



SPONSOR: Rep. Bentz & Sen. Townsend

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 225
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16, TITLE 24, TITLE 25, AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE DIVISION OF LONG TERM CARE RESIDENTS PROTECTION.

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

Section 1. Amend § 1102, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1102. Definitions.

As used in this subchapter, the following terms mean:

(3) "Division" shall mean the Division of ~~Long Term Care Residents Protection~~; Health Care Quality;

Section 2. Amend § 1131, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1131. Definitions.

When used in this subchapter the following words shall have the meaning herein defined. To the extent the terms are not defined herein, the words are to have their commonly-accepted meaning.

(3) "Division" shall mean the Division of ~~Long Term Care Consumer Protection~~; Health Care Quality.

Section 3. Amend § 1134, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1134. State response to reports of adult abuse, neglect, mistreatment or financial exploitation.

(d) In responding to abuse, neglect, mistreatment and financial exploitation complaints, the Division shall:

(12) Appointment of special investigators; powers and duties.

a. The Secretary of the Department of Health and Social Services ~~may~~ shall appoint qualified persons to be special investigators for the Division of ~~Long Term Care Residents Protection~~. Health Care Quality. Such investigators shall hold office at the pleasure of the Secretary. Any person appointed pursuant to this section shall have a minimum of 10 years experience as a "police officer," as that term is defined in § 1911(a) of Title 11,

significant investigatory experience while working as a police officer, shall be in good standing with the previous or present law-enforcement agency where such person is or was employed, and shall have such other qualifications deemed appropriate by the Secretary.

b. Special investigators appointed under this section may conduct investigations of abuse, neglect, mistreatment or financial exploitation of residents of long-term care facilities and adults who are impaired anywhere in this State as directed by the Director of the Division of ~~Long-Term-Care-Residents-Protection~~ Health Care Quality and shall have the power to make arrests and serve writs anywhere in this State. In conducting such investigations, the special investigators shall have the statewide powers enumerated under § 1911 of Title 11 and such other powers as conferred by law on police officers, but such powers shall be limited to offenses involving abuse, neglect, mistreatment or financial exploitation of residents of long-term care facilities and adults who are impaired anywhere in this State as directed by the Director of the Division of ~~Long-Term-Care-Residents-Protection~~ Health Care Quality. To the extent possible, special investigators pursuant to this section shall consult with the police agency having jurisdiction and the Director or the Director's designee prior to making an arrest and shall do so in all cases after making such arrest.

Section 4. Amend § 1161, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1161. Definitions.

(d) "Division" shall mean the Division of ~~Long-Term-Care-Residents-Protection~~ Health Care Quality.

Section 5. Amend § 1162, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1162. Nursing staffing.

(f) An individual in a facility-sponsored training program who has completed all but the final 37.5 hours of requisite classroom and clinical training to become a CNA may be counted in the direct care hours and minimum staffing shift ratios under the CNA staffing requirements given in subsections (b), (c) and (e) of this section. The individual shall be referred to as a nursing assistant in training (NAIT). The Division of ~~Long-Term-Care-Residents-Protection~~ (Division) shall conduct a study of the certified nursing assistant training programs in Delaware, both those sponsored by facilities and those sponsored by educational institutions. It shall report its findings to the Nursing Home Quality Residents Assurance Commission (Commission). The factors to be studied include, but are not limited to, the percentage of each training program's graduates who passed the certified nursing assistant certification test and the number of attempts it took each graduate to become certified, along with the total number of hours, divided by classroom and clinical time, spent in the

overall certified nursing assistant training program. The study shall encompass a period of 6 months commencing with the promulgation of the certified nursing assistant regulations. The report shall be issued no later than 2 months after the completion of the study period. Based on the results of its study, the Division shall recommend to the Commission whether a nursing assistant, while in training and prior to certification, should be counted as a CNA in the minimum staffing ratios, and, if so, at what point in the training program.

Section 6. Amend § 1210, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1210. Definitions.

