SPONSOR: Rep. Walker & Sen. Hall-Long
Reps. Briggs King, Jaques, Q. Johnson, Keeley, Miro, Outten, B. Short; Sen. Sokola

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 154

AN ACT TO AMEND TITLES 16 AND 24 OF THE DELAWARE CODE RELATING TO ABUSE AND NEGLECT OF RESIDENTS OR PATIENTS IN FACILITIES.

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

Section 1. Amend § 1131, Title 16 of the Delaware Code by making insertions as shown by underlining 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.

(1) Abuse shall mean:

a. Physical abuse by unnecessarily inflicting pain or injury to a patient or resident. This includes but is not limited to, hitting, kicking, punching, slapping or pulling hair. When any act constituting physical abuse has been proved, the infliction of pain is assumed.

b. Sexual abuse which includes, but is not limited to, any sexual contact, sexual penetration, or sexual intercourse, as those terms are defined in § 761 of Title 11, with a patient or resident by an employee or volunteer working at a facility. It shall be no defense that the sexual contact, sexual penetration, or sexual intercourse was consensual.

c. Emotional abuse which includes, but is not limited to, ridiculing, demeaning, humiliating, or cursing at a patient or resident, or threatening a patient or resident with physical harm.

<u>d. Medication diversion by knowingly, or intentionally, interrupting, obstructing, or altering the delivery, or administration, of a prescription drug to a patient or resident, providing that such prescription drug was:</u>

<u>i. prescribed or ordered by a healthcare provider for the patient or resident; and</u>

<u>ii. the interruption, obstruction, or alteration occurred without the prescription, or order, of a healthcare provider;</u>

<u>e. A person is justified in engaging in conduct otherwise prohibited in subsection (d) if the conduct was performed by:</u>

<u>i. a healthcare provider, or licensed health care professional, who acted in good faith within the scope of the person's practice or employment; or</u>

ii. a person acting in good faith while rendering emergency care at the scene of an emergency, or accident.

(2) "Department" shall mean the Department of Health and Social Services or its designee.

(3) "Division" shall mean the Division of Long-Term Care Consumer Protection;

(4) "Facility" shall include:

a. Any facility required to be licensed under this chapter;

b. Any facility operated by or for the State which provides long-term care residential services; and

c. The Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to § 5001 or § 5136 of this title.

d. Any hospital as defined in § 1001(2) of this Title. Hospital as defined in § 1001(2) is included in the definition of facility only for the purposes and application of § 1131 and § 1136 of this subchapter.

(5) "Financial Exploitation" shall mean the illegal or improper use or abuse of a patient's or resident's resources or financial rights by another person, whether for profit or other advantage.

(6) “Healthcare provider” shall mean an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession. This is the same definition as in 16 § 2501.

~~(6)~~(7)"High managerial agent" means an officer of a facility or any other agent in a position of comparable authority with respect to the formulation of the policy of the facility or the supervision in a managerial capacity of subordinate employees.

~~(7)~~(8) "Investigation" shall mean the collection of evidence in response to a report of abuse, neglect, mistreatment or financial exploitation of a resident or patient to determine if that resident or patient has been abused, neglected, mistreated or financially exploited. The Division shall develop protocols for its investigations which focus on ensuring the safety and well-being of the patient or resident and which satisfy the requirements of this Chapter.

~~(8)~~(9) "Mistreatment" shall include the inappropriate use of medications, isolation, or physical or chemical restraints on or of a patient or resident.

~~(9)~~(10) "Neglect" shall mean:

a. Lack of attention to physical needs of the patient or resident including, but not limited to toileting, bathing, meals and safety.

b. Failure to report patient or resident health problems or changes in health problems or changes in health condition to an immediate supervisor or nurse.

c. Failure to carry out a prescribed treatment plan for a patient or resident.

d. A knowing failure to provide adequate staffing which results in a medical emergency to any patient or resident where there has been documented history of at least 2 prior cited instances of such inadequate staffing within the past 2 years in violation of minimum maintenance of staffing levels as required by statute or regulations promulgated by the Department, all so as to evidence a willful pattern of such neglect.

~~(10)~~(11) "Person" means a human being and where appropriate a public or private corporation, an unincorporated association, a partnership, a government or governmental instrumentality.

~~(11)~~(12) "Protection and advocacy agency" shall mean 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 and Bill of Rights Act (42 U.S.C. § 15001 et seq.); or

c. Protection and advocacy for individual rights (29 U.S.C. § 794e).

(13) "Prescription drug" means a controlled substance as listed in Subchapter II in Chapter 47 of Title 16 or any other drug that can only be dispensed upon written, or verbal, authorization from a licensed healthcare provider.

