney General.

560 (g) Records maintained under this section are not public records as defined in Chapter 100 of Title 29.

561 § 5647. Required notifications to the Division of Professional Regulation; referrals to the Adult Abuse Registry.

562 (a) Whenever the Division determines that an individual holding a license or certification under Title 24 has
563 abused, exploited, neglected, or seriously injured a client, the Division shall notify the Division of Professional Regulation.
564 After receiving notification under this subsection, the Division of Professional Regulation shall notify the appropriate board
565 under Title 24 for disciplinary proceedings.

566 (b) Subject to § 8564 of Title 11, whenever the Division substantiates that an individual has abused, exploited,
567 neglected, or seriously injured a client, the Division shall refer the individual to the Department for entry on the Adult
568 Abuse Registry.

569 § 5667. The protection and advocacy system.

570 (a) The purpose of the protection and advocacy system complements the Division's role in promoting clients'
571 health, safety, and well-being through advocacy, investigation, and monitoring.

572 (b) The protection and advocacy system may access clients, facilities, and records as authorized by the Protection
573 and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801 et seq., and related federal regulations.

574 Section 6. Amend § 7908, Title 29 of the Delaware Code by making deletions as shown by strike through and
575 insertions as shown by underline as follows:

576 § 7908. Division of Substance Abuse and Mental Health.

577 ~~(a) There is hereby established the Division of Substance Abuse and Mental Health under the direction and control~~
578 ~~of the Secretary of the Department of Health and Social Services.~~

579 ~~(b) The Division of Substance Abuse and Mental Health shall be responsible for providing and overseeing public~~
580 ~~mental health and substance use treatment services serving individuals who are 18 years old and older.~~

581 ~~(c) The Division of Substance Abuse and Mental Health shall have the following powers and duties:~~

582 ~~(1) To plan for, establish, implement, amend and revise standards for mental health programs serving~~
583 ~~individuals who are 18 years old and older.~~

584 ~~(2) The authority to create, implement, and oversee licensing requirements for all mental health treatment~~
585 ~~programs serving individuals who are 18 years old and older.~~

586 ~~(3) To provide, facilitate, and create educational and training programs related to mental health and~~
587 ~~substance use.~~

- 588 (4) ~~To make contracts necessary or incidental to the performance of its duties and execution of its powers.~~
- 589 (5) ~~To operate the Delaware Psychiatric Center, including maintaining a forensic unit as required by~~
- 590 ~~Chapter 51 of Title 16.~~
- 591 (6) ~~To acquire, hold or dispose of real property or any interest therein, and construct, lease or otherwise~~
- 592 ~~provide treatment facilities for individuals in need of treatment.~~
- 593 (7) ~~To carry out all powers and duties set forth in Chapters 22, 50, 51, 59, and 61 of Title 16.~~
- 594 (8) ~~To coordinate with other divisions within the Department of Health and Social Services, as well as~~
- 595 ~~with the Department of Services for Children Youth and Their Families, as necessary to provide appropriate~~
- 596 ~~individualized treatment services and address systemic public health needs.~~
- 597 (9) ~~To solicit and accept for use any money, real property or personal property made by will or otherwise~~
- 598 ~~and any grant of money, services or property from the federal government, the State or any political subdivision~~
- 599 ~~thereof or any private source, and take all actions necessary to cooperate with the federal government or any of its~~
- 600 ~~agencies in making an application for any grants.~~
- 601 (10) ~~To administer or supervise the administration of the provisions relating to individuals in need of~~
- 602 ~~mental health or substance use treatment of any state plan submitted for federal funding pursuant to federal health,~~
- 603 ~~welfare or treatment legislation.~~
- 604 (11) ~~To take all other actions necessary to execute the authority expressly granted to the Division of~~
- 605 ~~Substance Abuse and Mental Health.~~
- 606 (d) ~~The Division of Substance Abuse and Mental Health shall be authorized to promulgate rules and regulations to~~
- 607 ~~implement this section.~~
- 608 (a) As used in this section:
- 609 (1) “Behavioral health condition” means as defined in § 5601 of Title 16
- 610 (2) “Behavioral health treatment program” or “program” means as defined in § 5601 of Title 16.
- 611 (3) “Department” means the Department of Health and Social Services.
- 612 (4) “Director” means the Director of the Division.
- 613 (5) “Division” means the Division of Substance Abuse and Mental Health.
- 614 (6) “Behavioral health treatment provider organization” or “provider organization” means as defined in §
- 615 5601 of Title 16.
- 616 (b) The Division is established within the Department under the direction and control of the Secretary.