As used in this subchapter:

(3) "Legitimate public health purpose" means a population-based activity or individual effort primarily aimed at the prevention of injury, disease, or premature mortality or the promotion of health in the community, including:

a. Assessing the health needs of the community through public health surveillance and epidemiological research;

b. Developing public health policy;

c. Responding to public health needs and emergencies;

d. Review by the Child Death Review Commission or the Child Protection Accountability Commission;

and

e. Requests for hospital records by the Division of ~~Long Term Care Residents' Protection~~ Health Care Quality pursuant to § 1212 of this title.

Section 7. Amend § 1212, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1212. Disclosure of protected health information.

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

(7) To the Division of ~~Long Term Care Residents' Protection~~ Health Care Quality in cases where the Division is engaged in an investigation or survey involving the care or treatment of an individual at a facility licensed by the Division, and the individual has been admitted to a hospital from the facility or discharged from a hospital to the facility. The Division of Long Term Care Residents Protection is an entity charged with helping to safeguard the health and safety of patients. It shall be recognized as a "public health authority" and as a "health oversight agency," and it

shall be recognized in the performance of its functions as a peer review organization or auditor or evaluator with respect to such aspects of healthcare delivery systems or providers;

Section 8. Amend § 9405, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 9405. Attendant screening.

(b) To effectively implement the attendant screening system, the Department is vested with the following powers, duties and authority:

(4) Notwithstanding any contrary provision of Chapter 11 of this title or Chapter 85 of Title 11, the Department is authorized to obtain adult abuse registry information from the Division of ~~Long-Term-Care-Residents Protection~~ Health Care Quality pertaining to any person seeking to provide attendant services under this chapter.

(5) Notwithstanding any contrary provision of Chapter 11 of this title, the Department is authorized to obtain nurse aide registry information from the Division of ~~Long-Term-Care-Residents Protection~~ Health Care Quality pertaining to any person seeking to provide attendant services under this chapter.

Section 9. Amend § 1730, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1730. Duty to report unprofessional conduct and inability to practice medicine.

(d) Every person to whom a certificate to practice medicine is issued has a duty to report, within 30 days of the day each such person becomes aware, of the existence of a report to the Department of Services for Children, Youth and Their Families under Chapter 9 of Title 16 against that person concerning child abuse or neglect or a report to the Division of ~~Long-Term-Care-Residents Protection~~ Health Care Quality under Chapter 85 of Title 11 against that person concerning adult abuse, neglect, mistreatment, or financial exploitation.

Section 10. Amend § 5202, Title 24 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5202. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

(5) "Nursing home" shall mean any licensed residential health facility for aged, infirm, chronically ill or convalescent persons, excluding neighborhood homes and group homes licensed by the Division of ~~Long-Term-Care-Residents Protection~~ Health Care Quality, that provides shelter and food to more than 4 persons who:

Section 11. Amend § 7903, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 7903. Powers, duties and functions of the Secretary.

The Secretary may:

(2) Appoint and fix the salary, with the written approval of the Governor, of the Deputy Secretary and the following division directors and office heads, who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

i. A Director of the Division of ~~Long-Term-Care-Residents-Protection~~, Health Care Quality, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

Section 12. Amend § 7907, Title 29 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 7907. Delaware Nursing Home Residents Quality Assurance Commission.

(d) ~~The Division of Long-Term-Care-Resident-Protection Health-Care-Quality shall furnish staff for the Commission and the Attorney General's office shall provide legal advice. [Repealed].~~

(g) The duties of the Commission shall include:

(4) The protection of the privacy of nursing home residents including following the guidelines for confidentiality of records to be established by the Division of ~~Long-Term-Care-Resident-Protection~~, Health Care Quality.

Section 13. This Act takes effect upon the enactment of House Bill No. 208 of the 149th General Assembly.

Section 14. Section 2 and Section 3 of this Act sunset upon the enactment of House Bill No. 195 of the 149th General Assembly.