Section 2. Amend § 1136, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 1136. Violations.

(a) Any person, who knowingly or recklessly abuses, mistreats or neglects a patient or resident of a facility shall be guilty of a class A misdemeanor. Where abuse results in sexual contact such person shall be guilty of a class G felony. Where the abuse, mistreatment or neglect results in serious physical injury, sexual penetration or sexual intercourse, such person shall be guilty of a class C felony. Where the abuse, mistreatment or neglect results in death, then the person shall be guilty of a class A felony.

(b) Any person who knowingly causes medication diversion of a patient, or resident, shall be guilty of a class G felony and guilty of a class F felony, if committed by a healthcare professional.

~~(b)~~ (c) Any person who knowingly exploits a patient's or resident's resources shall be guilty of a class A misdemeanor where the value of the resources is less than $1,000 and shall be guilty of a class G felony where the value of the resources is $1,000 or more.

~~(c)~~ (d) Any member of the board of directors or a high managerial agent who knows that patients or residents of the facility are being abused, mistreated or neglected and fails to promptly take corrective action shall be guilty of a class A misdemeanor.

~~(d)~~ (e) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

Section 3. Amend § 4732, Title 16 of the Delaware Code by making insertions as shown by underlining as follows:

(h) As a condition precedent to registration or any subsequent biannual renewal of such registration, an applicant shall demonstrate, in such a form and by such evidence as the Secretary deems appropriate, that the applicant, if a licensed practitioner, as defined in this chapter, or such officer or employee of the applicant, if a corporation, partnership or other business entity, as is required to be registered as an individual, has completed no less than two (2) hours of continuing professional education relating to (1) the prescription, distribution, dispensing or delivery of controlled substances, as defined in this chapter, and/or (2) the detection or recognition of the symptoms, patterns of behavior, or other characteristics of impairment and dependency resulting from the abusive or illegal use of controlled substances.

Section 4. Amend § 4787 (a), Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 4787. Education and research.

(a) The Secretary shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs the Secretary may:

(1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) Evaluate procedures, projects, techniques and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; ~~and~~

(6) Assist in the education and training of state and local law-enforcement officials in their efforts to control misuse and abuse of controlled substances~~.~~; and

(7) Require such evidence of completion of courses of professional education requirements needed for registration, or subsequent renewal of registration, as the Secretary deems appropriate.

Section 5. Amend § 2512, Title 24 of the Delaware Code by making insertions as shown by underlining as follows:

§ 2512. Issuance and renewal of license.

117 (a) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure to
118 practice pharmacy and who pays the fee established under § 2511 of this title.
119 (b) A license to practice pharmacy must be renewed biennially, in a manner determined by the Division. License
120 renewal must include the completion and submission of a renewal form provided by the Division, payment of the
121 appropriate fee, and proof that the licensee has met the continuing education requirements established by the Board.
122 (c) The Board shall not issue any license or any renewal thereof to any applicant unless and until the applicant has
123 offered proof that the applicant has completed no less than two (2) hours of education or continuing education relating to
124 (1) the prescription, distribution, dispensing or delivery of controlled substances and/or (2) the detection or recognition of
125 the symptoms, or other characteristics of impairment or dependency resulting from the abusive or illegal use of controlled
126 substances.
127 ~~(c)~~ (d) The Board, in its rules and regulations, shall determine the period of time within which a licensee may
128 renew that licensee's own license, notwithstanding the fact that the licensee failed to renew that licensee's own license on or
129 before the designated renewal date; provided, however, that the period of time may not exceed 1 year beyond the
130 designated renewal date.
131 ~~(d)~~ (e) A licensee, upon the licensee's written request, may be placed on inactive status for no more than 4 years. A
132 licensee on inactive status who desires to reactivate that licensee's own license shall complete and submit an application
133 form approved by the Board, submit the renewal fee set by the Division, and submit proof of fulfillment of the continuing
134 education requirements established by the Board.
135 ~~(e)~~ (f) If a licensee is on inactive status for more than 4 years, that licensee may be relicensed, but only by
136 following the reentry process established by the Board in its rules and regulations.

## SYNOPSIS

In recognition of the increasing abusive and illegal uses of controlled substances and the illegal commerce thereof, this bill creates a new offense and imposes penalties for diverting prescription drugs from a patient of a facility. It also requires those who register to prescribe, sell, dispense or distribute controlled substances demonstrate regularly to complete 2 continuing education credits in the area of awareness and knowledge of the problems posed by the abuse of controlled substances. The bill also makes corrections to drafting errors in the 2011 bill that eliminated consent as a defense to sexual abuse in a facility.