617 (c) The Division shall provide for and oversee the prevention of behavioral health conditions and the care,
618 treatment, and recovery of adults with behavioral health conditions.

619 (d) The Division shall do all of the following:

620 (1) Plan for, adopt, establish, implement, revise, and enforce program standards.

621 (2) License provider organizations to operate programs.

622 (3) Inspect, investigate, and monitor provider organizations to ensure compliance and quality.

623 (4) Receive and investigate complaints, grievances, and incident reports related to provider organizations
624 and programs.

625 (5) Provide and facilitate education, research, and training related to behavioral health conditions.

626 (6) Establish, operate, and maintain the Delaware Psychiatric Center and a forensic psychiatric unit
627 within the Center.

628 (7) Administer or supervise the administration of provisions in a federal grant related to individuals with
629 behavioral health conditions.

630 (e) The Division may do any of the following:

631 (1) Make contracts necessary or incidental to the Division's duties or the exercise of the Division's
632 powers.

633 (2) Solicit, accept, and use money, property, or services, regardless of the source.

634 (3) Acquire, hold, or dispose of real property, and construct, lease, or otherwise provide real property
635 necessary or incidental to the Division's duties or the exercise of the Division's powers.

636 (4) Coordinate with other divisions within the Department of Health and Social Services and with the
637 courts, the Department of Correction, the Department of Justice, the Department of Safety and Homeland Security,
638 and the Department of Services for Children, Youth and Their Families to address systemic public behavioral
639 health needs.

640 (5) Take action to execute the authority expressly granted to the Division.

641 (6) Promulgate rules and regulations to implement this section.

642 Section 7. Amend § 1212, Title 16 of the Delaware Code by making deletions as shown by strike through and
643 insertions as shown by underline as follows and by redesignating accordingly:

644 (d) Disclosure without informed consent. — Protected health information may be disclosed without the informed
645 consent of the individual who is the subject of the information where any of the following disclosures are made:

646 () To the Division of Substance Abuse and Mental Health in cases where the Division is engaged in an
647 audit, investigation, or survey involving the care or treatment of a client in a behavioral health treatment program
648 licensed by the Division. Under § 7808 of Title 29, the Division is charged with protecting the health and safety of
649 clients. The Division is a “public health authority” and “health oversight agency,” related to the Division’s
650 functions as a peer review organization, auditor, or evaluator for licensed behavioral health treatment programs.

651 Section 8. Chapter 22 of Title 16 of the Delaware Code is repealed in its entirety.

652 Section 9. §§ 5181 through 5186 of Title 16 of the Delaware Code are repealed in their entirety.

653 Section 10. This Act is known as the “Rick Urey Behavioral Health Treatment Act.”

654 Section 11. Sections 6, 7, 10, 11, and 12 of this Act are effective immediately.

655 Section 12. Sections 1 through 5, 8, and 9 of this Act are effective immediately and are to be implemented the
656 earlier of the following:

657 (a) Two years from the date of the Act’s enactment.

658 (b) Notice by the Director of the Division of Substance Abuse and Mental Health published in the
659 Register of Regulations that final regulations to implement this Act have been adopted.

SYNOPSIS

This Act authorizes the Division of Substance Abuse and Mental Health to issue licenses and adopt and enforce comprehensive regulations for behavioral health provider organizations and treatment programs. It requires provider organizations to obtain licenses to operate behavioral health treatment programs, with exemptions for certain practitioners and programs. It creates civil and criminal penalties for the provision of treatment services or the operation of programs without proper licensing or in violation of law or regulation.

This Act also establishes rights for community clients such as freedom from abuse, neglect, and exploitation; privacy; individualized treatment plans; and participation in their care. Residential clients have additional rights, including communication, personal belongings, and voting assistance. In addition to client rights, it establishes duties for provider organizations, which include treating clients respectfully, providing clear information, maintaining confidentiality, and establishing grievance procedures.

Furthermore, this Act requires provider organization staff to report incidents, including those involving abuse, neglect, or serious injury. It authorizes the Division to investigate reports and then take disciplinary action or refer the report to law enforcement.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Sections 6, 7, 10, 11, and 12 of this Act take effect immediately. Sections 1 through 5, 8, and 9 of this Act take effect immediately and are to be implemented the earlier of the following: 2 years after its enactment into law or notice by the Director of the Division published in the Register of Regulations that final regulations to implement this Act have been adopted.

This Act requires a greater than majority vote for passage because § 11 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to impose or levy a tax or license fee.

This Act requires a greater than majority vote for passage because § 28 of Article IV of the Delaware Constitution requires the affirmative vote of two-thirds vote when the General Assembly gives criminal jurisdiction to inferior courts.